

AGENDA ITEM

MAY 10 – Board of Trustees – March 9, 2018, Open Minutes

BOARD OF TRUSTEES MEETING

Friday, March 9, 2018

Open Minutes

The State Bar of California

845 S. Figueroa St., 2nd Floor, Room 2A

Los Angeles, CA 90017

The Board of Trustees of the State Bar of California convened in open session at 8:31 a.m. at the State Bar of California, 845 S. Figueroa St., 2nd Floor, Room 2A, Los Angeles on Friday, March 9, 2018, Michael Colantuono presiding. Immediately following roll call, the Board convened in closed session until 9:00 a.m., at which time it reconvened in open session. At 11:50 a.m., the Board convened in a second closed session. The meeting was adjourned at 12:40 p.m.

The following members of the Board of Trustees were present: Mark Broughton, James Fox, Renee LaBran, Debbie Manning, Joanna Mendoza, Sean SeLegue, Brandon Stallings, Alan Steinbrecher and Todd Stevens. Hailyn Chen, Jason Lee, Joshua Perttula and Stacie Spector joined the meeting in progress.

The following members of the Board of Trustees were not present: None.

The following members of the staff were present: Carolina Almarante, Louisa Ayrapetyan, Sarah Cohen, Justin Ewert, Rebecca Farmer, Kevin Harper, Donna Hershkowitz, Vanessa Holton, Dag MacLeod, Steve Mazer, Lori Meloch, Steven Moawad, Amy Nunez, and Leah Wilson.

The following guest was present: Emilio Varanini, California Lawyers Association, Vice-President and Liaison to the Board of Trustees.

The meeting was called to order. The roll call was taken. A quorum was established.

Mr. Colantuono called for public comment, inquiring whether there were persons in attendance who wished to make public comment. There was one member of the public who provided comment, Libia Rebivic. She talked about the epidemic of government corruption she has witnessed over the last six years. When she first started auditing government agencies, she was told that there are no laws regulating government attorneys. She gave as an example of a corrupt city government the City of Beaumont where \$400,000 is missing and one of the attorneys set up companies that profited off of the sale of municipal bonds. The SEC has thrown him out of the bond industry. City attorneys are violating state and federal law, including embezzlement, resulting in indictments. She requested that the Board of Trustees establish additional duties of care for government attorneys.

10 - Minutes

November 3, 2017 – open minutes

December 1, 2017 – open minutes

January 27, 2017 – open minutes

February 16, 2018 – open minutes

The minutes were deemed approved.

30 – Chair’s Report – Oral Report

Michael Colantuono touched on the following topics in his oral report: (1) International Women’s Day, noting the successful development of female talent on the State Bar management team, Leah Wilson and Vanessa Holton; (2) Budget inadequacies and need for fee increase; (3) Continuation of the ABA delegation status quo, recognizing the relevance of engaging the ABA on regulatory matters; (4) Cancellation of the April 2018 Board teleconference meeting; (5) Approaches in overhauling the Board Book; (6) Affirmative Program of Legislative Proposals; (7) AB 3249, the new fee bill; (8) Appreciation to outgoing member of the Committee of Bar Examiners, Lee Wallach, and welcome to new Assembly appointee, Kareem Gogora; (9) Relationship building with the California Lawyers Association, recognizing presence of guest Emilio Varanini, California Lawyers Association, Vice-President and Liaison to the Board of Trustees; and (10) Honors to Pat Lee on her retirement, recognizing her 24 years of work in furtherance of justice and diversity – the heart, soul and conscience of the Council on Access and Fairness.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees and the leadership of the State Bar of California express their deepest appreciation to Patricia Lee for her invaluable contributions to the State Bar of California.

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

40 – Staff Reports

41 Executive Director

Leah Wilson touched on the following topics in her oral report: (1) Meetings with staff to report on her transition period and performance plan; (2) 2018 initiatives to advance the Strategic Plan, including the Governance in the Public Interest Task Force Appendix I Review; Client Security Fund statutory report; Workload Study and funding methodology; Case prioritization implementation; New discipline system metrics; new discipline system case management system; new admissions system case management system; the first ever California Job Analysis as part of the process of evaluating the California Bar Examination ; Employee engagement

measures and efforts to rebuild employee morale; the launch of Malpractice Insurance Working Group pursuant to statutory directive; the Oracle system improvement project; and (3) the importance of seeking a fee increase to fund the State Bar's ability to accomplish its strategic goals and objectives, which requires adequate staffing levels, fair compensation and necessary infrastructure improvements.

