



The State Bar *of California*

OPEN SESSION

AGENDA ITEM

SEPTEMBER 2019

PROGRAMS COMMITTEE III.A

DATE: September 19, 2019

TO: Members, Programs Committee

FROM: Donna Hershkowitz, Chief of Programs
Kenneth Holloway, Assistant General Counsel, Office of General Counsel
Suzanne Grandt, Assistant General Counsel, Office of General Counsel

SUBJECT: Rule Changes Addressing Public Licensee Information and Required Reporting:
Request to Circulate for Public Comment

EXECUTIVE SUMMARY

Objective g of Goal 2 of the State Bar Strategic Plan requires that all attorneys be required “to report firm size and practice type to the State Bar and to maintain and update that information.” In seeking to amend the rules to address that requirement, staff concluded that a more comprehensive approach was needed. This agenda item asks the Programs Committee to authorize a 60-day public comment period for proposed amendments to State Bar Rule 2.2, which will clarify what information comprises an attorney’s official State Bar record and set forth attorneys’ mandatory and discretionary reporting requirements. Amended Rule 2.2 would consolidate and replace current State Bar Rules 2.2, 2.3, and 2.4.

BACKGROUND

At the July 11, 2019, Programs Committee meeting, the Programs Committee discussed an informational item regarding possible rule and practice changes related to the reporting, display, and public nature of licensee information.

That informational item noted that State Bar Rules 2.2 and 2.3 currently do not provide an exhaustive list of the information that comprises a licensee’s public record, nor of the information that must be verified or updated and on what schedule. Furthermore, pursuant to Objective g of Goal 2 of the State Bar Strategic Plan, the State Bar is seeking to require all attorneys to report firm size and practice sector information to the State Bar. Staff also believe

that client trust account (IOLTA) information and professional website information should be obtained and verified through the same yearly process used to verify other types of required information. Finally, staff believe that it would be appropriate to continue to permit the reporting of languages spoken by attorneys and their office staff and to cease the mandatory collection of certain information, including undergraduate institution and fax number.

Staff has also recognized that the current rule structure and language regarding “opting out” of the sale or disclosure of licensee information may result in attorneys erroneously believing that only those pieces of information specifically identified in Rule 2.2 are public. Business and Professions Code section 6026.11, effective January 1, 2016, makes the State Bar of California subject to the California Public Records Act (CPRA), meaning that *all* records relating to the business of the State Bar that are regulatory in nature are subject to public disclosure unless specifically exempt under state law. This means that all information reported by attorneys that is collected for a regulatory purpose—whether mandatory or optional, and whether displayed on the State Bar website profile or not—is subject to public disclosure, with the exception of private email addresses provided pursuant to California Rules of Court, rule 9.9.¹

DISCUSSION

Following the input of the Programs Committee at the July 2019 Programs Committee meeting, staff evaluated the various sources of State Bar reporting requirements and drafted one proposed rule that consolidates, clarifies, and harmonizes the requirements for what information licensees must (or may) provide to the State Bar, as well as updating the language to emphasize that, pursuant to the CPRA, all information in the licensee profile (with the exception of nonpublic email addresses) is public and could potentially be disclosed, whether or not it is posted on the licensee’s profile on the State Bar website. The proposed rule also provides clarity on the requirements for reporting changes to personal information as well as verifying such information.

As discussed at the July 2019 Programs Committee meeting, the information collected as part of the optional “expanded profile” for attorneys (website, photo, practice areas, and languages spoken) ceased being displayed on the State Bar website in an effort to align the attorney profile with the State Bar’s regulatory mission after the separation of the sections. Following the direction of the Committee, instead of collecting but not publicly posting the material, the proposed rule clarifies what information that was formerly part of the “expanded profile” must be reported, and what information is discretionary. All of that information will again be posted.

Undergraduate information and fax number are currently collected by the State Bar from all licensees but are not included as mandatory in this rule. Staff recommends that the State Bar make the listing of a fax number optional and stop collecting information about undergraduate institution entirely. This will require subsequent changes to the oath card that attorneys sign at

¹California Rules of Court, rule 9.9, prohibits disclosure of a private e-mail address without the licensee’s consent. Records that are prohibited from disclosure pursuant to law are exempt from public disclosure under the CPRA. (California Government Code section 6254(k).)

the time of their admission to the State Bar, which currently asks attorneys to identify their undergraduate institution.

This rule does not address what information will or will not be displayed on the State Bar attorney profile page. Since all information in the official record is public (with the exception of private email addresses), the State Bar has the discretion to determine what information it chooses to post online. This is a policy determination separate from this rule proposal.

The proposed amendments will not fully reconcile issues regarding the requirement in Business and Professions Code section 6001(g) that licensees be informed of a right “to limit the sale or disclosure of licensee information not reasonably related to regulatory purposes.” The original intent of this statutory section was to allow attorneys the opportunity to opt out of having their information shared on contact lists for advertising and other nonregulatory purposes. However, this section potentially conflicts with the CPRA, because the CRPA requires broad disclosure of “any writing containing information relating to the conduct of the [State Bar’s] business.” (California Government Code section 6252(e).) Generally, individual licensees cannot limit public disclosure, whether or not CPRA disclosure might also be considered outside of the State Bar’s “regulatory purposes.”

This rule proposal therefore reflects an effort to limit the State Bar’s collection of licensee information to only that information necessary for its regulatory purposes. However, to the extent there is or may be licensee information retained by the State Bar that does *not* relate to the State Bar’s business of regulation and discipline of attorneys, licensees should still be able to limit the sale or disclosure of such information pursuant to Business and Professions Code section 6001(g). To address this conflict, staff added language in proposed rule 2.2 indicating that all licensee record information listed in the rule is presumptively public and may be subject to disclosure under the California Public Records Act, unless required to be kept confidential by law.

Information Required to be Reported to the State Bar

Subsection (B) of proposed rule 2.2 lists the information that licensees must report to the State Bar. This includes attorney name as well as information already required to be reported by Business and Professions Code section 6002.1 (current office address, or if none, an alternative address; office phone number; other jurisdictions and date of admission; certified legal specialties; discipline in other jurisdiction; and any other information required by other attorney discipline agency); Business and Professions Code section 6212 (IOLTA information); and California Rules of Court, rule 9.9 (a nonpublic email address to be used for State Bar communications).

In addition to information already required under California law, proposed rule 2.2 requires the mandatory reporting of firm size and practice sector for the reasons discussed in the July 11, 2019 Programs Committee Agenda Item. Also included is the mandatory reporting of a professional website, if one is maintained, which was formerly part of the “expanded profile.” The Programs Committee discussed whether including a professional website, photo, and

practice area were appropriately tied to the State Bar's public protection mission, and concluded that the risk of identity theft, and the harm to the public that could result if someone impersonates one of the State Bar's licensees, make such items not just about the advancement of the professional interests of attorneys, but also about protection. This agenda item recommends making disclosure of the professional website mandatory, but leaving the photo and practice area as discretionary items, as discussed below.

At the July 2019 Programs Committee meeting, there was also a discussion regarding including malpractice insurance as a mandatory reporting requirement. As was discussed at the full Board meeting in July, there is work that remains to be done regarding malpractice insurance. A decision on whether to mandate the reporting of such insurance is thus premature at this time.

Lastly, proposed rule 2.2 maintains the existing requirement for mandatory reporting of any information directed by the California Supreme Court or otherwise required by law to take into account court orders and subsequent changes to state law.

Information that May be Reported to the State Bar

Subsection (D) of the proposed rule lists what information a licensee may report to the State Bar. Subsection (A) clarifies to the licensee that if he or she chooses to report any of this information, such information will be presumptively public, and may be subject to disclosure under the CPRA unless disclosure is otherwise prohibited by law. This information includes an email address to be posted publicly pursuant to rule 9.9 (listed as "optional") and a fax number.

Included in this subsection are also the remaining elements of the "expanded profile": a professional photograph, area of practice, and languages spoken. The July Programs Committee meeting agenda item suggested that, since these items were initially included in the profile as a "member benefit" and "business opportunity" for lawyers, continuing to post these items as part of the public profile fell within the trade associational functions in which the State Bar no longer engages.² The committee had an extensive discussion about these items, however, and concluded that they do in fact serve the public protection mission of the State Bar. The proposed rule therefore allows licensees to provide a professional photograph, areas of practice, and languages spoken. Allowing the reporting and posting of this information will support the State Bar's public protection mission by improving the public's ability to verify the identity of attorneys through their photographs, seek legal assistance in their primary language, and know the areas of law purported to be handled by the licensee.

When the expanded profile was created by Board action in 2009, there was a decision made that only the following elements would be searchable: name, city, state, county, bar district, certified legal specialization, and languages spoken.³ There was substantial opposition by county bar associations and lawyer referral services at the time to have the practice area searchable. The 2009 agenda item summarized the issue as follows:

² (July 11, 2019 Programs Committee Agenda Item at 6 [Attachment B].)

³ (Minutes of Board of Governors May 15, 2009 Meeting at 2-3 [Attachment C].)

