

AGENDA ITEM

SEPTEMBER 10 – Board of Trustees – July 19-20, 2018, Open Minutes

The State Bar of California
BOARD OF TRUSTEES MEETING
Thursday, July 19, 2018 – Friday, July 20, 2018

845 Figueroa Street
Board Room, 2nd Floor
Los Angeles, CA

The Board of Trustees of the State Bar of California convened its meeting in open session on Thursday, July 19, 2018, at 9:00 a.m. at the State Bar of California, 845 Figueroa Street, Board Room, 2nd Floor, Los Angeles, Michael Colantuono presiding.

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

The following members of the Board of Trustees were not present: Renee LaBran and Joshua Perttula.

The following members of the staff were present: Louisa Aryapetyan, Stephanie Choy, Andrew Conover, Antonia Darling, Kim DaSilva, Brady Dewar, Randall Difuntorum, Justin Ewert, Rebecca Farmer, Donna Hershkowitz, Vanessa Holton, Melanie Lawrence, Mimi Lee, Pat Lee, Natalie Leonard, Dag MacLeod, Steve Mazer, Steven Moawad, Amy Nunez, Destie Overpeck, Richard Schaffler, Andrew Tuft and Leah Wilson.

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

The Chair called for public comment, inquiring whether there were persons in attendance who wished to make public comment.

Erika Hiramatsu, Chair of the Committee of Bar Examiners (CBE), presented public comment in and distributed 3 documents prior to the meeting for the Board's consideration. See attached documents. The documents were endorsed by current and former chairs and twelve members of the CBE. She believes therefore she speaks for the majority. Ms. Hiramatsu gave her opinion that the CBE report written by State Bar consultant Elise Walton and former State Bar Executive Director Elizabeth Parker is biased and inaccurate. Ms. Hiramatsu takes issue with the recommendations regarding testing accommodations, the size of the CBE and moral character determinations. According to Ms. Hiramatsu, there has been no showing of necessity for any of the recommended changes. Ms. Hiramatsu states that CBE was not given an opportunity to weigh in on each of the recommendations and would like an opportunity to do so.

700 Miscellaneous

701 Appendix I Review: Framework for Board Committee Discussions

This was an informational item. The presenter, Richard Schauffler, Principal Analyst, Office of Research & Institutional Accountability, was introduced by Leah Wilson, Executive Director

As directed by the Board of Trustees, Bar staff have been working to evaluate various committees, commissions, board and councils that work under the umbrella of the Bar: the sub-entities. The review of the work of the sub-entities is guided by Appendix I of the 2017 Governance in the Public Interest Task Force Report. This agenda item provides a conceptual framework for discussion by the Board with the goal of providing guidance for the Board when it engages in the detailed discussions of specific sub-entities.

The meeting adjourned at 9:49 a.m.

The Board of Trustees of the State Bar of California reconvened its meeting in open session on Thursday, July 19, 2018, at 4:44 p.m. at the State Bar of California, 845 Figueroa Street, Board Room, 2nd Floor, Los Angeles, Michael Colantuono presiding.

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

The following members of the Board of Trustees were not present: Joshua Perttula.

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

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

700 Miscellaneous

702 State Bar Legislative Update

This was an informational item, presented by Dag MacLeod, Chief of the Mission Advancement and Accountability Division.

This item was followed by The Board continued in closed session at 5:00 p.m. with consideration of Item #7001, titled Collective Bargaining pursuant to Government Code section 11126(c)(17).

The meeting adjourned at 5:54 p.m.

The Board of Trustees of the State Bar of California reconvened in closed session on Friday, July 20, 2018, at 9:02 a.m. at the State Bar of California, 845 Figueroa Street, Board Room, 2nd Floor, Los Angeles, Michael Colantuono presiding. Closed session ended at 11:07 a.m. Following a short break, open session commenced at 11:17 a.m.

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

The following members of the staff were present: Andrew Conover, Antonia Darling, Kim DaSilva, Randall Difuntorum, Justin Ewert, Rebecca Farmer, Suzanne Grandt, Donna Hershkowitz, Vanessa Holton, Hatem Khalek, Melanie Lawrence, Mimi Lee, Dag MacLeod, Steve Mazer, Ron Pi and Leah Wilson.

