



# The State Bar *of California*

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## **OPEN SESSION**

## **AGENDA ITEM**

**702 SEPTEMBER 2019**

**DATE:** September 19, 2019

**TO:** Members, Board of Trustees

**FROM:** Donna S. Hershkowitz, Chief of Programs

**SUBJECT:** Appendix I: Approval of Agreement for Separation of California Commission on Access to Justice from the State Bar of California

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### **EXECUTIVE SUMMARY**

As part of its review of State Bar governance and the appropriate structure and function of its subentities, the Board of Trustees (Board), with the concurrence of the California Commission on Access to Justice (CCAJ), approved the separation of CCAJ from the State Bar. The Board directed that the transition be complete by December 31, 2019. This agenda item is presented to the Board to provide finality to the Board actions regarding CCAJ. Specifically, this agenda item notes the formation of a new, nonprofit public benefit corporation to be known as the California Commission on Access to Justice, and provides that effective October 1, 2019, CCAJ will be separated from the State Bar. This agenda item also seeks approval of the execution of a deliverables-based contract with CCAJ so that the State Bar may continue to benefit from CCAJ's advice and recommendations where appropriate to the mission of the State Bar.

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### **BACKGROUND**

CCAJ was created by the Board of Trustees in 1996 to improve access to civil justice for low-income Californians. The establishment of CCAJ was proposed by the State Bar-appointed Access to Justice Working Group in its report, adopted by the Board of Trustees in 1996, entitled *And Justice for All: Fulfilling the Promise of Access to Civil Justice in California*. CCAJ was originally envisioned as the entity to provide ongoing leadership to increase the funding for, and improve the delivery of legal services in, civil matters for persons of modest means through representation from the State Bar, judiciary, business, and community organizations.

In September 2018, the Board adopted recommendations related to the ongoing structure and function of many of the State Bar's subentities pursuant to the "Appendix I" review process. However, needing further input with regard to CCAJ, the CCAJ Stakeholder Working Group (CCAJSWG) was formed to explore the issues further with the access community and CCAJ before making a recommendation. The CCAJSWG, co-chaired by Trustee Joanna Mendoza and CCAJ Chair Judge Mark Juhas, included 3 members of CCAJ selected by the Chair and Vice-Chair of CCAJ and one appointment from each of the following bodies: the Senate and the Assembly Judiciary Committees, the Board, and the Judicial Council. The Supreme Court provided a liaison, and State Bar staff also served in a liaison capacity.

The Board, at its January 2019 meeting, adopted the recommendations made by the CCAJSWG on November 27, 2018, including the recommendation that CCAJ separate from the State Bar, with the transition to occur no later than December 31, 2019. (See agenda item, <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000023536.pdf>.)

Business and Professions Code section 6008.6 generally requires Board approval for all nontechnology contracts for goods, services, or both if the amount of the contract exceeds fifty thousand dollars (\$50,000).

## **DISCUSSION**

The Appendix I review process brought to the attention of the Board a number of unique features of CCAJ that set it apart from other subentities, including:

- The operational autonomy with which CCAJ had operated;
- The breadth of CCAJ's work, which exceeds the State Bar's mission;
- The use of staff resources to work on CCAJ priorities that may exceed the scope of and/or differ from the priorities set by the Board; and
- The possibility – rare though it might be – that CCAJ could pursue a legislative strategy or issue a report that conflicts with the interests of the State Bar.

The Board acknowledged that CCAJ's actions were within the scope of authority the Board had permitted up until that time. However, with the reexamination of the governance structure of the Board and its subentities, the Board felt strongly that the past practices could not continue.

The CCAJSWG engaged in lively discussions about the need for CCAJ to operate independently of the agendas of any of its appointing authorities, to speak on behalf of the consumers of justice services, and potentially to advocate for access for consumers in ways that could be contrary to the interests of one or more of its appointing authorities. Ultimately, the CCAJSWG concluded that the best way for CCAJ to adhere to its values and maintain its integrity would be to separate from the State Bar, with the understanding that CCAJ and the State Bar would continue to work collaboratively on access issues where their interests overlap.

At its January 2019 meeting, the Board adopted the recommendations of the CCAJSWG, memorializing the joint intent that CCAJ and the State Bar work collaboratively to develop a

plan for transition from the State Bar by the conclusion of 2019. The adopted recommendations included 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.

CCAJ has been working diligently to form its own separate corporate identity. To that end, on August 14, 2019, CCAJ filed articles of incorporation with the Secretary of State, establishing the California Commission on Access to Justice as a nonprofit public benefit corporation. The articles of incorporation provide that “the specific purposes of this corporation are to provide ongoing independent leadership in the effort to achieve access to justice for all Californians, particularly poor and moderate means Californians, and oversee efforts to increase funding and improve delivery methods through a coordinated effort among the three branches of government, the public, attorneys and other public and private sector stakeholders.” As of the writing of this agenda item, the certificate of incorporation has not yet been received. However, staff is informed that the certificate of incorporation will bear the date that the articles of incorporation were filed.<sup>1</sup>

Concurrently with CCAJ’s efforts to establish its new status, staff has been working with the CCAJ transition team and the CCAJ executive committee to finalize a contract to meet the spirit of the Board action in January 2019. The draft contract identifies specific deliverables that CCAJ will provide to the State Bar so that the State Bar may continue to obtain from CCAJ the unique advice, expertise, information, and perspectives related to access to civil justice that it possesses. The annual amount of the contract is \$150,000. However, because CCAJ was able to finalize the separation prior to December 31, 2019, this contract spans one year and one quarter (covering the period from October 1, 2019 to December 31, 2020), and thus the total contract amount is \$187,500.

## **FISCAL/PERSONNEL IMPACT**

There are sufficient funds in the 2019 budget to cover the costs of the contract, and funding will be provided in the 2020 budget and for future years, per the normal budget planning process.

## **RULE AMENDMENTS**

None

## **BOARD BOOK AMENDMENTS**

None

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<sup>1</sup> On that date, the sole incorporator also filed a document appointing the Board of Directors. They are the incumbent members of the Commission.

## **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, Board, 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 thanks the California Commission on Access to Justice for its stellar work since its creation and wishes CCAJ continued success in its efforts to advocate for access to justice for all; and it is

**FURTHER RESOLVED**, that the Board of Trustees confirms that, effective at the close of the October 1, 2019 CCAJ meeting at the State Bar, CCAJ will be a separate, independent entity; and it is

**FURTHER RESOLVED**, that the Board of Trustees approves execution of the contract with CCAJ described above.

## **ATTACHMENT(S) LIST**

None