



The State Bar of California

AGENDA ITEM

JANUARY 10 – November 16, 2018, Open Minutes

Open Session Minutes
Regular Meeting of the Board of Trustees
State Bar of California
180 Howard Street, Board Room, San Francisco

Friday, November 16, 2018
9:00 AM

Time meeting commenced: 9:06 AM

Time meeting adjourned: 2:30 PM

Chair: Jason Lee

Secretary: Sarah Cohen

Members present: Mark Broughton, Sonia Delen, Ruben Duran, Renee LaBran, Debbie Manning, Joanna Mendoza, Joshua Perttula, Seam SeLegue, Brandon Stallings, Alan Steinbrecher

Members joined in progress: Hailyn Chen

Members absent: N/A

Public Comment: See below.

Public Comment: Lawyer Assistance Program (LAP)

Lita Abella, LAP senior program analyst and union executive board member, appeared on behalf of LAP staff and the union to support Option #1, maintain LAP as is, per expert Patrick Krill's recommendation. Many of Krill's recommendations have already been implemented including creating her position as outreach coordinator. She has already presented to over 1000 attorneys and law students. 2018 is first year LAP has been open to law students, and 2018 saw a higher number of non-discipline participants than in 2017. Ms. Abella noted that the State Bar recently leased new office space outside the State Bar for LAP, and moved staff and program to the new building, a move that has been well received.

Nicole Roger is a licensed mental health therapist and clinical rehabilitation coordinator for LAP and urges the Board to reconsider Option #1 and follow the recommendations of Patrick Krill of keeping LAP within the State Bar. Ms. Roger believes that outsourcing is problematic because many interventions occur prior to formal State Bar discipline. These early interventions are what promotes rehabilitation. LAP has already restructured based on Krill's recommendations to remove the evaluation committee. It has been replaced by a clinical review team, which has been met with positive reviews by participants and group facilitators because of increased level of care, transparency, flexibility and confidentiality.

Jennifer Cantore gave public comment by phone. She commented that experts do not support outsourcing/altering the structure of LAP, and neither do LAP/State Bar Court staff, oversight committee, participants, or facilitators who were not given the opportunity to provide input.

Shelly Frasier, LAP clinical rehabilitation coordinator, also gave comment by phone and made two points based on her 25 years of professional experience in the field as a licensed social worker in mental health and substance abuse: (1) there has been a big increase in law student calls since Lisa started doing outreach; State Bar has opportunity to be proactive rather than reactive; (2) at the conference in Charleston, everyone sang Patrick Krill's praises; Option #1 should be reconsidered; with implementation of the new outreach coordinator, the new location and the new streamlined internal clinical processes, LAP should be given a chance to succeed in its current structure.

Dr. June Ruse, LAP group facilitator, also gave comment by phone. In support group, the lawyers really understand each other's issues. They reach out to each other over the years, even after they've completed their requirements.

James Heiting, former President of the Other Bar and former President and member of the Board, also gave comment by phone in support of Option #1. LAP should remain with the State Bar at least for one year to give it a chance to succeed. He noted he was not selected to fill a slot on the oversight committee that remains empty - not filling statutorily mandated slots limits the ability of LAP to move forward. Mr. Heiting feels that LAP is a partnership that can work so long as the Board lets the experts take over and lets the oversight committee manage the program. The Board should review their recommendations, plans and thought processes and if reasonable approve them so LAP can move forward.

Public Comment: Committee of Bar Examiners (CBE)

Greg Brandes, Dean of Saint Francis School of Law and Chair of Law School Engagement Committee, appeared on behalf of 23 law schools to support the staff proposal in virtually

every respect including immediate implementation of the distance learning rules, the law school engagement plan, the accreditation plan.

Elizabeth Xyr, the Dean of Academics at Monterrey College of Law, gave public comment on engagement between law schools and State Bar. She thanks the Board and the staff for all time and effort in collaborating with the law schools. She feels positive about the engagement model moving forward. The Law School Council will be an ABA model advisory committee. The CS Bars group will be an advisory committee that incorporates the registered schools and the Cal schools. The new model will have these committees move to the magic number of seven. CBE membership would be reduced on both committees. Ad hoc limited term working groups can be convened if necessary. This will allow the Law School Assembly to be more effective by coming together when needed. The model includes a staff outreach newsletter. Ms. Xyr also spoke in support of a State Bar sponsored LAP.

