

AGENDA ITEM

OCTOBER 10 – Board of Trustees – September 13, 2018 Open Minutes

Open Session Minutes
Regular Meeting of the Board of Trustees

State Bar of California
845 South Figueroa Street, Board Room. 2nd Floor, Los Angeles CA

Thursday, September 13, 2018
2:30 PM –

Time meeting commenced: 3:00 PM

Time meeting adjourned: 6:15 PM

Chair: Michael Colantuono

Secretary: Sarah L. Cohen

Members present: Broughton, Chen, Delen, LaBran, Lee, Manning, Mendoza, Perttula, SeLegue, Stallings, Steinbrecher, Stevens

Members joined in progress: N/A

Members absent: N/A

Public Comment: Written and Oral – see attached written public comment and below brief summaries of oral public comment.

Stewart Hsieh, Chair of the Lawyer Assistance Program (LAP) Oversight Committee, gave public comment regarding Agenda Item 702, Appendix I Sub-Entity Review: Report and Recommendations, urging the Board to adopt Option #1, which is to retain LAP within the State Bar and clarify its charge and responsibility. Mr. Hsieh believes that bifurcation of LAP, i.e., retaining the disciplinary and moral character referrals while separating the voluntary referrals would have a negative effect.

AGENDA

OPEN SESSION

The Chair, hearing no objection, deemed approved the following Closed Session items:

1000 [Closed Session] MINUTES

July 19-20, 2018 – Closed Minutes – Dispensed with reading; deemed approved.

5000 [Closed Session] CONSENT – Deemed approved.

5001 Approval for Contracts Relating to the Preparation, Approval, Grading or Administration of the California Bar Examination or the First-Year Law Students' Examination Pursuant to Business and Professions Code Section 6008.6

1. For Printing of First-Year Law Students' Examination

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.

10 Minutes

July 19-20, 2018 – Open Minutes – Dispensed with reading; deemed approved.

30 Chair's Report – ORAL

40 Staff Reports

41 Executive Director

1. Report from Executive Director – WRITTEN

2. Dashboards

50 Consent – Collectively, deemed approved as amended, except 54-121 OCTC Rule Changes: Return from Public Comment and Request for Approval, 1. Consumer Notices and Alerts, which was withdrawn for further study.

50-1 Appreciation to Outgoing Chair and Board Members

It is recommended that the Board of Trustees adopt the following resolution of appreciation to the outgoing Chair and Board members:

WHEREAS, Michael Colantuono, Chair, James Fox, Stacie Spector, and Todd Stevens have served this Board and The State Bar of California with devotion and distinction; and

WHEREAS, it is appropriate that the minutes of this meeting officially record the warm gratitude and respect, both personal and professional, of their fellow Board members;

RESOLVED, that that the Board of Trustees hereby expresses to Michael Colantuono, Chair, James Fox, Stacie Spector, and Todd Stevens, members of the Board of Trustees, its sincere appreciation for their admirable accomplishments and selfless efforts expended on behalf of the State Bar, and also expresses to them the high esteem and personal affection of their fellow members of the Board.

50-2 Approval for Specified Contracts Pursuant to Business and Professions Code section 6008.6

1. For Annual Auditing and Accounting Services, with: Macias, Gini & O’Connell LLP

2. For Attorney Job Analysis Services, with: Castle Worldwide, Inc.

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.

54-111 Recommendation to Extend Chair and Vice Chair Terms of Certain Sub-Entities

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

RESOLVED, that an extension of the terms of the following sub-entity Chairs and Vice-Chairs through December 31, 2018 is approved:

- **Mandatory Fee Arbitration Commission:**
Chair, Lorraine Walsh
Vice-Chairs/Assistant Presiding Arbitrators Clark Stone and Lee Straus
- **Client Security Fund Commission:**
Chair Etan Rosen
- **Legal Services Trust Fund Commission:**
Co-Chair Rich Reinis
- **California Commission on Access to Justice:**
Chair Mark Juhas
Vice Chair Catherine Blakemore

- Council on Access and Fairness:
Chair Diana Becton
Vice Chair Holly Fujie
- California Board of Legal Specialization:
Chair Glenn Plattner
Vice Chair Michael Berg

54-121 OCTC Rule Changes: Return from Public Comment and Request for Approval

1. Consumer Notices and Alerts - *Withdrawn*

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

RESOLVED, that following a 60-day public comment period, the Board of Trustees hereby adopts the amendments the Board policy regarding consumer alerts as set forth in Attachment A; and it is

FURTHER RESOLVED, that the amendment to Board policy is effective immediately and will apply to all pending and future matters.