Local bars believe that consumers are best served in finding a lawyer by a Lawyer Referral Service, which interviews them to learn the nature of their legal problem and then refers them to a local attorney possessing the appropriate practice area experience or to some other source if they do not need a lawyer's assistance in order to address their problem. They are concerned that adding search features such . . . practice areas to the State Bar's database would allow potential clients to bypass the LRS. Revenue from the LRS program is used to fund the LRS program and other local bar programs, including legal aid programs. Approximately 5,100 attorneys belong to a LRS panel (this compares to 164,365 active State Bar members as of April 29).⁴

Staff recommends that, going forward, practice area information be made searchable in the interest of providing useful information to the public. To address concerns about the State Bar website providing self-described practice areas and confusing the public as to whether the State Bar is somehow endorsing the work of that attorney in that practice area, it is also recommended that the publication of practice area be accompanied by appropriate caveats, which state that the information has been provided by the licensee, but has not otherwise been verified by the State Bar, and that the State Bar cannot attest to any attorney's performance in any particular area.

Information that Is Otherwise Part of the Licensee Record

Subsection (E) of the proposed rule lists information that is part of the official licensee record but is not information that is "reported" by the licensee. This includes the licensee's State Bar number, date of admission in California, law school attended, and California licensee status and California disciplinary history. Section membership is also included in this subsection because the State Bar is required to identify membership in California Lawyers Association (CLA) sections on the public attorney profiles on the State Bar website pursuant to a Memorandum of Understanding between the State Bar and CLA.

All of this information is associated with a particular licensee, but is collected, updated, and maintained by the State Bar itself.

Timing of Reporting

Most of the information required to be reported by licensees is collected at the time the attorney is admitted to practice law in California. To ensure that the information maintained and displayed by the State Bar is as accurate as possible, subsection (C) of the proposed rule specifies that all reported information should be verified at least annually through the yearly license renewal process, or as otherwise determined by the State Bar.

Rule 2.3 currently provides that a licensee must inform the State Bar of a change to address, telephone number, or email "no later than thirty days after making the change" and specifies how attorneys must report the changes. However, this is not an exhaustive list of the

⁴ (May 11, 2009 Board of Governors Agenda Item at 3–4 [Attachment D].)

information that licensees must currently update under state law. Business and Professions Code section 6002.1 provides that—in addition to physical address—discipline imposed by another jurisdiction and information that may be required by agreement with or by condition of probation imposed by an attorney disciplinary agency must also be reported within 30 days of any change. Section 6002.1 also provides that licensees must notify the State Bar of any change in other jurisdictions in which the attorney is admitted, or specialties in which the attorney is certified, on or before the first day of February of each year.

Subsection (C) of the proposed rule also incorporates these requirements and adds additional information for which changes must be reported within 30 days to account for the new mandatory reporting requirements. These additions include firm size and practice sector, IOLTA account information, and any other information directed by the Supreme Court, required by another government entity, or otherwise required by law.

In sum, the proposed rule would require notification within 30 days of changes to all appropriate information, would require verification of other information at least annually, and would permit the State Bar to request verification of information at other times it deems appropriate (for instance, continuing to prompt licensees to verify their address if it has been more than six months since they have last accessed their online profiles).

Removal of Rule 2.4

Rule 2.4 currently notes that while licensees must maintain a public address, the State Bar will not publicly disclose a licensee's prior address if the licensee so requests.

In light of the State Bar's obligations under the CPRA, the current Rule 2.4 regarding confidential address history could also potentially mislead licensees into believing that prior public address information could be protected from CPRA disclosure if the licensee makes such a request. This would conflict with the CPRA because, as discussed earlier, licensees cannot choose to limit the disclosure of public information.

Nevertheless, prior private addresses and phone numbers that were not previously displayed on the State Bar website are exempt from public disclosure pursuant to California Government Code section 6254(c), which states that the CPRA does not require disclosures "which would constitute an unwarranted invasion of personal privacy." As such, there is no need for Rule 2.4 and staff recommends it be deleted as part of this revision.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

State Bar Rules 2.2, 2.3, and 2.4

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

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

Objective: g. No later than January 1, 2019, require all attorneys to report firm size and practice type to the State Bar and to maintain and update that information.

RECOMMENDATIONS

It is recommended that the Programs Committee approve the following resolution:

RESOLVED, that the Programs Committee authorizes staff to make available for a 60-day public comment period proposed Amended State Bar Rule 2.2, which includes the proposed repeal of Rules 2.3 and 2.4, attached hereto as Attachment A; and it is

FURTHER RESOLVED, that this authorization for release of public comment is not, and shall not be construed as, a statement or recommendation of approval by the Programs Committee of the Board of Trustees.

ATTACHMENT(S) LIST

- A. Text of proposed Amended State Bar Rule 2.2
- B. July 11, 2019 Programs Committee Agenda Item, also available at <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000024410.pdf>
- C. Minutes of Board of Governors May 15, 2009 Meeting
- D. May 11, 2009 Board of Governors Agenda Item

**Rules of Procedure
of the State Bar of California**

Rule 2.2 Public information; duty to update licensee record

- (A) Licensees are responsible for maintaining the accuracy of information contained in their official State Bar record. With the exception of nonpublic email addresses provided pursuant to Rule 9.9(a)(2) of the California Rules of Court, all information contained in the official licensee record is presumptively public, is collected and retained for the State Bar's regulatory purposes, and may be subject to disclosure under the California Public Records Act unless that disclosure is otherwise prohibited by law.
- (B) A licensee shall report to the State Bar, and shall verify with the State Bar at least annually, the following information:
- (1) Last name, first name, and any middle names;
 - (2) A nonpublic email address to be used for State Bar communications;
 - (3) Office address or, if no office is maintained, an address to be used for State Bar purposes;
 - (4) Office telephone number, if one is maintained;
 - (5) A professional website, if one is maintained;
 - (6) Practice sector;
 - (7) Law firm size;
 - (8) IOLTA account information;
 - (9) All legal specialties in which the licensee is certified;
 - (10) Any other jurisdictions in which the licensee is admitted and the date(s) of admission;
 - (11) The jurisdiction, and the nature and date of any discipline imposed by another jurisdiction, including the terms and conditions of any probation imposed, and, if suspended or disbarred in another jurisdiction, the date of any reinstatement in that jurisdiction;
 - (12) Any other information as directed by the California Supreme Court;
 - (13) Any other information as may be required by agreement with or by conditions of probation imposed by any other government agency; and
 - (14) Any other information as may be required by law.
- (C) With the exception of certified legal specialties under subsection (B)(9) or admission to a new jurisdiction under subsection (B)(10), a licensee shall report to the State Bar a change in any of the information in subsection (B) no later than 30 days after the change and shall verify such information by February 1 of each year during the license renewal process, as well as at other times as determined by the State Bar. Changes in certified legal specialties or admission to a new jurisdiction shall be reported during the annual license renewal process.

- (D) A licensee may report the following information to the State Bar:
- (1) An email address to be posted publicly;
 - (2) Fax number;
 - (3) A professional photograph;
 - (4) Area of practice; and
 - (5) Languages spoken by the attorney or office staff.
- (E) The following additional information shall also be part of a licensee's public record and shall be maintained by the State Bar:
- (1) State Bar license number;
 - (2) Date of admission in California;
 - (3) Law school attended;
 - (4) California Lawyers Association section membership, if any;
 - (5) License status;
 - (6) Date of any transfer from one license status to another; and
 - (7) Date and period of any discipline imposed in California.

Rule 2.3 [REPEALED]

Rule 2.4 [REPEALED]

Rules of Procedure of the State Bar of California

Rule 2.2 Public information; duty to update licensee record

~~A licensee record contains public information, including the following:~~

(F) ~~last~~ Licensees are responsible for maintaining the accuracy of information contained in their official State Bar record. With the exception of nonpublic email addresses provided pursuant to Rule 9.9(a)(2) of the California Rules of Court, all information contained in the official licensee record is presumptively public, is collected and retained for the State Bar's regulatory purposes, and may be subject to disclosure under the California Public Records Act unless that disclosure is otherwise prohibited by law.

(G) A licensee shall report to the State Bar, and shall verify with the State Bar at least annually, the following information:

~~(F)~~ (1) Last name, first name, and any middle names;

~~(G)~~ State Bar license number;

(2) A nonpublic email address and to be used for State Bar communications;

(3) Office address or, if no office is maintained, an address to be used for State Bar purposes;

~~(H)~~ (4) Office telephone number, if one is maintained;

~~(I)~~ e-mail address;

(5) A professional website, if one is maintained;

(6) Practice sector;

(7) Law firm size;

(8) IOLTA account information;

(9) All legal specialties in which the licensee is certified;

(10) Any other jurisdictions in which the licensee is admitted and the date(s) of admission in;

(11) The jurisdiction, and the nature and date of any discipline imposed by another jurisdiction, including the terms and conditions of any probation imposed, and, if suspended or disbarred in another jurisdiction, the date of any reinstatement in that jurisdiction;

~~(J)~~ (12) Any other information as directed by the California Supreme Court;

(13) ~~places and dates~~ Any other information as may be required by agreement with or by conditions of probation imposed by any other government agency; and

(14) Any other information as may be required by law.