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

The Chair called for public comment, inquiring whether there were persons in attendance who wished to make public comment.

Emilio Varanini, the California Lawyers Association (CLA) Liaison to the State Bar Board of Trustees, provided public comment. Mr. Varanini sends regards from CLA President Heather Rosing. CLA supports the mission of the State Bar and sees opportunities to create the following points of partnership: (1) the development of low-cost/no-cost continuing legal education programs, e.g., new Rules of Professional Conduct programing; (2) presentation of the new Rules of Professional Conduct and new technology/forms of practice at CLA's June 2019 Solo & Small Firm Summit; (3) collaboration on future Annual Meetings; and (4) support of the Supreme Court learning initiative.

Claudia Mascari, Center for Public Interest Law (CPIL) Intern, provided public comment in oral and written form. See attached written comments. CPIL supports the staff recommendation for Item #703 regarding Professor William Henderson's Legal Market Landscape Report, requesting that the Board authorize the formation of a Task Force to consider regulatory reforms addressing online delivery of legal services and access to justice. CPIL considers Professor Henderson's focus on the consumer rather than the lawyer to be cutting-edge and desperately needed. CPIL urges the Board to open to the public and webcast all Task Force meetings, to include as Task Force members consumers, an economist, a sociologist and a law student, and to make the Task Force representative of California's geographically and ethnically diverse population. According to CPIL, a majority of the Task Force should be non-lawyers. CPIL applauds the State Bar for commissioning the Legal Market Landscape Report, and encourages the State Bar to lead the nation in these much needed reforms.

1000 Minutes

May 18, 2018 – closed minutes

Going back to an overlooked closed session item, these minutes were deemed approved.

10 Minutes

May 18, 2018 – open minutes

June 15, 2018 – open minutes

These minutes were deemed approved.

30 – Chair’s Report – Oral Report

The Chair touched on the following topics: (1) Efforts to solicit judiciary’s assistance in reporting attorney misconduct/ongoing dialogue with California Judges Association; (2) Malpractice Insurance Task Force – status report; (3) Signing onto letter as “Chair” (for identification purposes only) in support of Chief Justice’s effort to prohibit the arrest of undocumented persons in California’s courthouses/admonition to members to be similarly circumspect in using their State Bar title; (4) Attorney Job Analysis – status report; (5) Fingerprinting – status report; (6) Diversity Initiative/outreach to affinity bar associations; (7) Agreement by California Lawyers Association to take over the State Bar awards program; (8) San Francisco State Bar building – progress report on leasing of office space; (9) Recent activities as Chair included legislative meetings on fee bill and participation in City of Temecula Legal Scholars Program; (10) Recruitment for new Chief Financial Officer; (11) Case Prioritization project; (12) Ongoing efforts to address the unauthorized practice of law; and (13) Need for an August meeting.

40 Staff Reports

41 Executive Director

1. Written Report from Executive Director – informational

2. Dashboards – informational

50 Consent

All of the following consent items on the agenda were deemed approved.

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

1.For Bar Exam Delivery Services, with: STAT Delivery Service Inc.

2.For Audio Visual System Improvements, with: GST Inc.

3.For New Attorney MCLE Updates, with: InfoPro Learning Inc.

4.For Interim Financial Services, with: Kevin Harper, Olivier Flewellen

5.For Professional Auditing Service, with: Moss Adams

6.For Case Management System Implementation Services, with: Tyler Technologies Inc.

7.For Enterprise Resource Planner Implementation Services, with: Sierra-Cedar IT Services Inc.

Summary: This item requests approval to execute contracts for goods or services with a value in excess of \$50,000.

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

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

50-2 Licensee Requests for Adjustment to Fees and Penalties – *AS AMENDED* *

Summary: Licensees may request that adjustments be made to their license fees and penalties. Title Two, Rule 2.16 (H) of the Rules of the State Bar states that the Board reserves the right for good cause to grant requests for waivers that were denied by staff and to consider all other requests for waivers. This item consolidates several licensee requests for which the Board's Licensee Liaisons have determined that good cause exists to recommend fee adjustments.

