



The State Bar of California

AGENDA ITEM

MARCH 10 – January 25, 2019, 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

Friday, January 25, 2019
1:00 PM

Time meeting commenced: Closed Session 1:19 PM; Open Session 1:52 PM

Time meeting adjourned: 5:09 PM

Chair: Jason Lee

Secretary: Sarah Cohen

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

Members joined in progress: N/A

Members absent: Hailyn Chen

Public Comment: See below.

Emilio Varanini: Mr. Varanini, Vice President of the California Lawyers Association (CLA) invited the Board, General Counsel, and Executive Director to a reception on March 21 commemorating the opening of CLA's new Sacramento office. Mr. Varanini reports that the CLA is thriving, due in no small measure to the support CLA has received from the State Bar.

702 Approval of Omnibus Appendix I Subentity Review Recommendations: Law School Engagement and Accreditation

Jackie Gardena: Ms. Gardena, member of the rules Advisory Committee (RAC) and Dean of Santa Barbara and Ventura Colleges of Law, commends staff for pressing the pause button, listening to stakeholders and arriving at better proposals than the original ones, a procedure that aids with the legitimacy of the outcome.

She wants to ensure that stakeholders have an opportunity to be fully engaged in the process of creating guidelines to be passed on by the Committee of Bar Examiners and the Board. Ms. Gardena would like the CS Bar process to be similar to RAC, but would like to amend the proposed nomination process.

Greg Brandis: Mr. Brandis, Dean of Saint Francis School of Law, shared that California is behind ABA standards when it comes to accessibility of distance legal education in legal education. The CS Bar is a positive step in the right direction.

Stanislaus Pulle: Mr. Pulle, Ph.D., stated that Southern California Institute of Law (SCIL) sued State Bar on basis that the State Bar does not have authority to accredit law schools. Mr. Pulle provided a summary of his comments, which was distributed to the Board.

702 Approval of Omnibus Appendix I Subentity Review Recommendations: California Commission on Access and Justice

Amos Hartston: Mr. Hartston, Deputy Attorney General, thanked the Board and staff for hitting the pause button last year, and appreciated the working group process.

702 Approval of Omnibus Appendix I Subentity Review Recommendations: Legal Services Trust Fund Commission (LSTFC)

The public comment period was introduced by Trustees SeLeague and Manning who described the working group process and the issues raised. One issue is the committee size, to be addressed at the next Board meeting. Another issue is whether the funds are being distributed equitably; data suggests Latinos and rural areas are underserved in current distribution. The working group has pushed back on this issue, with the example that one housing matter affects not just one Latino, but an entire family. Given complexities of the issues, statutory changes will not be pursued at this time.

Richard Reinis: Mr. Reinis, Co-Chair of LSTFC, stated that in 2019 grants amounted to \$60 million to over 100 different bodies. According to Mr. Reinis: there are complex statutory rules to ensure funds are being distributed as intended; there isn't enough money to go around; LSTFC serves a useful purpose that cannot be served by the State Bar staff or the Board; the Board needs to be more informed to make better decisions; and the size of LSTFC should not be reduced because it would be unfair to volunteers to increase their workload and minimal financial impact would occur with a reduction in size.

Selena Copeland: Ms. Copeland, Executive Director of the Legal Aid Association of California and member of the working group, thanks the State Bar for pressing the pause button and establishing the working group. Regarding size, Ms. Copeland is concerned that the proposed size includes only one client eligible member; if that member is not able to attend a meeting, no one from the eligible population would be present. Ms. Copeland would like the State Bar to create an applicant pool now, so that when the efficiency study is considered by the Board at the March meeting, it can at the same time make appointments to fill the vacancies instead of waiting for the next Board meeting to do so.

Lauren Klein: Ms. Klein, with the Legal Aid Association of California, states that the working group recommendations are the result of the working group process and represent the consensus of the entire legal aid community.

David Lash: Mr. Lash has been involved with LSTFC for about 25 years and has worn different hats, both as the Executive Director of one of LSTFC's largest grant recipients and as member and co-chair of LSTFC. Mr. Lash reports that LSTFC and staff have excellent relationship. Mr. Lash attended several working group meetings and observes that the process was excellent, but there were a few instances where the LSTFC deviated from recommendations of staff based on their unique perspective. He was heartened to learn that the State Bar decided to embark on the working group process instead of eliminating LSTFC. The process has been excellent and was informed by public comment from experts and stakeholders. What resulted was a well-informed and detailed decision and series of recommendations. All share the view that LSTFC plays a critical role in the delivery of legal aid to the poor.

