



## The State Bar *of California*

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### **OPEN SESSION AGENDA ITEM 701 MARCH 2019**

**DATE:** March 15, 2019

**TO:** Members, Board of Trustees

**FROM:** Donna S. Hershkowitz, Chief of Programs  
Hellen Hong, Director, Office of Access & Inclusion

**SUBJECT:** Approval of Appendix I Subentity Recommendations Re (1) Legal Services Trust Fund Commission – Size and Appointments; and (2) Implementation of Global Changes, Including State Bar Rule Revisions

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### **EXECUTIVE SUMMARY**

This agenda item presents follow up recommendations related to actions taken by the Board of Trustees at its September and November 2018, and January 2019, meetings pursuant to the Appendix I review of State Bar subentities. The item specifically addresses the size of the Legal Services Trust Fund Commission (LSTFC) and the Committee on Professional Responsibility and Conduct, appointments to the LSTFC to effectuate the recommendation regarding size, and rule revisions needed to implement recommendations approved by the Board at its September meeting regarding the California Board of Legal Specialization (CBLS).

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### **BACKGROUND**

In September 2018, the Board of Trustees approved a set of recommendations regarding the number, size, organizational structure, and functions performed by many of the committees, commissions, boards, and councils that support the work of the State Bar, also known as the “subentities.” The recommendations were developed by Bar staff at the direction of the 2017 Governance in the Public Interest Task Force.

At the November 2018 meeting of the Board, Bar staff returned with implementation plans related to these recommendations. The implementation plans were divided into two broad groups – global recommendations that apply to most or all subentities, and specific

recommendations that relate to individual subentities. The plans provided broad timelines and general parameters for the implementation of the recommendations.

In January 2019, the Board approved recommendations regarding the work of the Legal Services Trust Fund Commission (LSTFC), but deferred taking action on whether to reduce the size of the LSTFC, and on filling existing vacancies on the LSTFC, until the March 2019 meeting. In February 2019, the LSTFC and the Stakeholder Working Group considered these topics. Their recommendations are highlighted in the discussion section below.

In January 2019, the Board also approved circulating for public comment rule revisions necessary to effectuate the Appendix I changes. Rule revisions related to the California Board of Legal Specialization were inadvertently not included in that packet. This agenda item seeks Board approval to circulate those proposed rule changes for public comment.

Staff had planned to return to the Board at the March meeting with a recommendation for how to implement the decision to separate the “voluntary” Lawyer Assistance Program from the “mandatory” LAP, which the Bar will be continuing to operate. The options included contracting out the day-to-day responsibility for the delivery of the service, or having another entity assume the obligation to operate the program as well as the day-to-day responsibility for the delivery of the service. That recommendation has been deferred to the Board’s May meeting.

## **DISCUSSION**

### **California Board of Legal Specialization – Proposed Rule Changes**

To effectuate the changes to the responsibilities of CBLS previously adopted by the Board, staff proposes the following amendments to the rules governing CBLS:

- Rule 3.90 is revised to change the size of the California Board of Legal Specialization (board) from 15 to seven members, consisting of at least five attorney members and up to two non-attorneys.
- Rule 3.92 is repealed as there will no longer be advisory commissions. The term “working groups” or “working group member” replaces the word “commission” in Rules 3.120, and 3.121.
- Rule 3.93, which set forth that the board members are appointed for 4 year terms, is repealed, as the committee terms will be addressed in the Board Book.
- Rule 3.94 is repealed to conform to the requirement to hold meeting pursuant to the Bagley-Keene Open Meeting Act, pursuant to Business and Professions Code section 6026.7.
- Rule 3.95 is repealed as the Bar is currently circulating for public comment proposed conflict of interest rules that would apply to CBLS along with other subentities. Importantly, should those rules not be adopted, Rule 3.95 would remain as is, with the exception of changing references from “commission” to “working groups” or “working group member” consistent with the changes to Rule 3.120 and 3.121.

- Rule 3.96 is revised to conform to the Bagley-Keene Open Meeting Act requirements.
- The word “member” is replaced with “licensee” in Rules 3.110 and 3.114.
- The following rules are revised to refer to the State Bar instead of the “board” or “commission,” as the State Bar staff will carry out the various functions:
  - Rule 3.114 (approved legal-specialist education)
  - Rule 3.115 (acceptance or rejection of computation of the tasks prescribed)
  - Rule 3.116 (the legal specialization examination)
  - Rule 3.117 (references)
  - Rule 3.118 (waivers and modifications)
  - Rule 3.119 (recertification)
  - Rule 3.121 (action on application)
  - Rule 3.122 (informal conferences)
  - Rule 3.124 (suspension or revocation of certification)
  - Rule 3.123 is the procedure for a review of a denial of application. Because the State Bar is the entity that will issue a denial, the rule is revised to refer to the “State Bar” instead of “commission.”
- Rule 3.126 is revised to change the designation of certification to “Certified by the State Bar of California.”

These changes are shown in mark-up text in Attachment A.

### **Legal Services Trust Fund Commission - Size**

Pursuant to Rule 3.662 of the Rules of the State Bar, the LSTFC is composed of twenty-one (21) voting members, of which fifteen (15) are attorneys and six are public members. Two of the public members must be or have been within the past five years, indigent persons as defined by the Interest on Lawyers’ Trust Accounts (IOLTA) statute. In addition, there are three non-voting judicial advisors. The State Bar appoints fourteen voting members, ten of whom must be licensees and four of whom must be public members. The Judicial Council appoints the other seven voting members, five of whom must be licensees and two who are public members. The Judicial Council also appoints the non-voting judicial advisors. The commission is charged with the following responsibilities:

- Administer the rules and all the provisions of the law regarding IOLTA;
- Review all applicants’ qualification for funding, denial of funding, or termination of existing funding; and
- Administer funds received from the Judicial Council under the Equal Access Fund (EAF).

To assist in the determination of the appropriate size of the commission, staff created a functional analysis of the core work of the LSTFC, which in 2019 will distribute nearly \$62M in grants. The matrix highlights the fact that the main work of the Commission falls into the responsibility of three of its standing subcommittees:

- Eligibility and Budget for IOLTA/EAF funds;
- Partnership Grants (through Equal Access Funds from the Judicial Council); and

- Bank Grants (which is responsible for proposals on the distribution of funds received by the State Bar as a result of the settlement of lawsuits between 2 banks and the U.S. Department of Justice).

The functional matrix is included as Attachment B to this agenda item.

At the February 21 meeting of the LSTFC, and the February 22 meeting of the LSTFC Stakeholder Working Group, staff proposed the following regarding the Commission size:

- Remain 24 members for the 2019 committee year. During this year, staff reasoned, the full Commission would be necessary for the development of rules and guidelines to codify unwritten policies and practices for the administration of the grant programs. The full commission would also be necessary to administer the Request for Proposal selection process for more than \$6 million remaining in bank grant funds.
- Extend the terms of Commissioners scheduled to end in September 2019 through the end of 2019.
- Reduce the Commission from 21 voting and 3 non-voting advisors to 16 voting and 2 non-voting advisors effective 2020.