54-121 OCTC Rule Changes: Return from Public Comment and Request for Approval

2. Judicial Notice of Court Records

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

RESOLVED, that following a 60-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 amendment to rule 5.104 of the Rules of Procedure of the State Bar is effective ~~immediately~~ January 1, 2019, and thereafter will apply to all pending and future matters.

54-121 OCTC Rule Changes: Return from Public Comment and Request for Approval

3. Reinstatement Cases

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

RESOLVED, that following a 60-day public comment period, the Board of Trustees hereby adopts the amendments to:

Title 5, Division 7, Chapter 1, Rule 5.400, Rules of Procedure of the State Bar,
Title 5, Division 7, Chapter 1, Rule 5.403, Rules of Procedure of the State Bar,
Title 5, Division 7, Chapter 1, Rule 5.405, Rules of Procedure of the State Bar,
Title 5, Division 7, Chapter 1, Rule 5.408, Rules of Procedure of the State Bar,
Title 5, Division 7, Chapter 1, Rule 5.409, Rules of Procedure of the State Bar,
Title 5, Division 7, Chapter 1, Rule 5.411, Rules of Procedure of the State Bar,
Title 5, Division 7, Chapter 3, Rule 5.440, Rules of Procedure of the State Bar,
Title 5, Division 7, Chapter 3, Rule 5.443, Rules of Procedure of the State Bar;
as set forth in Attachment A; and it is

FURTHER RESOLVED, that the amendment to rules 5.400, 5.403, 5.405, 5.408, 5.409, 5.411, 5.440, and 5.443 of the Rules of Procedure of the State Bar is effective ~~immediately~~ January 1, 2019, and thereafter will apply to all pending and future matters.

54-121 OCTC Rule Changes: Return from Public Comment and Request for Approval

4. Third Party Subpoenas

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

RESOLVED, that following a 60-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 amendment to rule 2302 of the Rules of Procedure of the State Bar is effective ~~immediately~~ January 1, 2019, and thereafter will apply to all pending and future matters.

54-122 SBC Rule Changes: Return from Public Comment and Request for Approval

1. Integration of Rules of Practice into Rules of Procedure

RESOLVED, that following the 60 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 the Rules of Procedure of the State Bar are effective January 1, 2019.

54-122 SBC Rule Changes: Return from Public Comment and Request for Approval

2. 5.30 Early Neutral Evaluation

RESOLVED, that following the 60 day public comment period, the Board of Trustees hereby adopts the amendments to Rule 5.30 of the Rule of Procedure of the State Bar, as set forth in Attachment A; ~~and it is~~

FURTHER RESOLVED, that the amendments to the Rules of Procedure of the State Bar are effective January 1, 2019; ~~and it is~~

[FURTHER RESOLVED, that staff study the Early Neutral Evaluation process and return to RAD to share their findings.](#)

54-122 SBC Rule Changes: Return from Public Comment and Request for Approval

3. 5.46 Disqualification of Judges

RESOLVED, that following the 60 day public comment period, the Board of Trustees hereby adopts the amendments to Rule 5.46 of the Rule of Procedure of the State Bar, as set forth in Attachment A; and it is

FURTHER RESOLVED, that the amendments to the Rules of Procedure of the State Bar are effective January 1, 2019.

54-122 SBC Rule Changes: Return from Public Comment and Request for Approval

4. 5.80 Default Procedures and 5.85 Petition for Disbarment

RESOLVED, that following the 60 day public comment period, the Board of Trustees hereby adopts the amendments to Rules 5.80 and 5.85 of the Rules of Procedure of the State Bar, as set forth in Attachment A; and it is

FURTHER RESOLVED, that the amendments to the Rules of Procedure of the State Bar are effective January 1, 2019.

54-122 SBC Rule Changes: Return from Public Comment and Request for Approval

5. 5.106 Prior Record of Discipline

RESOLVED, that following the 60 day public comment period, the Board of Trustees hereby adopts the amendments to Rule 5.106 of the Rule of Procedure of the State Bar, as set forth in Attachment A; and it is

FURTHER RESOLVED, that the amendments to the Rules of Procedure of the State Bar are effective January 1, 2019.