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

RESOLVED, that the Board of Trustees approve the fee adjustments for the State Bar licensees as presented this day before the Board, and on file in the San Francisco office of the State Bar.

* See attached amended item, adding an 82nd licensee to the chart of requesters.

54-111 Commission on Judicial Nominees Evaluation (JNE), Annual Reappointment of Members, Appointment of New Members and Alternates, and Selection of Officers for the 2019 JNE Commission

Summary: The Commission on Judicial Nominees Evaluation (JNE) is an agency of the State Bar created by Government Code section 12011.5 to evaluate judicial candidates who are under consideration for appointment by the Governor. Pursuant to statute, prior to exercising judicial appointment authority, the governor is required to submit the names of candidates to the JNE Commission for an investigation and evaluation of the candidates' judicial qualifications. The JNE Commission must report back to the governor within 90 days of the date of submission its rating of the

2019 JNE Commission – Recommended Third-Year Class

candidate as exceptionally well qualified, well qualified, qualified or not qualified and the reasons for its rating. The JNE Commission is composed of both public (non-lawyer) and lawyer members, up to a maximum of 38 members. This report places before the Board Executive Committee and the Board of Trustees the annual JNE Commission appointments matters: (1) reappointment of members; (2) appointment of new members and alternates; and (3) selection of the Chair and Vice Chair.

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

RESOLVED, that the Board of Trustees approve reappointment of the following members and officers to the 2019 Commission on Judicial Nominees Evaluation (JNE); each for a one-year term commencing on February 1, 2019, and expiring in 2020 at the close of the last business meeting of the 2019 JNE Commission, or until further order of the Board of Trustees, whichever occurs earlier;

2019 JNE Commission – Recommended Second-Year Class
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REAPPOINTED PUBLIC (non-lawyer) MEMBERS		CITY
1.	Cody, Lisa	Claremont
2.	Conn, Carole	San Francisco
REAPPOINTED LAWYER MEMBERS		CITY
3.	Alexander, Daniel L.	Los Angeles
4.	Carrillo, Sarah J.	Sonora
5.	El-Amamy, Reema M.	Los Angeles
6.	Hammon, Patrick M.	Palo Alto
7.	Michalski, James W.	La Mirada
8.	Ngai, Stella J.	Oakland
9.	Traicoff, Kristin A.	Sacramento
10.	Triano, Martin F.	Berkeley
11.	Tsai, Jeffrey E.	San Francisco

REAPPOINTED PUBLIC (non-lawyer) MEMBERS		CITY
1.	Lempel, Barbara M.	Los Angeles
REAPPOINTED LAWYER MEMBERS		CITY
2.	Albracht, Kathryn B.	Pasadena
3.	Block, Randall G.	San Francisco
4.	Crosby, James D.	San Diego
5.	D’Orazio, Elizabeth K.	San Francisco
6.	Hastings, James G. [former judicial officer]	Redondo Beach
7.	Ibarra, Crisostomo G.	San Francisco
8.	Okcu, Niki B.	San Ramon
9.	Onyeagbako, Maureen C.	Sacramento
10.	Pritt, Maxwell V.	Oakland
11.	Quinn, Linda B. [former judicial officer]	San Diego
12.	Stewart, Virginia E.	Bonita

2019 JNE Commission – Recommended Third-Year Member and New Vice Chair		
REAPPOINTED LAWYER MEMBER		CITY
1.	Singh, Aminder	Oakland

2019 JNE Commission – Recommended Fourth-Year Member and New Chair		
REAPPOINTED LAWYER MEMBER		CITY
1.	Bellas, Diane	San Rafael

and it is

FURTHER RESOLVED, that the Board of Trustees approve appointment of the following new members and alternates to the 2019 Commission on Judicial Nominees Evaluation (JNE); each for a one-year term commencing February 1, 2019, and expiring in 2020 at the close of the last business meeting of the 2019 JNE Commission, or until further order of the Board of Trustees, whichever occurs earlier.