Staff believed that the functional matrix supported this reduction in size based on the elimination of much of the bank grant work after 2019. In addition, codification of current policies and procedure should increase efficiency and reduce the number of novel issues requiring the Commission's input. Moving forward, staff believed the main committees, Eligibility and Budget and Partnership Committees would only require 18 members to accomplish the main function of the LSTFC.

The LSTFC and the LSTFC Stakeholder Working Group have questioned the rationale for the reduction of the size of the commission. An analysis of the issue prepared by one of the Commissioners, Professor James Meeker, is included as Attachment C. The LSTFC did not take a vote on the staff proposal but did share concerns about the loss of institutional knowledge, the complexity of the IOLTA formula in California, and the amount of additional work and time commitment that would be imposed on remaining Commissioners should the staff proposal move forward. They argued that even after the bank grant funding is awarded, there is significant work for the Commission to perform which requires the full complement of 24 members.

The LSTFC Stakeholder Working Group unanimously voted to reaffirm its prior recommendations: that the LSTFC size remain at 24 and that the vacant positions be filled immediately.

Although staff has confidence in our analysis of the reduced work over time, in the interest of moving forward productively, and based on the feedback from the LSTFC and the Stakeholder Working Group, staff is now recommending that the LSTFC remain at its current size of 24.

## **Legal Services Trust Fund Commission - Appointments of Commissioners and Officers**

Based on the recommendation to maintain the current size, and after consultation with the Appointments Liaisons to the Board's Executive Committee, staff recommends the following appointments to fill LSTFC vacant positions:

### Reappointment of Commissioners who termed off in 2018:

- Richard Reinis, Attorney member
- Susan Ryan, Attorney member (formerly Judicial Council appointee)
- Kim Savage, Attorney member
- Christina Vanarelli, Attorney member

### Appointment of the following two new members:

- Pamela Bennett, Los Angeles CA. Public Member. Ms. Bennett has over 16 years of experience as a Legal Secretary for the City of Los Angeles. She also has over 25 years of experience working with and supervising clients in the adult residential care setting. She is passionate about increasing diversity, and is active in the African American Board Leadership Institute and the Los Angeles Association of Black Personnel. Ms. Bennett has letters of recommendations from: (1) Judge Thomas Griego of the Los Angeles Superior Court; (2) Zna Portlock Houston, Senior Assistant City Attorney for Los Angeles; and (3) Susan Montgomery, Deputy City Attorney for Los Angeles;
- Erica Connolly, San Francisco CA. Attorney Member. Ms. Connolly is currently a Litigation Associate at Vinson & Elkins where her principal areas of practice include government and internal investigations, white collar criminal defense and complex commercial litigation. She has practiced law for over five years and has extensive pro bono experience in the Bay Area and beyond, including volunteering for Swords to Plowshare, Bay Area Legal Aid, Public Advocates, and Planned Parenthood. Ms. Connolly has a letter of recommendation from former LSTFC member David Tsai.

There were no applicants for the public member position that is dedicated to an individual who is, or within the last five years was indigent, so staff will continue seeking applications for this position.

### As to LSTFC officers, the LSTFC makes the following recommendations:

- As Co-Chairs: Corey Friedman (currently serving as Co-Chair) and Christian Schreiber (currently Commissioner)
- As Co-Vice-Chairs: Banafsheh Akhlaghi (currently serving as Vice-Chair) and Eric Isken (current Commissioner).

With these appointments, the Commission will have 23 of the 24 appointments filled. The roster would be as follows:

**State Bar Attorney Appointments (10)**

- Amin Al-Sarraf
- Erica Connolly
- Eric Isken
- Parissh Knox
- Jim Meeker
- Richard Reinis
- Susan Ryan
- Kim Savage
- Christian Schreiber
- Christina Vanarelli

**State Bar Public Member Appointments (4)**

- Fred Bailard
- Pamela Bennett
- Bob Planthold
- Vacant

**Judicial Council Attorney Appointments (5)**

- Corey Friedman
- Banafsheh Akhlaghi
- Louise Bayles Fightmaster
- Rebecca Delfino
- Melanie Snider

**Judicial Council Public Member Appointments (2)**

- Kim Bartleson
- Herman DeBose

**Judicial Council non-voting judicial advisors (3)**

- Judge Lisa Jaskol
- Judge Brad Seligman
- Justice William Murray

**Committee on Professional Responsibility and Conduct (COPRAC) – Size**

The September Appendix I report to the Board included a number of “global recommendations” applicable to all subentities, including those not otherwise the subject of individualized Appendix I attention. One of these recommendations related to size of the subentities. The Board established as a default, that subentities would be comprised of seven members, though an opportunity would exist to demonstrate that a larger (or smaller) number was appropriate for a specific subentity.

Staff initially was recommending reducing COPRAC from a membership of 16 to a membership of 10. After consultation with the Committee, staff agrees that the appropriate recommendation is for 12 members. A letter from COPRAC expressing their rationale for a 12 member committee is attached as Attachment D. In short, continuing to produce the high quality ethics opinions, educational programming, and recommendations to the Board related to rule revisions and statutory proposals, in addition to the new tasks related to assuming some of the responsibilities of the sunseting Committee on Mandatory Fee Arbitration, indicate an ongoing need to for 12 members.

## **FISCAL/PERSONNEL IMPACT**

None

## **RULE AMENDMENTS**

Title 3, Division 2, Chapter 2

## **BOARD BOOK AMENDMENTS**

None

## **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: 1. Successfully transition to the “new State Bar” — an agency focused on public protection, regulating the legal profession, and promoting access to justice.

Objective: c. Determine the appropriate role of, and Board responsibility for, State Bar Standing Committees, Special Committees, Boards, and Commissions in the new State Bar.

## **RECOMMENDATIONS**

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

**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 California Board of Legal Specialization, shown in mark-up text in Attachment A; and it is

**FURTHER RESOLVED**, that the Board of Trustees retain the size of the Legal Services Trust Fund Commission at 21 voting members and 3 non-voting judicial advisors, and retain the distribution of appointments as between the State Bar and the Judicial Council; and it is

**FURTHER RESOLVED**, that the Board reappoint to the LSTFC for one term, effective immediately, the following Commissioners who termed off the Commission in 2018:

- Richard Reinis
- Susan Ryan (formerly a Judicial Council Appointee)

- Kim Savage
- Christina Vanarelli; and it is

**FURTHER RESOLVED**, that the Board of Trustees appoint to the LSTFC the following for one term, effective immediately:

- Pamela Bennett, Public member
- Erica Connolly, Attorney member; and it is

**FURTHER RESOLVED**, that the Board of Trustees appoint Corey Friedman and Christian Schreiber as Co-Chairs and Banafsheh Akhlaghi and Eric Isken as Co-Vice-Chairs; and it is

**FURTHER RESOLVED**, that the Committee on Professional Responsibility and Conduct be reduced from 16 members to 12 members, through attrition.