State Bar Executive Director Leah Wilson concluded the public comment period with confirmation that the State Bar is not pursuing statutory change or non-stating administrative/allocation change, and recommended that the Board take no action regarding size of appointment (filling vacancies) until the March meeting, observing that any deviation from the default size of seven should be based on a functional review. Ms. Wilson reported that there were only three areas where no consensus was reached, and recommended that the Board direct staff to work with LSTFC to complete the matrix only with regard to the three remaining issues. She also alerted the Board that the bank grant distribution item will also be coming to the Board in March.

MINUTES

November 16, 2019, Open Session Minutes – Adopted

30 CHAIR'S REPORT - ORAL

40 Staff Reports

41 Executive Director

1. Report from Executive Director – *Informational*

In addition to a written report, Executive Director Leah Wilson also provided an oral report, summarized as follows: Ms. Wilson dedicated her report to the new performance metrics, which measure results, or impact, as opposed to simply workload, address every functional area of the State Bar, and were completed pursuant to the State Bar's Five Year Strategic Plan. There is an over thirty year history of reports and plans being written, recommendations being made, and little to nothing being done. In the new State Bar, the Board sets policy as manifested in a publicly available strategic plan and staff is held accountable for achieving plan goals through regular reporting to the Board, all against a backdrop of an increasingly dire financial condition. The old State Bar might have faced such a challenge with insufficient planning, an unclear articulation of need, failure to adhere to an adopted strategic plan, and a cautious retreat from activities central to the mission. The new State Bar has reengineered and reduced costs well in advance of the pending current financial crisis. These measures include: Drastic reductions in catering, temporary help, non-IT professional services; Requiring executive staff and State Bar Court judges to contribute to benefit costs for the first time on par with non-executive State Bar staff; Transition to CalPERS health, a decision that both reduced annual required contribution and unfunded liability; Electronic billing and payment and ceasing the practice of sending out hundreds of

thousands of plastic bar cards. These reengineering efforts reflect a new culture of innovation at the State Bar. For example, the Board soon will be asked to approve a contract to explore the feasibility of using computational law tools to increase efficiency and standardize outcomes. The State Bar is doubling down on the mission, which includes new statutory components of access, diversity and inclusion. Two important access initiatives are underway, the California Justice Gap Study, and the Technology Taskforce, which will study potential changes to our regulatory environment to ensure that there are no artificial barriers to the type of innovation that might ultimately increase access. In addition, staff has been working to increase interest rates on IOLTA accounts, which has, in conjunction with an improving economy, resulted in a 450 percent increase in IOLTA funding over the last two years- from \$7M in 2017 to slightly over \$39M this year. Unlike access however, there is a dearth of diversity objectives, a situation that will change based on the Board's actions at the meeting in selecting objectives that are measurable, and upon which real progress can be assessed. Ms. Wilson ended her remarks by thanking and congratulating the Board and staff.

50 Consent - Collectively, Deemed Approved

50 Consent

50-1 Approval for Specified Contracts Pursuant to Business and Professions Code Sections 6008.6 and 6140.9

1. For Bar Examination Grading Reporting Services, with: Research Solutions Group

2. For Bar Examination Psychometric Services, with: Research Solutions Group

3. For Oracle Compliance Development, with: Solution Boost – *Withdrawn*

4. For Oracle Support Services, with: Spinmaker Support LLC

5. Memorandum of Understanding for Transfer of One Dollar from Attorney Diversion and Assistance Program

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 Approval and Ratification of Revised Board Book – *Informational*

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

~~**RESOLVED**, that the Board Executive Committee approves and the Board of Trustees ratifies the revised Board Book without the detailed appendices, pending their~~

~~finalization. Appendices to the Board Book will be presented as a single unit for approval and ratification at future Board Executive Committee and Board meetings; and it is~~

~~**FURTHER RESOLVED**, that the Board Executive Committee has the authority to approve technical changes to the revised Board Book without the need for ratification of such changes by the Board of Trustees.~~

[The Board Executive Committee did not approve the recommended resolution; the item was included on the Board agenda for informational purposes only.]

54-121 OCTC Proposed Standards for Professional Misconduct: 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, that the Board of Trustees approve the amendments to the Standards for Attorney Sanctions for Professional Misconduct as set forth in Attachment A; and it is

FURTHER RESOLVED, that the amendments to the Standards for Attorney Sanctions for Professional Misconduct is effective immediately and will apply to all pending and future cases.

