

OPEN SESSION AGENDA ITEM

703 MARCH 2018

DATE: March 9, 2018

TO: Members, Board of Trustees

FROM: Vanessa Holton, General Counsel

SUBJECT: Exception to the CalPERS 180 Day Wait Period to Appoint a Retired Annuitant; Waiver of Board Rule Barring Former Executives from Doing Business with the State Bar

EXECUTIVE SUMMARY

To comply with California Public Employee Retirement System (CalPERS) requirements, Board of Trustees action is required to waive the 180-day waiting period for the State Bar to appoint as a retired annuitant a former employee retired under CalPERS, within six (6) months of that individual's retirement date. In addition, to comply with the State Bar's Policy Restricting Former Members of the Board of Trustees and the Senior Managers Designated by the Executive Director from Doing Business with the State Bar, a waiver under the terms of that policy is also necessary from the Board. Patricia Lee, a Program Manager I in the Center for Access & Fairness, will retire from the State Bar on March 9, 2018. Ms. Lee has unique institutional knowledge and specialized skills needed for operational continuity; thus, the State Bar seeks interim short-term assistance from Ms. Lee immediately after her retirement and through the transition process.

The State Bar of California participates in the CalPERS retirement system. A CalPERS retiree can be appointed to work for the former employer as a retired annuitant. However, under pension reform standards (see Government Code section 7522.56 and 21224), the retired individual to be appointed must meet the following standards:

1. The individual must have specialized skills needed to perform work of limited duration;
2. The individual cannot work more than 960 hours in a fiscal year (July 1 – June 30);
3. The contracted compensation rate cannot be less than the minimum nor exceed the maximum paid to other employees, if any, performing comparable duties;
4. Compensation must be limited to wage rates set forth above and not take the form of other non-wage benefits;
5. The individual cannot have received unemployment insurance benefits for prior retired annuitant work;
6. The individual cannot work as a retired annuitant within six (6) months following his or her retirement date unless the governing Board of the contracting entity certifies to a critical need for the individual's skills within this six month period, as set forth in the resolution passed during public session, which must then be filed with CalPERS;

7. The individual must be the normal retirement age or older at the time of retirement.

Ms. Lee has served in a leadership capacity with the State Bar's Center for Access & Fairness for more than 23 years. She joined the State Bar as its Director of the Voluntary Legal Services unit on January 7, 1980. She became the Director of the Office of Legal Service in June 1982 and remained in this position until July 1986, when she left the Bar. Ms. Lee returned in August 2001 as the State Bar's Director of the Legal Service Access and Fairness Program, which was later renamed to the Office of Diversity Outreach. From this history, it is apparent that Ms. Lee has unique knowledge and specialized skill that will be instrumental in helping the Center for Access & Fairness maintain continuity of operations during the transition period following her retirement.

Because of CalPERS restrictions on contracting with a CalPERS retiree, the State Bar is seeking a Board resolution certifying the critical need to appoint Ms. Lee as a retired annuitant within six months of her retirement date, as required by CalPERS. The resolution recommended for this Board is set forth in Attachment A.

Additionally, the State Bar seeks from the Board of Trustees a waiver for good cause, described above, of Section 6 [Policy Restricting Former Members of the Board of Trustees and the Senior Managers Designated by the Executive Director from Doing Business with the State Bar]; Article 3 [Contracts]; Tab 17 [Control Policies & Procedures]. Section 6 states:

Policy Restricting Former Members of the Board of Trustees and the Senior Managers Designated by the Executive Director from Doing Business with the State Bar

Members of the Board of Trustees and Senior Managers designated by the Executive Director, for a period of twelve months following expiration of their term of office or termination of employment, shall not:

- (a) Seek to do, or do, business with the State Bar for monetary gain, or
- (b) Act as agent or attorney for, or otherwise represent any person, for compensation by making any formal or informal appearance, or any oral or written communication before the State Bar, or any officer or employee or agent thereof, if the appearance or communication is for the purpose of influencing official State Bar action, including the awarding or revocation of services, contracts, or the sale or purchase of goods or property.

The Board, or its designee, may waive the requirements of this policy for good cause.

FISCAL/PERSONNEL IMPACT

Ms. Lee's hourly rate of pay as a retired annuitant will be \$67.43. Staff does not anticipate that Ms. Lee's retired annuitant appointment will have any significant impact on the State Bar's finances.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

STRATEGIC PLAN GOALS & OBJECTIVES 2017-2022

Goal:

Goal 4: Support access to justice for all California residents and improvements to the state's justice system.

Objective:

Objective a: Support increased funding and enhanced outcome measures for Legal Services.

Objective b: Study and implement improved programmatic approaches to increasing access to justice.

RECOMMENDED BOARD ACTION

The Staff recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees adopts the resolution set forth in Attachment A; and it is

FURTHER RESOLVED, that the Board of Trustees waives Section 6 (Policy Restricting Former Members of the Board of Trustees and the Senior Managers Designated by the Executive Director from Doing Business with the State Bar); Article 3 (Contracts); Tab 17 (Control Policies & Procedures), as applied to Patricia Lee for good cause, as discussed this date.

ATTACHMENT(S) LIST

A. CalPERS Resolution

RESOLUTION

March 9, 2018

RESOLUTION FOR EXCEPTION TO THE 180-DAY WAIT PERIOD **GC sections 7522.56 and 21224**

WHEREAS, in compliance with Government Code sections 7522.56 and 21224, The State Bar of California Board of Trustees must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since his or her retirement date; and

WHEREAS, Patricia Lee has retired under CalPERS as a Program Manager I with The State Bar of California effective March 9, 2018; and

WHEREAS, Government Code sections 7522.56 and 21224 prohibit the appointment of a CalPERS retiree as a retired annuitant earlier than 180 days after his or her retirement date without a certification resolution, such as this; and

WHEREAS, Government Code sections 7522.56 and 21224 provide that a certification resolution will not waive the 180-day wait period if the retiree has received any unemployment insurance benefits; and

WHEREAS, Patricia Lee certifies that she has not and will not receive any unemployment insurance benefits; and

WHEREAS, The State Bar of California Board of Trustees and The State Bar of California certify that there is a critical need to hire Patricia Lee as a retired annuitant within 180 days of her March 9, 2018, retirement date; and

WHEREAS, no matters, issues, terms or conditions related to this appointment as a retired annuitant have been or will be placed on a consent calendar; and

WHEREAS, the appointment as a retired annuitant shall be limited to 960 hours per fiscal year; and

WHEREAS, the compensation paid to the retiree is not less than the minimum (\$8,767) nor exceeds the maximum (\$11,688) monthly base salary paid to State Bar employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the minimum hourly rate for the classification of Program Manager I is \$50.58 and the maximum hourly rate for this classification is \$67.43; and,

WHEREAS, the hourly rate paid to Patricia Lee for her work as a retired annuitant will be \$67.43 per hour; and

WHEREAS, Patricia Lee has not and will not receive any other benefit, incentive, or compensation in lieu of benefits or other form of compensation in addition to this hourly pay rate; and

THEREFORE, BE IT RESOLVED THAT The State Bar of California Board of Trustees hereby certifies the nature of the appointment as described herein and that this appointment is necessary to perform critically needed duties for The State Bar of California beginning March 12, 2018.