1. Written Report from Executive Director – informational

2. Dashboards – informational

50 Consent Agenda

The following items on the agenda were withdrawn prior to the meeting:

50-1 Approval for Specified Contracts Pursuant to Business and Professions Code Section 6008.6

54-142 Cost Allocation Policy

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

54-111 California Rural Legal Assistance, Appointment of Attorney Members to Board of Directors

Pursuant to regulations of the Legal Services Corporation (LSC), the State Bar of California makes appointments to multi-county, federally funded legal services programs. The State Bar Guidelines for Appointment of Attorney Members to Boards of Directors of Programs funded by the Legal Services Corporation allow members to serve a maximum of six years (through successive terms of either two or three years). A member may be reappointed as required to serve as an officer, or for other good cause, such as lack of eligible candidates from the service area. The State Bar appoints eight members to the California Rural Legal Assistance (CRLA) Board of Directors. The members serve staggered terms. At its December 2, 2017 meeting, the CRLA Board recommended David Martinez and Jacq Wilson for appointment to the CRLA Board, each for a two-year term. The Board also recommended the reappointment of Ana de Alba, Camille Pannu and Susan Scott for additional two-year terms to the CRLA Board.

RESOLVED, that the Board of Trustees approve the appointment of David Martinez and Jacq Wilson to the California Rural Legal Assistance Board of Directors each for a two-year term to commence on March 31, 2018, and expire on March 31, 2020, or until further order of the Board, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees approve the reappointment of Ana de Alba, Camille Pannu and Susan Scott to the California Rural Legal Assistance Board of Directors each for a two-year term to commence on March 31, 2018, and expire on March 31, 2020, or until further order of the Board, whichever occurs earlier.

54-113 Board Book Amendments Re Budget Transfer Policy

The Board Book currently calls for the Board to approve all budget transfers. Staff recommends that approval of certain budget transfers be delegated to staff with the Board of Trustees retaining authority to approve all budget revisions that increase expenditures and all transfers between Funds.

RESOLVED, that the Board Executive Committee recommend to the Board of Trustees amendments to the Board Book, Tab 4.1, Article 1, Section 1, as presented to the Board of Trustees this day and as contained in Attachments A and B, including a technical amendment approved by the Finance and Planning Committee incorporated by reference herein; and authorize staff to make technical edits and corrections as needed.

54-121 Office of Chief Trial Counsel Case Prioritization

Public protection is the highest priority of the Office of Chief Trial Counsel (OCTC) (Bus. & Prof. Code, § 6001.1). The Office of Chief Trial Counsel acknowledges the statutorily-defined aspirational goal of completing matters within six-months of receiving a complaint. (Bus. & Prof. Code, §§ 6094.5, 6140.2). The Office of Chief Trial Counsel seeks the approval of the Regulation and Discipline Committee and the Board of Trustees to implement a case prioritization system that applies different processes to different categories of cases so that resources can be devoted to those cases that present the greatest risk to the public.

RESOLVED, that the Office of Chief Trial Counsel is authorized to implement a case prioritization system that applies different processes to different categories of cases so that resources can be devoted to those cases that present the greatest risk to the public; and it is

FURTHER RESOLVED, the Office of Chief Trial Counsel will provide regular reports to the Board Regulation and Discipline Committee on the progress and performance of the case prioritization system.

54-131 Proposed Amendments to Admissions Rules Re Qualification of Out-of-State Attorney Applicants to File Moral Character Determination Applications – Return

At its June 24, 2017 meeting, the Committee of Bar Examiners approved in principle a proposed amendment to Title 4, Division 1, Chapter 4, Rule 4.41 of the *Rules of the State Bar*, which would, if adopted, clarify the criteria for submission of moral character determination applications by out-of-state attorneys who have been suspended for administrative reasons, subject to a public comment period and final approval by the Board of Trustees. Subsequently, at the Committee's request, the Board Committee on Admissions and Education approved a 45-day public comment period. The proposed rule amendment was circulated for public comment, which ended October 25, 2017, and no public comments were received. During its December

2017 meeting, the Committee adopted the rule amendment, subject to the Board of Trustees' approval.

RESOLVED, that the Board of Trustees approve the proposed amendment to the Admissions Rules as attached, which clarifies the rules for qualification of out-of-state attorney applicants to file Moral Character Determination applications.