54-122 SBC Rule Changes: Return from Public Comment and Request for Approval

6. 5.351 How Commenced; Notice of Disciplinary Charges

RESOLVED, that following the 60 day public comment period, the Board of Trustees hereby adopts the amendments to Rule 5.351 of the Rule of Procedure of the State Bar, as set forth in Attachment A; and it is

FURTHER RESOLVED, that the amendments to the Rules of Procedure of the State Bar are effective January 1, 2019.

54-122 SBC Rule Changes: Return from Public Comment and Request for Approval

7. New Expert Witness Disclosure; Discovery

RESOLVED, that following the 60 day public comment period, the Board of Trustees hereby adopts new Rule 5.XXX of the Rule of Procedure of the State Bar, as set forth in Attachment A; and it is

FURTHER RESOLVED, that the amendment to the Rules of Procedure of the State Bar are effective January 1, 2019.

54-123 Workload Study Report – *Informational Only*

54-131 Annual Recommendation Re Attorneys in Non-Compliance with Minimum MCLE Audit

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

RESOLVED, that the Board of Trustees approve, pursuant to California Rule of Court 9.31 and the Rules of the State Bar, that those attorneys in MCLE Compliance Group 2 who were audited and who do not bring themselves into compliance with their MCLE Audit requirements by November 6, 2018, as well as those attorneys who have failed to comply with their modified MCLE requirement by November 6, 2018, be enrolled as inactive and placed on “Not Eligible to Practice” status in State Bar records, effective November 7, 2018; and it is

FURTHER RESOLVED, that the Board of Trustees hereby authorizes staff to remove an attorney from administrative inactive status once the attorney has provided proof of compliance and paid all noncompliance fees.

54-141 2018 Q2 Financial Statement Report, Investment Report and Client Security Fund Report

RESOLVED that the Board of Trustees approve the 2018 Second Quarter Financial Report in the form this day before the Board, for the six months ended June 30, 2018, as certified by the Interim Chief Financial Officer, and on file with the San Francisco office of the State Bar.

54-142 Office of Finance Mid-Year Budget Variance Report/Projection

RESOLVED that the Board of Trustees approve the 2018 Budget-to-Actual Variance Report and the 2018 Mid-Year Projection Report in the form this day before the Board, for the six months ended June 30, 2018, as certified by the Interim Chief Financial Officer, and on file with the San Francisco office of the State Bar.

54-143 Licensee Requests for Adjustment to Fees and Penalties

It is recommended that the Finance and Planning Committee and Board of Trustees approve the following resolution:

RESOLVED, that 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.

54-144 Proposed 2019 Schedule of Fees, Penalties, Charges and Deadlines

It is recommended that the Finance and Planning Committee and Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve and set, subject to AB 3249 becoming law and effective January 1, 2019, the annual licensing fee for active status at \$430 and the annual licensing fee for inactive status at \$155; and it is

FURTHER RESOLVED, that, as required by Business and Professions Code section 6140.05, a \$5 deduction from annual fees be provided to each attorney who elects not to fund State Bar lobbying and other legislative activity; and it is

FURTHER RESOLVED, that a \$2 deduction from annual fees be provided to each attorney who elects not to fund State Bar programs that support the elimination of bias; and it is

FURTHER RESOLVED, that for the Legal Services Assistance Fee under Business and Professions Code section 6140.03, a \$40 deduction from the annual fee be provided to each attorney who elects not to have this amount allocated to support nonprofit organizations that provide free legal services to persons of limited means; and it is

FURTHER RESOLVED, that the 2019 annual fees for new attorneys admitted in 2019 be set as follows: fees of \$430 for those admitted between January 1 and May 31, 2019 and \$215 for those admitted between June 1 and November 30, 2019; and it is

FURTHER RESOLVED, that the deadlines and penalties as proposed on the attached “Appendix A: Schedule of Charges and Deadlines for 2019” (Attachment A), be applied to delinquent 2019 annual fees; and it is

FURTHER RESOLVED, that the MCLE noncompliance fee remain set at \$75, the MCLE audit deficiency fee remain set at \$200, and the MCLE reinstatement fee to terminate MCLE inactive enrollment remain set at \$200; and it is

FURTHER RESOLVED, that the interest on assessed costs for reimbursement to the Client Security Fund be set at 10% annually calculated from the date of disbursement as set forth by the Board, pursuant to Business and Professions Code §6140.5(c); and it is

FURTHER RESOLVED, that the administrative penalty on failure to comply with binding arbitration is charged at a fee not to exceed 20% of the amount ordered refunded to the client or \$1,000 whichever is greater.