## **ATTACHMENTS LIST**

- A.** Proposed Changes to State Bar Rules Related to the California Board of Legal Specialization in Mark-Up Text: Title 3, Division 2, Chapter 2.
- B.** LSTFC Functional Matrix
- C.** Comments on LSTFC Size by Commissioner Jim Meeker, Ph.D.
- D.** Letter from COPRAC re: COPRAC Size



TITLE 3. PROGRAMS AND SERVICES

Adopted July 2007

DIVISION 2. CALIFORNIA LICENSEES

Chapter 2. Legal Specialization

Article 1. General provisions

Rule 3.90 California Board of Legal Specialization

- (A) The California Board of Legal Specialization (“board”) is appointed by the Board of Trustees of the State Bar of California to establish ~~and administer~~ a program to encourage attorney competence by certifying as legal specialists attorneys who have demonstrated proficiency in specified areas of law.<sup>1</sup> This chapter sets forth the rules for those certified specialists.
- (B) The seven member board consists of the following members, including a chair, and vice-chair, ~~and the immediate past chair~~, each entitled to vote:
- (1) at least five ~~twelve~~ attorney members, ~~up to two of whom need not be certified specialists~~; and
- (2) up to two ~~three~~ non-attorneys.
- (C) The board may recommend that the Board of Trustees approve additional areas of legal specialization and their related certification standards.
- (D) The board may recommend that the Board of Trustees authorize other entities to grant certification. The rules applicable to such entities are set forth elsewhere in this title.<sup>2</sup>

*Rule 3.90 adopted effective January 1, 2014; amended effective 2019.*

Rule 3.91 Certification standards

The Board of Trustees adopts certification standards for each specialty to supplement these rules.

*Rule 3.91 adopted effective January 1, 2014.*

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<sup>1</sup> See Rule of Court 9.35.

<sup>2</sup> Rule 3.900 et seq.

~~Rule 3.92 Advisory commissions~~

~~An advisory commission ("commission") is appointed by the Board of Trustees to recommend and apply certification standards for each area of legal specialization. A commission consists of an even number of attorney members, but no more than eight, and a non-attorney member. One of the attorney members need not be a certified specialist.~~

~~Rule 3.92 adopted effective January 1, 2014.~~

~~Rule 3.93 Terms~~

- ~~(A) Each board and commission member is appointed for a term of four years. A member whose four year term is expiring may serve an additional year as chair, vice chair, or immediate past chair. An immediate past chair may also serve an additional year.~~
- ~~(B) A vacancy on the board or a commission occurs when a member dies, resigns, or an attorney member ceases to be an active member of the State Bar. A vacancy must be filled by the Board of Trustees.~~

~~Rule 3.93 adopted effective January 1, 2014~~

~~Rule 3.94 Meetings~~

~~Meetings of the board and its advisory commissions are governed by the Rules of the State Bar.<sup>3</sup>~~

~~Rule 3.94 adopted effective January 1, 2014.~~

~~Rule 3.95 Conflicts of interest~~

- ~~(A) To avoid a conflict of interest that may interfere or appear to interfere with impartial evaluation of an applicant, a board or commission member considering an application must immediately disclose to the chair of the board or commission any significant past or present relationship with the applicant, whether familial, professional, political, social, or financial.~~
- ~~(B) A board or commission member who believes that the length or nature of a relationship would unduly influence or appear to influence evaluation of an applicant may in no way participate in or attempt to influence the evaluation. Representing opposing parties in a legal matter does not necessarily require recusal.~~

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<sup>3</sup> ~~See Rule 6.60 et seq.~~

~~(C) If a board or commission member believes recusal is not required and the chair disagrees, the determination of the chair prevails. Factors the chair is to consider in making the determination include the date of the relationship, its duration, and whether it is more than casual or incidental.~~

~~(D) A board or commission member may in no way participate in or attempt to influence board or commission consideration of his or her own application for certification.~~

~~Rule 3.95 adopted effective January 1, 2014; amended effective July 24, 2015.~~

## Rule 3.96 Confidentiality

~~(A)~~ A certified specialist's certification is public information.

~~(A)(B)~~, but all applications, Examination development, examination administration, examinations, grading materials, scores, references, and other records are confidential, unless otherwise provided by these rules or by law. ~~Hearings and informal conferences of the board and the commissions are confidential.~~

~~(B)(C)~~ This rule does not preclude disclosure of information about an applicant or certified specialist by and between the board and the State Bar's Office of ~~the~~ Chief Trial Counsel or the Office of General Counsel in furtherance of the State Bar's regulatory and disciplinary responsibilities.

~~(C)(D)~~ A board ~~or commission~~ member may be removed by the Board of Trustees for a breach of confidentiality.

~~Rule 3.95 adopted effective January 1, 2014; previously amended effective July 24, 2015; amended effective 2019.~~

## Article 2. Certified specialists

### Rule 3.110 Certification requirements in general

- (A) In these rules "applicant" means an initial applicant for certification or an application for recertification, unless otherwise specified. An applicant must establish proficiency in the specialty area by meeting the following requirements:
- (1) be an active licensee in good standing of the State Bar and not currently in disciplinary proceedings or on disciplinary or criminal probation;
  - (2) submit an application with an application fee; and
  - (3) meet the requirements of these rules and any relevant standards regarding

- (a) education;
  - (b) practice and tasks;
  - (c) examination; and
  - (d) references familiar with the applicant's proficiency in performing tasks relied upon for certification in the specialty area.
- (B) An applicant must submit the application within eighteen months of the date on which the applicant took the examination. An applicant may request an extension of up to eighteen months for completion of all requirements. Requests are granted for good cause shown ~~at the discretion of the board~~.

*Rule 3.110 adopted effective January 1, 2014; ~~previously~~ amended effective July 24, 2015; ~~amended~~ effective 2019.*

#### Rule 3.111 Fees and deadlines

- (A) These rules refer to fees and deadlines that are set forth in the Schedule of Charges and Deadlines.<sup>4</sup>
- (B) A certified specialist who fails to make timely payment of a required fee will be notified of the delinquency and may be assessed a late charge. Failure to pay the annual fee or late charge within thirty days of notice of delinquency may result in suspension of certification.

*Rule 3.111 adopted as Rule 3.112 effective January 1, 2014; renumbered effective July 24, 2015; amended effective July 24, 2015.*

#### Rule 3.112 Application for Certification

- (A) An Application for Certification must be submitted with an application fee.
- (B) An application is deemed abandoned and ineligible for a refund of the application fee if
  - (1) the application is not complete within sixty days of receipt by the State Bar, unless an extension has been granted;
  - (2) the application is complete but the applicant fails to provide additional information requested by the State Bar within ninety days of the request; or

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<sup>4</sup> See Rule 1.20(L).

- (3) an applicant fails to complete any other certification application requirement.
- (C) Certification requirements completed for an abandoned application may be used for a subsequent application.
- (D) An applicant may apply for certification in more than one specialty.