2019 JNE Commission – Recommended First-Year Class		
NEW PUBLIC (non-lawyer) MEMBER		CITY
1.	Kalian, Susan	Carlsbad
NEW LAWYER MEMBERS		CITY
2.	Brandt, Robert C.	Los Angeles
3.	Chirlin, Judith C. [former judicial officer]	Pasadena
4.	Danitz, Brian	Burlingame
5.	Diallo, Souleymane P.	Riverside
6.	Hofmann, Adam W.	San Francisco
7.	Johnson, Arwen R.	Pasadena
8.	Kristovich, Bethany W.	Los Angeles
9.	Matthews, Alana	Sacramento
10.	Sapozniklow, Michael	Sacramento
11.	Seastrom, Brian	Newport Beach
12.	Sheik, Martin	San Francisco
13	Yuen, Tammy M.	Oakland

NEW ALTERNATES		CITY
1.	Yoo, Donald W.	Los Angeles
2.	Fleming, Michael J.	Vista
3.	Wolf, Marc Price	San Francisco
4.	Schulte, Mary Fingal [former judicial officer]	Irvine
5.	Hirsch, David H.	San Luis Obispo
6.	Goldman, James L.	Los Angeles
7.	McCall, Christina M.	Oakland
8.	Beals, Bruce M.	San Diego

54-112 Review Committee of the Judicial Nominees Evaluation (JNE) Commission (RJNE), Annual Appointment of Chair and Members

Summary: The Commission on Judicial Nominees Evaluation (JNE) is an agency of the State Bar created by Government Code section 12011.5 for the purposes of evaluating judicial candidates under consideration for appointment by the Governor. Pursuant to statute, prior to exercising judicial appointment authority, the governor is required to submit the names of candidates to the JNE Commission for an investigation and evaluation of the candidates' judicial qualifications. The JNE Commission must report back to the governor within 90 days of the date of submission its rating of the candidate as exceptionally well qualified, well qualified, qualified or not qualified and the reasons for its rating. The State Bar Rules and Procedures governing the JNE Commission) provide for a five-member Review Committee (RJNE) to review, upon request, "not qualified" ratings of the JNE Commission. There are two open positions on RJNE. This report presents the recommendations of the Board Executive Committee's Appointments Liaisons, Todd Stevens and Brandon Stallings, for appointing two new members to RJNE and selecting a Chair.

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

RESOLVED, that upon recommendation of the Board Executive Committee, the Board of Trustees approve appointment of Armando Rodriguez as Chair of the Review Committee of the Commission on Judicial Nominees Evaluation, for a one-year term, commencing at the close of the 2018 State Bar annual meeting, and expiring at the close of the 2019 State Bar annual meeting, or until further order of the Board of Trustees, whichever occurs earlier; and it is

FURTHER RESOLVED, that upon recommendation of the Board Executive Committee, the Board of Trustees approve appointment of Angelique G. Bonanno and David K. George to fill the two at-large positions on the Review Committee of the Commission on Judicial Nominees Evaluation, each for a three-year term, commencing at the close of the 2018 State Bar annual meeting, and expiring at the close of the 2021 State Bar annual meeting, or until further order of the Board of Trustees, whichever occurs earlier.

54-113 Committee of Bar Examiners, Annual Nomination of Candidates for Supreme Court Appointment *

Summary: On January 1, 2018, the Supreme Court of California assumed responsibility for appointing ten examiners to the Committee of Bar Examiners (CBE), a responsibility that previously belonged to the Board of Trustees. The new role of the Board of Trustees is to nominate CBE candidates to the Supreme Court for consideration. The State Bar received eleven applications for three open positions on the CBE. Board Executive Committee's Appointments Liaisons, Todd Stevens and Joanna Mendoza, reviewed the application materials, conferred with one another and arrived at a set of recommendations, as presented herein. Upon recommendation of the Board Executive Committee, the Board of Trustees will take action to nominate candidates to the Supreme Court, from which the Supreme Court will appoint three new members to the CBE.