54-145 Update on 2019 Budget – *Informational Only*

700 Miscellaneous

701 Tech + Law: State Bar Study of Online Delivery of Legal Services – Recommendation for Task Force Charter and Composition – *Moved to Friday, September 14, 2018, agenda*

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

RESOLVED, that the Board of Trustees adopts the charter for the Task Force on Access Through Innovation of Legal Services in the form attached to these minutes; and it is

FURTHER RESOLVED, that the Board of Trustees directs staff to carry out a Task Force appointment outreach and application process to be completed in time for the appointment of the Task Force at the Board’s October 19, 2018 meeting.

702 Appendix I Sub-Entity Review: Report and Recommendations

Presenter: Richard Schauffler, Senior Program Analyst, Office of Research & Accountability, State Bar of California

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

COMMITTEE OF BAR EXAMINERS (CBE)

RESOLVED, that that the Board of Trustees approves the proposed staff recommendations for Exam Development work of the Committee of Bar Examiners summarized in Table 5, p. 24 of the Opportunities for Improving Governance and Service Delivery report (Attachment A); and it is

FURTHER RESOLVED, that the Board of Trustees approves the proposed staff recommendation for Moral Character work of the Committee of Bar Examiners, summarized in Table 5, p. 24 of the Opportunities for Improving Governance and Service Delivery report (Attachment A); and it is

FURTHER RESOLVED, that the Board of Trustees approves the proposed staff recommendation for Eligibility & Enforcement of Exam Rules work of the Committee of Bar Examiners, summarized in Table 5, p. 25 of the Opportunities for Improving Governance and Service Delivery report (Attachment A); and it is

FURTHER RESOLVED, that the Board of Trustees approves the proposed staff recommendation for Budget work of the Committee of Bar Examiners, summarized in Table 5, p. 25 of the Opportunities for Improving Governance and Service Delivery report (Attachment A); and it is

FURTHER RESOLVED, that the Board of Trustees approves the proposed staff recommendation for Trends in Licensing & Certification work of the Committee of Bar Examiners, summarized in Table 5, p. 24-25 of the Opportunities for Improving Governance and Service Delivery report (Attachment A); and it is

Public Comment

Ira Spiro withdrew his comment opportunity as the matter he wanted to address is not affected by the recommended resolutions.

Esther Linn, CBE member, expressed concern about a lot of the recommended changes but wanted to focus on one area, moral character. She believes that an integral part of moral character determinations is candor. How a person presents is critical. She said it is unfair to assume that CBE is being inconsistent.

Moved by: Mendoza
Seconded by: Broughton

Yes: Broughton, Chen, Delen, LaBran, Lee, Manning, Mendoza, Perttula, SeLegue, Steinbrecher, Stevens

No: Stallings

Motion passes.

COUNCIL ON ACCESS AND FAIRNESS (COAF)

FURTHER RESOLVED, that the Board of Trustees approves the proposed staff recommendation for the work of the Council on Access and Fairness, summarized as Option 1 on p. 48-49 of the Opportunities for Improving Governance and Service Delivery report (Attachment A); and it is

Moved by: Lee
Seconded by: Chen

Yes: Broughton, Chen, Delen, LaBran, Lee, Manning, Mendoza, Perttula, SeLegue, Stallings, Steinbrecher, Stevens

Motion passes, with friendly amendment by Mendoza, as follows:

p. 48-49 Option 1: Retain and Focus

...

- Clarify charge of COAF, ~~de-emphasizing focus on judicial diversity and ensuring alignment with State Bar's diversity and inclusion mandate and Board strategy, as reflected in the Board's Strategic Plan;~~ and ...

CLIENT SECURITY FUND COMMISSION

FURTHER RESOLVED, that the Board of Trustees approves the proposed staff recommendation for the work of the Client Security Fund Commission, summarized as Option 2 on p. 56 of the Opportunities for Improving Governance and Service Delivery report (Attachment A); and it is

Moved by: Manning
Seconded by: Steinbrecher

Substitution of roll call.