~~(K)~~(H) With the exception of certified legal specialties under subsection (B)(9) or admission to a new jurisdiction under subsection (B)(10), a licensee shall report to the State Bar a change in any other jurisdictions; of the information in subsection (B) no later than 30 days after the change and shall verify such information by February 1 of each year during the license renewal process, as well as at other times as determined by the State Bar. Changes in certified legal specialties or admission to a new jurisdiction shall be reported during the annual license renewal process.

(I) A licensee may report the following information to the State Bar:

- (1) An email address to be posted publicly;
- (2) Fax number;
- (3) A professional photograph;
- (4) Area of practice; and
- (5) Languages spoken by the attorney or office staff.

(J) The following additional information shall also be part of a licensee's public record and shall be maintained by the State Bar:

- (1) State Bar license number;
- (2) Date of admission in California;
- (3) Law school attended;
- (4) California Lawyers Association section membership, if any;
- ~~(L)~~(5) License status;

~~(M)~~(6) -dateDate of any transfer from one license status to another; and

~~(N)~~(7) -dateDate and period of any discipline; and imposed in California.

~~(O) — any other information as directed by the Supreme Court or otherwise required by law.~~

~~Rule 2.2 adopted effective June 17, 2006; amended effective March 10, 2017; amended effective January 25, 2019.~~

Rule 2.3 ~~Duty to update licensee record~~[REPEALED]

~~(A) — A licensee must inform the State Bar of a change of address, telephone number, or e-mail address no later than thirty days after making the change. The licensee must report a change of address or telephone number online or using the State Bar Address Change Form. The licensee must make a change of e-mail address online.~~

~~(B) — A licensee must inform the State Bar of a change of name no later than thirty days after making the change. The licensee must report the change using the State Bar Name Change Form.~~

~~Rule 2.3 adopted effective June 17, 2006; amended effective January 25, 2019.~~

Rule 2.4 Confidential treatment of address history

~~Every licensee must maintain with the State Bar a non-confidential current address,⁴ but upon the request of a licensee, the State Bar will not publicly disclose a licensee's prior address.~~

~~Rule 2.4 adopted effective July 20, 2007; amended effective January 25, 2019.~~ [\[REPEALED\]](#)

⁴ ~~Business and Professions Code § 6002.1(a)(1).~~



The State Bar *of California*

OPEN SESSION AGENDA ITEM JULY 2019 PROGRAMS COMMITTEE III.A

DATE: July 11, 2019

TO: Members, Programs Committee

FROM: Donna S. Hershkowitz, Chief of Programs

SUBJECT: Discussion of Possible Rule and Practice Changes Related to Reporting, Display, and Public Nature of Licensee Information – Informational Item

EXECUTIVE SUMMARY

Objective g of Goal 2 of the State Bar strategic plan requires all attorneys to report firm size and practice type to the State Bar and to maintain and update that information. In the process of developing the rule change to implement that objective, staff realized that adding these requirements to the list of information a licensee is required to report is only one piece of a broader puzzle. This agenda item gathers all of those pieces together to give the Board of Trustees the necessary context so that all of the pieces can ultimately be considered together. This is an informational item only. Feedback from the Board will be used to develop a rule proposal that will be presented in September 2019.

BACKGROUND

ITEMS LICENSEES ARE REQUIRED TO REPORT

Rule 2.2 of the State Bar Rules provides that a licensee record contains public information, and lists the following information as included as part of the public licensee record:

- Name
- State Bar number
- Physical address and e-mail address
- Telephone number
- Date of admission in California

- Places and dates of admission in any other jurisdiction
- License status and date of transfer from one status to another
- Date and period of any discipline
- Any other information as directed by the Supreme Court or required by law

Some of this information is provided by licensees and other information, such as date and period of discipline, is derived from State Bar records. Some is displayed on the licensee profile, and some is not. Although the language of the rule provides that this information is the public licensee record, the list does not purport to be, and is not, the complete list of items that are subject to public disclosure.

Business and Professions Code section 6002.1 contains a similar list of information that licensees are required to provide, and also includes on that list all specialties in which the licensee is certified.

In addition to the above, pursuant to the California Rules of Court, rule 9.9, attorneys are, with limited exception, required to provide the State Bar a private e-mail address, that is, an e-mail address not to be disclosed on the State Bar's website or otherwise provided to the public without the licensee's consent. The purpose of this private e-mail is to facilitate communications by the State Bar with its licensees.

Business and Professions Code section 6212 also requires licensees to report all account information required by the State Bar, in the manner specified by the State Bar, regarding Interest on Lawyers' Trust Accounts (IOLTA).

ITEMS LICENSEES MAY REPORT

In addition to the above categories of information defined as part of the licensee record, the State Bar collects the following:

- Fax number
- Law school from which the licensee graduated
- Section membership
- Undergraduate school from which the licensee graduated (collected on the oath card at the time of admission into the State Bar)

The State Bar also created the opportunity for licensees to have an "enhanced" or "expanded" profile. Information that may be submitted for this expanded profile is:

- Office website
- Photo
- Practice areas
- Languages spoken by the attorney or office staff

PUBLIC RECORDS, “OPT OUT,” AND INFORMATION CURRENTLY DISPLAYED

Business and Professions Code section 6026.11, effective January 1, 2016, makes the State Bar of California subject to the California Public Records Act (CPRA), providing that *all* public records and writings of the State Bar are subject to the CPRA.

Business and Professions Code section 6002.1 (g) provides: “The State Bar shall conspicuously publicize . . . that its licensees have the right to limit the sale or disclosure of licensee information not reasonably related to regulatory purposes. In those communications the State Bar shall . . . note the simple procedure by which a licensee may exercise his or her right to prohibit or restrict, at the licensee’s option, the sale or disclosure of licensee information not reasonably related to regulatory purposes.”

Business and Professions Code section 6009.5 provides that “[a]ny demographic data collected shall be used only for general purposes and shall not be identified to any individual licensee or his or her State Bar record.”

The language of Business and Professions Code section 6002.1 pre-dated the provision making the State Bar subject to the CPRA, and is not consistent with the CPRA. In an attempt to conform the prior ability to opt out with the CPRA, State Bar policy on opt out changed in 2016, as reflected in the following language posted on the State Bar website:

The State Bar roll of attorneys, including official membership information, has always been and remains public.

However, this information will now be subject to public records requests pursuant to CPRA. The CPRA removes restrictions on the types of entities that are eligible to obtain lists, and other publicly available information. However, only certain information will be shared for members who have opted out of being contacted.

The following public profile information will be provided regardless of an attorney’s opt-out preference:

- Name
- Address
- Phone number
- Bar number
- Certified legal specialization
- Bar license status
- Bar license status history
- Discipline history

The following public profile information may be provided for those attorneys who have not opted out:

- Public email address
- Fax number
- Undergraduate school
- Law school
- Section membership

Prior to that time, licensees were told the following: “The bar has a policy under which members’ [sic] names are provided at cost to a restricted list of outside entities that meet certain criteria. The names are provided for a one-time use to, among others, MCLE providers, the Foundation of the State Bar, local bars and bar-approved insurance providers.”¹

Although better than the former opt out policy, staff question whether the revised opt out policy is compliant with the CPRA.

Not all information that is defined as part of the licensee record is publicly displayed as part of the attorney profile. Specifically, place and date of admission in other jurisdictions is not displayed. Additionally, in an effort to align the attorney profile with the State Bar’s regulatory mission after the separation of the sections, the website, photo, and practice areas that are part of the expanded profile are no longer displayed. In addition, although applicants for admission to the State Bar are told “the information on the [Oath] Card becomes part of your permanent record with the State Bar, is a matter of public record, and *will appear on the State Bar’s website*,”² in fact, undergraduate school, which is included on the oath card, was taken off the attorney profile on the website in 2018, along with the expanded profile information.

TIMING OF REPORTING

Rule 2.3 of the State Bar Rules requires licensees to update the State Bar within 30 days of a change of name, physical address, telephone, or e-mail.

Business and Professions Code section 6002.1 provides that physical address, discipline imposed by another jurisdiction, and information that may be required by agreement with or by condition of probation imposed by an attorney disciplinary agency must be reported within 30 days of any change. Licensees must notify the State Bar of any change in specialties in which the attorney is certified, and any other jurisdiction in which the attorney is admitted on or before the first day of February of each year.

¹ California Bar Journal, January 2005, <http://archive.calbar.ca.gov/archive/Archive.aspx?articleId=60038&categoryId=60038&month=1&year=2005>

² State Bar Enrollment and Receiving Your Bar Number, <https://www.calbar.ca.gov/Portals/0/documents/admissions/gbx/Enrollment-Information-201707.pdf>. Emphasis added.

DISCUSSION

ITEMS LICENSEES ARE REQUIRED TO REPORT

In addition the elements licensees are currently required to report, staff would like to pursue rule changes to also require the reporting of firm size and practice type (e.g., government, private practice, not for profit, in house counsel, etc.). As discussed with the Programs Committee at the May meeting, the Strategic Plan objective to require reporting of firm size and practice type was initially envisioned as a preventative approach to provide attorneys with information and tools they need when they switch firm types, especially when switching to a solo practice or a small firm. The Office of Chief Trial Counsel posited that attorney misconduct can often arise out of simple lack of knowledge of one's responsibilities. Although attorneys are expected to be aware of their obligations, and, as the saying goes, ignorance of the law is no excuse, that ignorance may result in client harm or other misconduct. An attorney who transitions from government or a large firm, for example, may have never had access to a client trust account, and may be unaware of the requirements. The goal of this objective was to have a means of identifying when an attorney became a solo practitioner or went to a small firm, so the State Bar could provide the attorney with resources to aid in the transition. The Office of Chief Trial Counsel envisioned emailing a welcome or congratulatory letter to attorney, noting their recent transition and, for example, providing links to the State Bar Client Trust Accounting Handbook, information about State Bar Ethics School or State Bar Client Trust Accounting School, a list of the most common types of misconduct, etc.