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

RESOLVED, that upon the recommendation of the Board Executive Committee, the Board nominate the following candidates to the Supreme Court of California, from which the Supreme Court will appoint three new examiners to the Committee of Bar Examiners: (1) *Judicial Officer*: Andre De La Cruz; William V. McTaggart, Jr.; Shelly Baron Torrealba; (2) *New Lawyer*: Joseph Lloyd Buckley, Jr; Michael Andrew Iseri; and (3) *Other Lawyer*: James Fox; Carolyn J. Olson; Alan Joseph Smith; each for a term effective at the close of the 2018 State Bar annual meeting, and expiring at the close of the 2022 State Bar annual meeting, or until order of the Supreme Court, whichever occurs earlier, and it is

FURTHER RESOLVED, that upon the recommendation of the Board Executive Committee, the Board of Trustees direct staff to prepare a list of the candidates so nominated by the Board of Trustees at its meeting on July 20, 2018, and submit it to the Supreme Court of California for consideration on behalf of the Board of Trustees.

* Fox, Lee and Stallings recused themselves from consideration of this item. Fox had a personal interest because he was being recommended for a seat on the Committee of Bar Examiners. Lee and Stallings had a personal interest because Fox's appointment likely would create an opening on the Board, which they are interested in filling.

**54-114 Committee on Professional Responsibility and Conduct, 2018-2019
Recommendations for Appointment of New Members, Officers and Advisor - Request for
Approval**

Summary: This memorandum presents the Committee on Professional Responsibility and Conduct's ("COPRAC" or "the Committee") recommended slate of 2018-2019 candidates for appointment. COPRAC is not subject to the "Appendix I" sub-entity reviews occurring as a result of the May 2017 Governance in the Public Interest Task Force recommendations and thus consideration of appointments is appropriate at this time.

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

RESOLVED, that the Board Executive Committee and the Board of Trustees approve the appointment of the following new members, officers and advisor to serve on the Committee on Professional Responsibility and Conduct (COPRAC) beginning in the 2018-2019 committee year:

Officers

Andrew Dilworth, Advisor (2019)
Amy Bomse, Chair (2019)
Stephen Bundy, Vice-Chair (2019)

Member Appointments (in order of preference)

- 1) David Carr (2021)
- 2) Amber Lee (2021)
- 3) Tobi Inlender (public member) (2021)
- 4) Adam Koss (2021)

Alternate Member Appointments (in order of preference)

- 5) Jennifer Saunders

**54-115 California Rural Legal Assistance, Appointment of Attorney Member to Board of
Directors**

Summary: Periodically, the State Bar of California is called upon to appoint attorney members to the Boards of certain multi-county, federally funded legal services programs in California. The State Bar Board Book sets forth Guidelines for Appointment of State Bar Representative to Boards of Directors of Programs Funded by the Legal Services Corporation (Section 5, Tab 5.3, Article 6). Under the bylaws of California Rural Legal Assistance, Inc. ("CRLA"), the Board of Trustees appoints eight members to its Board of Directors on a staggered term basis. At its March 9, 2018 meeting, the State Bar Board of Trustees recommended the reappointment of Ana de Alba for an additional two-year term to the CRLA Board. Unfortunately, unforeseen

circumstances required Ms. De Alba to resign the CRLA Board, leaving a vacancy. The CRLA Board now recommends the appointment of Ramon E. Romero, Jr., who is a past member of the Board, to fill Ms. De Alba's position on their Board for a two-year term, with the possibility of reappointment for an additional two-year term.

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

RESOLVED, that the Board of Trustees approve the appointment of Ramon E. Romero, Jr., to the California Rural Legal Assistance Board of Directors for the balance of a two-year term to commence on July 20, 2018, and expire on March 31, 2020, or until further order of the Board, whichever occurs earlier.