Mitch Winick, in 13th year of a Cal accredited law school, Monterrey College of Law and former Rules Advisory Committee and Law School Council Chair, called attention to page 3 of executive summary, regarding recognizing other accreditors. He supports proposal to add a category of accreditation within the State Bar rules. The “deemed accredited” status will be extended to non-ABA schools accredited by the other accreditors with the additional expectation that the schools will still be held accountable by the State Bar to a minimum set of standards. The other non-ABA schools will continue to look to the State Bar as the accreditor. The final item, the mandatory pathway to accreditation for all law schools, will require additional work/legislative input. Mr. Winick also spoke in support of a State Bar sponsored LAP.

MINUTES:

Corrected May 18, 2018, Open Minutes

Moved by Mendoza, Seconded by SeLegue.

Yes – Broughton, Chen, LaBran, Manning, Mendoza, Perttula, SeLegue, Stallings, Steinbrecher

No – N/A

Abstain/Not Voting – Delen (abstain), Duran (absent)

Motion passes.

October 19, 2018, Open Minutes

Moved by Mendoza, Seconded by Delen.

Yes – Delen, LaBran, Manning, Mendoza, Perttula, SeLegue, Steinbrecher

No – N/A

Abstain/Not Voting – Broughton (abstain), Chen (abstain), Duran (absent), Stallings (abstain)

Motion passes.

30 CHAIR'S REPORT - ORAL

1. Board Committee and Liaison Assignments

RESOLVED, that the Board of Trustees ratifies the attached Committee and Liaison Assignments for the 2018-2019 Board year, as amended.

NOTE: All changes to RAD rejected; change eliminating Mark Broughton from Programs Committee rejected.

Moved by Stallings, Seconded by LaBran.

Substitution of the Roll Call.

Motion passes.

40 Staff Reports

41 Executive Director – *Informational*

1. Report from Executive Director

2. Dashboard

50 Consent - Collectively, Deemed Approved

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

1. For Bar Examination (California Bar Examination and First Year Law Student Examination) Testing

Accommodation Evaluations, with: Douglas Tucker MD; Michael Shore PhD

2. For Bar Examination Testing Accommodation Space, February 2019, with: Doubletree Hotel Los Angeles-Westside

3. For Audiovisual Maintenance and Support, San Francisco & Los Angeles, with: Golden Start Technologies, 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.

50-2 Proposed Changes to Conflict of Interest Code for Designated Employees: Request for Approval

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

RESOLVED, that Board of Trustees hereby adopts the proposed Conflict of Interest Code for Designated Employees of the State Bar of California, including Appendix A and B, as set forth in Attachments A, B, and C.

54-111 Appointments of Chairs/Vice Chairs and Members of Sub-entities Subject to Appendix I Review

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

RESOLVED, that the following appointments and re-appointments are approved to the subentities and for the terms indicated:

- To the Committee on Mandatory Fee Arbitration, from January 1, 2019 through June 30, 2019: Lorraine Walsh, Chair; Lee Straus, Vice-Chair; Clark Stone, Vice-Chair.
- To the Client Security Fund Commission
 - From January 1, 2019 until the end of the annual meeting in 2019: Carol A. Klauschie, Chair and Shanae Buffington, Vice-Chair.
 - Jordan N. Wright, Public Member, from November 19, 2018, until the end of the annual meeting in 2021.
- To the Council on Access and Fairness, from January 1, 2019 until the end of the annual meeting in 2019: Judge Holly Fujie, Chair and Judge Brenda Harbin-Forte, Vice-Chair.
- To the Lawyer Assistance Program Oversight Committee, from January 1, 2019 through December 31, 2019: Stewart Hsieh, Chair, and Kellie Condon.
- To the Law School Council from November 19, 2018, until the end of the January 2019 Board meeting: Kevin Johnson, Lisa Kloppenberg, Susan Westerberg Prager and Robert Strouse.
- To the Advisory Committee on Accredited Law School Rules, from November 19, 2018, until the end of the January 2019 Board meeting: Dean Barbieri, Gregory Brandes and Jackie Gardina.