In addition, staff propose to improve our efforts to get client trust account information from licensees. Although statute currently requires licensees to report client trust account information in the manner requested by the State Bar, we believe including it in the same rule that requires reporting and maintaining of physical address, e-mail, telephone, etc. is appropriate. Staff also propose to address this technologically. Currently, for example, attorneys are required to verify their address each year when they go into My State Bar Profile (MSBP) as part of the licensee renewal process. They are also prompted to verify their address if it has been more than six months since they have last accessed MSBP. Staff believe that this same process should be used for client trust account information and all mandatory reporting items that are subject to change. The one exception to this would be for the list of other jurisdictions in which the licensee is admitted to practice. Although staff believe that routine verification of that information is important, Business and Professions Code section 6002.1, as currently written, appears to limit that information to annual reporting.

A final item to add to the mandatory reporting, raised with the Board at the May 2019 Programs Committee meeting, is whether to also require the reporting of whether the attorney has malpractice insurance. This item emanates from the work of the Malpractice Insurance Working Group (MIWG). A majority of the MIWG recommended that attorneys be required to report as part of the annual license renewal process whether or not they are insured. The Board might also consider requiring attorneys to report whether they have malpractice insurance in amounts of at least \$100,000 per claim/\$300,000 annual aggregate. The MIWG unanimously

agreed that if malpractice insurance becomes mandatory, these amounts are appropriate to ensure public protection. The Board could conclude that even if not mandatory, disclosure that an attorney has malpractice insurance of such an amount would be appropriate.

ITEMS LICENSEES MAY REPORT

As noted above, in addition to the information that is identified in Rule 2.2 as part of the licensee record, the State Bar collects: fax number; law school from which the licensee graduated; section membership; undergraduate school from which the licensee graduated; and the information in the “expanded profile” (website, photo, practice areas, and languages spoken by the attorney or office staff).

It seems that the concept of creating an expanded profile grew out of the Member Services Initiative, launched by the Board of Governors in 2001. This initiative was “aimed at creating a more member centric State Bar responsive to member practice needs and bar services and benefits[, because while the State Bar has many regulatory functions, it also has many associational characteristics.”³ The Board agenda item in 2008 which identified these additional elements to report expressly noted that then-existing law authorized the State Bar “to engage in activities that ‘may advance the professional interests of the members of the State Bar.’ (Cal. Bus & Prof. Code, § 6031, subd. (a).)”⁴

The expanded profile was discussed as a member benefit and a business opportunity for lawyers who do not participate in lawyer referral services. In particular, it was noted that “Board members believe allowing self-designation of practice areas is an important member benefit that should be offered.”⁵

As noted in the Background section, above, in an effort to align the attorney profile with the State Bar’s regulatory mission after the separation of the sections, the website, photo, and practice areas that are part of the expanded profile are no longer displayed. The history noted above supports that decision, as these items were added to the profile as a “member benefit” and a “business opportunity” for lawyers, falling within the trade associational functions in which the State Bar no longer engages. At this same time, staff ceased displaying undergraduate institution. Staff believe it would be appropriate to:

- Eliminate from the oath card the field for undergraduate institution, and update the instructions accordingly;

³ Board of Governors Agenda Item 701, November 2008, “Find A Lawyer” — Proposed Adoption of Program Recommendations.

⁴ Id. That statute has since been amended and no longer refers to advancing the professional interests of attorneys.

⁵ Id.; Board of Governors Agenda Item 701, May 2009, “Find a Lawyer” – Proposed Adoption of Program Recommendations (Revised). As a side note, a key issue that required further study (a task force) and a return of this item to the Board after its initial presentation in November 2008 was the issue of whether these additional items would be searchable or simply displayed on the attorney’s profile. The discussions appeared to be quite lively, and the votes close.

- Terminate the “expanded profile” option. Currently attorneys are still submitting information (website, photo, practice areas), but have not been instructed that the State Bar ceased displaying it;
- Terminate the maintenance of fax numbers;
- Maintain the reporting of section membership, as that is subject to the MOU executed by the State Bar and the California Lawyers Association;⁶ and
- Continue to allow attorneys to report languages spoken in their office, as this is the most closely tied to the State Bar’s public protection mission.

PUBLIC RECORDS, “OPT OUT,” AND INFORMATION CURRENTLY DISPLAYED

Staff believe the current rule structure and opt out language may result in attorneys erroneously believing that only those pieces of information specifically identified in Rule 2.2 are public. All information reported by attorneys, unless otherwise exempt from disclosure under the CPRA, is public information and can be disclosed pursuant to a proper request – whether or not it is publicly displayed on the attorney profile or otherwise on the website.

Based on the notification provided in anticipation of the CPRA becoming applicable to the State Bar, attorneys who have “opted out” believe that their public e-mail address, fax number, undergraduate school, law school, and section membership, though posted on their attorney profile, will not be shared pursuant to public records requests. All attorneys who elected to opt out should be notified that information of this type maintained by the State Bar is public, and would be subject to disclosure. To the extent any of these fields are optional, but still maintained by the State Bar, it would be appropriate to notify these attorneys of the opportunity to update their profile to delete non-required information so that going forward, this information would not be maintained by the State Bar. To the extent the State Bar no longer has the information, logically, it cannot disclose it.

Along with the rule proposal to be presented to the Board in September, staff will clearly identify what information is proposed to be displayed on the attorney profile, what information attorneys will be required to provide and maintain, and what information remains optional. For example, although staff will be proposing to amend the rule to mandate the reporting of client trust account information, neither the fact that the attorney has a trust account, nor the account number, would be displayed as part of the attorney profile.

TIMING OF REPORTING

To ensure that we have the most accurate information possible as part of the attorney record, staff believe that all of the following information should be verified annually as part of the license renewal process, and within 30 days of a change in the information:

⁶ “The State Bar will continue to identify membership of CLA Sections as an attribute on public attorney profiles on the State Bar website with a notation that CLA is an independent organization and is not part of the State Bar.” Memorandum of Understanding Between The State Bar of California and California Lawyers Association; General Provisions, paragraph 9.

- Name
- Physical address
- E-mail address for State Bar communications
- Firm size (new)
- Practice type (new)
- Client Trust Account information (new)

Should the Board decide to also mandate the reporting of malpractice insurance, the same timeline would apply.

Statute currently limits the ability to collect information on admission to practice law in other jurisdictions to once per year. As a result, pending statutory change, staff would propose to require attorneys to verify this information only as part of the license renewal process.

As noted in the “Items Licensees Must Report” section, we believe a technological solution will assist in ensuring routine and accurate reporting, by requiring licensees to verify this information when accessing MSBP to pay fees, or if they have not accessed MSBP in at least six months.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

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

Objective: g. No later than January 1, 2019, require all attorneys to report firm size and practice type to the State Bar and to maintain and update that information.

RECOMMENDATIONS

None

ATTACHMENT(S) LIST

None

AGENDA ITEM

JULY 10
Board of Governors Open Minutes of
May 15, 2009 Meeting

THE STATE BAR OF CALIFORNIA

MINUTES

BOARD OF GOVERNORS MEETING

SAN FRANCISCO, CALIFORNIA

FRIDAY, MAY 15, 2009

The Board of Governors of The State Bar of California convened in open session in the Board Room of the State Bar offices at 180 Howard Street, San Francisco, California 94105, at 12:25 p.m. on Friday, May 15, 2009, Holly J. Fujie presiding.

The following members of the Board of Governors were present: James H. Aguirre, Joseph L. Chairez, Angela J. Davis, George O. Davis, Bonnie M. Dumanis, John J. Dutton, Jeannine English, Richard A. Frankel, William N. Hebert, Rex Heinke, James B. Hussey, Paul A. Kramer, Jr., Micha S. Liberty, Michael D. Marcus, Howard B. Miller, John E. Peterson, Richard A. Rubin, Jon Streeter, and Patricia P. White.

The following members of staff were present: Starr Babcock, Saul Bercovitch, Itzel Berrio, Phyllis Culp, Diane Curtis, Scott Drexel, Mary Lavery Flynn, Francisco Gomez, Karen Hagelund, Robert A. Hawley, Judy Johnson, Dean Kinley, Steve Mazer, Nancy McCarthy, Marie Moffat, Gayle Murphy, Cathy Torney, Peggy Van Horn, Colin Wong, and Larry Yee.

Also present: Mike McKee, *The Recorder*; Anthony Williams, the Bar's outside legislative consultant; Ronald G. Overholt, AOC; Amy Yarbrough, *Daily Journal*.