54-121 Reconsideration of Proposed Rule 1.2.1 of the Rules of Professional Conduct - Return from Public Comment and Adoption of Revised Proposed Rule

Summary: At its March 9, 2017 meeting, the Board of Trustees ("Board") adopted proposed rule 1.2.1 (entitled "Advising or Assisting the Violation of Law") of the Rules of Professional Conduct of the State Bar of California ("rules") as part of a comprehensive recommendation for new and amended rules. On March 30, 2017, the proposed rules were submitted to the Supreme Court of California ("Supreme Court") for approval (Supreme Court case no. S240991). On April 11, 2018, the Supreme Court issued Administrative Order 2018-04-11, which included suggested substantive revisions to Comment [6] of proposed rule 1.2.1 and some other minor modifications. The order directed the Board to consider whether to adopt this revised version of the rule. The Committee on Regulation and Discipline ("RAD") approved a request to post for a 45-day public comment period two alternative versions of the rule – one mirroring the Supreme Court's proposed language, and the other including minor modifications to the Supreme Court language.¹ The comment period concluded on July 3, 2018. The Commission for the Revision of the Rules of Professional Conduct ("Commission") reviewed the public comments submitted, made revisions in response to some of the comments and recommends that the Board adopt a revised proposed rule for submission to the Supreme Court for approval.

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

RESOLVED, that the Board of Trustees approve the appointment of Ramon E. Romero, Jr., to the California Rural Legal Assistance Board of Directors for the balance of a two-year term to commence on July 20, 2018, and expire on March 31, 2020, or until further order of the Board, whichever occurs earlier.

54-122 Rule 1.15e of the Rules of Professional Conduct - Adoption of Client Trust Account Record Keeping Standards

Summary: New rule 1.15 of the Rules of Professional Conduct governs the safekeeping of funds and property of clients and other persons. It will become operative on November 1, 2018.

Paragraph (e) of the rule continues the existing authorization for the Board of Trustees to adopt recordkeeping standards. This agenda item requests Board adoption of proposed standards developed by the Rules Revision Commission.

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

RESOLVED, that following public comment and consideration of the comments received, the Board of Trustees adopt the recordkeeping standards, as set forth in Attachment A; and it is

FURTHER RESOLVED, that the operative date of the standards will be November 1, 2018.

54-123 Rules of Professional Conduct - Adoption of Non-Substantive "Clean-Up" Revisions

Summary: New Rules of Professional Conduct will become operative on November 1, 2018. Staff reviewed the text of the new rules and identified non-substantive “clean-up” revisions. This agenda item requests Board adoption of these non-substantive revisions.

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

RESOLVED, that the Board of Trustees adopt the “clean-up” revisions to the Rules of Professional Conduct as set forth in Attachment A; and it is

FURTHER RESOLVED, that staff is directed to submit these revisions to the Supreme Court with a request that the Supreme Court approve the revisions.

54-124 Follow up on Client Security Fund Mandated Report to Legislature Regarding Options to Increase Timeliness of Payouts

Summary: Business and Professions Code section 6140.56, added by Stats. 2017, Ch. 422 (SB 36), directed 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. The report, which was timely submitted to the Legislature, provided a detailed list of options for addressing the funding shortfall in the CSF with the goal of increasing timeliness of payouts. A number of the options have been implemented or are in the process of implementation. In its discussions on the draft report at the March Board meeting, the Board of Trustees (BOT) approved including all the options in the report, but asked staff to report back on the individual items for further consideration of whether the options should be pursued. In light of the recent reduction of the CSF reserve, the transfer of funds from LAP to CSF, as well as legislative input regarding the options listed in the report, it is recommended that the remaining items not be further pursued.

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

RESOLVED, that no further action on options 9, 10, 11 and 12, set forth in Attachment A, be pursued at this time.

54-131 Submission of Council on Access and Fairness Annual Report – *INFORMATIONAL*

Summary: The Council on Access & Fairness (COAF) serves as the State Bar’s diversity think tank and is charged with implementing the Bar’s goal of increasing diversity and inclusion in the legal profession. COAF presents its 2017 Year End report to the Programs Committee and Board of Trustees for informational purposes.