Motion passes.

LAWYER ASSISTANCE PROGRAM (LAP) OVERSIGHT COMMITTEE

FURTHER RESOLVED, that the [State Bar staff obtain more information on the questions raised by the](#) Board of Trustees ~~regarding~~ ~~approves the proposed staff recommendation for~~ the work of the Lawyer Assistance Program Oversight Committee, [and report back to the Board on](#) ~~summarized as~~ Option 2 [and Option 3](#) on pp. 68-69 of the Opportunities for Improving Governance and Service Delivery report (Attachment A) [at the November 2018 Board meeting](#); and it is

Public Comment

Justin Delacruz, LAP Oversight Committee member, stressed his support for maintaining the status quo, as recommended by Patrick Krill. Mr. Delacruz is the only former LAP participant who is a member of LAP Oversight Committee. With LAP's assistance, he has been sober for over 7 years. It is the unanimous position of the LAP Oversight Committee that keeping the voluntary portion of LAP serves a proactive public protection role. Retaining only the mandatory portion will perpetuate the perception that LAP is disciplinary in nature. Separating the voluntary from the mandatory portions will decrease LAP's effectiveness in protecting the public. Mr. Delacruz is willing to work on Option 1 with the Board, i.e., retaining LAP within the State Bar and clarifying its charge and responsibility.

The staff recommendation as stated in the original resolution above was rejected. An alternate motion, as reflected above in Track Changes, passed. In addition the last bullet under Option 2 ("Separate voluntary referrals from the State Bar program, while retaining the disciplinary and moral character referrals") was struck. It stated:

- ~~• The Board of Trustees and State Bar staff would perform the functions currently performed by the LAPOC.~~

Moved by: Lee

Seconded by: SeLegue

Yes: Broughton, Chen, Delen, LaBran, Lee, Manning, Mendoza, Perttula, SeLegue, Stallings, Steinbrecher

Abstain: Stevens

Alternate Motion passes.

COMMITTEE ON MANDATORY FEE ARBITRATION

FURTHER RESOLVED, that the Board of Trustees approves the proposed staff recommendation for the work of the Committee on Mandatory Fee Arbitration, summarized as Option 1 on p. 79 of the Opportunities for Improving Governance and Service Delivery report (Attachment A); and it is

Moved by: Mendoza

Seconded by: Lee

Unanimous roll call vote.

Delen not present for vote.

Motion passes.

CALIFORNIA BOARD OF LEGAL SPECIALIZATION (CBLs)

FURTHER RESOLVED, that, ~~the Board of Trustees approves the proposed staff recommendation for~~ regarding the work of the California Board of Legal Specialization, ~~the Board of Trustees approves~~ summarized as Option ~~13~~ as summarized on p. ~~401~~ of the Opportunities for Improving Governance and Service Delivery report (Attachment A) 1 and requests that staff identify legal specializations that increase access to justice; and it is

Public Comment

Avi Levy, official representative of the California Lawyers Association (CLA) and authorized to speak on behalf of its Board, expressed general consensus that the State Bar's Legal Specialization program is valuable to clients and to the profession while taking no position on the options. The question is what will the program look like moving forward. Regarding Option 2 (contract out) and Option 3 (eliminate), CLA would like to be involved and provide input. If it is contracted out or eliminated, there needs to be a structure for it. CLA offers that structure, with former State Bar employees now on CLA staff. Transitioning State Bar Sections to CLA has gone well. This presents a similar opportunity.

Bridget Gramme, with Center for Public Interest Law, expressed support for Option 3 (eliminate). Ms. Gramme compares it to the de-unification question, and asks whether it really serves a public protection function. The number of certified legal specialists is small and, given the demographics of the clients served by legal specialists, there is no access to justice tie-in.

it is maintained at the State Bar, it is recommended that the composition change to avoid anti-trust problems and the validation of the examinations be done differently.

Melinda Ebelhar, stakeholder, said that she only heard about the plan to eliminate the program at 10 am that day. She opposes moving it outside the State Bar. Consumers are best served by the assurance that there is an objective standard that is applied uniformly.

Wesley Avery, former head of bankruptcy law section, federal bankruptcy trustee and legal specialist in bankruptcy law, refers the Board to a federal district court opinion, 140 F. Supp. 1290, which was omitted in the analysis of the Legal Specialization program. The case stands for the proposition that if there is no regulation of legal specialization under state law, anyone can call themselves a specialist. Mr. Avery urges the Board to read the decision before taking action. Also, the small numbers of State Bar certified legal specialists is not different than the numbers for Super Lawyers and Avvo.

