

AGENDA ITEM

MARCH 10 – Board of Trustees – February 16, 2018, Open Minutes

BOARD OF TRUSTEES MEETING

Friday, February 16, 2018

Open Minutes

The State Bar of California

Conference Call

180 Howard St., 8th Floor, Room 8B, San Francisco, CA 94105

845 S. Figueroa St., 2nd Floor, Room 2A, Los Angeles, CA 90017

The Board of Trustees of the State Bar of California convened its meeting in open session at 11:01 a.m. at the State Bar of California, 180 Howard St., 8th Floor, Room 8B, San Francisco; 845 S. Figueroa St., 2nd Floor, Room 2A, Los Angeles; and by conference call on Friday, February 16, 2018, Michael Colantuono presiding. The meeting adjourned at 12:45 p.m. There was no closed session.

The following members of the Board of Trustees were present at roll-call: Mark Broughton, James Fox, Debbie Manning, Joanna Mendoza, Joshua Perttula, Stacie Spector and Alan Steinbrecher. Renee LaBran, Sean SeLegue and Todd Stevens joined the meeting in progress.

The following members of the Board of Trustees were not present: Hailyn Chen, Jason Lee and Brandon Stallings.

The following members of the staff were present: Louisa Ayrapetyan, Randall Difuntorum, Donna Hershkowitz, Vanessa Holton, Linda Katz, Dag MacLeod, Steven Moawad, Destie Overpeck, Leah Wilson and Sean Strauss.

The meeting was called to order. The roll call was taken. A quorum was established. Trustees were reminded that a roll call vote would be taken on all action items.

Mr. Colantuono called for public comment, inquiring whether there were persons in attendance who wished to make public comment. There was no public comment.

30 – Chair’s Report – Oral Report

Mr. Colantuono reported on the Chair’s annual visit to the Legislature with key executive staff. It was a productive round of meetings, covering the State Bar’s public protection mission, affirmative legislative program and 2019 fee bill. Mr. Colantuono expressed appreciation for the service of outgoing members of the Committee of Bar Examiners, Larry Sheingold and Lee Wallach. Mr. Colantuono noted the successful launch of the California Lawyers Association, and briefly discussed the filing of the biannual report to the Supreme Court and the Strategic Plan report as well as the State Bar’s reply to San Francisco District Attorney George Gascon’s request for a new rule of professional conduct to prohibit disclosure of a defendant’s immigration

status in open court. Mr. Colantuono has been reaching out by telephone to Bar leaders in San Diego, Kern County and Orange County, and thanked Trustee Alan Steinbrecher for covering the Los Angeles swearing in ceremony. Finally, Mr. Colantuono welcomed new Trustees Debbie Manning, the Senate public member, and Joshua Perttula, the Senate attorney member, while observing that there remain three vacancies on the Board, two Governor public members and one Assembly public member.

30 - 1 Board of Trustees Committee and Liaison Assignments

Presented for ratification on February 16, 2018, are Trustees Joshua Perttula's and Debbie Manning's Board Committee and Liaison Assignments for the 2017–2018 Board year.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees hereby ratifies Trustee Joshua Perttula's and Trustee Debbie Manning's Board Committee and Liaison assignments for the 2017–2018 Board year as presented on February 16, 2018.

All members present and recorded on the roll-call slip voted yes, except LaBran who abstained.

30 -2 Proposed Amendment to Multi-Year Board Meeting Schedule for 2018 and 2019

This item would amend the Multi-Year Board Meeting Schedule for 2018 and 2019 to correct an error regarding the dates of the January 2019 Board of Trustees meeting. The Multi-Year Board Meeting Schedule approved by the Board of Trustees at its January 27, 2018, meeting lists the dates of the January 2019 Board of Trustees meeting as "January 23, 24 & 25, 2019." The correct dates are "January 24, 25 & 26, 2018."

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board affirms that all regularly scheduled meetings of the Board be held as listed on the attached meeting schedule.

All members present and recorded on the roll-call slip voted yes.

40 Staff Reports

41 Executive Director

A written Report from Executive Director was posted to the agenda item. At the meeting, Ms. Wilson focused her oral remarks on the follow-up to the Strategic Planning Session, previewing that the Board will be asked at today's meeting to approve modifications to the 2017-2022 Strategic Plan objectives based on discussions that occurred during the Strategic Planning Session. Regarding the Access to Justice objectives, Ms. Wilson advised that staff will separately bring forward options for the Board's consideration at the March meeting.

50 Consent Agenda

The following items on the consent agenda are presented to the Board, and no objection being raised thereto, are deemed unanimously adopted.