The following representatives from local bar associations also attended: Claudette Kunzman, Board member, and Trudy Levindofsky, Executive Director, Orange County Bar Association; Robynn Gaspar, Executive Director, Marin County Bar Association; Stuart Forsyth, Immediate Past President, ECLA; Dan Burkhardt, Executive Director, Joshua Ridless, member, LRIS Committee, David Hopman, BASF Director, and David Odgers, BASF; Chris Burdick, Executive Director, and Tom Kuhnle, Immediate Past President, Santa Clara County Bar Association; Julia Wilson, Director, LAAC; Linda Kim, Director, Public Clearing House; and John Hodson, State Bar Family Law Section Incoming Chair / representative, Council of State Bar Sections.

The roll-call vote was taken, and upon motion made, seconded and unanimously adopted, it was

RESOLVED that the roll-call vote will be substituted for the vote unless otherwise noted.

1-1 President Fujie presented a Certificate of Recognition to John Mola, Director, Practising Law Institute (PLI), recognizing PLI's outstanding contributions and commitment to providing training to State Bar members in matters relating to low and moderate income Californians, and how Californians have benefited, and continue to benefit, from the tireless dedication by PLI and its staff in assisting and outreaching to as many people as possible in the State of California, especially regarding foreclosures.

113 Ms. Fujie introduced Dan Passamaneck, SEIU representative/staff member, who addressed the Board regarding labor negotiations.

701 Representatives from identified local bar associations addressed the Board regarding concerns expressed by local bar associations on the matter of Find A Lawyer (FAL): Claudette Kunzman, Orange County Bar Association, David Hopman, BASF Director, Julia Wilson, LAAC Director, John Hodson, incoming chair, Family Law Section, and Council of State Bar Sections representative, and also addressed the Board. Mr. Hodson distributed a letter he had received from "Your Local Bar Association" to the Board.

Mr. Kramer, Jr., member, the Board's FAL Task Force, made a Power Point presentation to the Board.

Following extensive discussion on the matter, the Board took action as recorded below.

701 Upon motion made, seconded and adopted, it was

RESOLVED, that the Board hereby approves the implementation of an enhanced attorney member profile design which includes the following information on member profile displays on the State Bar's Web site:

1. Official regulatory information that is already displayed on the member profile—name, bar #, address, telephone numbers, email address, undergraduate and law schools, Certified Legal Specialization(s), Section membership(s);
2. Self-designated areas of practice;
3. Languages spoken;
4. A link to the attorney's website, if any, with an interrupt page indicating that the user is leaving the State Bar's website;
5. Attorney photograph;
6. Attorney's address displayed on a map; and it is.

FURTHER RESOLVED, that users who do not wish to search by name or bar number be directed to a screen which offers a choice of searching for Legal Referral Services by county, linking to Law-HelpCalifornia.org to find a legal aid provider, conducting a search by name or bar number, or linking to an advanced search screen to search the member records; and it is

FURTHER RESOLVED, that the advanced search referred to above shall allow searching of the member records by the elements currently available (name, firm name, city, state, county, bar district, Certified Legal Specialization), and the following new element:

Language spoken

Voting yes: Mr. Aguirre, Mrs. Chairez, Ms. Davis, Ms. Dumanis, Mr. Dutton, Mr. Frankel, Mr. Heinke, Mr. Marcus, Mr. Miller, Mr. Streeter, and Ms. White.

Voting no: Mr. Davis, Ms. English, Mr. Hebert, Mr. Hussey, Mr. Kramer, Ms. Liberty, Mr. Peterson, and Mr. Rubin.

10 Upon motion made, seconded and unanimously adopted, it was

RESOLVED that the minutes of the meeting of the Board of Governors held on Friday, March 6, 2009, in San Francisco, California, hereby are approved as written.

30 Ms. Fujie, President, reported on the following:

1. President Fujie reported to the Board that she had signed a letter, which was submitted to the Obama Administration and the House and Senate Appropriations Committees, with copies sent to each Member of Congress, supporting Legal Services Corporation funding.
2. Ms. Fujie, in a major outreach to the membership, visited all nine State Bar districts since the March 2009 Board meeting.
3. She attended the Western States Conference in Oahu, HI, the last week of March, and spoke to the Hawaiian Women's Bar Association.
4. Ms. Fujie attended a press conference with Los Angeles Mayor Antonio Villaraigosa where they addressed the issues of lawyer misconduct and foreclosure abuse.
5. President Fujie reported on the recent development with law firm deferred associate programs and indicated she had followed up with the legal services community to determine how legal services programs could benefit from placements of deferred associates. She convened a working group including Julia Wilson and Linda Kim (Public Interest Clearinghouse - **PIC**), Ken Babcock (Public Law Center), Mitch Kamen (Bet Tzedek), Diane Chin (Equal Justice Works) and Pat Lee (State Bar).

The group surveyed legal services and other nonprofit providers to determine if they would be able to "host" deferred associates, including what additional support might be needed. (e.g. benefits, equipment and IT assistance, space, administrative support). The survey generated over 200 possible placements, with a summary of responses listed on the PIC website. The group also contacted law firms to advise them that their deferred associates could access the program listings for potential placements. The Legal Aid Association of California (LAAC) is developing a series of webinars for both deferred associates and new public interest attorneys working at legal services programs. Finally, the working group is creating a list of "tips" for programs to maximize the use of short term placements.

6. Ms. Fujie complimented staff for an excellent Ethics Symposium, which was held in San Diego at the beginning of the month.

41/42 Ms. Johnson, Executive Director/Secretary, reported on the following:

1. Ms. Johnson announced that Howard B. Miller, Vice-President / Treasurer, was the only third-year candidate who stated his intention to run for the 2009-10 Presidency of the State Bar; the other members of the third-year class declared that they were not running for the presidency. Because Mr. Miller is the only candidate, Ms. Johnson asked the Board to ratify Mr. Miller's appointment as President-Elect until he takes up his tenure as the 2009-10 President of The State Bar of California at the bar's Annual Meeting in September 2009, and to cancel the Special Meeting for the Election of the 2009-10 President of the State Bar scheduled for Friday, July 23, 2009, in Los Angeles, immediately prior to the Board's regular meeting..

Upon motion made, seconded unanimously adopted, it was

RESOLVED, that Vice-President/Treasurer Howard B. Miller is deemed elected by acclamation as the President-elect of The State Bar of California. President-elect Miller will assume his presidency as the 2009-10 President of the State Bar at the Bar's Annual Meeting in September 2009 in San Diego.

All members present and recorded on the roll-call slip voted yes on the above matter.

50 The consent agenda was presented to the Board, and no objection being raised thereto, the following item on the consent agenda was deemed unanimously adopted.

54-121 **RESOLVED**, following publication for public comment and consideration of comments received, and upon the recommendation of the Board Regulation, Discipline and Oversight Committee, that the Board of Governors approves the proposed amendments to the Rules of Procedure for Fee Arbitrations and the Enforcement of Awards by the State Bar of California in the form attached to these minutes and made a part hereof.

54-122 **RESOLVED**, that, upon recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, the Board of Governors hereby approves the proposed revision to the filing fee schedule set forth in rule 8.4, the Rules of Procedure for Fee Arbitrations of the Sonoma County Bar Association, in the form attached to these minutes and made a part hereof, as being in compliance with Business and Professions Code sections 6200-6206 and the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitrations.

54-131 **RESOLVED**, upon recommendation of the Board Committee on Member Oversight, that the Board of Governors hereby approves the fee adjustments for the following State Bar members as noted below:

J GoAnne Vannix: Contingent on payment of \$730 (inactive fees) within 60 days of notice to member, waiver of remaining balance for 2001-2009; total waiver of \$4030.

Michael Arthur Bernstein: Contingent on payment of \$6626 (half of his outstanding balance) within 60 days of notice to member, waiver of the other half; total waiver of \$6626.

54-132 **RESOLVED**, upon recommendation of the Board Committee on Member Oversight, that the Board receives the 22nd Annual Report of the California Board of Legal Specialization for the period January 1 through December 31, 2008, and that copies of the report be sent to the California Supreme Court as required by section 21.0 of the Rules Governing the State Bar of California Program for Certifying Legal Specialists to aid in the Court's continued review of the legal specialist program.

54-133 **RESOLVED**, upon recommendation of the Board Committee on Member Oversight, that the Board hereby ascertains and determines:

- (a) that each of the persons named in the list this day before the Board is a member of The State Bar of California;
- (b) that each such person has failed to fully pay fees, penalties, and/or costs as established pursuant to the provision of sections 6086.10, 6140, 6140.3, 6140.35, 6140.5 (c), 6140.55, 6140.6, 6140.7, 6140.9 and 6141 of the Business and Professions Code;
- (c) that there has been sent to each such person, two months' written notice of his or her delinquency which included notice of section 6143;
- (d) that as shown by the records of the State Bar, the address of each such person is as set forth herein;
- (e) and hereby recommends to the Supreme Court of the State of California that each such person be suspended from membership in the State Bar, and from the practice of law in the State of California, effective July 1, 2009, until such time as he or she may be reinstated, upon the payment of the delinquent fees, penalties, and/or costs and of such additional fees, penalties and/or costs as may have accrued at the time of such payment, in the form attached to these minutes, and made a part hereof, and it is

FURTHER RESOLVED, that for the purpose of withdrawing the foregoing recommendation for suspension in particular cases, the Secretary or her designee is authorized and directed to strike from the foregoing list the name of any member of the State Bar who by proper remittance (e.g., credit card accepted by the State Bar, cash, cashier's check, money order, bank certified check, or wire transfer) and prior to the effective date of the Supreme Court order of suspension based hereon, pays to the State Bar fees, penalties, and/or costs in the amount in which he or she is delinquent; and to notify the Clerk of the Supreme Court of the fact of such payment and of the consequent withdrawal of the Board's recommendation for suspension; and it is

FURTHER RESOLVED that for the purpose of modifying the recommendation to the Supreme Court for suspension for nonpayment of fees, penalties, and/or costs, the Secretary or her designee is authorized and directed to change the data as to status or the amounts of delinquency on said list and will forthwith notify the Clerk of the Supreme Court accordingly of the consequent modification of the Board's recommendation for suspension.