*Rule 3.112 adopted as Rule 3.113 effective January 1, 2014; renumbered effective July 24, 2015.*

#### Rule 3.113 Reporting requirement

Every applicant and every certified specialist has an ongoing duty to comply with these rules and any relevant standards and to promptly disclose ~~to the board~~ any information that might affect eligibility for certification<sup>5</sup> or that the State Bar Act requires the licensee to report to the State Bar.<sup>6</sup>

*Rule 3.113 adopted as Rule 3.114 effective January 1, 2014; renumbered effective July 24, 2015; previously amended effective July 24, 2015; amended effective 2019.*

#### Rule 3.114 Education

- (A) ~~Board~~State Bar-approved legal specialist education or ~~board~~State Bar-approved legal specialist education alternative must be completed in the specialty area of law as follows:
  - (1) by applicants for initial certification: at least forty-five hours in the three years immediately preceding the application; and
  - (2) by certified specialists: at least thirty-six hours during the specialist's Minimum Continuing Legal Education (MCLE) compliance period. The specialist must report specialty education compliance to the State Bar~~board~~ when reporting MCLE compliance.<sup>7</sup>
- (B) A provider intending to offer specialty education must be approved by the State Bar as a Multiple Activity Provider in a specialty area of law<sup>8</sup> or must file an application to the ~~State Bar board or a designated commission~~ for approval of a single education activity designed to attain or maintain proficiency in a specialty area of law.
- (C) The State Bar~~board~~ may grant specialty education credit for education that meets certification requirements,<sup>9</sup> inclusive of activities approved for MCLE credit<sup>10</sup> as

<sup>5</sup> Rule 3.110.

<sup>6</sup> Business and Professions Code § 6068(o).

<sup>7</sup> Rules 2.70 and 2.71.

<sup>8</sup> See Rule 2.52 and Rule 3.600 et seq.

<sup>9</sup> Rule 2.84.

well as credit for MCLE requirements for legal ethics, elimination of bias, and competence issues.<sup>11</sup>

- (D) The State Barboard may grant specialty education credit to a certified specialist who mentors an applicant or a prospective applicant for certification as well as to the mentored applicant or prospective applicant, provided the specialty education is documented to the satisfaction of the board and otherwise meets the requirements of these rules.<sup>12</sup>

*Rule 3.114 adopted as 3.115 effective January 1, 2014; renumbered effective July 24, 2015; amended effective 2019.*

### Rule 3.115 Practice and task requirements

In the five years immediately preceding the Application for Certification, an applicant must complete the tasks prescribed by the relevant standards with proficiency; demonstrate current substantial involvement in the practice; and spend at least twenty-five percent of the time given to occupational endeavors practicing law in the specialty in which certification is sought. The State Bar'sboard's acceptance or rejection of the computation is final.

*Rule 3.115 adopted as Rule 3.116 effective January 1, 2014; renumbered effective July 24, 2015; amended effective 2019.*

### Rule 3.116 Examination

- (A) An applicant must pay an examination registration fee and take and pass a written examination that tests knowledge of the substantive law and procedures of a legal specialty. The State Barboard determines the scope, format, topics, grading process, and passing score of the examination.
- (B) Results reported to applicants are final. Applicants are not entitled to receive their examination answers or to see their scores.
- (C) Upon approval of a new area of legal specialization by the Board of Trustees, the State Barboard may approve for a period of no more than two years satisfactory completion of one or more alternative tasks in lieu of a written examination.

*Rule 3.116 adopted as Rule 3.117 effective January 1, 2014; renumbered effective July 24, 2015; amended effective 2019.*

### Rule 3.117 References

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<sup>10</sup> See Rules 2.51; 2.80; 2.81; 2.82 and 2.83.

<sup>11</sup> Rule 2.72.

<sup>12</sup> Rule 2.86.

An applicant must provide references from attorneys or judges whom the applicant has identified as familiar with the applicant's proficiency in performing the tasks required for certification. At least three positive references must be provided unless the relevant standards require more. The State Bar~~A commission~~ may seek additional references.

*Rule 3.117 adopted as Rule 3.118 effective January 1, 2014; renumbered effective July 24, 2015; previously amended effective July 24, 2015; amended effective 2019.*

#### Rule 3.118 Waivers and modifications

- (A) A certified specialist who serves full-time in a state or federal court of record as a judge, magistrate, commissioner, or referee or as an administrative law judge is exempt during the period of service from the annual fee required of a certified specialist and from recertification requirements. The specialist is not eligible for the fee waiver until the service officially begins; any fee paid prior to that time is not refundable.
- (B) The State Bar~~board~~ may waive or permit modification of a certification requirement.

*Rule 3.118 adopted as Rule 3.119 effective January 1, 2014; renumbered effective July 24, 2015; amended effective 2019.*

#### Rule 3.119 Recertification

- (A) To maintain certification in a specialty area, a certified specialist must recertify every five years, which includes submitting a completed application,<sup>13</sup> paying fees,<sup>14</sup> and meeting education, practice and task, and reference requirements as specified by the State Bar~~board~~.
- (B) If permitted by the relevant standards, education or practice and task requirements completed in the last six months of certification that exceed recertification requirements may be applied to the next certification period.
- (C) An applicant who fails to pay fees will be notified of the delinquency and may be assessed a late charge. Failure to pay fees or any assessed late charge within 30 days of the notice of delinquency may result in suspension of certification.
- (D) Action on an application for recertification is governed by the process applicable to action on an initial application.<sup>15</sup>
- (E) Certified specialists who choose not to recertify will be terminated from the legal specialization program.

<sup>13</sup> Following the process outlined in Rule 3.112.

<sup>14</sup> See Rule 3.111

<sup>15</sup> Rules 3.122-3.124 and 3.126.

Rule 3.119 adopted as Rule 3.124 effective January 1, 2014; renumbered effective July 24, 2015;  
| previously amended effective July 24, 2015; amended effective 2019.

Rule 3.120 Denial of certification or recertification

An applicant may be denied certification or recertification for

- | (A) failure to timely file a completed application, pass the examination for certification, meet the practice and task requirements, obtain at least three positive references, and-or pay all certification or recertification fees;
- (B) pending disciplinary charges in the State Bar Court, transfer to inactive status, suspension, resignation, or disbarment in California;
- (C) pending disciplinary charges, other disciplinary actions, suspension, resignation, or disbarment in another jurisdiction or before another regulatory body that has licensing or professional disciplinary authority over the applicant;
- (D) prior discipline;
- | (E) lack of candor, including any material omissions or material false representations or misstatements made in an Application for Certification or Application for Recertification, or to a working group member~~commission~~, the board, or the State Bar;
- (F) failure to report information the applicant must report to the State Bar<sup>16</sup> and to the board<sup>17</sup>; or
- (G) information bearing negatively on proficiency that is obtained from references.

Rule 3.120 adopted as Rule 3.111 effective January 1, 2014; renumbered effective July 24, 2015;  
| previously amended effective July 24, 2015; amended effective 2019.

| Rule 3.121 State Bar~~Commission~~ action on application

- | (A) Within 180 days of receipt of an application, the State Bar~~a-commission~~ must recommend that the board grant or deny certification or advise the applicant that
  - (1) it requires additional time or information to consider the application; or
  - (2) because of substantial and credible concerns regarding the applicant's qualifications, it is allowing the applicant to withdraw the application or to request an informal conference to address the concerns.<sup>18</sup>

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<sup>16</sup> For example, see Business and Professions Code §§ 6068(o)(1)-(7) and 6086.8(c).

