

OPEN SESSION AGENDA ITEM

707 JULY 2018

DATE: July 19, 2018

TO: **Members, Board of Trustees**

FROM: Sean T. Strauss, Assistant General Counsel

SUBJECT: Requested Changes to State Bar Court Judges' Employee Health Insurance and Pension Contributions

EXECUTIVE SUMMARY

The State Bar presently pays 100% of the cost of health insurance premiums and 100% of California Public Employees' Retirement System ("CalPERS") pension contributions on behalf of all State Bar Court judges. This is in contrast to the health premium and pension contributions that the State Bar provides for its employees. Although State Bar Court judges are not State Bar employees, their salaries and benefits are supported entirely by the State Bar's General Fund. In addition, the Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service (Rules) align State Bar Court judges' health and other benefits with State Bar Executive Staff. As a result of these facts, staff believes that, effective November 1, 2018, State Bar Court judges should contribute to the cost of their health premiums and pensions at the same rate as State Bar Executive Staff. A November 1 date has been selected as this marks the start of new terms for at least three judicial positions.

BACKGROUND

The Rules establish the benefits, terms, and conditions of service for State Bar Court judges. A copy of the Rules is attached hereto as Exhibit A.

The Rules explicitly vest the Board with discretion to adjust benefits of employment for State Bar Court judges. Specifically, Section 5C of the Rules provides as follows:

The Board shall also fix and provide benefits of employment, in addition to salary, to judges at levels to be determined and adjusted from time to time in the discretion of the Board.

Two specific benefits of employment for State Bar Court judges are at issue here: State Bar Court judges' employee contribution rates toward (1) health insurance, and (2) CalPERS pension benefits.

As to health insurance, Section 9 (Health and Life Insurance Benefits) of the Rules provides as follows:

The State Bar shall provide health and life insurance benefits to judges as are provided to State Bar Executive Staff (which may include medical/hospital, vision care, dental, and life coverage. [sic]

The State Bar presently pays 100% of the costs of each State Bar Court judge's health insurance premium.

As to pension contributions, Section 20 (Retirement) of the Rules provides as follows:

- A. The State Bar shall pay to the California Public Employees' Retirement System ("CalPERS") the full amount of the employer and employee contribution for each judge who is or becomes a member of CalPERS.

The State Bar accordingly presently pays 100%, i.e. the entirety of both the employer and employee contributions, of each State Bar Court judge's CalPERS pension contribution.

Staff believes that the State Bar's obligations in both respects should be revised moving forward to align State Bar Court judges' benefit contributions with State Bar Executive Staff. It should be noted that California trial court judges are required to contribute to both health care and pension costs; as State Bar Court judge salaries are set as a percentage of trial court judicial compensation, this fact may provide some relevant context to the Board.

DISCUSSION

A. Health Insurance Premium Contributions

Prior to January 1, 2018, the State Bar paid 100% of health insurance premiums on behalf of State Bar Executive Staff. Pursuant to Section 9 of the Rules, the State Bar accordingly paid 100% of health insurance premiums on behalf of State Bar Court judges.

The Board subsequently determined that, as of January 1, 2018, State Bar Executive Staff should contribute 20% of the cost of their health insurance premiums. Despite the change in policy as to Executive Staff, and the Rules' express statement that State Bar Court judges are to receive health insurance benefits on the same terms as provided to Executive Staff, the State Bar continues to pay 100% of the health insurance premium on behalf of State Bar Court judges.

Pursuant to Section 1 (General Provisions), subsection A, the Board may amend the Rules from time to time. It has the discretion to "fix and provide benefits of employment" and to adjust those benefits "from time to time." (Rules, Section 5 [Salary and Benefits], subsection C.) The Board accordingly has the discretion to require State Bar Court judges to contribute to their health insurance premium at the same level as State Bar Executive Staff. Staff accordingly requests that the Board require each State Bar Court judge to contribute 20% of the cost of premiums for health insurance provided to him or her by the State Bar, effective November 1, 2018.