54-132 Commission on Judicial Nominees Evaluation - 2017 Activities and Statistical Report

Summary: This is an informational report on the activities of the Commission on Judicial Nominees Evaluation (JNE). Attached are: (1) a letter from David Fu, the 2017-2018 Chair of the JNE Commission, reporting on his year as Chair; and (2) the JNE Commission 2015-2017 Activities and Statistical Report (Report). The Report includes statistical data concerning judicial evaluations and appointments, and JNE Commissioner workload and budget expenditures, for calendar year 2017. Also included is the same statistical data for years 2015 and 2016 for purposes of comparison.

The Programs Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees receives the Commission on Judicial Nominees Evaluation (JNE) 2015-2017 Activities and Statistical Report, attached to this agenda item as Attachment B, and orders it filed.

54-133 Legal Services Trust Fund: Approval of Interest on Lawyers Trust Accounts (IOLTA) Distributions

Summary: Each year, the Board of Trustees sets the grant amount available for distribution from Interest on Lawyers’ Trust Accounts (“IOLTA”) to nonprofit legal aid organizations in California. While called “IOLTA grants,” over the years, the Justice Gap Fund and other contributions through the State Bar Fee bill, have supplemented the amount available for distribution. This request is for the Board to approve the distribution of grant funds for the 2019 calendar year. After careful review of revenue projections and consideration to the needs of the legal aid programs, the Legal Services Trust Fund Commission recommends a calendar year 2019 grant distribution of \$27,603,000, a ninety-seven percent (97%) increase over the 2018 grant distribution of \$14,009,353.

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

RESOLVED that the Board adopts the recommendation of the Legal Services Trust Fund Commission to approve the distribution of \$27,603,000 in IOLTA grants for the 2019 year, while setting aside a total reserve of \$14,295,176.

700 Miscellaneous

Items #701 and #702 were taken out of order and heard in the morning and afternoon, respectively, on Thursday, September 13. See minutes covering those items above.

703 State Bar Study of Online Delivery of Legal Services – Discussion of Preliminary Landscape Analysis

This item was introduced by Randall Difuntorum, Program Manager, Office of Professional Competence. The item was presented by Professor William D. Henderson,¹ who had been commissioned by the State Bar to conduct the analysis, and accompanied by a power point show. See above public comment in support of the staff recommendation from Claudia Mascari, Center for Public Interest Law Intern.

Summary: This matter is before the Board of Trustees (“Board”) for discussion. After the January 2018, planning session, the Board added objective d to Goal 4 of the strategic plan, directing the study of online legal service delivery models to determine if regulatory changes are needed to support or regulate access through the use of technology. The Bar contracted with Professor William D. Henderson to conduct a landscape analysis of the current state of the legal services market, including new technologies and business models used in the delivery of legal services, with a special focus on enhancing access to justice.

Upon motion made, seconded and unanimously adopted, it was

¹ Professor William Henderson is on the faculty at Indiana University Maurer School of Law, where he holds the Stephen F. Burns Chair on the Legal Profession. Prof. Henderson focuses primarily on the empirical analysis of the legal profession and has appeared in leading legal journals, including the *Stanford Law Review*, the *Michigan Law Review*, and the *Texas Law Review*. In addition, he regularly publishes articles in *The American Lawyer*, *The ABA Journal*, and *The National Law Journal*. His observations on the legal market are also frequently quoted in the mainstream press, including the *New York Times*, *Wall Street Journal*, *Los Angeles Times*, *Atlantic Monthly*, *The Economist*, and National Public Radio. Based on his research and public speaking, Prof. Henderson was included on the *National Law Journal*’s list of The 100 Most Influential Lawyers in America (compiled every ten years). In 2015 and 2016, he was named the Most Influential Person in Legal Education by *The National Jurist* magazine. In 2010, Prof. Henderson co-founded Lawyer Metrics, an applied research company that helps lawyers and law firms use data to make better operational and strategic decisions. Lawyer Metrics (now LawyerMetrix) was acquired by AccessLex Institute in 2015. In 2017, he founded Legal Evolution, an online publication that chronicles successful innovation within the legal industry.