54-141 2017 Q4 Financial Statement Report, Investment Report and Client Security Report

In adherence to the State Bar's Fiscal Control Policies and Procedures, the Office of Finance has prepared the Financial Report (Pre Audit) for the year ended December 31, 2017 for the Board's review. This financial report consists of three separate reports: Financial Statement Report, Investment Report and Client Security Fund Report.

RESOLVED, that the Board of Trustees approve the Financial Report, Investment Report and CSF Report (Pre-Audit) for the year ended December 31, 2017 in the form this day before the Board, as presented by the Chief Financial Officer, and on file in the Los Angeles office of the State Bar.

54-143 2018 BUDGET AMENDMENT

In January 2018, the Board of Trustees adopted the State Bar's 2018 Final budget and authorized staff to make technical adjustments and corrections as necessary prior to filing with the State Legislature on February 15, 2018. The 2018 Final Budget was filed with the Legislature as adopted by the Board. This agenda item seeks approval for a technical adjustment to increase budgeted expenses of the Client Security Fund.

RESOLVED, that the 2018 Budget be amended to increase budgeted expenses of the Client Security Fund by \$1,000,000.

The following item was pulled from the consent agenda:

54-112 Legal Services of Northern California, Appointment of Attorney Members to Board of Directors

Pursuant to regulations of the Legal Services Corporation (LSC), the State Bar of California makes appointments to multi-county, federally funded legal services programs. The State Bar Guidelines for Appointment of Attorney members to Boards of Directors of Programs Funded by the Legal Services Corporation allow members to serve a maximum of six years (through successive terms of either two or three years). A member may be reappointed as required to serve as an officer, or for other good cause, such as lack of eligible candidates from the service area. The State Bar appoints 22 members to the Board of Directors of Legal Services of Northern California (LSNC). The members serve staggered terms. At its October 17, 2017 meeting, the LSNC Board of Directors recommended the reappointment of six attorney board members for a second three-year term. The attorneys are: Lesli Caldwell, Josie Corporon, Mary DuBose, Robert Joehnck, Deborah Kollars and John Zorbas.

Upon motion made and seconded, it was

RESOLVED, that the Board of Trustees approve the reappointment of Lesli Caldwell, Josie Corporon, Mary DuBose, Robert Joehnck, Deborah Kollars and John Zorbas to the Board of the Directors of Legal Services of Northern California, each for a second three-year term, commencing March 31, 2018, and expiring March 31, 2021, or until further order of the Board, whichever occurs earlier.

All members present and listed on the roll-call slip voted yes except Jason Lee, Debbie Manning and Brandon Stallings.

120 Regulation and Discipline Committee

122 Adoption of Resolution in Support of Senate Confirmation of Steven Moawad as Chief Trial Counsel

Upon presentation by the RAD Committee Chair, the Board unanimously adopted the following resolution:

WHEREAS, Steven J. Moawad is committed to protecting all Californians by furthering the primary mission of the State Bar of California to protect the public; and

WHEREAS, Steven J. Moawad has the necessary background to act as a highly-effective and ethical Chief Trial Counsel, including the following: nearly two decades as a Deputy District Attorney in Contra Costa County working on consumer protection, environmental protection, insurance fraud, and criminal cases; two years as a Senior Deputy District Attorney; five years of management experience in the District Attorney's Special Operations Division; and experience overseeing projects including the implementation of a new case management system; and

WHEREAS, Steven J. Moawad has worked to create and implement a new case prioritization initiative focused on public protection, which shows his commitment to true and effective public protection; and

WHEREAS, Steven J. Moawad has already made progress toward improving the State Bar's Office of the Chief Trial Counsel by placing emphasis on the effective operation of the unauthorized practice of law unit, collaborating with stakeholders, developing measures of success, and implementing Workforce Planning recommendations; and

WHEREAS, Steven J. Moawad is dedicated to ensuring that cases with the greatest impact on protection of clients and the public receive the resources they need both by updating how cases are processed and through prevention efforts; and

WHEREAS, Steven J. Moawad is committed to improving morale, building trust, and creating an inclusive office; and

WHEREAS, Steven J. Moawad plans to improve the procedural fairness of discipline for all involved parties; and

WHEREAS, Steven J. Moawad is forward-thinking and forward-leaning in his approach to leadership and long-term planning as Chief Trial Counsel; and

WHEREAS, Steven J. Moawad will maintain a strong State Bar Office of the Chief Trial Counsel to further the prosecution of unethical attorneys; and

WHEREAS, the Office of the Chief Trial Counsel is on a path of reform and stabilization, and Steven J. Moawad is dedicated to continuing this trajectory.