B. CalPERS Pension Contributions

Pursuant to the Rules, the State Bar presently pays both the employer and employee portion of CalPERS pension contributions on behalf of all State Bar Court judges.

On January 1, 2013, the California Public Employees' Pension Reform Act of 2012 ("PEPRA") went into effect. PEPRA specifies that, "Equal sharing of normal costs [of pension contributions] between public employers and public employees shall be the standard." (Gov. Code, § 722.30(a).) PEPRA also requires that, for "new" members of CalPERS (individuals who

became members in CalPERS on or after January 1, 2013), a member's employee pension "contribution shall not be paid by the employer on the employee's behalf." (Gov. Code, § 722.30(c).) There is an exception to the requirement that each "new" CalPERS member pay his or her own employee pension contribution, which specifies that the requirement will not apply if the "terms of a contract . . . between a public employer and its employees . . . would be impaired[.]" (Gov. Code, § 722.30(f).) Pursuant to this exception and the Section 20A of the Rules, the State Bar continues to pay both the employer and employee CalPERS contribution on behalf of all State Bar Court judges, regardless of whether a judge is a "new" member of CalPERS.

The State Bar has fully implemented PEPRA with respect to all State Bar Executive Staff (and non-Executive Staff). Adoption of the Rule change requested here will result in aligning State Bar Court judges' pension contributions with those of State Bar staff. Staff accordingly proposes that all State Bar Court judges whose terms begin on or after November 1, 2018, be responsible for paying the employee portion of his or her pension contributions at the same levels as State Bar Executive Staff. Implementation of this policy would require revision of Section 20A of the Rules, as specified below. Under this revised benefit of employment, all new State Bar Court judges and any current State Bar Court judges who begin a new term would be required to pay the employee portion of his or her pension contribution at the same level as State Bar Executive Staff (i.e. for "new" members of CalPERS, 6.5% of salary; for "classic" members of CalPERS, namely individuals who became CalPERS members before January 1, 2013, 7% of salary).

It may also be worthwhile to consider revisiting the policy as to current State Bar Court judges at some point in the near future. Cases involving the scope of permissible pension modifications under the "California rule" are presently pending before the California Supreme Court, with a decision expected sometime this calendar year. (*See Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association*, Cal. Supreme Court, Case No. S247095; *Marin Association of Public Employees v. Marin County Employees' Retirement Association*, Cal. Supreme Court, Case No. S237460.) Staff recommends that, before making changes to the policy regarding pension contributions by current State Bar Court judges, the State Bar await decisions in these cases for possible guidance because any expectations regarding continued payment of State Bar Court judges' employee CalPERS contribution may be impacted by a ruling.

C. Response from State Bar Court Judges

The State Bar Court judges, who are not State Bar employees and are not State Bar Executive members, disagree with the Staff's proposed recommendations that they pay contributions for health and retirement benefits. Rather, the judges request that the status quo be maintained with respect to the issues raised by the staff's recommendation and proposed resolution. For your consideration, the judges will be presenting further information on these issues. (Rules Proc. of State Bar, rule 1013 [duty of presiding judge to represent State Bar Court in State Bar budgetary process].)

FISCAL/PERSONNEL IMPACT

The State Bar shall receive immediate cost savings by requiring State Bar Court judges to contribute 20% of the cost of their employee health insurance. Based on health insurance elections as of May 1, 2018, savings to the State Bar resulting from State Bar Court judges' 20% contribution toward their health insurance premiums will be roughly \$20,000 per year.

The State Bar will also receive cost savings when State Bar Court judges begin contributing the "employee" share of monthly pension costs. Once fully implemented, these savings could reach as high as \$12,000 per judge, annually.

RULE AMENDMENTS

Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service, Section 20A must be amended to implement the proposed change of policy regarding pension contributions.

Section 20A presently states as follows:

The State Bar shall pay to the California Public Employees' Retirement System ("CalPERS") the full amount of the employer and employee contribution for each judge who is or becomes a member of CalPERS.