<sup>17</sup> Rule 3.113

<sup>18</sup> See Rule 3.122.



- (B) The State Bar ~~A commission~~ must ~~recommend that the board~~ grant or deny certification no later than 180 days after
- (1) an informal conference with an applicant;
  - (2) the date of a scheduled conference at which the applicant failed to appear; or,
  - (3) if an applicant did not request a conference, the date of the notice regarding the State Bar's commission's concerns.

*Rule 3.121 adopted as Rule 3.120 effective January 1, 2014; renumbered effective July 24, 2015; previously amended effective July 24, 2015; amended effective 2019.*

Rule 3.122 Informal conference

- (A) An applicant notified of the State Bar's ~~a commission's~~ concerns regarding his or her application may request an informal conference within thirty days of the date of the notice. The conference must be held within one year of the State Bar's receipt of the request. The applicant's failure to attend the conference entails no negative inference.
- (B) An informal conference may be recorded as the State Bar commission deems appropriate. The applicant may attend with counsel; make a written or oral statement; and present documentary evidence. Counsel is limited to observation and may not participate. The State Bar commission may require the applicant to provide further documentation or information after the conference.

*Rule 3.122 adopted as Rule 3.121 effective January 1, 2014; renumbered effective July 24, 2015; amended effective 2019.*

Rule 3.123 Request for review of State Bar denial of application and Board action on request for review of the State Bar's denial of application

- (A) An applicant notified that the State Bar has denied the applicant's application for certification may request the board to review the decision. Within 120 days of receiving a request for review of the State Bar's denial of commission's recommendation to grant or deny application for certification, the board must make a determination to
- (1) grant certification;
  - (2) direct the State Bar commission to further consider the application and report back within 100 days; or
  - (3) deny certification.

- (B) If the board intends to deny certification, it must notify the applicant of its reasons for doing so and allow the applicant thirty days to withdraw the application, provide further support for it, or request a hearing before the board.
- (C) Within ninety days of receiving a timely request for hearing, the board will schedule a hearing. Following the hearing, the board may then continue to deny certification. The applicant must be provided with written notice of the reasons for the board's denial.
- (D) Within thirty days of deciding to grant certification, the board must notify the applicant that certification begins on a specified date for a five-year period. Certification may be terminated sooner as provided by these rules or upon the request of a certified specialist. Certification remains in effect pending final action on a timely application for recertification, except where certification is suspended or revoked pursuant to Rule 3.124.
- | (E) The board may postpone ~~commission or board~~ action on an application
  - (1) when a disciplinary recommendation has been made by the State Bar Court or another body that has licensing or professional disciplinary authority over the applicant; or
  - (2) if the applicant is on probation as a result of a disciplinary recommendation; or
  - (3) upon an applicant's suspension, resignation, disbarment or another status change not entitling an applicant to practice law in any jurisdiction where admitted to practice law.

*Rule 3.123 adopted as Rule 3.122 effective January 1, 2014; renumbered effective July 24, 2015; previously amended effective July 24, 2015; amended effective 2019.*

#### Rule 3.124 Suspension or revocation of certification

- | (A) Certification may be suspended by the State Barboard when a disciplinary recommendation has been made by the State Bar Court, or upon transfer to inactive status, suspension, resignation, or disbarment in California; or ~~(B)~~ pPending disciplinary charges, other disciplinary actions, suspension, resignation, or disbarment in another jurisdiction or before another regulatory body that has licensing or professional disciplinary authority over the certified specialist.
- | Certification may otherwise be revoked or suspended by the State Barboard for failure to comply with a material requirement of these rules or any relevant standard.<sup>19</sup>

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<sup>19</sup> Rule of Court 9.35(d).

~~(B) (C)~~ If the State Barboard intends to suspend or revoke certification, it must notify the certified specialist of its reasons for doing so and allow the applicant thirty days either to respond in writing to the State Barboard that suspension or revocation would be inappropriate or to request a hearing before the board. The response or request for hearing must be supported by any additional relevant evidence. Suspension or revocation of certification is final if the specialist fails to provide a timely written response or a request for hearing.

~~(C) (D)~~ The board must consider a timely response to a notice of intent to suspend or revoke certification of a certified specialist within ninety days of receiving the response. The board may then continue certification with or without conditions, or suspend or revoke certification. The certified specialist must be provided with written notice of the reasons for the board's action. A decision to continue certification with or without conditions is final.

~~(D) (E)~~ Within ninety days of receiving a timely request for hearing, the board will schedule a hearing. Following the hearing, the board may then continue certification with or without conditions, suspend or revoke certification. The certified specialist must be provided with written notice of the reasons for the board's action.

*Rule 3.124 adopted as Rule 3.125 effective January 1, 2014; renumbered effective July 24, 2015; previously amended effective July 24, 2015; amended effective 2019.*

#### Rule 3.125 Appeal of certification denial, suspension, or revocation

An applicant who is denied certification or recertification pursuant to Rule 3.120 (C)-(G) or a certified specialist whose certification is suspended or revoked pursuant to Rule 3.124(B) or (C) may file a petition for hearing in the State Bar Court in accordance with the rules of that court with the fee set forth in the Schedule of Charges and Deadlines no later than thirty days after the notice of denial, suspension or revocation is served on the applicant or certified specialist. A copy of the petition must be served on the board and the Office of ~~the~~ Chief Trial Counsel at the San Francisco office of the State Bar.

*Rule 3.125 adopted as Rule 3.126 effective January 1, 2014; renumbered effective July 24, 2015; amended effective July 24, 2015.*

#### Rule 3.126 Designation as certified specialist

Certification may be indicated by "Certified by The State Bar of California-Board of Legal Specialization," the logo of the certified specialization program, or both. Certification is individual and may not be attributed to a firm. Anyone whose certification has been revoked or suspended may not claim to be certified specialist.

*Rule 3.126 adopted as Rule 3.123 effective January 1, 2014; renumbered effective July 24, 2015.*

\*Unless noted, committee hours listed are projections for 2019. Projections are based on 2018 estimates

## Some Thoughts on Determining the Optimal Size of the Legal Services Trust Fund Commission

James W. Meeker JD, PhD  
 Legal Services Trust Fund Commissioner  
 Advisor to the Working Group  
 Professor Emeritus UC Irvine

As a Legal Services Trust Fund (LSTF) commissioner and working group (WG) advisor I would like to start by saying I am in complete agreement with what Co-Vice Chair Christian Schreiber said at Monday's meeting, the commission has been working very well for many years at its current size and the BOT or other interested parties have not produced any evidence that the size is not optimal and should be changed. Testimony at the public meetings of the WG by Legal Service Providers (LSP) were all supportive of the commission and none recommended a size or membership change. It seems to me that those who are arguing for change should have the burden of proof with clear and convincing evidence to support their point. That said, since Ms. Wilson asked for input the following represents my thoughts on the matter.