NOW, THEREFORE, BE IT RESOLVED that the members of the Board of Trustees of The State Bar of California express their wholehearted support for Steven J. Moawad as Chief Trial Counsel.

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

130 Programs Committee

The following item on the agenda was withdrawn prior to the meeting:

132 Mentoring Pilot Program

700 Miscellaneous

701 Amendments to 2017-2022 Strategic Plan

At its February 16, 2018, meeting, the Board took action to adopt modifications to Goals 1, 2, 3, and 5 of the State Bar's 2017-2022 Strategic Plan (Strategic Plan). This agenda item provides the Board with edited and clean versions of the Strategic Plan reflecting those changes approved at the February Board meeting. In addition, this agenda item outlines possible amendments to Goal 4 for Board consideration, as well as Information Technology specific objectives proposed for addition to Goal 3.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees adopt revisions to the 2017-2022 Strategic Plan, including an amendment approved by the Programs Committee to Goal 4, Objective c., incorporated by reference herein.

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

702 Proposed Rule of Court Re Fingerprinting Active Licensed Attorneys: Return from Public Comment and Approval of State Bar Policies

On January 27, 2018, staff presented the Board of Trustees (Board) with an overview of the approximately 2,600 public comments received on a proposed California Supreme Court (Court) Rule implementing a fingerprinting requirement for licensed attorneys pursuant to recent amendments to Business and Professions (B&P) Code section 6054, effective January 1, 2018. Staff organized the comments, and responses thereto, and made revisions to the proposed Court Rule based on the comments. The Board authorized an additional 30 day period for public comment on the amended proposed Rule. The State Bar received 169 new public comments pursuant to the February comment period. This agenda item is divided into four primary sections. The first addresses the new public comments and recommends that the Board direct staff to petition the Court for adoption of the proposed Rule. The second discusses staff's proposed schedule for the fingerprinting of attorneys, and recommends that the Board adopt this schedule. The third discusses staff's proposed approach for granting reductions in fingerprint processing fees for attorneys with demonstrable financial hardship, and recommends approval of this policy by the Board. Finally, the Board is asked to authorize, for a 30-day public comment period, a proposed State Bar Rule regarding the impact of non-compliance with the proposed Court Rule.

After public comment from Bridge Gramme of the Center for Public Interest Law supporting the proposed rule as written and urging the Board to approve it, upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees hereby authorizes staff to submit the proposed Court Rule, attached hereto as Attachment C, to the California Supreme Court for approval; and it is

FURTHER RESOLVED, that the Board of Trustees hereby adopts the proposed Notification and Penalty Schedule as described in this Board Item; and it is

FURTHER RESOLVED, that the Board of Trustees hereby adopts the proposed policy for fingerprint processing fee reductions as described in this Board Item; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to make available for a 30-day public comment period the proposed State Bar Rule attached hereto as Attachment D.

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

703 Exception to CalPERS 180 Day Wait Period to Appoint Retired Annuitant

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.

Upon motion made, seconded and unanimously adopted, it was

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.

No objection having been raised, the Chair substituted the roll call.

704 Client Security Fund Mandated Report to Legislature – informational

Business and Professions Code section 6140.56, added by Stats. 2017, Ch. 422 (SB 36), directs the State Bar to conduct a thorough analysis of the Client Security Fund (CSF) and that a report on the findings be submitted to the Legislature no later than March 15, 2018. This agenda item presents a draft of that report for the Board's review and discussion. The draft report does not contain recommendations. Instead, the report provides a detailed list of options for addressing the current funding shortfall in the CSF. It is anticipated that the Board of Trustees' discussion of this item will provide direction regarding whether recommendations should be provided and, if so, which funding options should be recommended.

Straw Vote on Options:

1. **INCLUDE** Reduce Maximum Payout as option
 - a. Vote – failed (keep in report, but don't pursue)
 - i. Lee moved, LaBran seconded
 - ii. Yes: 5 - Broughton, Fox, LaBran, Lee, Manning
 - iii. No: 7 - Mendoza, Perttula, SeLegue, Spector, Stallings, Steinbrecher, Stevens
 - b. Vote includes option to reduce all payouts by 50%
2. **INCLUDE** Only Pay California (requiring a California nexus) as option