- 54-134 **RESOLVED:** pursuant to California Rule of Court 9.31 and the Rules of the State Bar, and upon recommendation of the Board Committee on Member Oversight, that the Board of Governors hereby authorizes that those members of MCLE Compliance Groups 1, 2 and 3 who do not bring themselves into compliance with their MCLE requirement by June 30, 2009, shall be enrolled as inactive members of the State Bar of California and placed on “Not Eligible to Practice” status, effective July 1, 2009; and it is,
- FURTHER RESOLVED:** that the Board of Governors hereby authorizes staff to remove members from administrative inactive status once the member has provided proof of compliance and paid all noncompliance fees.
- 54-165 **RESOLVED,** upon recommendation of the Board Committee on Stakeholder Relations, that the Board hereby approves the creation of an appointment by the Legal Aid Association of California to the California Commission on Access to Justice, effective immediately.
- 54-166 **WHEREAS** more than 6 million Californians live below 125% of the federal poverty level and there are fewer than 800 legal aid attorneys to serve them; and
- WHEREAS** the State Bar’s Pro Bono Resolution adopted in December 1989 and amended in June 2002 strongly encourages all State Bar members to contribute at least 50 hours of pro bono legal services a year and to make a financial contribution to non-profit legal services organizations, and
- WHEREAS** California attorneys donate thousands of hours of pro bono legal services and make annual financial contributions to the Justice Gap Fund and directly to legal services organizations, to help address the huge unmet need for legal assistance to California’s poor, especially in light of the current economic situation; and
- WHEREAS** the State Bar of California actively promotes pro bono participation in a variety of ways on an ongoing basis and gives special recognition annually for outstanding pro bono contributions made by its members; and
- WHEREAS** the American Bar Association has designated October 25 – 31, 2009 as the first National Pro Bono Week Celebration to recognize the valuable pro bono contributions made by lawyers throughout the year, and to increase pro bono participation across the country to narrow the justice gap;
- NOW, THEREFORE, BE IT RESOLVED** that the Board of Governors of the State Bar of California recognizes the week of October 25 - 31, 2009, as the first National Pro Bono Week Celebration, commends California attorneys for their ongoing pro bono contributions, and reminds all members that by engaging in pro bono work and providing financial support they can make a significant difference in the lives of California’s poor who would not otherwise have access to the legal system.
- 54-167 **RESOLVED,** upon recommendation of the Board Committee on Stakeholder Relations, that the Board hereby accepts the statistical report for the year 2008 submitted by the Commission on Judicial Nominees Evaluation and orders it filed.

- 55 **RESOLVED**, that the Board hereby receives and orders filed the Independent Auditors' Report for Years Ended December 31, 2008 and 2007, prepared by Macias Gini & O'Connell, in the form this day before the Board.

[The above is a report of action taken by the Board of Governors via fax/electronic poll April 24-28, 2009, by the Board between regularly scheduled Board meetings.]

- 111 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, following publication for comment and no comments having been received, and upon the recommendation of the Board Committee on Operations, that the Board of Governors of the State Bar of California hereby repeals the "Rules Governing Open Meetings, Closed Sessions and Records of Regulatory and Special Committees" and adopts Rules 6.60 – 6.63 in the form attached to these minutes and made a part hereof, effective May 15, 2009.

All members present and recorded on the roll-call slip voted yes on the above matter.

- 112 Upon motion made, seconded and adopted, it was

RESOLVED, upon recommendation of the Board Committee on Operations, that the Board hereby adopts the Executive Director Performance Evaluation Summary Report for 2008-09 as the annual evaluation of the Executive Director.

All members present and recorded on the roll-call slip voted yes on the above matter, except Mr. Marcus who abstained and requested the record so to show.

- 113 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Operations, that the Board hereby explicitly reconfirms the authority previously given to Robert Hawley, as discussed this day.

All members present and recorded on the roll-call slip voted yes on the above matter.

A subcommittee made up of Board members Jeannine English, Richard Frankel, Micha Liberty and Bonnie Dumanis has been established to work with the Executive Director for the next rating period.

- 123 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, the Board of Governors hereby adopts the proposed amendment to rule 2.37 of the Rules of the State Bar of California regarding voluntary resignations of members, in the form attached to these minutes and made a part hereof, effective immediately.

All members present and recorded on the roll-call slip voted yes on the above matter.

124 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, following public comment period and consideration of comments received, and upon recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, the Board of Governors of the State Bar hereby adopts the proposed amendments to rule 106 of the Rules of Procedure of the State Bar of California, in the form attached to these minutes and made a part hereof, to become effective on July 1, 2009.

All members present and recorded on the roll-call slip voted yes on the above matter.

125 The reappointment process of the Bar's Chief Trial Counsel continues to be ongoing and the RAD and the Board will consider this matter at a special meeting in early June, depending on the availability of members.

126 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, following publication for comment and consideration of comments received, and upon recommendation of the Board Regulation, Admissions and Discipline Oversight Committee, that the Board of Governors of the State Bar of California hereby adopts Rule 1-650, Rules of Professional Conduct of the State Bar of California [Limited Legal Services Programs], in the form attached to these minutes and made a part hereof, and hereby directs that said rule be transmitted by staff to the Supreme Court with the request that it be approved by the Court.

All members present and recorded on the roll-call slip voted yes on the above matter.

141 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon the recommendation of the Board Planning, Program Development and Budget Committee, the Board of Governors hereby approves the adjustments in Admissions Fees, in the form attached to these minutes and made a part hereof, the bar examination-related fees to be effective with administration of the February 2010, 2011 and 2012 examinations and the other Admissions Fees effective January 1, 2010, 2011 and 2012; and it is

FURTHER RESOLVED, upon recommendation of the Board Planning, Program Development and Budget Committee, the Board of Governors hereby approves the Schedule of Admissions Administrative Fees, in the form attached to these minutes and made a part hereof, to be effective immediately following this action of the Board.

All members present and recorded on the roll-call slip voted yes on the above matter.

150 Mr. Dutton, Chair, Board Committee on Volunteer Involvement, reported to the Board on the work of CYLA.

He also mentioned that the deadline for applications for appointment to the Commission Nominees Evaluation Commission is June 1, 2009, and only 11 applications had been received to fill 12 vacancies.

161 Mr. Williams, the Bar's outside legislative consultant, did not make a report to the Board at this meeting.

162 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Stakeholder Relations, that the Board of Governors hereby:

- Remains neutral on AB 48 (Portantino), which would re-establish the Bureau of Private Postsecondary Education, with amendments.
- Opposes AB 484 (Eng), which would authorize the suspension of professional and occupational licenses, including attorneys, for failure to pay state taxes, unless amended.
- Supports AB 590 (Feuer), which would create a cause of action for the misuse of the name "legal aid", and create a pilot project to provide for appointed counsel in certain civil proceedings.
- Supports AB 663 (Jones), which would create a cause of action for the misuse of the name "legal aid", and create pilot projects to provide for interpreters in certain civil proceedings.
- Opposes AB 984 (Nava), which would revise the authority of the Committee of Bar Examiners to accredit and regulate law schools.
- Supports SB 377 (Corbett), which creates 50 new trial court judgeships.

All members present and recorded on the roll-call slip voted yes on the above matter.

163 Consideration of Bills of Others: None were presented to the Board at this meeting.

164 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Stakeholder Relations, that the Board of Governors, hereby adopts the Statement in support of Limited Scope Legal Assistance (Unbundling) as follows (amendments underlined):

Whereas, limited scope legal assistance is defined as a relationship between an attorney and a person seeking legal services in which it is agreed that the scope of the legal services will be limited to the defined tasks that the person asks the attorney to perform;

Whereas the need for legal services for all Californians continues to increase and limited scope representation can help fill that need by providing legal assistance and specific representation at critical points in the legal process;

Whereas limited scope practice has been recognized by the State Bar Board of Governors as well as by the Judicial Council through the adoption of Rules of Court and Court Forms to facilitate providing legal services;

Whereas the Standing Committee on the Delivery of Legal Services has promoted the use of limited scope legal assistance as a way to address the unmet legal need of low and moderate income Californians; they have sponsored or co-sponsored multiple trainings on Limited Scope Representation at numerous conferences and local bar associations statewide to educate State Bar members on the ethical and competent practice of Limited Scope Legal Assistance;

Whereas various segments of the legal profession can play an important role in promoting and expanding limited scope practice and State Bar members can enhance their practices by providing services on a limited scope basis;

RESOLVED that the State Bar supports the expansion of limited scope legal assistance as part of the ongoing effort to increase access to legal services; that it is important to continue to identify ways in which attorneys can appropriately provide “unbundled” legal services to provide limited and specific services to litigants without undertaking full case representation;

RESOLVED FURTHER that limited scope legal assistance must be performed with a sound understanding of the ethical obligations, and that all education programs must clearly explain that limits on the scope of legal assistance do not limit the ethical obligations of the attorney to the client nor the obligations of counsel to other parties or to the court, the attorney’s exposure to liability for the work he or she agreed to perform is not limited, and that the attorney continues to have an obligation to warn a client about issues outside the scope of representation which the client should address, and for which the client should consider seeking counsel. Attorneys and clients must be thoughtful in their approach to establishing the scope of services, and an attorney should not undertake such an engagement without a careful analysis of the client’s capabilities, the complexity of the case, as well as the alternatives available.