54-122 Discipline System Costs - *Withdrawn*

54-123 SBC Proposed Changes to Rules of Procedure 5.340, 5.341, 5.342, 5.343 and 5.344 (Conviction Proceedings): 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, that the Board of Trustees approve that following the 60-day public comment period, the Board of Trustees hereby adopts the amendments to Rule 5.340, 5.341, 5.342, and 5.343 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 25, 2019.

54-131 Revision of State Bar Rules to Reflect Revised Grant Timelines: Return from Public Comment and Request for Approval

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

RESOLVED, that the Board of Trustees approve State Bar Rule 3.680(E)(1), as revised; Appendix A, the Schedule of Charges and Deadlines for Rule 3.680(E)(1), as revised; and, the elimination of reference to State Bar Rule 3.681 in the Schedule of Charges and Deadlines, attached hereto in Attachment C.

54-132 Revisions to the Lawyer Referral Service Certification 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 approves and adopts proposed amendments to Rules of the State Bar amending the Lawyer Referral Service certification rules, attached hereto as Attachment B; and it is

FURTHER RESOLVED, that the Board of Trustees request that the Supreme Court review and approve the amendments to the State Bar Rules on Lawyer Referral Service certification, attached hereto as Attachment B.

54-141 Annual Review of Debt Collection Efforts

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

RESOLVED, that the Board of Trustees approve the recommendation that, effective immediately the Collections Program obtain superior court judgments only in cases where property owned by the debtor is identified.

700 Miscellaneous

701 Approval of Final 2019 Budget (Adams)

It is recommended that the Board of Trustees adopt the 2019 Final Budget as provided in Attachment A. Staff also recommends that the Board of Trustees delegate to staff the ability to make technical adjustments and corrections to the proposed budget prior to its statutorily required submission to the Legislature by February 28, 2019.

Presenter: John Adams, Chief Financial Officer

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

RESOLVED, that the Board of Trustees hereby adopts the 2019 Final 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 2019 Final Budget prior to submitting it to the Legislature by February 28, 2019.

Moved by Mendoza, Seconded by LaBran.

Substitution of the Roll Call.

Motion passes.

702 Approval of Omnibus Appendix I Sub-Entity Review Recommendations Re (1) Law School Engagement and Accreditation, California Commission on Access to Justice, and Legal Services Trust Fund Commission; (2) Implementation of Global Changes including Request to Circulate for Public Comment Package of Related Rule Revisions (MacLeod/Hershkowitz/Wilson)

(1) Law School Engagement

Presenter: Donna Hershkowitz, Chief of Programs

RESOLVED, that the Board of Trustees approve the proposed approach to law school engagement set forth in Attachment E, **as clarified in the related power point presentation**, and directs staff to implement the proposal.

Moved by Stallings, Seconded by SeLegue.

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

No – N/A

Motion passes.

[Before the above vote occurred, the following alternate motion to adopt as modified a proposal by Dean Jackie Gardena, who provided public comment, regarding the nomination process was brought by Stallings, and seconded by Mendoza: Candidates for member shall be nominated by each respective group and submitted to the State Bar for confirmation by CBE Chair and Vice Chair. CSBAR Chair and Vice Chair shall be nominated by CSBAR and submitted for confirmation by the CBE Chair and Vice Chair. Members LaBran, Mendoza and Stallings voted Yes; Members Broughton, Delen, Duran, Manning, Perttula, SeLegue and Steinbrecher voted No. The alternate motion failed.]

(2) Law School Accreditation

Presenter: Donna Hershkowitz, Chief of Programs

FURTHER RESOLVED, that the Board of Trustees approve the proposed approach to accreditation set forth in Attachment G, and direct staff to implement the proposal.

Moved by Stallings, Seconded by Steinbrecher.

Substitution of the Roll Call.

Motion passes.

(3) California Commission on Access to Justice

Presenter: Donna Hershkowitz, Chief of Programs

FURTHER RESOLVED, that, as to the California Commission on Access to Justice, the Board of Trustees adopt the recommendations made by the CCAJSWG on November 27, 2018, to wit:

- 1) That CCAJ separate from the State Bar, with the transition to occur no later than December 31, 2019;
- 2) That State Bar appointed membership **of** CCAJ that termed off in September 2019, and leadership of CCAJ that termed off in December 2019, be reauthorized and those members reappointed, to continue through the time of the transition;
- 3) That the Board of Trustees and the State Bar continue to provide support to CCAJ during the transition;
- 4) That CCAJ is authorized to take all necessary and reasonable efforts to effect its transition; and
- 5) That State Bar staff continue their efforts with the transition team to address transition issues, including the development of a contract or MOU, as appropriate to effectuate the transition; and it is

Moved by Mendoza, Seconded by Broughton.