**54-112 California Rural Legal Assistance (CRLA),
Reappointment of State Bar Representatives to Board |
of Directors**

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

RESOLVED, that the Board of Trustees approve the reappointments of Esteban Rodriguez, Anthony LoPresti and Alejandro Delgado to the California Rural Legal Assistance Board of Directors each for a two-year term and eligible for reappointment; and it is

FURTHER RESOLVED, that the terms for Mr. Rodriguez and Mr. LoPresti shall commence upon passage of this resolution and expire on April 30, 2020 or until further order of the Board, whichever occurs earlier. The term for Mr. Delgado shall commence on January 1, 2019 and expire on December 31, 2020 or until further order of the Board, whichever occurs earlier.

**54-113 California Indian Legal Services (CILS),
Reappointment of State Bar Representatives to Board of Directors**

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

RESOLVED, that the Board of Trustees approve the reappointment of Joe Ayala to the California Indian Legal Services Board of Directors for a three-year term commencing on January 1, 2019 and expiring on December 31, 2021.

**54-114 Legal Services of Northern California (LSNC), Reappointment of State Bar
Representatives to Board of Directors**

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

RESOLVED, that the Board of Trustees approve the reappointment of James G. Wright, Amelia Burroughs, and Cheryl Carl to the Board of the Directors of the Legal Services of Northern California, each for a second three-year term, commencing November 16, 2018, and expiring August 31, 2021, or until further order of the Board, whichever occurs earlier.

**54-115 Recommendation for Appointment and Reappointment of Fee Arbitrators;
Reappointment of Presiding Arbitrator and Assistant Presiding Arbitrators**

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

RESOLVED, that the Board of Trustees hereby reappoints the fee arbitrators whose names appear on the list attached hereto as Attachment A to the State Bar Mandatory Fee Arbitration Program; each for a one-year term commencing January 1, 2019, and expiring December 31, 2019; and it is

FURTHER RESOLVED, that the Board of Trustees appoints the applicants whose names appear on the list attached hereto as Attachment B to the State Bar Mandatory Fee Arbitration Program, each for a term commencing November 16, 2018, and expiring December 31, 2019; and it is

FURTHER RESOLVED, that the Board of Trustees reappoints Kenneth E. Bacon, Sacramento, as the State Bar's Presiding Arbitrator effective January 1, 2019 and expiring December 31, 2019; and it is

FURTHER RESOLVED, that the Board of Trustees reappoints Clark Stone, San Jose, and Lee Straus, Los Angeles, as the State Bar's Assistant Presiding Arbitrators effective January 1, 2019 and expiring December 31, 2019.

54-116 Approval and Ratification of Board Book Revision to Change Composition of Committee on Regulation and Discipline

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

~~**RESOLVED**, that the Board Book be revised in the charter of the Regulation and Discipline Committee (RAD), to eliminate the requirement that the composition of RAD include all Board members, except the two California Supreme Court's Applicant Evaluation and Nomination Committee.~~

NOTE: At its meeting on November 15, 2018, the Board Executive Committee did not approve the resolution in Item No. 54-116, and therefore it did not come before the full Board.

54-121 Office of Chief Trial Counsel (OCTC) State Bar Rule Change: Return from Public Comment and Request for Approval - Consumer Notices and Alerts

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 posting of a consumer alert upon the filing of felony charges against an attorney in superior court as set forth in proposal 1 on Attachment A; and it is

FURTHER RESOLVED, that following a 60-day public comment period, the Board of Trustees hereby adopts the amendments the Board policy regarding posting of a consumer alert upon the Superior Court assumption of jurisdiction over an attorney's practice as set forth in proposal 2 on Attachment A; and it is

FURTHER RESOLVED, that following a 60-day public comment period, the Board of Trustees hereby adopts the amendments the Board policy regarding posting of a consumer alert upon involuntary inactive enrollment, suspension, disbarment, and resignation with charges pending as set forth in proposal 3 on Attachment A; and it is

FURTHER RESOLVED, that following a 60-day public comment period, the Board of Trustees hereby adopts the amendments the Board policy regarding posting of a consumer alert upon the filing of a petition alleging that the attorney should be placed on inactive status because he or she poses a substantial threat of harm to the public or clients as set forth in proposal 4 on Attachment A; and it is

