



The State Bar *of California*

OPEN SESSION

AGENDA ITEM

54-111 MAY 2020

BOARD EXECUTIVE COMMITTEE III.A

DATE: May 12, 2020

TO: Members, Board Executive Committee
Members, Board of Trustees

FROM: Sarah L. Cohen, Attorney, Mission Advancement & Accountability Division

SUBJECT: American Bar Association (ABA) House of Delegates, Annual Appointment of Members

EXECUTIVE SUMMARY

For the past two years, the State Bar has endeavored to transfer all but one of its American Bar Association (ABA) House of Delegates (HOD) appointments to the California Lawyers Association (CLA), recognizing that participation on the ABA HOD more closely aligns with the CLA's associational role. Of the 11 seats originally allocated to the State Bar, the State Bar currently retains four. Of these four seats, the State Bar and CLA agreed that the State Bar will keep one indefinitely. The State Bar and CLA understood from the ABA that the other three seats would be held by the State Bar until CLA is eligible under ABA rules to fill those seats. Recent correspondence from the ABA, however, created some uncertainty as to whether the State Bar will have one, two or three open ABA HOD seats to fill when terms expire at the conclusion of the August 4, 2020, ABA Annual Meeting. It appears likely that the State Bar will have three open HOD seats to fill, but it will not have confirmation from the ABA of the number of seats it will have prior to the Board Executive Committee meeting on May 12, 2020, or the full Board of Trustees meeting on May 14, 2020. Accordingly, the recommended resolutions presented in this agenda item allow for the filling of one, two or three vacancies, depending on ABA's final determination. If the State Bar has one vacancy to fill, it recommends the appointment of Toby Rothschild; if two, the appointment of Toby Rothschild and Sal Torres; and if three, the appointment of Toby Rothschild, Sal Torres, and Interim Executive Director Donna Hershkowitz.

BACKGROUND

The control and administration of the ABA is vested in the House of Delegates (HOD). Established in 1936, the HOD meets twice each year, at the ABA Annual and Midyear Meetings. Action taken by the HOD on specific issues becomes official ABA policy. The State Bar delegates are part of the California delegation, which is led by the elected State Delegate, Laura Farber. The California delegation also includes delegates appointed by local bar associations, ABA sections and divisions, and officers and members of the ABA Board of Governors.

Historically, the Board of Trustees appointed 11 members to the ABA HOD based on the recommendations of State Delegate Laura Farber. The separation of the Sections from the State Bar on January 1, 2018, began the process of tightening the focus of the Bar on its core mission. The 2017 Governance in the Public Interest Task Force Report led to the “Appendix I” review, a study of the Board’s volunteer appointments with the objective of aligning the work of the State Bar subentities with the strategic goals of the State Bar. The Board’s appointment of ABA HOD delegates was not a part of the Appendix I review, but raised similar questions: (1) is the work of the delegates aligned with the strategic goals and objectives of the State Bar; and (2) is the structure of the ABA HOD delegation and the process of appointments effective for achieving those goals and objectives?

In 2018, the State Bar began discussions with the CLA regarding the reallocation of its seats. CLA expressed great interest, but ABA rules and deadlines prevented the State Bar from relinquishing its seats to the CLA at that time. At its June 2018 meeting, the Board took a first step toward realignment by appointing then Chief of Programs Donna Hershkowitz to fill one of the upcoming vacancies. With the appointment of Ms. Hershkowitz, a State Bar leader could begin working with the California delegation and the ABA HOD on issues of common interest and involve the State Bar in a national conversation about issues central to the State Bar’s mission. The Board filled the other five vacancies based on joint recommendations developed by Ms. Farber in consultation with the CLA.

At the ABA Midyear meeting in January 2019, the ABA House Committee on Credentials and Admissions granted CLA’s petition for admission into the HOD and with the support of the State Bar, transferred five of the State Bar’s 11 delegates to the CLA. At its September 2019 meeting, the Board directed staff to work with the ABA, the CLA and other stakeholders to effectuate the transfer of five of the remaining six State Bar delegate seat to the CLA.

At the ABA Midyear meeting in February 2020, a resolution was passed transferring to CLA two of the five seats the Board planned to transfer to CLA. With this transfer, the CLA became the primary bar entity and the State Bar became the secondary bar entity within the California delegation. As of the Midyear meeting, the State was left with four delegate seats, three expiring in 2020 and one in 2021.

CLA was not yet large enough at the time of the Midyear meeting to permit it, under ABA rules, to take the three additional seats the State Bar planned to transfer to it. The State Bar and CLA

understood that the State Bar would retain the three additional seats the State Bar intended to transfer to CLA until such time as CLA is large enough to hold those delegate seats.

Recent correspondence from the ABA, however, created uncertainty as to how many seats CLA will have after the Annual Meeting on August 4, 2020 and whether the State Bar will be expected to fill seats that CLA is not yet large enough to fill, as it previously understood it would. CLA and State Delegate Farber are working with the ABA to resolve this uncertainty. It is CLA's and State Delegate Farber's intent to maximize the number of CLA delegates, and to have the State Bar to appoint delegates to any seats CLA is not yet large enough to be eligible for, so that the combined CLA/State Bar delegation does not fall below the current 11 (consistent with the agreement reached between CLA and the State Bar that led to the petition at the 2020 HOD Midyear meeting).