Substitution of the Roll Call.

Motion passes.

(4) Implementation of Global Changes including Request to Circulate for Public Comment Package of Related Rule Revisions

Presenter: Dag MacLeod, Chief of Mission Advancement & Accountability Division

FURTHER RESOLVED, that the Board of Trustees authorize staff to make available for public comment for a period of 45 days the proposed State Bar Rules that will effectuate the changes to the operation of the Committee of Bar Examiners and the Office of Admissions, shown in mark-up text in Appendix I and summarized above; and it is

FURTHER RESOLVED, that the Board of Trustees authorize staff to make available for public comment for a period of 45 days the proposed State Bar Rules that will effectuate the elimination of the Committee on Mandatory Fee Arbitration, shown in mark-up text in Appendix J and summarized above; and it is

FURTHER RESOLVED, that the Board of Trustees authorize staff to make available for public comment for a period of 45 days the proposed State Bar Rules that will effectuate the changes to the operation of the Client Security Fund, shown in mark-up text in Appendix K and summarized above; and it is

FURTHER RESOLVED, that the Board of Trustees authorize staff to make available for public comment for a period of 45 days the proposed State Bar Rules to establish a standard Conflict of Interest Policy for **all subentities with the exception of the Commission on Judicial Nominees Evaluation and the Review Committee of the Commission on Judicial Nominees Evaluation** ~~eight subentities~~, shown in mark-up text in Appendix J and summarized above;

~~**FURTHER RESOLVED**, that the Office of General Counsel is directed to work with staff and the subentities covered by the proposed State Bar Rules 6.70-6.77 to evaluate the need for subentity-specific guidelines for implementation of the proposed State Bar Rules 6.70-6.77, and, as appropriate, to develop such guidelines.~~

Moved by SeLegue, Seconded by Mendoza.

Substitution of the Roll Call.

Motion passes.

(5) Legal Services Trust Fund Commission

Presenter: Leah Wilson, Executive Director

Written public comment provided by James W. Meeker, Legal Services Trust Fund Commission member, Advisor to Working Group, Professor Emeritus UC Irvine.

FURTHER RESOLVED, that as to the Legal Services Trust Fund Commission (LSTFC), the Board of Trustees adopt the recommendations 1, 2, and 6-9 made by the LSTFC Stakeholder Process Working Group (Working Group) on January 22, 2019 as specified below:

- 1) No recommended statutory changes at this time;
- 2) The LSTFC should continue to exist;
- ...
- 6) Any recommendations to change the LSTFC size should return to the Working Group for study and further recommendation to the Board of Trustees;
- 7) All procedures, policies, and practices governing the allocation and/or administration of grant funds should be codified in guidelines and/or State Bar Rules and approved by the Board of Trustees;
- 8) The Board of Trustees should receive training and regular reports about the activities of the LSTFC and the legal services funded by the State Bar;
- 9) The LSTFC and the Board of Trustees should seek additional funding for legal services.

Chair Lee recused himself from voting on this item, identifying a conflict based on his wife's work with a regulated legal services organization. Vice Chair Steinbrecher stood in for Chair Lee in calling the vote.

Moved by SeLeague, Seconded by Manning.

Yes – Broughton, Delen, Duran, LaBran, Manning, Mendoza, Perttula, SeLeague, Stallings.

No – N/A

Motion passes.

FURTHER RESOLVED, that as to the Legal Services Trust Fund Commission, the Board of Trustees adopt the following staff recommendation:

~~There should be a status quo division of responsibilities between staff and the Commission except as reflected in the consensus changes to~~ **Adopt** the matrix provided as Attachment A to the January 22, 2019, LSTFC Stakeholder Process Working Group report **and direct staff and the LSTFC to work together to finalize proposed rules of staff, the LSTFC, and the Board with respect to those functional areas of the matrix for which consensus was not reached.**

Chair Lee recused himself from voting on this item, identifying a conflict based on his wife's work with a regulated legal services organization. Vice Chair Steinbrecher stood in for Chair Lee in calling the vote.