FURTHER RESOLVED, that following a 60-day public comment period, the Board of Trustees hereby amends Board policy to append the license status on the State Bar website of an attorney against whom an NDC has been filed as set forth in proposal 5 on Attachment A; and it is

FURTHER RESOLVED, that following a 60-day public comment period, the Board of Trustees hereby amends Board policy to append the license status on the State Bar website when an attorney is placed on probation or issued a public reproof with conditions as set forth in proposal 6 on Attachment A; and it is

FURTHER RESOLVED, nothing in this resolution prevents State Bar staff from making additional modification to the design and appearance of the attorney State Bar profile page, including content, font size, font color, etc. that are not material to the manner in which the information about discipline, criminal charges and criminal convictions are presented; and it is

FURTHER RESOLVED, that the above amendment(s) to Board policy is(are) effective immediately ~~and will apply to all pending matters.~~

54-122 Lawyer Assistance Program (LAP) Proposed Rule Change: Return from Public Comment and Request for Approval

1. Proposed Rule Amendment Reflecting Elimination of Evaluation Committees

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

RESOLVED, that following the 45 day public comment period, the Board of Trustees hereby adopts the revisions to State Bar Rules, Rule 3.242, Rule 3.246, Rule 3.249 and Rule 3.250 as set forth in Attachment A; and it is

FURTHER RESOLVED, that the revisions to State Bar Rules, Rule 3.242, Rule 3.246, Rule 3.249 and Rule 3.250 are effective immediately.

2. Participant Eligibility for Financial Assistance

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

RESOLVED, that following the 45 day public comment period, the Board of Trustees hereby adopts the amendments to Rule 3.252, as set forth in Attachment A; and it is

FURTHER RESOLVED, that the amendments to Rule 3.252 are effective immediately.

54-123 Proposed State Bar Court Rule 5.137: Return from Public Comment and Request for Submission to California Supreme Court for Approval

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

RESOLVED, that staff submit to the California Supreme Court for approval proposed State Bar Rule of Procedure, rule 5.137, attached hereto as Attachment C.

54-124 Revision to Confidentiality Rule, Rule 2302, Rules of Procedures of the State Bar: Return from Public Comment and Request for Approval

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

RESOLVED, following notice and publication for comment, that the Board of Trustees adopt the proposed amendments to Rules of Procedure of the State Bar of California, rule 2302, as set forth in Attachments A and B, with such amended rule operative immediately.

54-131 Revisions to the Special Admission Rules - Return from Public Comment and Request for Submission to the California Supreme Court for Approval

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

RESOLVED, that the Board of Trustees hereby authorizes staff to submit to the California Supreme Court for approval:

- proposed amendments to Rules of Court, rule 9.46, Registered In-House Counsel, Attachment A;
- proposed amendments to Rules of Court, rule 9.45, Registered Legal Aid Attorneys, Attachment C;
- proposed amendments to Rules of Court, rule 9.44, Registered Foreign Legal Consultant, Attachment E;
- proposed Rules of Court, rule 9.41.1, Registered Military Spouse Attorney, Attachment G; and that it is

FURTHER RESOLVED, that the Board of Trustees hereby approve and adopt:

- proposed amendments to Rules of the State Bar, rules 3.370 – 3.377 (RIHC), Attachment B;
- proposed amendments to Rules of the State Bar, rules 3.360 – 3.367 (RLAA), Attachment D;
- proposed amendments to Rules of the State Bar, rules 3.400 – 3.411 (RFLC), Attachment F;
- proposed Rules of the State Bar, rules 3.350 – 3.356 (RMSA), Attachment H;
- proposed Rules of the State Bar, Appendix A re. Title 3, Division 3, Chapter 1, Article 1, Attachment I;
- proposed amendments to Rules of the State Bar, Appendix A re. Title 3, Division 3, Chapter 1, Article 2, Attachment J, and
- proposed amendments to Rules of the State Bar, Appendix A re. Title 3, Division 3, Chapter 1, Article 3, Attachment K;

and request that the Supreme Court review and approve these State Bar Rules.