Staff proposes that Section 20A be amended, as follows (revisions are underlined):

The State Bar shall pay to the California Public Employees' Retirement System ("CalPERS") the full amount of the employer and employee contribution for each judge who is or becomes a member of CalPERS. As to any judge whose State Bar Court term begins on or after November 1, 2018, the employer and employee contributions to CalPERS shall be shared between the judge and the State Bar in the same manner as provided for State Bar Executive Staff.

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 3. Improve the fiscal and operational management of the State Bar, emphasizing integrity, transparency, accountability, and excellence.

RECOMMENDATION

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that beginning November 1, 2018, each State Bar Court judge shall be required to individually contribute 20% of the cost to his or her State Bar sponsored health insurance premium, the same contribution level as currently required for State Bar Executive Staff; and it is

FURTHER RESOLVED, that Section 20A of the Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service shall be amended to read in its entirety as follows: "The State Bar shall pay to the California Public Employees' Retirement System ("CalPERS") the full amount of the employer and employee contribution for each judge who is or becomes a member of CalPERS. As to any judge whose State Bar Court term begins on or after November 1, 2018, the employer and employee contributions to CalPERS shall be shared between the judge and the State Bar in the same manner as provided for State Bar Executive Staff."

ATTACHMENT(S) LIST

- A. Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service

RULES AND REGULATIONS OF THE
STATE BAR OF CALIFORNIA
PERTAINING TO THE BENEFITS, TERMS AND
CONDITIONS GOVERNING
STATE BAR COURT JUDGE SERVICE

Section 1. **GENERAL PROVISIONS**

- A The following Rules and Regulations are adopted to govern the benefits, terms and conditions under which the judges appointed by the Supreme Court serve the State Bar Court.
- B These Rules and Regulations are promulgated by the Board of Governors of the State Bar and may be amended from time to time by the Board.
- C Nothing herein shall be construed as limiting or altering the plenary authority of the Supreme Court over the admissions and disciplinary system including but not limited to the service of State Bar Court judges.

Section 2. **DEFINITIONS**

- A “Board” is the Board of Governors of the State Bar of California.
- B “Day(s)” are calendar days unless otherwise specified.
- C “Executive Staff” is the Executive Staff of the State Bar governed by the Rules and Regulations Pertaining to the Employment of Executive Staff Employees.
- D “Judge” is a judge of the State Bar Court appointed pursuant to Bus. & Prof. Code §6079.1 and/or 6086.65. Pro Tem judges are not subject to these Rules and Regulations.
- E “Lay Judge” is the non-attorney judge appointed pursuant to Bus. & Prof. Code §6086.65(a).
- F “Rules and Regulations” are these Rules and Regulations Pertaining to the Benefits, Terms and Conditions of Employment Governing the Service of State Bar Court Judges.
- G “State Bar” is the State Bar of California.

- H “State Bar Court” is the State Bar Court established by the Board of Governors pursuant to Bus. & Prof. Code §6086.5.
- I “Supreme Court” is the Supreme Court of California.

Section 3. **APPOINTMENT, TERM, DISCIPLINE**

As set forth in Bus. & Prof. Code §6079.1, and rule 9.61, California Rules of Court, judges are appointed and reappointed by the Supreme Court. Judges are subject to admonition, censure, removal, or retirement by the Supreme Court on the same grounds as provided for judges of California courts of record.

Section 4. **STATUS**

- A With the exception of the Lay Judge, judges are, during their term, to be “Inactive” members of the State Bar not entitled to practice law.
- B Judges are not judges of a court of record as defined in California Constitution, article 6, section 1. For salary and benefit purposes, judges are employees of the State Bar. With respect to the performance of their adjudicatory responsibilities, judges are independent from the State Bar.
- C By directive of the Supreme Court, State Bar Court judges are subject to the provisions of the Code of Judicial Conduct.