RESOLVED, that the Board of Trustees authorizes staff to make necessary modifications when implementing fee scaling policies in connection with attorney fingerprinting requirements.

RESOLVED, that the Board of Trustees receives and accepts Professor William Henderson's landscape report on the legal services market; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes the formation of a Task Force to analyze the landscape report and conduct a study of possible regulatory reforms, including but not limited to the online delivery of legal services, that balance the State Bar's dual goals of public protection and increased access to justice; and it is

FURTHER RESOLVED, that the Board of Trustees directs staff to work with the Chair and Vice-Chair of the Programs Committee to draft a task force charter and a recommendation for the categories of expertise that the members to be appointed to the Task Force should possess in order to ensure that the Task Force represents a broad range of interests.

Steinbrecher moved the item. Mendoza seconded. Hearing no objection, the Chair substituted the roll call and the motion carried.

704 Transition of the State Bar's Sponsored Life Insurance Program – *INFORMATIONAL*

This item was presented by Linda Katz, Principal Program Analyst, Office of Research and Institutional Accountability, and Marc Shapp, Assistant General Counsel, Office of General Counsel, both participating by telephone.

Summary: This agenda item is intended to be informational only, to update the Board of Trustees on the ongoing negotiations to transition the State Bar's Sponsored Life Insurance Program ("Program") from the current sponsored insurer, American General Life Insurance Company ("AGL"), to New York Life Insurance ("NYL"). State Bar staff expects to present to the Board of Trustees a recommendation regarding naming NYL as the sponsored insurer of the Program at the September 2018 Board Meeting.

705 Rule of Limitations: Return from Public Comment and Request for Approval

This item was presented by Melanie Lawrence, Interim Chief Trial Counsel, Office of Chief Trial Counsel.

Summary: This proposal would amend the Rule of Limitations: (1) to allow both the State Bar Court and the Office of Chief Trial Counsel to dismiss disciplinary matters without prejudice when respondent attorneys are enrolled inactive because they lack mental capacity, and (2) to clarify three existing tolling provisions. This proposal would also make non-substantive amendments to the Rule of Limitations, to reflect the fact that the responsibility for reviewing appeals by complainants has been

transferred from the former Audit and Review Unit of the Office of Chief Trial Counsel (OCTC) to the Complaint Review Unit of the Office of General Counsel. At the July 2018 meeting, the Regulation and Discipline Committee resolved to send out for public comment the proposed amendments to the rule of Limitations. The close of public comment was July 6. No public comments were received during the 45-day public comment period.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that following a 45-day public comment period, the Board of Trustees hereby adopts the amendments to the rules of Procedure of the State Bar, as set forth in Attachment A; and it is

FURTHER RESOLVED, that the amendments to rule 5.21 of the Rules of Procedure of the State Bar are effective immediately and will apply to all pending and future matters.

Fox moved the item. Lee seconded. Hearing no objection, the Chair substituted the roll call and the motion carried.

706 Discipline System Metrics – *INFORMATIONAL*

This item was presented by Ron Pi, Principal Program Analyst, Office of Research and Institutional Accountability, and was accompanied by a power point show.

707 Requested Changes to State Bar Court Judges' Employee Health Insurance and Pension Contribution Amounts

This item was presented by Sean Strauss, Assistant General Counsel, Office of General Counsel, participating by telephone.

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.

State Bar Court judges Purcell and Honn appeared to oppose the resolution. Judge Purcell spoke on behalf of the State Bar Court. She stressed that she had never before appeared before the

Board to make a request. She requests that the Board maintain the status quo for two reasons: (1) it is fair compensation; and (2) it is an important tool for recruitment.

Executive Director Leah Wilson expressed sympathy for the State Bar Court position, but noted that the proposed change is part of a continuum of change to fix the perception that the State Bar does not manage its finances well, and that the proposed change is in alignment with changes to executive and confidential staff compensation and that the status quo is not sustainable.

Upon motion made, seconded and unanimously adopted, it was

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.”

Fox moved the item. Spector seconded. Hearing no objection, the Chair substituted the roll call and the motion carried.

The meeting adjourned at 1:50 p.m.