Marshall Walker, certified family law specialist, just heard about the plan to eliminate the Legal Specialization program. He believes it absolutely is a licensing issue, and urges the Board to at least read the case mentioned by Mr. Avery. Legal specialization should be regulated. If it is outsourced to a private agency, it will engender competition.

Sandra Salinas, certified family law specialist, explained that the numbers of legal specialists is small because certification requires knowledge and experience.

Dennis McGoldrick, certified bankruptcy specialist, supports Option 1 (retain), and believes that the notion that legal specialization does not protect the public is wrong.

Peter Walzer, certified specialist, spoke on behalf of LA County Matrimonial and Family Law Section. He was on the Elkin Task Force to reform family law. Feedback from judicial officers is that legal specialization raises the bar. Consumers want specialists. The State Bar program is fair and consistent.

Stella Harkin, certified bankruptcy specialist, stated that she is a better lawyer by having become a specialist.

Miles Freedman, incoming Vice Chair of CBLS with 37 years as an IRS attorney and 10 years on the Tax Law Advisory Commission, stated he is concerned with public protection. There is qualitatively more protection in taxation law because of legal specialists. The program should be maintained for public protection.

Jeff Haydn, immediate past Chair of CBLS, agreed that the State Bar shouldn't maintain programs that aren't working. The Legal Specialization program does work. There have been significant changes that have improved the program, e.g., paid drafters and graders. With this

change, responsibility has shifted away from volunteers to individuals directly responsible to staff.

Jeremy Klein, certified family law specialist, supports retaining the program.

Bob Planthold, senior with disability, stated that the State Bar toilets are not accessible, captioning is problematic, and the name of the newly named office, Office of Access and Inclusion, is misleading.

The staff recommendation as stated in the original resolution above was rejected. An alternate motion, as reflected above in Track Changes, passed.

Moved by: Lee

Seconded by: Stallings

Yes: Chen, Delen, LaBran, Lee, Manning, Stallings, Steinbrecher, Stevens

No: Mendoza, Perttula

Abstain: Broughton, Colantuono, SeLegue

Motion passes.

GLOBAL RECOMMENDATION

FURTHER RESOLVED, that the Board of Trustees approves the proposed staff global recommendations for the work of all subentities of the State Bar, summarized in Table 2 on p. 12 of the Opportunities for Improving Governance and Service Delivery report (Attachment A).

Moved by: Steinbrecher

Seconded by: Mendoza

Yes: Broughton, Chen, Delen, LaBran, Lee, Manning, Mendoza, Perttula, SeLegue, Steinbrecher, Stevens

No: Stallings

Motion passes.

Michael S. Berg
Attorney at Law
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12 September 2018

Mark Broughton
Attorney at Law
2300 Tulare Street
Ste 215
Fresno, CA 93721-2265

Dear Mark:

I am writing not only as the incoming chairman of the California Board of Legal Specialization, but also as a certified specialist in criminal law for over 20 years.

It is with a great deal of distress and sadness that I read the recommendation to the Board of Trustees regarding the future of the Board of Legal Specialization. I cannot stress to you enough that ending the Legal Specialization program, as recommended to the Board, would have disastrous results for over 5,000 certified specialists in the State of California, certified through the State Bar.

As I'm sure you are aware, our program is entirely self-funded. In 2016, revenues from the certification program were over \$2 million while the program's expenses were just under \$900,000. For 2017, revenues were about \$600,000 and expenses were about \$2.1 million. The decline in 2017 revenues and increase in 2017 expenses were the temporary and planned result of a one-time waiver of the annual fee normally charged to all certified specialists plus a planned expenditure of reserves for a computer system that the specialization program is purchasing for the use of the entire State Bar. Revenues and expenses in 2018 have returned to prior levels.

Without going into what I believe are the numerous benefits to the State Bar and the consumers in California seeking the services of a certified specialist to assist in legal situations, I would ask if Board of Trustee members have considered the following:

1. What would happen to the financial assets of the program? Certainly the Bar could not just appropriate the funds for their own use.
2. Would there not be some sort of detrimental reliance and breach of good faith for the hundreds of attorneys that just studied for, paid for and took the exam?
3. Should not the over 5,000 certified specialists in the California Bar have some notice and an opportunity to be heard before they are summarily "de-certified?"
4. Are you aware that there are not outside certification programs that cover all 11 specialty areas that we currently cover? Therefore, there would be thousands of attorneys that would have no future opportunity to ever become a specialist in their area of law.