54-141 2018 Q3 Financial Statement Report, Investment Report, Client Security Fund Report

The staff recommends that the Board of Trustees approve the following resolution:

RESOLVED that the Board of Trustees approve the 2018 Third Quarter Financial

Report in the form this day before the Board, for the nine months ended September 30, 2018, as certified by the Chief Financial Officer, and on file with the San Francisco office of the State Bar.

54-142 Admissions Information Management System - Budget Amendment and Request for Approval of Change Order

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

RESOLVED, that the Finance and Planning Committee and Board of Trustees approve an amendment to the 2018 Budget, to increase budgeted expenses of the Admissions Information Management System by \$570,000, as described herein; and that it is

FURTHER RESOLVED, that the Finance and Planning Committee and Board of Trustees approve a contract amendment with Slalom for \$450,000.

54-181 Third Quarter Board and Management Expenses - *Informational*

700 Miscellaneous

701 Approval of Contract for Best, Best and Krieger LLP Of Counsel Gary Schons to Serve as Special Deputy Trial Counsel Administrator Pursuant to State Bar Rule 2201

Presenters: Holton/Dewar

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

RESOLVED, that the Board of Trustees, having considered the facts of Ruben Duran's remote interest in the Agreement Between the State Bar of California and Best Best & Krieger, LLP re Special Deputy Trial Counsel Administrator, approves and ratifies that agreement between the State Bar and Best Best & Krieger LLP.

Moved by Stallings, Seconded by Mendoza.

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

No – N/A

Abstain/Not Voting – Duran (recused)

Motion passes.

702 Exception to CalPERS 180 Day Wait Period to Appoint Sheila Campbell as Retired Annuitant

Presenter: Lee

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

RESOLVED, that the Board of Trustees adopts the resolution set forth in Attachment A.

Moved by Manning, Seconded by Stallings.

Yes – Broughton, Chen, Delen, Duran, LaBran, Manning, Mendoza, Perttula, SeLegue, Stallings, Steinbrecher

No – N/A

Abstain/Not Voting – N/A

Motion passes.

703 Appointment of Retired Honorable State Bar Court Judge Patrice McElroy as Judge Pro Tem of the State Bar Court; Exception to CalPERS 180 Day Wait Period to Appoint Judge McElroy as Retired Annuitant

Presenters: Darling/Lee

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.

Moved by LaBran, Seconded by Manning.

Substitution of the Roll Call.

Motion passes.

704 Changes to Sub-entity Governance, Structure and Composition: Implementation Plans

Presenters: Wilson/Hershkowitz/MacLeod

RESOLVED, the Board of Trustees directs Bar staff to move forward with the implementation of Option 2 on the Lawyer Assistance Program (LAP), specifically directing Bar staff to restructure the LAP so that the Bar retains the Alternative Discipline Program and moral character referrals but no longer operate the self-referral /support component of the LAP.

Moved by Stallings, Seconded by SeLegue.

Substitution of the Roll Call.

Motion passes.

Steinbrecher proposed an additional motion related to the agenda item (including a friendly amendment by Lee):

RESOLVED, the Board establish a policy that weekend meetings of sub-entities will not be scheduled except where absolutely necessary.

Moved by Steinbrecher, Seconded by Delen.

Substitution of Roll Call.

Motion passes.

705 2019 State Bar Preliminary Budget & 2020-2024 Five Year Forecast/Projection Update

Presenter: Adams

Should the Board of Trustees concur with staff's recommendation, the following resolution would be in order:

~~**RESOLVED**, that the Board of Trustees hereby adopts the 2019 Preliminary Budget in the form presented to the Board this day; and it is~~

~~**FURTHER RESOLVED**, that the Board of Trustees hereby authorizes staff to make technical adjustments and corrections to the 2018 Preliminary Budget prior to submitting it to the Legislature by November 21, 2018.~~

NOTE: The Board rejected the staff resolution, as shown in strike-out above, and proposed and approved the following resolution:

RESOLVED, that the Board adopt the proposed budget to be submitted to the Legislature along with a message that the Board is considering emergency measures to reduce the deficit spending resulting from the current level of available revenue.

Moved by SeLegue and Seconded by Broughton.

Yes – Broughton, Delen, Duran, LaBran, Manning, Mendoza, SeLegue, Stallings, Steinbrecher

No – N/A

Abstain/Not Voting – Chen (absent), Perttula (absent)

Motion passes.

ADJOURNED