First off, the analysis by Mr. Schauffler, "Appendix I Sub-Entity Review: Report and Recommendations" September 13, 2018 is misleading and irrelevant for the determination of the optimal size of the commission. I have attached more detailed comments outlining why his analysis does not apply to the functional analysis of the commission's size. What may or may not be an analysis of optimal meeting size does not apply to board of directors, board of trustees or commissions.

Second, a detailed analysis of what the commission members do and how much time they spend in doing it should be done. The staff has apparently started this workload analysis, but I am not sure where they are getting their estimates of time for preparation. While their estimates for time spent in meetings may be real as they know how long the meetings lasted, I would add the following. I was in the bank grant committee and in reviewing the grants and taking notes on issues to raise at the meetings I would spend between 30 minutes and an hour, depending on the complexity and use of proportional resources (ie. 30 % of the library and IT equipment, and partial use of FTE) so put me down for 45 minutes for each grant my subcommittee reviewed. Put me down for 1.5 hours of preparation for each full bank grant meeting. I was also on the reboot committee. Rocio will have the number of meetings and how long they took. Also add another 40 hours for the work done on calculating the costs avoided by the state for each restraining order obtained by LSPs in domestic violence cases. I have also attended a number of site visits, each of those are a full day (8 hours) plus 2 hours of preparation in reading material and discussions with staff doing the visit as well as reading and commenting of the staff letter to the LSP. This of course does not include any of the work and time involved with the WG but this does not involve routine work of the LSTFC. In order to monitor workload in the future you might start collecting data from the members on how much time they are spending on commission duties.

Third there should be a detailed comparison of what our LSTFC does to other state commissions/boards/committees that distribute IOLTA funds. Each state plus DC and Puerto Rico has one. I have started a partial analysis, see attached spread sheet. The first line contains the url of the source I used to get the contact information for the various organizations. The groupings were from the recent analysis of Access to Justice Commissions where states are grouped by level of support provided, so the categories may not be of interest for this analysis. The red states are the states that were listed in one of Mr. Schauffler's charts in an earlier report about the LSTFC and CCAJ. Why he picked those states is not clear but I made sure I looked at them for a point of comparison. This is not an easy task, as not all commissions/boards/committees provide yearly reports and many web sites are not well constructed. That said, this would allow a comparison of number of grants made, total grantees served, total funds allocated and number of members doing the work. You might also want to gather information on the number of FTE staff assisting in the work because staff supports impacts on members' work load

Fourth there should be a comparison of the time it takes individual commissioners to do the work of the LSTFC to the time it takes members of other sub-entities to do their work. Without substantial justification, time commitments from volunteers should not vary greatly across sub-entities and size should be adjusted accordingly. Assuming that the BOT is not compensated, their workload should also be compared. Size should not be reduced to the point that volunteers are putting in more time than the members of the BOT. In terms of leadership and making an example, it could be argued that the BOT work load should be greater than the average volunteer.

Finally other issues need to be taken into account, such as statutory requirements relating to size as well as representation of various groups, stake holders and the client community and their impact on size.



From: James W. Meeker [jwmeeker@uci.edu](mailto:jwmeeker@uci.edu)  
Sent: Thursday, January 24, 2019  
To: Lea Wilson  
Subject: Draft Report

I strongly oppose the senior staff recommendation that the LSTFC be reduced in size. At the Working Group public meetings there was testimony from current and former members of the LSTFC that reducing its size would severely impact its ability to function.

There were no data or analyses presented that indicated that the commission size should be reduced. The only document submitted to the Working Group supporting size reductions in sub-entities was the report by Richard Schauffler on September 13, 2018, Subject: Appendix I Sub-Entity Review: Report and Recommendations. In this report he did not analyze either LSTFC or any of the other 51 organizations that allocate IOLTA funds across the county. He specifically states in the last sentence of the executive summary that:

“This agenda item provides a final report and recommendations of the following subentities for the Board’s consideration: Committee of Bar Examiners; California Board of Legal Specialization; Council on Access and Fairness; Client security Fund Commission, Lawyer Assistance Program Oversight Committee; and Committee on Mandatory Fee Arbitration.”

So the findings and recommendations of this report do not apply to the LSTFC.

To support his recommendation that all sub-entities should be the size of seven comes from one book Blenko, Rogers, and Mankins, “Decide and Deliver: Five Steps to Breakthrough Performance in Your Organization, (Harvard University Press, 2010). The authors have MBAs and work for Bain and Company. They are not research scholars whose expertise is organizational theory. They say their work is based on a survey of 760 companies and they are focused on financial performance and shareholder returns for measures of success. They do not list their organizations nor present any statistical analysis for the conclusions they draw. The only place they mention the “Rule of Seven for meetings” is on page 88. It is specifically addressed to meetings not board of directors, board of trustees, or commissions. Without citing any research, data or findings they assert “Our research highlights what we might call the Rule of Seven: every person added to a decision-making group over seven reduces decision effectiveness by 10 percent.” Mr. Schauffler uses this obscure “Rule” that is not data driven, to establish a size limit. A better rule to follow is that form follows function, and given the testimony presented at the Working Group public meetings that the full size is needed for the commission’s work and lack of evidence that the when the commission is fully staffed it is less effective, the Working Group’s recommendation and not the senior staff’s should be followed.

The only other IOLTA administration organization mentioned at the meetings was Minnesota’s the Legal Services Advisory Committee. That organization has eleven members served twenty grantees and allocated \$5,403,000 in grants. The LSTFC deals with over four times as many grantees and allocated more than ten times the funds. It has twenty two members but is doing well more than twice the work of the Minnesota’s committee. A proper analysis of what the optimal size of the commission should be would be to look at the other similar commissions throughout the states plus Puerto Rico and DC and look at the number of commissioners, number of grantees, grants allocated, etc to determine the appropriate size.

The Board is not the only entity that appoints members to the commission, yet the senior staff in their unilateral recommendation appears to have no concern about the court’s reaction to this. In my opinion, the senior staff recommendation on commission size is arbitrary and capricious and should not be followed, rather the recommendations of the Working Group should be followed.

## 88 Decide &amp; Deliver

alternatives were on the table, and whether everyone agreed on the criteria for making the ultimate choice. In a separate session, they would then choose from among the alternatives and plan how to mobilize for execution. This two-step process contributed to Roche's superior performance for much of Humer's tenure.