I urge you to go with Option # 1: retain the program within the State Bar and, if you believe it necessary, streamline the process by reducing the role, size, and meetings of the 11 Specialty Advisory Commissions.

Thank you for your consideration in this matter. Should you have any questions, please do not hesitate to contact me.

Best regards,

Michael S. Berg

Michael S. Berg
Attorney at Law

MSB/bm



A
Professional
Corporation

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*Certified Family Law Specialist

September 12, 2018

VIA EMAIL AND FIRST CLASS MAIL
California State Bar Association Board of Trustees
845 South Figueroa Street
Board Room, 2nd Floor
Los Angeles, CA 90017

Re: *CHANGES IN THE CERTIFIED LEGAL SPECIALISTS CERTIFICATION*

Dear Trustees,

I was shocked to hear that the Board of Trustees is contemplating significant changes to the Certified Legal Specialization program and that a vote of some sort is to take place tomorrow, on September 13, 2018. As a Certified Specialist in Family Law I am disappointed that those of us who will be directly affected by any changes were not noticed or kept informed, nor was any input from us invited. This sort of lack of transparency is very disconcerting.

I want to express my opposition to any plan that eliminates the State Bar Certified Specialization program or that delegates the certification process to some other non-bar entity. The program provides a valuable service to consumers by identifying attorneys who devote time to completing more than the minimal required continuing legal education and who are identified by their colleagues as maintaining the highest standards. This is a benefit to consumers and not merely a "marketing tool" for attorneys as so offensively suggested in the *Report and Recommendations Regarding the State Bar of California's Boards, Commissions, Committees and Counsels* by Richard Schaufli, a Senior Staff Analyst September 13, 2018 (the Report).

There are numerous commercial entities outside of the State Bar who claim to identify "top attorneys" the "cream of the crop", "Super Attorneys" of the day and so on. Many of the honors are bestowed based on how much money "nominees" spend in publications, website badges, and ads in magazines, or on award items to display around the office. The objectivity of the State Bar certification is the very basis of the Certified Specialist program's credibility and reputation. It is objective and lacks any connection to a commercial venture. To delegate the certification program elsewhere would invite abuse and facilitate the kind of cronyism that is prevalent in some of non-bar, specialist associations.

I cannot speak to other counties, but I know that the Certified Family Law Specialists (CFLS) in Solano County are among the top tier of practitioners. Not only do they keep abreast of changes in the

law, the also contribute to the development of, and changes in, the law. The are often the attorneys tackling the more difficult cases and nuanced legal issues and tasks, sharing information through certified specialist organizations' meetings, and carefully analyzing proposed legislation.

Not only do Certified Specialists raise the bar of excellence in their practice areas of specialization, they also improve the general legal communities where they practice. Certified Specialists in our county have presented low and no cost seminars for non-specialist attorneys on complex changes in the law and complicated legal theories, raising the bar in the quality of representation among more than just our Counties' Certified Specialists. In our county CFLS have also provided pro bono assistance in the family law practice area and support to the local Solano County Family Law Committee with special educational opportunities.

I am opposed to any plan that eliminates the Certified Specialist program of the State Bar or delegates it to some other entity. Certified Specialists pay a substantial annual fee for which the Bar has no obligation to provide the paying attorneys any special services. Those fees sustain the minimal administrative work necessary to maintain the Certified Specialist program and the Report indicates the Certified Specialist program is solvent.

I am perhaps most disappointed with what I see as a less than transparent process to attempt to make substantial changes to the Certified Specialist program, most notably without any involvement of the thousands of Certified Specialists in California. I became aware of you meeting tomorrow and the report all a day before the report's recommendations were to be presented. There has been no opportunity for peer review of the claims made in the Report or for comments from bar members about the recommendations.

I am requesting that no action be taken regarding changes to the Certified Specialists program, that the report be distributed to all certified specialists, and that comments from each specialization area be invited. If you have any questions, please feel free to contact me.

Sincerely,



RHODA A. CHANDLER, CFLS