Section 5. **SALARY AND BENEFITS**

- A The Board shall fix and pay the salary and benefits of judges. In accordance with Business and Professions Code §§6079.1(d) and 6086.65(a), the salary for Hearing Department judges shall be the same as for Municipal Court judges and the salary for Review Department judges, including the Presiding Judge, shall be the same as for Superior Court judges.
- B The salary of judges shall adjust automatically in accordance with salary increases received by Municipal and Superior Court judges.
- C The Board shall also fix and provide benefits of employment, in addition to salary, to judges at levels to be determined and adjusted from time to time in the discretion of the Board.

Section 6. **VACATION**

A Throughout their terms, judges shall accrue vacation at the following rates:

Less than (15) years of service	1 and 2/3 days per month (20 working days per year)
Fifteen (15) or more years of service	2 and ½ days per month (25 working days per year)

B Vacation accrual shall be limited as follows:

1. A judge with less than ten (10) years of continuous service may accrue a maximum of forty-five (45) working days of vacation;
2. A judge with at least ten (10) but less than fifteen (15) years of continuous service may accrue a maximum of fifty (50) working days of vacation;
3. A judge with fifteen (15) or more years of continuous service may accrue a maximum of fifty-five (55) working days of vacation.

Upon accruing this maximum, a judge shall cease accruing vacation and shall not commence to accrue vacation again until the accrual is reduced below the maximum.

C Upon termination of service, a judge shall be paid for all unused, accrued vacation time.

Section 7. **HOURS OF EMPLOYMENT**

The hours of employment of judges are those reasonably necessary to perform their duties. By the nature of their duties, judges are exempt from the overtime provisions of state or federal law and are not entitled to overtime or compensatory time payments.

Section 8. **PAID SICK AND DISABILITY LEAVE**

Paid sick leave, short term and long term disability coverage shall be provided to judges on the same terms and to the same extent as such benefits are provided to State Bar Executive Staff.

Section 9. **HEALTH AND LIFE INSURANCE BENEFITS**

The State Bar shall provide health and life insurance benefits to judges as are provided to State Bar Executive Staff (which may include medical/hospital, vision care, dental, and life coverage.

Section 10. **HOLIDAYS**

A The following are recognized as paid holidays for judges:

1. New year's Day
2. Martin Luther King's Birthday
3. Presidents' Day
4. César Chávez Day
5. Memorial Day
6. Independence Day
7. Labor Day
8. Columbus Day
9. Veteran's Day
10. Thanksgiving Day
11. Day after Thanksgiving Day
12. Christmas Eve
13. Christmas Day
14. New Year's Eve

B Holidays falling on Sunday shall be observed the following Monday.
Holidays falling on Saturday shall be observed the preceding Friday

C Judges not on paid status will not receive holiday time off or holiday pay.

Section 11. **BEREAVEMENT LEAVE**

In the event of a death in the immediate family (i.e., spouse, children, including foster, step or adopted; parents; brother; sister; father-in-law; mother-in-law; grandparents; grandchildren and person assuming the role of spouse) judges shall be entitled to bereavement leave of five (5) work days with pay. Such leave shall not be charged to vacation or to paid sick leave.

Section 12. **JURY DUTY**

In the event that a judge is called for jury duty or is subpoenaed to appear as a witness in a state or federal court proceeding in which the judge is not a party nor has an economic interest, the judge will receive his/her salary less that amount to

which the judge is entitled as “juror’s compensation” or “witness fees”. In no instance will the judge realize less salary than he/she would have otherwise received, had the judge not been called for jury duty or subpoenaed to appear as a witness.

Section 13. **MILITARY LEAVE**

Military leave and accompanying rights will be granted as provided by law.

Section 14. **PROFESSIONAL DUES AND FEES**

- A The State Bar shall pay annual State Bar membership fees at the level required for “Inactive” membership for judges who are members of the State Bar.
- B The State Bar shall also pay annual membership fees in job-related professional associations for the lay judge and the other judges in an amount not to exceed the difference between “Inactive” fees actually paid for a judge and the highest amount of annual membership fees that must be paid in order to maintain “Active” membership status in the State Bar.