- *Follow the Rule of Seven for meetings.* Who should come to a meeting is always a sensitive issue, and the basic precept is often "The more the merrier." But more is rarely better when it comes to making decisions. Our research highlights what we might call the Rule of Seven: every person added to a decision-making group over seven reduces decision effectiveness by 10 percent. If you take this rule to its logical conclusion, a group of seventeen or more rarely makes any decisions. Of course, a larger group may sometimes be necessary to ensure buy-in. But organizations trying to make important decisions should limit the size of the group as much as possible.
- *Track the timing as well as the level of bottleneck resources to ensure effective execution.* Timing, as they say, can be everything. If performance depends on one particular resource, as it often does, a key measure of execution must capture whether the right level of resource gets to the right place at the right time. So companies must track the level of resources both over time and at specific points in time to ensure performance. A few years ago, for instance, Cisco Systems had decided to roll out a series of products for the rapidly growing Internet protocol (IP) telephony market. Executives came to realize that the number of trained service engineers—people capable of developing new products and applications and training customers in how to use them—was the single most im-

source	<a href="https://www.americanbar.org/groups/interest-lawyers-trust-accounts/resources/directory-of-iolta-programs/">https://www.americanbar.org/groups/interest-lawyers-trust-accounts/resources/directory-of-iolta-programs/</a>		
Category one	members		
Arkansas	19 <a href="https://arkansasjustice.org/about/commissioners/">https://arkansasjustice.org/about/commissioners/</a> - toggle-id-13-closed		
Californian	21 <a href="http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Client-Trust-Accounting-IOLTA/FAQ">http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Client-Trust-Accounting-IOLTA/FAQ</a>		
Florida Bar Foundation	33 <a href="https://thefloridabarfoundation.org/about/membership-and-governance/">https://thefloridabarfoundation.org/about/membership-and-governance/</a>	13 staff 2016-17 \$9,344,751 in grants	
Illinois Lawyers Trust Fund of IL	10 <a href="http://www.ltf.org/about/board-of-directors/">http://www.ltf.org/about/board-of-directors/</a>		
Louisiana Bar Foundation IOLTA	23 <a href="https://www.raisingthebar.org/board-of-directors">https://www.raisingthebar.org/board-of-directors</a>		
IOLA Fund of New York	10 <a href="https://www.iola.org/all-documents/118-2018-annual-report/file">https://www.iola.org/all-documents/118-2018-annual-report/file</a>	2017-2019 \$48 mil IOLTA grants 69 grantees	
North Carolina State Bar IOLTA	9 <a href="https://www.ncbar.gov/for-lawyers/directories/agencies-boards-commissions/">https://www.ncbar.gov/for-lawyers/directories/agencies-boards-commissions/</a>		
Tennessee Bar Foundation IOLTA	12 <a href="http://www.tnbarfoundation.org/leadership/">http://www.tnbarfoundation.org/leadership/</a>		
Texas Access to Justice Foundation	12 <a href="http://www.teajf.org/about/tajf/board_staff.aspx">http://www.teajf.org/about/tajf/board_staff.aspx</a>	7 staff, 15-17 31 IOLTA grants	Texas bar foundation appears to
Legal Foundation of Washington	9 <a href="https://legalfoundation.org/leadership/">https://legalfoundation.org/leadership/</a>	2017 approximately \$2.5mil 11 staff	hand out more money and grants
mean	15.8		
Category 2			
Alabama Law Foundation	19 <a href="https://www.alabamalawfoundation.org/about-us/meet-the-board/">https://www.alabamalawfoundation.org/about-us/meet-the-board/</a>		
Arizona Foundation for Legal Services & Education	26 <a href="https://www.azflse.org/azflse/about/bod.cfm">https://www.azflse.org/azflse/about/bod.cfm</a>		
District of Columbia Bar Foundation	11 <a href="https://dcbarfoundation.org/about/board/">https://dcbarfoundation.org/about/board/</a>	also has advisory committee of 10, 7staff	\$9 mil to 20 grantees for 2019
Hawaii Justice Foundation	22 <a href="http://www.hawaiijustice.org/hawaii-access-to-justice-commission/about-the-commission/commissioners">http://www.hawaiijustice.org/hawaii-access-to-justice-commission/about-the-commission/commissioners</a>		
Indiana Bar Foundation	20 <a href="https://inbf.org/Portals/0/Uploads/NBF2017AnnualReport.pdf">https://inbf.org/Portals/0/Uploads/NBF2017AnnualReport.pdf</a>		
Kentucky IOLTA Fund	13 <a href="https://www.kybar.org/page/iolta">https://www.kybar.org/page/iolta</a>		
Maryland Legal Services Corp	9 <a href="https://www.mlsc.org/about/mlsc/mlsc-board-and-staff/">https://www.mlsc.org/about/mlsc/mlsc-board-and-staff/</a>		
Mississippi Bar Foundation IOLTA			
Program	20 <a href="https://www.msbar.org/programs-affiliates/ms-bar-foundationiolta/officers-trustees/">https://www.msbar.org/programs-affiliates/ms-bar-foundationiolta/officers-trustees/</a>	Since 1984 awarded \$12 mil in IOLTA grants	
Nevada Bar Foundation	12 <a href="https://www.nevadabarfoundation.org/board-of-trustees/">https://www.nevadabarfoundation.org/board-of-trustees/</a>	2015 awarded \$2.8 mil in IOLTA grants	
	<a href="https://www.nmbar.org/nmstatebar/AboutUs/Governance/Board_of_Bar_Commissioners/Nmstatebar/About_Us/BB_C.aspx?hkey=5ed62821-a919-4156-9f92-d7548a9b4b66">https://www.nmbar.org/nmstatebar/AboutUs/Governance/Board_of_Bar_Commissioners/Nmstatebar/About_Us/BB_C.aspx?hkey=5ed62821-a919-4156-9f92-d7548a9b4b66</a>	last 5 years awarded \$1.716 mil	not clear if Foundation members are the bar members
State Bar of New Mexico	25		
South Carolina Bar Foundation IOLTA			
Program	17 <a href="https://scbarfoundation.org/about/board/">https://scbarfoundation.org/about/board/</a>	For 2019 awarded \$1.9 mil	
	<a href="https://static1.squarespace.com/static/5632a199e4b0292ace726ae4/t/5a579696652dea1b6c04eb96/1515689646658/">https://static1.squarespace.com/static/5632a199e4b0292ace726ae4/t/5a579696652dea1b6c04eb96/1515689646658/</a>		
Legal Services Corporation of Virginia	21 <a href="https://www.lscv.org/fy16-17+Overview+1.10.18.pdf">LSCV+FY16-17+Overview+1.10.18.pdf</a>	FY2016-17 awarded \$11.9 mil, 4 staff	
	17.9167		
Category 3			
Alaska Bar Foundation	8 <a href="https://alaskabar.org/for-lawyers/bar-foundationiolta/board-of-trustees/">https://alaskabar.org/for-lawyers/bar-foundationiolta/board-of-trustees/</a>	2016 \$30K 2017 Bank Grants \$900K	
Colorado Lawyer Trust Account			
Foundation	16 <a href="http://www.coltaf.org/about/">http://www.coltaf.org/about/</a>	2018 awarded \$1,003,900 grants	
Massachusetts IOLTA Committee	9 <a href="https://www.maiolta.org/about-us/committee-and-staff">https://www.maiolta.org/about-us/committee-and-staff</a>	2016 awarded \$14,515,417	
Nebraska Lawyers Trust Account			
Foundation	14 <a href="https://www.nltaf.org/board/">https://www.nltaf.org/board/</a>	Since 1984 awarded \$5,168,500	
Wisconsin Trust Account Foundation, Inc	15 <a href="https://www.wistaf.org/wistaf/Contacts_29">https://www.wistaf.org/wistaf/Contacts_29</a>	2018 awarded \$1,222,750	
	12.4		
Category 4			
Connecticut Bar Foundation IOLTA			
Program	22 <a href="https://www.ctbarfdn.org/officers">https://www.ctbarfdn.org/officers</a>	2017 awarded \$17,422,067	
Delaware Bar Foundation	12 <a href="http://www.delawarebarfoundation.org/about-us/">http://www.delawarebarfoundation.org/about-us/</a>	FY2017 \$1,450,000 IOLTA \$580,000 Bank Grants	