THEREFORE the following steps should be pursued:

- **State Bar Section members**, particularly the Family Law, Solo and Small Firm Practice, Business Law, Real Property and Trusts & Estates Sections, should be encouraged to develop education for their membership and to expand the use of limited scope representation in their respective practice areas, and should emphasize the benefits to their members if they offer limited scope legal assistance;
- **Law schools** should be encouraged to expand their efforts to raise awareness of limited scope legal assistance, particularly through their legal clinics, so that their students can competently incorporate it into their private practices after graduation. Law schools can also help by developing a quality teaching curriculum including the concept of limited scope representation to supplement their clinical offerings;

- **State Bar Certified Lawyer Referral Services** should be encouraged to create and expand subject matter panels to include limited scope representation in a greater number of practice areas and to provide additional training for increased participation of panel attorneys;
- **Errors and Omissions insurance carriers** should be encouraged to offer training on limited scope representation;
- **The Judicial Council** should continue to be involved with the coordination of strategies for educating the legal profession and the judiciary as to the need for and implementation of increased limited scope representation; and
- **The State Bar** should continue to coordinate with experts in the field and with legal training providers to present training programs on limited scope representation on a statewide and local basis, with programs offered live and online to maximize training opportunities and the expanded limited scope practice.

The State Bar Board of Governors will continue to review the efforts to expand the use of limited scope representation on an annual basis to further support and promote these efforts.

All members present and recorded on the roll-call slip voted yes on the above matter.

702
Emergency

Upon motion made, seconded and unanimously adopted, it was

RESOLVED that the State Bar Board of Governors hereby supports the cost-saving measure as proposed by the Chief Justice and the AOC, which would have all courts close one day per month during fiscal year 2009-2010. It is essential to the members of the State Bar that the courts provide consistent practices and hours of operation throughout the state; and it is

FURTHER RESOLVED that the Board of Governors further recommends that court construction, pursuant to SB 1407, and development and deployment of CCMS continue to its completion.

All members present and recorded on the roll-call slip voted yes on the above matter.

The Board convened in closed session at 3:43 p.m. and all persons present, except the Senior Executive Staff, left the meeting.

The Board resumed open session at 3:48 p.m.

6010

The closed consent appointments agenda was presented to the Board, and no objection being raised thereto, the following items on the consent appointments agenda were deemed unanimously adopted.

6011 **RESOLVED**, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints Andrew O. Krastins, Long Beach, member, Board of Directors of Legal Aid Society of Orange County & Neighborhood Legal Services of Southeast Los Angeles County for a three-year term commencing July 1, 2009, and expiring June 30, 2012, or until further order of the Board, whichever occurs earlier.

6012 **RESOLVED**, upon recommendation of the Board Volunteer Involvement Committee, that the Board of Governors appoints the following candidates to the State Bar Fee Arbitration Department, each for a term commencing May 18, 2009 and expiring December 31, 2009, or until further order of the Board, whichever occurs earlier:

Name	County	Bar Number or Layperson
Fisher, George C.	Santa Clara	40794
Kim, Angie H.	Los Angeles	231069
Miller, Glenn Kelly	San Mateo	209253
Hoffmeier, Julayne	Sacramento	Layperson

6013 **RESOLVED**, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints or reappoints, as the case may be, officers and members to the Section Executive Committees as set forth on the forms attached to the minutes and made a part hereof; effective at the close of the 2009 State Bar Annual Meeting (September 13, 2009), or as indicated; each officer and member to serve a term expiring as indicated, or until further order of the Board, whichever occurs earlier.

6021 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints or reappoints, as the case may be, officers and members to the standing committees and special boards, commissions and committees as set forth on the forms attached to the minutes and made a part hereof, effective at the close of the 2009 State Bar Annual Meeting, i.e., September 13, 2009, or as indicated; each officer and member to serve a term expiring as indicated, or until further order of the Board of Governors, whichever occurs earlier.

6022 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon the recommendation of the Board Committee on Volunteer Involvement, that the Board hereby approves the selected program, Pacific McGeorge Diversity Pipeline Initiative, for the 2009 State Bar of California Education Pipeline Award.

All members present and recorded on the roll-call slip voted yes on the above matter.

6023 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon the recommendation of the Board Committee on Volunteer Involvement, that the Board hereby approves the selection of the recipients for the 2009 State Bar of California Diversity Awards as follows:

Individual Attorney
Law Firm
Bar Association

Ann Park
Southern California Edison Law Department
Asian American Bar Association of the Greater Bay Area

All members present and recorded on the roll-call slip voted yes on the above matter.

The Board adjourned its meeting at 3.50 p.m. The Board may meet again at the call of the President, or, if no such meeting is called, at the State Bar offices, 1149 South Hill Street, Los Angeles, CA 90015 at 12:00 noon on Friday, July 17, 2009.

AGENDA ITEM

MAY 701
Find A Lawyer
(Revised 5/11/09)

DATE: May 11, 2009

TO: Members of the Board of Governors

FROM: Paul Kramer, Member, Find a Lawyer Task Force

SUBJECT: "Find A Lawyer" - Proposed Adoption of Program Recommendations
(Revised)¹

EXECUTIVE SUMMARY

At its November, 2008 meeting, the Board of Governors referred the Find a Lawyer proposal back to its task force for further discussion and refinement. Those discussions occurred but agreement was not reached on all issues. The matter returns to the Board for decision.

Task force members did agree 1) that member profiles can display a photograph, the member's address shown on a map, a link to the member's web site, and languages spoken by the member, 2) to allow advanced searches of the member database by Certified Legal Specialty and languages spoken, and 3) if members are allowed to self-designate areas of practice, they may opt out of searches of that data.

Agreement was not reached about the following issues however the Board members of the task force recommend 1) allowing a search of the member database by name or bar number directly from the home page, 2) ~~allowing advanced searches of the member database by Section membership~~, and 3) allowing advanced searches of the member database by self-designated practice area. On the question of whether to force visitors to make a search for an lawyer referral service (LRS) before they may make an advanced search of the member database, some of the Board members favor a "2-pane" approach which does require that a LRS search before conducting an advance search. Other Board members favor a "3-pane" approach which adds a link to the advanced search to the page that presents the LRS search.

¹ Changes from the original agenda item, dated May 4, are shown in underline and ~~strikeout~~ format.

BACKGROUND

At its November, 2008, meeting, the Board of Governors considered a proposal to modify the attorney search functions on the Bar's web site. Elements of the proposal included allowing the addition of data to the member records database such as self-designated practice areas, languages spoken, member photos and the member's web site address and allowing searching of the records by section membership, certified legal specialty, languages and practice areas. Prior to the Board's November consideration, concerns expressed by representatives of local bars and lawyer referral services about the proposal as it was under development by staff led to the creation of a task force, chaired by Governor Frankel. That task force was unable to come to a consensus and thus the matter came to the Board without a recommendation. The Board, after hearing extensive comment and debate, appointed an expanded task force to attempt again to resolve the points of difference. Members of the expanded task force are:

Board members: Holly Fujie, Howard Miller, George Davis, Jim Aguirre, Micha Liberty, Paul Kramer, Jeannine English

Local bar members: Stuart Forsyth (Los Angeles County Bar), Tom Kuhnle (Santa Clara County Bar), Dan Burkhardt (Bar Association of San Francisco)

The task force met several times and, after a healthy exchange of views, was unable to reach a consensus recommendation on all of the elements of the proposal. As further discussion at the task force level will not resolve the remaining differences, we return the matter to the Board for decision.

The issues are summarized below. As there was no consensus recommendation from the task force, this memorandum is written from the perspective of the Board of Governor members on the task force and conveys our recommendations. While we, [in this memo, "we" means the Board members of the task force and opinions we express may not be shared by the local bar members] describe the positions of the local bar/LRS members as we understand them, we have encouraged them to report their thoughts in a separate memo.

We will first describe the points of agreement between the Board member and local bar/LRS contingents on the task force, followed by the remaining points of disagreement. During the Board meeting, we will show mock up pages to illustrate the features.² Selected pages are attached and referred to below as "slides."³

² Traditionally the Board has not micro-managed the design or features of the Bar's web site. Due to the controversy over this project, we are asked to decide fundamental design issues such as whether a feature should be provided. While the final design may not precisely follow the illustrative mock up pages, we expect that the spirit of our discussions and decisions will be honored.