- a. Vote – carried (keep in report, and pursue)
 - i. Lee moved, Spector seconded
 - ii. Yes: 11 - Broughton, Fox, LaBran, Lee, Manning, Mendoza, Perttula, Selegue, Spector, Steinbrecher, Stevens
 - iii. No: 1 – Stallings
- 3. **INCLUDE** Change Eligible Losses as option
 - a. Vote – carried (keep in report, and pursue)
 - i. Lee moved, Stevens seconded
 - ii. Yes: 10 - Broughton, Fox, LaBran, Lee, Manning, Mendoza, Perttula, Selegue, Spector, Stevens
 - iii. No: 2 – Stallings, Steinbrecher
- 4. **INCLUDE** LAP Transfer as option
 - a. Vote – carried (keep in report, and pursue)
 - i. Lee moved, Stevens seconded
 - ii. Yes: 10 - Broughton, Fox, LaBran, Lee, Manning, Perttula, Selegue, Spector, Steinbrecher Stevens
 - iii. No: 2 – Mendoza, Stallings
- 5. **INCLUDE** Deny Fee Waiver as option
 - a. Vote – carried (keep in report, and pursue)
 - i. Lee moved, Fox seconded
 - ii. Consensus reached
 - b. Vote includes option to deny fee scale
- 6. **INCLUDE** Add CSF Assessment to Foreign Legal Consultant and Multi-Jurisdictional Practice Programs as option
 - a. Vote – carried (keep in report, and pursue)
 - i. No one moved, no one seconded
 - ii. Consensus reached
- 7. **INCLUDE** Reduce CSF Reserve as option
 - a. Vote – carried (keep in report, and pursue)
 - i. No one moved, no one seconded
 - ii. Consensus reached
 - b. **Note:** Place on Board’s May 2018 agenda
- 8. **INCLUDE** Means Test as option
 - a. Vote – carried (keep in report, and pursue)
 - i. Lee moved, Broughton seconded
 - ii. Yes: 10 - Broughton, Fox, LaBran, Lee, Manning, Perttula, SeLegue, Spector, Stallings, Steinbrecher
 - iii. No: 2 - Mendoza, Stevens
- 9. **EXCLUDE** Cap Unearned Fees option as option
 - a. Vote – carried (keep in report, but don’t pursue)

- i. Stevens moved, Lee seconded
 - ii. Yes: 11 – Broughton, Fox, Lee, Manning, Mendoza, Perttula, SeLeague, Spector, Stallings, Steinbrecher, Stevens
 - iii. Abstain: 1 – LaBran
- 10. **EXCLUDE** Certain Categories as option
 - a. Vote – carried (keep in report, but don’t pursue)
 - i. No one moved, no one seconded
 - ii. Consensus reached
- 11. B&P Code section 6086.13 – Disciplinary Sanctions
 - a. Not an option
 - b. Required by statute, but hasn’t been enforced/complied with
- 12. **EXCLUDE** Voluntary Contributions as option
 - a. Vote – carried (keep in report, but don’t pursue)
 - i. Mendoza moved, Fox seconded
 - ii. Yes: 10 - Broughton, Fox, LaBran, Lee, Manning, Mendoza, Perttula, SeLeague, Stallings, Stevens
 - iii. No: 1 – Steinbrecher
 - iv. Absent for vote – Spector

705 State Bar Legislative Priorities

At its meeting on January 27, 2018, the Board of Trustees adopted guiding principles for the Bar to use in determining appropriate legislation to pursue and on which to take formal positions. The resolutions approved by the Board at the January meeting also eliminated out dated provisions of the Board Book related to legislative policies and procedures. The guiding principles adopted by the Board – “State Bar Legislative Program: Purpose and Guiding Principles” (Attachment A) – tie the Bar’s legislative program directly to the mission of the Bar, linking it to the Bar’s 2017-2022 Strategic Plan. At its February meeting, the Board approved initial legislative priorities for the 2017-2018 legislative session (Attachment B). These initial priorities related entirely to technical changes designed to ensure that statutory language that references the Bar reflects the transition to the “new State Bar” and is consistent with the Bars focus on public protection and access to justice – for example changing statutory references to “members” to “attorneys,” “licensees,” or “licensed attorneys.” This agenda item seeks the approval of the Board of Trustees to finalize the State Bar’s legislative priorities to address core components of the Bar’s public protection mission and revenue generation in support of that mission. The adoption of these priorities does not commit the Bar to seeking these changes during the current legislative session. Rather, these priorities are intended to establish broad guidelines for staff to follow subject to modification in consultation with the Board, the Supreme Court, and the Legislature.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees approve the legislative priorities referenced in this report and that Bar staff will seek to advance this legislative agenda in close consultation with members of the Board and the Legislature.

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