

**OPEN SESSION
AGENDA ITEM**

703 NOVEMBER 2018

DATE: 11/16/2018

TO: Members, Board of Trustees

**FROM: Antonia Darling, Chief Court Counsel, State Bar Court
Jay Lee, Asst. General Counsel, Office of General Counsel**

**SUBJECT: Appointment of Retired Honorable State Bar Court Judge
Patrice McElroy as Judge Pro Tem of the State Bar Court;
Exemption to CalPERS 180-Day Wait Period to Appoint
Judge McElroy as a Retired Annuitant**

EXECUTIVE SUMMARY

The Board has the authority to appoint Judges Pro Tem to the State Bar Court (SBC). The Hon. Patrice E. McElroy (Ret.) served with distinction for 17 years as a Judge with SBC's Hearing Department until she retired on October 31, 2018. SBC currently has two judicial vacancies in its Hearing Department, leaving only three active Judges to handle all Hearing Department matters across the Los Angeles and San Francisco courts. Because of her judicial experience, Judge McElroy has unique skills to provide service to SBC as a Judge Pro Tem retired annuitant. To comply with California Public Employee Retirement System (CalPERS) requirements, Board of Trustees action is also required to certify that there is a critical need to appoint a recently retired State Bar employee as a retired annuitant before six months has passed from that individual's retirement date.

BACKGROUND

The Board of Trustees has the authority to appoint Judges Pro Tem to the State Bar Court. (Bus. & Prof. Code section 6079.1). Retired annuitants may be appointed to act as Judges Pro Tem.

As of November 1, 2018, the SBC has two vacant hearing judge positions (one each in San Francisco and Los Angeles) that will likely not be filled any sooner than late spring of 2019. These vacancies will negatively impact SBC's ability to hold early, neutral evaluation conferences (ENECs) and voluntary settlement conferences (VSCs) in a timely manner.

The State Bar of California participates in the CalPERS retirement system. CalPERS retirees can be hired to work as retired annuitants if they meet certain statutory conditions. (Government Code sections 7522.56 and 21224.) However, CalPERS retirees are prohibited from working as retired annuitants within the first 180 days after their retirement date unless the governing body of a public agency passes a resolution in public session certifying that the CalPERS retiree has unique skills and that there is a critical need to appoint them within the first 180 days of retirement.

DISCUSSION

The Hon. Patrice McElroy (Ret.) has been a SBC Hearing Department Judge since 2001, when she was appointed to that position by the California Supreme Court. She was then reappointed in 2006 and 2012. Her 17 years of experience adjudicating cases involving State Bar licensees and violations of the Code of Professional Conduct provides Judge McElroy with unique skills, including in conducting ENECs and VSCs.

In order to protect the public by allowing the timely scheduling and holding of ENECs and VSCs, SBC requests that the Board of Trustees certify that the need to appoint the Hon. Patrice E. McElroy (Ret.) as a Judge Pro Tem retired annuitant is critical and that she should be so appointed within 180 days of her October 31, 2018, retirement date.

FISCAL/PERSONNEL IMPACT

Judge McElroy's hourly rate of pay as a retired annuitant would be \$91.07. Staff does not anticipate that Judge McElroy's retired annuitant appointment will have any significant impact on the State Bar's finances, as the SBC has sufficient funds in its budget, due to judicial vacancies.

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal:

Goal 2: Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California.

Objective:

Objective c: Develop and implement transparent and accurate reporting and tracking of the health and efficacy of the discipline system, to include...(b) identification of staffing and resource needs.

RECOMMENDATION

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

RESOLVED, that the Board of Trustees exercise its authority under Business & Professions Code section 6079.1 and appoint the Hon. Patrice E. McElroy (Ret.) as a Judge Pro Tem to the Hearing Department of the State Bar Court.

RESOLVED, that the Board of Trustees adopts the resolution set forth in Attachment A and appoint the Hon. Patrice E. McElroy (Ret.) as a pro tem Judge.

ATTACHMENT LIST

A. CalPERS Resolution

Attachment A

RESOLUTION November 16, 2018

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

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

WHEREAS, the Hon. Patrice McElroy retired under CalPERS as a State Bar Court Judge effective October 31, 2018; and

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

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

WHEREAS, Judge McElroy certifies that she has not and will not receive any unemployment insurance benefits; and

WHEREAS, The State Bar of California Board of Trustees and The State Bar of California certify that there is a critical need to hire Judge McElroy as a retired annuitant within 180 days of her October 31, 2018, retirement date; and

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

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

WHEREAS, the compensation paid to the retiree is equal to the monthly base salary (\$15,785.27) paid to State Bar employees performing comparable duties (State Bar Court Hearing Department Judges), divided by 173.333 to equal the hourly rate; and

WHEREAS, the hourly rate paid to Judge McElroy for her work as a retired annuitant will be \$91.07 per hour; and

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

THEREFORE, BE IT RESOLVED THAT The State Bar of California Board of Trustees hereby certifies the nature of the appointment as described herein and that this appointment is necessary to perform critically needed duties for The State Bar of California beginning November 19, 2018.