50 - 1 Approval for Specified Contracts for California Bar Examination Sites with Double Tree Hotel Westside; Ontario Gateway Hotel; Sheraton Mission Valley Hotel per Business and Professions Code Section 6008.6

Pursuant to Business and Professions Code section 6008.6, the State Bar shall award no contract for goods, services, or both, for an aggregate amount in excess of fifty thousand dollars (\$50,000), or for information technology goods, services, or both, for an aggregate amount in excess of one hundred thousand dollars (\$100,000), except pursuant to the standards established in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code and approval of the Board of Trustees. The contracts listed on the agenda item are in excess of \$50,000, and have met the standards established by Article 4 of the Public Contract Code, as implemented through the State Bar's Procurement Policy. These contracts require approval by the Board of Trustees in order to be executed.

RESOLVED, that the Board of Trustees approves execution of the contracts listed herein.

50 - 2 Proposed Amendments to Admissions Rules re Implementation of Bagley-Keene Amendments Effective January 1, 2018

During its December 2017 meeting, the Committee of Bar Examiners (Committee) approved the proposed amendments to Admissions Rules pertaining to the Open/Closed Meeting Rules for meetings of the Committee of Bar Examiners, subject to approval by the Board of Trustees. The amendments were necessary as effective January 1, 2018, the Committee's meetings are subject to the Bagley-Keene Act. Since the amendments are necessary due to a statutory change, no public comment period is needed.

Prior to the enactment of this legislation, which became effective January 1, 2018, the Committee conducted its meetings in accordance with provisions contained in Title 4, Division, 1, Chapter 1, Rule 4.11 of the Rules of the State Bar of California (*Admissions Rules*), which were adopted effective May 13, 2016. Since the Committee's meetings will be conducted in accordance with the provisions of Bagley-Keene beginning January 1, 2018, Rule 4.11, the *Admissions Rules* is no longer needed. As a result, the Committee adopted the amendments to the *Admissions Rules* to remove Rule 4.11, subject to the approval of the State Bar's Board of Trustees.

RESOLVED, that the Board of Trustees approves the proposed amendments to Title 4, Division, 1, Chapter 1, of the Rules of the State Bar of California to eliminate Rule 4.11 set forth in as Attachment A, effective immediately.

700 Miscellaneous

701 Strategic Planning Session Follow-up: Revision of Objectives and Identification of Action Items

On January 26 and 27, 2018, the Board conducted a strategic planning session where the Board considered new objectives to add to the 2017-2022 Strategic Plan, as well as objectives that should be revised or eliminated. This agenda item captures the full list of possible new objectives and action items discussed, as well as revisions to existing objectives and recommendations discussed for elimination of certain objectives that were completed in 2017.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees adopt revisions to the 2017-2022 Strategic Plan.

All members present and recorded on the roll-call slip voted yes.

702 State Bar Legislative Priorities

This agenda item seeks the Board of Trustees' approval of the initial legislative priorities and agenda for 2018. This item seeks approval only for pursuing technical amendments or clean-up as part of the Bar's annual licensing fee legislation, including eliminating references to "members," and "dues," as vestiges of the trade associational role of the Sections, and eliminating remaining references to the Treasurer of the State Bar, a position eliminated as part of last year's fee legislation. This agenda item also seeks approval to pursue other items of statutory clean-up.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees approve pursuing legislative amendments to change statutory references from "members" to "licensees," "licensed attorneys," or "attorneys," as contextually appropriate; and it is

FURTHER RESOLVED, that Board of Trustees approve pursuing legislative amendments to change statutory references from "dues" to "fees" or "licensing fees," as contextually appropriate; and it is

FURTHER RESOLVED, that the Board of Trustees approve pursuing legislative amendments as clean-up to last year's fee legislation, including eliminating remaining statutory references to the Treasurer position, and revising the description in Business and Professions Code section 6031 of the Board's mission that is inconsistent with the transition of the Sections, specifically by making the following amendment:

"6031(a) The board may aid in all matters pertaining to the advancement of the science of

jurisprudence or to the improvement of the administration of justice, including, but not by way of limitation, ~~all matters that may advance the professional interests of the members of the State Bar~~ and such matters as concern the relations of the bar with the public;” and it is

FURTHER RESOLVED, that the Board of Trustees approve pursuing legislative amendments to define the “Board year” as September to September, syncing up the presumed start of Board terms with the statutory provision defining the start and end of terms of the Chair and Vice-Chair; and it is

FURTHER RESOLVED, that the Board of Trustees approve pursuing legislative amendments to update statutes to properly refer to the role and authority of the State Bar Court, instead of the current references to the Board, as described in the Discussion section of this agenda item; and it is

FURTHER RESOLVED, that the Board of Trustees delegate to staff the authority to determine the appropriate strategy of the manner in which, and the method, to pursue the above amendments.

All members present and recorded on the roll-call slip voted yes.