Moved by Manning, Seconded by Delen.

Substitution of the Roll Call.

Motion passes.

(6) Implementation of Global Changes including Request to Circulate for Public Comment Package of Related Rule Revisions – Moral Character

Presenter: Donna Hershkowitz, Chief of Programs

FURTHER RESOLVED, that the Board confirm the action taken at the September 2018 Board meeting **and again at today's meeting** directing that moral character informal conferences be conducted by staff upon adoption of the rule changes set forth in Attachment I.

Moved by SeLeague, Seconded by LaBran.

Yes – Broughton, Delen, Duran, LaBran, Mendoza, Perttula, SeLeague, Stallings, Steinbrecher.

No – N/A

Motion passes.

703 Proposed Nonsubstantive Changes to State Bar Rules of Procedure and Rules of the State Bar to Conform to Specific Changes in the Law

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

RESOLVED, that the Board of Trustees adopts the recommended revisions to State Bar Rules and the Rules of Procedure of the State Bar, as reflected in Attachments B and C; because the revisions are nonsubstantive, the Board of Trustees adopts the revisions without public comment pursuant to Board Rule 1.10(B); and it is;

FURTHER RESOLVED, that the revisions are effective January 25, 2018.

Moved by SeLeague, Seconded by Stallings.

Substitution of the Roll Call.

Motion passes.

704 Waiver of Licensing Fee Late Payment Penalty for Federal Employees Impacted by the Partial Federal Government Shutdown

Presenter: Donna Hershkowitz, Chief of Programs

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

RESOLVED, that the Board of Trustees approve the waiver of any 2019 licensing fee late payment penalty where the requester has provided proof, prior to the March 2019 Board meeting, to the satisfaction of staff that they are a federal employee impacted by the partial government shutdown; and it is

FURTHER RESOLVED, that the Board of Trustees hereby delegate to staff **until March 2019 Board meeting**, the authority to adopt reasonable measures to **defer payment of nonlicensing fees and to waive penalties on such fees** ~~similarly address other payment issues that may be raised by~~ **for** applicants and attorneys **who provide proof to the satisfaction of staff that they are federal employees** impacted by the partial federal government shutdown; and it is

FURTHER RESOLVED, that the Board of Trustees direct staff to report regularly to the Chair of the Finance and Planning Committee on any measures adopted to address these ~~other~~ **nonlicensing fee** payment issues; and it is

FURTHER RESOLVED, that staff continue to monitor the partial federal government shutdown and report back to the Board in March with any further recommendations.

Moved by Stallings, Seconded by SeLegue.

Substitution of the Roll Call.

Motion passes.

705 Adoption of Revised Strategic Plan

Pipeline

Law School Retention

- a) Work with the CALS and registered schools to develop enhanced demographic reporting requirements by December 31, 2019
- b) Identify programs in place in law schools by December 31, 2019.

Bar Passage

- a) No later than December 31, 2019, identify ways that diversity and inclusion principles can be institutionalized in bar exam development and grading analyses including
 - i. Exam and essay question development
 - ii. Item analysis and grading

Institutionalize these practices no later than December 31, 2020.

- b) Assuming positive final results, expand implementation of the Productive Mindset Intervention by February 2020.

Retention and Career Advancement

- a) Continue development and implementation of program to collect demographic data about licensed attorneys through all stages of their career through 2019.
- b) No later than December 31, 2019, analyze available data to identify the particular obstacles to diverse attorneys' entry into and retention and advancement in the legal profession.

Statewide Leadership

- a) By December 31, 2020, modify the EOB MCLE requirement in ways that could include:
 - i. Creation of sub-topics
 - ii. Mandating State Bar offered curriculum
 - iii. Expanding number of required hours
- b) Develop and publish an annual report card on the state of the profession by January 31, 2020, and annually thereafter.

Judicial Diversity

- a) Partner with the Judicial Council to complete the Judicial Diversity Toolkit and transition leadership on judicial diversity efforts to the Council.

Diversity Definition:

In furtherance of the goal of supporting efforts for greater access to and inclusion in the legal system and achieving a statewide attorney population that matches the rich demographics of the state's population, the State Bar is focusing its definition of diversity as follows:

[Race, ethnicity, gender, gender identity, disability, sexual orientation, and veteran status](#)

Moved by Delen, Seconded by SeLegue.

Substitution of the Roll Call.

Motion passes.

ADJOURNED