Section 15. **OUTSIDE EMPLOYMENT**

During his/her term, a judge may not engage in any conduct which constitutes the practice of law or which is otherwise inconsistent with the Code of Judicial Conduct, which by Supreme Court directive, is applicable to State Bar Court judges.

Section 16. **EDUCATION AND TRAINING**

- A Subject to budgetary constraints, the Board of Governors shall provide funding for the education and training of judges consistent with the standards set forth in rule 970, California Rules of Court.
- B Subject to the efficient administration of justice and in the discretion of the Presiding Judge, State Bar Court judges shall be entitled to paid leave for education and training consistent with the standards set forth in rule 970, California Rules of Court.

Section 17. **PERSONNEL FILES**

- A. The State Bar shall maintain, in its Office of Human Resources, personnel files containing the personnel records of judges. At reasonable times, upon

request, the State Bar shall permit a judge to inspect his/her personnel file and any material referred to in such personnel file. A judge's personnel file shall also be made available to the Supreme Court.

- B. Documents and materials pertaining to the evaluation and appointment of judges shall not be part of the judge's personnel file and shall be maintained in accordance with the directives of the Supreme Court.

Section 18. **TRAVEL REIMBURSEMENT**

Judges shall be reimbursed for travel and related expenses in the course of performing their duties in accordance with the travel reimbursement policies adopted by the Board and applicable to all who travel on State Bar business.

Section 19. **PARKING**

To the extent the State Bar continues to provide parking to employees, parking shall be provided to judges to the same extent and on the same basis as is provided for Executive Staff employees. The State Bar, however, retains the right to eliminate free parking entirely or charge for parking, in accordance with the above, upon reasonable notice.

Section 20. **RETIREMENT**

- A. The State Bar shall pay to the California Public Employees' Retirement System ("CalPERS") the full amount of the employer and employee contribution for each judge who is or becomes a member of CalPERS.
- B. Nothing contained in this section shall be deemed to abrogate the right of the State Bar to require a waiting period of ninety (90) days prior to enrolling a judge into CalPERS.
- C. Under the following circumstances, the State Bar shall provide to regular, full-time Judges who receive benefits under CalPERS and who retire under CalPERS as a Judge on or after the date upon which these Judge Rules are adopted, comparable health care plan (providing medical/hospital and vision care coverage) benefits including dependent and domestic partner coverage benefits, as it provides from time to time to its then active, regular, full-time Employees, provided that:
 - 1. For Judges employed as such as of the date these Rules are adopted August 1, 2016, eligibility requires fifteen years of service to the State Bar as a Judge.

2. The Employee must also have such medical/hospital coverage at the time of his/her retirement from employment with the State Bar;
3. The Employee must also elect to receive retirement benefits effective within one hundred twenty (120) days of retirement from State Bar employment under CalPERS;
4. If the State Bar's agreement with its medical/hospital insurance carrier does not permit the identical coverage to be provided to such retired Employee at the same group rate as the State Bar would pay if they were included, the State Bar may provide substantially similar coverage, or contribute to the purchase of substantially similar coverage in an amount equal to the amount that the State Bar contributes toward payment of medical/hospital and vision care coverage for any of its then active, full-time Employees and their dependents; and
5. If the State Bar subsequently adopts a retirement plan other than CalPERS, the State Bar shall also provide substantially similar medical/hospital and vision care benefits to those who retire from State Bar employment under the provisions of such other retirement plans.

Section 21. **DEFERRED COMPENSATION PLAN**

Judges shall be eligible to participate in an Internal Revenue Code section 457B deferred compensation plan to the same extent and on the same terms as State Bar employees.

Section 22. **OTHER BENEFITS**

In the discretion of the Board, judges may be provided other benefits.