Iowa Lawyer Trust Account  
 Commission  
 Kansas Bar Foundation  
 Main Justice Foundation  
 Montana Justice Foundation  
 New Hampshire Bar Foundation  
 Oklahoma Bar Foundation  
 Puerto Rico Fundacion FondoDe  
 Acceso A La Justicia  
 Vermont Bar Foundation IOLTA  
 Virgin Islands  
 West Virginia State Bar  
 Equal Justice Wyoming Foundation

- 7 <https://www.iowacourts.gov/opr/about-opr/lawyers-trust-account-commission/>  
 25 <https://www.ksbar.org/mpage/bot>  
 23 <https://www.justicemaine.org/about/leadership-board-of-directors/>  
 15 <http://www.mtjustice.org/about-us/board-of-directors/>  
 22 <https://www.nhbar.org/nh-bar-foundation/about-the-foundation/>  
 27 <http://www.okbarfoundation.org/about-obf/trustees/>  
 9 <https://fundacionfondoaccesoalajusticia.org/nosotros/junta-administrativa/>  
 13 <https://vtbarfoundation.org/about-the-foundation/>  
 9 <https://wybar.org/committees/bar-committees/iolta-advisory-committee/>  
 8 <https://www.equaljusticewyomingfoundation.org/board>  
 16

2016-2017 \$239,990 IOLTA, \$346,652 Brank Grants  
 For 2019 awarded \$400,000  
 2017 report awarded \$1,502,620 in grants  
 2017 awarded over \$383,000  
 FY2018 \$800.00  
 2019 funding IOLTA \$500,000 Bank Grants \$1.36mil

Cite is in spanish  
 Since 1982 awarded more than \$15mil  
 Virgin Islands Bar Association does not discuss IOLTA  
 2018 \$80,000 awarded

No Access to Justice Commission  
 Georgia Bar Foundation  
 Idaho  
 Michigan State Bar Foundation  
 Minnesota Legal Services Advisory  
 Committee  
 Missouri  
 North Dakota  
 Ohio  
 Oregon  
 Pennsylvania  
 Rhode Island  
 South Dakota  
 Utah

- 19 <https://www.gabar.org/aboutthebar/lawrelatedorganizations/iolta/iolta.cfm>  
 14 <https://www.msbf.org/trustees/>  
 11 <http://www.mncourts.gov/lac>

3 staff, no reports on grants

3 x officio 1 ct liaison 1 emeritus  
 26 grantees \$5,403,000 in grants, includes Bank  
 Grants from 2018 report

Current year 2 grants tot \$18,938

Groupings from Access to Justice  
 Commissions chart 4 p23



# The State Bar *of California*

180 Howard Street, San Francisco, CA 94105

## COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT

February 28, 2019

Board of Trustees  
The State Bar of California  
180 Howard Street  
San Francisco, CA 94105

RE: Size of Committee on Professional Responsibility and Conduct

Dear Members of the Board of Trustees:

The Committee on Professional Responsibility and Conduct (COPRAC) understands that the Board of Trustees is engaged in an evaluation of the optimal staffing size for all State Bar committees and sub-entities. To assist the Board in its task, COPRAC offers the following information relevant to the optimal staffing size of our committee.

COPRAC currently consists of 16 members. These include two members of the public who are not lawyers. COPRAC members are volunteers with full time practices.

Our mission is integral to the public protection mission of the State Bar as a whole. We play a key role in helping to ensure that California lawyers are ethical and competent. For the reasons described below, we believe that maintaining our current high level of productivity and consistent high quality analysis reflecting diverse perspectives requires a Committee size of no fewer than 12 members. We believe that this number of members will ensure that we are a diverse committee representing the spectrum of California lawyers and law practice.

**What does COPRAC do?** In the service of our mission COPRAC performs many tasks. We write ethics opinions that provide crucial guidance to California lawyers on ethical issues and California law on professional responsibility. COPRAC conducts educational programs including the State Bar annual ethics symposium and programs at local bars or organizations (upon request to the State Bar). We also write and publish educational articles regarding legal ethics, including monthly MCLE Self-Study articles that are posted on the State Bar website. This is a task performed by each COPRAC member on a rotating basis.

With the transition to a new and much more comprehensive set of Rules of Professional Conduct, COPRAC's educational mission has never been more critical.

Members of the Board of Trustees

February 28, 2019

Page 2

In addition to these established functions we will be assuming the tasks of the Committee on Mandatory Fee Arbitration (CMFA) when the CMFA sunsets in June, 2019. New tasks within our purview will include assuming the writing of the Arbitration Advisories, which assist the volunteer fee arbitrators in the important public protection work done through our system of low cost fee arbitration and assuming the CMFA roll and educating lawyers on ethical rules related to fees and fee agreements.

**Why 12 members?** First, COPRAC's public protection work benefits from the diversity of backgrounds, expertise and experiences among COPRAC members including plaintiff and defense lawyers, criminal and civil lawyers, lawyers who practice at large firms, small firms and are solo practitioners. The public members bring further diversity of thought and a client perspective. This broad input results in opinions that are well-researched and practical in terms of providing lawyers with "real world" ethics advice that they can truly use. Assuming that COPRAC continues to include two public members, having 10 attorney-members will help ensure that we continue to have a diversity of opinions.

Second, COPRAC's work is labor intensive. Our California ethics opinions are justifiably lauded for their meticulous scholarship and practical value. Generating this high quality output requires substantial research and drafting time, including iterative drafting and redrafting in response to extensive discussion and input by the entire Committee at our monthly meetings. Notably, we are proud of the fact that our opinions are nearly always approved unanimously. Getting there takes time but we believe the process produces a rigorously analyzed and balanced final product. After our internal process, our Committee frequently engages in further drafting to respond to public comment.

We are mindful that State Bar is undergoing many changes designed to enhance its public protection mission in light the recent Legislative reforms concerning the organization. We are also mindful that resources for that mission must be used in an efficient manner. We believe that the public is protected by ensuring that lawyers are fully knowledgeable about the intricacies of the law on professional responsibility, which grows ever more complex.

All the members of COPRAC looks forward to a dialogue with the Board of Trustees about how we can continue to do the important work for the people of California that has been assigned to us and structure that work in the most efficient way possible.

Sincerely,



Amy Bomse  
Chair, Committee on Professional Responsibility and Conduct