703 Malpractice Working Group Member Appointment

Business and Professions Code section 6069.5, enacted as part of the 2018 State Bar fee bill (SB 36, Stats. 2017, ch. 422) directs the State Bar to conduct a review and study regarding errors and omissions insurance for attorneys licensed in California. At its November 2017 meeting, the Board of Trustees authorized the formation of the Malpractice Insurance Working Group to undertake this review and study, and appointed a chair to the working group. This item requests that the Board: 1) approve the working group charter; and, 2) appoint members to the working group.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees approve the attached charter for the Malpractice Insurance Working Group; and it is

FURTHER RESOLVED, that the Board of Trustees appoint the members set forth on a list presented as supplemental information to this agenda item to serve on the Malpractice Insurance Working Group, and delegate appointment of the remaining members to the Working Group Chair, in consultation with the Chair and Vice Chair of RAD.

All members present and recorded on the roll-call slip voted yes.

704 Commission for the Revision of the Rules of Professional Conduct: Extension of Term of Appointment

The State Bar of California's Commission for the Revision of the Rules of Professional Conduct (Commission) is scheduled to sunset on March 9, 2017. This agenda item requests an extension of the term of the Commission until June 30, 2018.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees approve the extension of the Commission for the Revision of the Rules of Professional Conduct and the terms of its officers and members until June 30, 2018, or when terminated by the Board, whichever is earliest; and it is

FURTHER RESOLVED, that the charter of the Commission is revised to implement this extension.

All members present and recorded on the roll-call slip voted yes.

705 Resolution Approving State Bar's Transition to the California Public Employees' Retirement System for Employee Health and Welfare Benefits and for State Bar to Provide Public Employees' Medical and Hospital Care Act's Statutory Minimum Contribution for Retiree Health and Welfare Benefits

This agenda item requests that the Board of Trustees formally authorize the transition of the State Bar's health plans to the California Public Employees' Retirement System ("CalPERS"). As previously authorized by the Board of Trustees, in the new two-year Memorandum of Understanding covering the State Bar's represented employees, the State Bar and the State Bar Employees Union agreed to a transition to CalPERS medical plans for provision of health & welfare benefits to current employees, which will result in expanded access to medical plans and reduced costs. The transition to CalPERS for health & welfare benefits also includes the State Bar's extension of a retiree health benefit to non-executive employees for the first time in State Bar history. In order to begin the transition, which is presently contemplated to be effective May 1, 2018, CalPERS requires that the Board of Trustees formally approve the enclosed resolution.

Upon motion made, seconded and unanimously adopted, it was

The Staff recommends that the Board of Trustees approve the resolution attached hereto as Exhibit A.

All members present and recorded on the roll-call slip voted yes.

706 Proposed Changes to Schedule of Charges and Deadlines - WITHDRAWN

The Board of Trustees adjourned its meeting at 12:45 p.m.

The Board may meet again at the call of the Chair at any time prior to the next regularly scheduled meeting of the Board, or if no such meeting be called, at the State Bar, 845 S. Figueroa St., 2nd Floor, Room 2A, Los Angeles, CA 90017, on Friday, March 9, 2018, at a time to be determined.

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE DISTRICT ATTORNEY



George Gascón
District Attorney

January 26, 2018

Michael G. Colantuono
Chair, Board of Trustees
State Bar of California
180 Howard St.
San Francisco, CA 94105

RE: Rule Proposal - Immigration Status in Court Hearings

Dear Chair Colantuono:

Thank you for the opportunity to provide further input regarding the Rule of Professional Conduct our office has proposed. While we understand the obstacles to adopting such a rule as the Office of Professional Competence recently outlined, we remain hopeful that the State Bar of California will take action that helps meet our shared goal of ensuring access to the courts for all. As you know, with reports of ICE agents in our courtrooms and imminent immigration raids in sanctuary cities like San Francisco, our undocumented neighbors are less likely to come forward to work with law enforcement and hold dangerous offenders accountable. When this happens our community's safety is jeopardized, as unreported crimes and criminals pose a threat that extends far beyond immigrant communities.

Whether the State Bar takes action in the form of a new rule of professional conduct, an ethics opinion, chooses to assist with a new rule of court or pending legislation-or something else entirely-the goal is the same: to prevent the unnecessary disclosure of immigration status and to instill confidence in an otherwise hesitant community. Ultimately, someone's country of origin has no bearing on whether they are suitable to take the stand.

With renewed confidence California can continue to ensure that crimes are reported, and the State Bar can promote equal access, participation, and the fair administration of justice. Given the current climate I applaud the State Bar for their recognition of this very real and legitimate issue and look forward to collaborating in the near future.

Sincerely,


George Gascón
San Francisco District Attorney

CC: James P. Fox
President, California State Bar