POINTS OF AGREEMENT

The task force did reach a tentative agreement that Bar member profiles (Slide 19) can include these additional elements:

- a photograph,
- the member's address shown on a map,
- a link to the member's web site (with a cautionary intermediate note that the user is leaving the Bar's web site for parts unknown), and
- languages spoken by the member.
- Certified specialty and languages spoken would be searchable via the advanced search screen. (Slide 17) If searching by practice area is allowed, members should be able to supply the information but opt out of having it be searchable.

POINTS OF DISAGREEMENT

- Requiring a search for a LRS or legal aid provider before the member records data can be searched.
- Allowing member record searches by section membership, and
- Allowing searches by self-designated practice area and displaying practice areas on the member's profile screen.

The Bar's web site currently allows a visitor to navigate directly from the home page to a screen in which an attorney's name or bar number can be entered and a list of matching names obtained. Clicking on one of the matching names brings up a "profile" listing, showing the member's mailing address, telephone and facsimile numbers, email address, colleges attended, section membership and disciplinary information. The visitor can click a link from the name/number page to go to an advanced search screen allowing searching by first, middle and last name, city, county, zip code, and bar district. Links on the home and various search pages exist for LRS but it is only after clicking one of those links is any statement of the reasons why one might use a LRS found. Consumers are given no encouragement to consider using a LRS.

Local bars believe that consumers are best served in finding a lawyer by a Lawyer Referral Service, which interviews them to learn the nature of their legal problem and then refers them to a local attorney possessing the appropriate practice area experience

³ Slide numbers are found in the lower right corner of each page. They do not begin at number 1 because they are excerpted from the set of slides that I am preparing for projection at the meeting.

or to some other source if they do not need a lawyer's assistance in order to address their problem. They are concerned that adding search features such as Section membership and practice areas to the State Bar's database would allow potential clients to bypass the LRS. Revenue from the LRS program is used to fund the LRS program and other local bar programs, including legal aid programs. Approximately 5,100 attorneys belong to a LRS panel (this compares to 164,365 active State Bar members as of April 29).

Board members of the task force agree that making consumers more aware of the benefits of consulting an LRS is appropriate, but that an appropriate balance between that goal and providing convenient search mechanisms for our members and the public who do not wish to use an LRS must be struck.

REQUIRING A SEARCH FOR A LRS OR LEGAL AID PROVIDER BEFORE THE MEMBER RECORDS DATA CAN BE SEARCHED.

To achieve their goal of maximizing consumer use of LRS, local bars propose that all attorney searches be directed to a screen which describes the reasons that the benefits of using a LRS. Only after viewing a screen of search results, would a search of the member records be allowed.

Board members of the task force believe that at least the simple search by name or bar number must be possible without first searching for an LRS. This is one of the most popular functions on the web site, used by attorneys, judges and the public to quickly look up an attorney, whether to get a phone number or check his status. Burying this simple function behind a LRS search would inconvenience members and the public and likely result in a significant volume of complaints.

To address this, we propose that the simple name/number search remain, as it is now, a direct link from the home page. (Slide 13) Searchers lacking a name or bar number would be directed to a "consumer" search page. Pop up text balloons will help visitors sort between the two search choices on the home page. (Slide 12) The consumer search page would offer a choice between searching for a LRS by County or navigating to LawHelpCalifornia.org to find a legal aid service.⁴ (Slide 14) We call this the "2-pane" approach. After making an LRS search, the option of navigating to the advanced search screen is offered (on the bottom of the search results page). (Slide 15) This approach assures that the public is exposed to and exercises either the LRS or legal aid search options before they can attempt to make their own search of the database.

⁴ Formerly, the proposed search system included a search for legal aid providers by county, similar to that proposed for LRS. The Public Interest Clearinghouse and Legal Aid Association of California requested that we direct legal aid searches to their LawHelpCalifornia.org web site. Their letters are included in the agenda materials. We already link to that page, though not as the only source of legal aid referrals. Staff has no objection.

The 2-pane approach still forces a LRS search before an advanced search of the database can be made, inconveniencing bar members, judges and members of the public who do not want to use an LRS or do not qualify for legal aid. Some of the Board members prefer to add a third pane holding both the name/number search and a link to the advanced search. (Slide 16) This “3-pane” approach continues to promote LRS and legal aid (they occupy the top portion of the page) but offers the advanced search (Slide 17) in a more convenient way. Those of us who favor the 3-pane approach feel it strikes a better balance between promotion of LRS and legal aid services to the public and convenience for our members and the courts.

ALLOWING MEMBER RECORD SEARCHES BY SECTION MEMBERSHIP.

Local bars assert that Section membership in and of itself offers no indication of an attorney’s competence to handle a legal matter. The Board members find some value in that data, however, as joining a Section does indicate a member’s interest in the practice area and will expose the member to educational materials such as Section journals. Staff also informs us that Section members are statistically less likely to be subject to discipline. We already display section membership on the profile pages; allowing searches by section would be an additional benefit of Section membership.

Following submission of our original recommendations, the officers of the Council of State Bar Sections submitted comments on the proposals. Among those comments is a request that the member database not be made searchable by Section membership; display of Section memberships on the member’s profile pages should continue, however. They are concerned that unauthorized entities might use the search function to contact Section members for commercial or other purposes. We honor the Sections’ request by withdrawing our recommendation that the member database be searchable by Section membership.

ALLOWING SEARCHES BY SELF-DESIGNATED PRACTICE AREA AND DISPLAYING PRACTICE AREAS ON THE MEMBER’S PROFILE SCREEN.

Similarly, local bars are concerned that allowing members to self-designate practice areas without the vetting that LRS apply to their panel members, offers no assurance to the public of the lawyer’s competence.

Board members believe allowing self-designation of practice areas is an important member benefit that should be offered. The proposed member profile display places this information, along with languages spoken and the member’s web site address, under a warning that “the information below was provided by the bar member and has not been verified by the State Bar.” If desired, links to information about how to choose an attorney could be included on the display, the search screen, or both.

ADDITIONAL MATERIALS.

We've avoided repeating much of the information that was provided for our November meeting; it is available in the agenda packet. In addition, we expect the local bar members of the task force will provide their own memo, as will has the Council of State Bar Sections.

RULE AMENDMENTS: "None"

BOARD BOOK/ ADMINISTRATIVE MANUAL IMPACT: "None"

RECOMMENDATION

The Board members on the task force recommend that the Board of Governors approve in concept the enhanced attorney search features as described above, that is:

1. Add a photograph, the member's address shown on a map, a link to the member's web site, and languages spoken by the member to the member profile information;
2. Allow advanced searches of the member database by Certified Legal Specialty and languages spoken in addition to the existing criteria;
3. Allow a search of the member database by name or bar number directly from the home page;
4. Adopt either the 2-pane or 3-pane approach for searches where the visitor does not know the name or bar number;
5. ~~Allow searches of the member database by Section membership; and~~
6. Allow members to designate their areas of practice, allow searches of the member database by practice area, and allow members to opt-out of searches of their practice area data.

RESOLUTION:

If the members of the Board of Governors concur with the recommendations, it is appropriate for the Board to adopt the following resolutions. The four separate resolutions set forth below, if considered and voted upon individually, will help organize the Board's deliberations. As a matter of process for decision making, these four resolutions can be divided into two parts. Resolutions A and B deal only with changing the current member profile and permitting the same search of that profile only by known name and known number as can be done now. We recommend these two resolutions

be dealt with first. The added search functions that have been so much a focus of the discussions can then be dealt with separately in Resolutions C and D.:

Should the Board agree with the above recommendation, the following resolutions would be appropriate:

A. RESOLVED, that the Board approves the implementation of an enhanced attorney member profile design which includes the following information on member profile displays on the State Bar's website:

1. Official regulatory information that is already displayed on the member profile—
Name, Bar #, Address, Telephone numbers, email address, undergraduate and law schools, Certified Legal Specialization(s), Section membership(s)
2. Self-designated areas of practice
3. Languages spoken
4. A link to the attorney's website, if any, with an interrupt page indicating that the user is leaving the State Bar's website
5. Attorney photograph
6. Attorney's address displayed on a map.

B. RESOLVED, that the user may directly conduct a search by name or bar number, but not using any other criteria, from a link on the home page and other pages.

C. [2-pane alternative] RESOLVED, that users who do not wish to search by name or bar number be directed to a screen which offers a choice of searching for Legal Referral Services by county or linking to LawHelpCalifornia.org to find a legal aid provider. The search results screen will display an optional link to an advanced search screen to search the member records.

-or-

C. [3-pane alternative] RESOLVED, that users who do not wish to search by name or bar number be directed to a screen which offers a choice of searching for Legal Referral Services by county, linking to LawHelpCalifornia.org to find a legal aid provider, conducting a search by name or bar number or linking to an advanced search screen to search the member records.

D. RESOLVED, that the advanced search referred to above shall allow searching of the member records by the elements currently available (Name, firm name, city, state, county, bar district, Certified Legal Specialization) and the following new elements:

1. ~~Section membership~~
2. Self-designated areas of practice
3. Languages spoken

Members may elect that their areas of practice, though displayed on their member profile, not be searchable using the advanced search.