On May 6, 2020, State Delegate Farber and CLA President Emilio Varanini informed the State Bar that representatives of the ABA's Committee on Credentials and Admissions informed them via telephone that the State Bar will have three vacant positions (plus the seat that Esther Lin will hold through the 2021 Annual Meeting) to fill effective at the conclusion of the 2020 Annual Meeting, as previously understood. The State Bar was not able to get formal confirmation of this prior to the May 2020 Executive Committee and Board of Trustees meetings, however.

DISCUSSION

At the conclusion of the August 4, 2020, Annual Meeting, the terms of Anthony Barash, Sandra McCandless, Michelle Philo, Roger Royse, and Interim State Bar Executive Director Donna Hershkowitz will expire. The term of Esther Lin, Vice-Chair of the Committee of Bar Examiners, will expire at the conclusion of the August 20, 2021, Annual Meeting. See Attachment A.

Depending on the final resolution of the issues raised by the ABA's recent correspondence, there will be one, two, or three State Bar delegate seats to fill at the May 14, 2020, Board meeting. While it appears very likely that there will be three State Bar delegate seats to fill, because the State Bar has not received formal confirmation of this by the ABA, it is recommended that the Board fill those seats in the following manner:

One Vacant Delegate Seat Scenario

Appoint Toby Rothschild

Toby Rothschild has been an active member of the State Bar and of the ABA for over 50 years, and has participated in committees of both, as well as the local and county bars. Mr. Rothschild's State Bar service includes leadership positions on the Committee on Human Rights (Vice-Chair, 1977–78), the Committee on the Administration of Justice (Chair, 1985–86), the California Access to Justice Commission (Vice-Chair, 2005), and the Access Through Innovation in Legal Services (ATILS) Task Force (Co-Vice-Chair, 2019–2020); and membership on the Committee on Professional Responsibility and Conduct (COPRAC) (2010–2013), the Commission

on Judicial Nominees Evaluation (JNE) (2014–2017), and the Second Rule Revision Commission (2014–2017).

As a long-time legal services attorney and advocate for access to justice, Mr. Rothschild brings to any setting a unique and critically important perspective. Between his access to justice background and his background in professional ethics and lawyer regulation, he has long experience and deep expertise in operational areas core to the State Bar’s mission.

Two Vacant Delegate Seats Scenario

Appoint Toby Rothschild and Sal Torres

Sal Torres is the Senior Director of the Americas Commercial Transactions team in the Legal Department at Equinix, a leading colocation and interconnection platform business. At Equinix, Mr. Torres is on the planning committee for the company’s Inclusion & Diversity Program and founded Equinix Gente Connection, the company’s Latino-focused employee resource group. Mr. Torres also was elected five times to the City Council of Daly City, and also served as the city’s Mayor and Vice-Mayor. In 2019, Mr. Torres was appointed to the State Bar’s Council on Access and Fairness Committee (COAF) and is committed to working to effectuate the State Bar’s diversity and inclusion objectives. Mr. Torres is also the President-elect of the Board of Governors for the University of San Francisco School of Law and founder of the Cesar & Graciela Torres Memorial Scholarship, the first-ever endowed law school scholarship program specifically designed to assist Latino students who demonstrate financial need and academic promise.

With Mr. Torres’s proven commitment to diversity and inclusion, he would bring a vital perspective to his service on the ABA HOD as a State Bar delegate.

Three Vacant Delegate Seats Scenario

Appoint Toby Rothschild, Sal Torres, and Interim Executive Director Donna Hershkowitz.

FISCAL/PERSONNEL IMPACT

The State Bar will incur between \$3,500 and \$4,200 annually per delegate in travel reimbursement expenses. Costs are allocated to both General Fund and restricted funds based on the extent the delegate work touches on distinct areas of State Bar operations.

AMENDMENTS TO RULES OF THE STATE BAR

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

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

Objective: a. Determine whether additional State Bar functional areas will transition to the Sections entity, other organizations, or to new standalone entities and develop an action plan for those transitions.

RECOMMENDATIONS

Should the Board Executive Committee concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board Executive Committee recommends that the Board of Trustees appoint or reappoint, as the case may be, the following State Bar delegates to the American Bar Association (ABA) House of Delegates, contingent upon appointees being in good standing with the ABA; each term is for two years and is effective at the conclusion of the 2020 ABA Annual Meeting and expires at the conclusion of the 2022 ABA Annual Meeting, or until further order of the Board, whichever occurs earlier:

- If one vacancy, Toby Rothschild;
- If two vacancies, Toby Rothschild and Sal Torres; and
- If three vacancies, Toby Rothschild, Sal Torres, and Donna Hershkowitz.

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee, appoints or reappoints, as the case may be, the following State Bar delegates to the American Bar Association (ABA) House of Delegates, contingent upon appointees being in good standing with the ABA; each term is for two years and is effective at the conclusion of the 2020 ABA Annual Meeting and expires at the conclusion of the 2022 ABA Annual Meeting, or until further order of the Board, whichever occurs earlier:

- If one vacancy, Toby Rothschild;
- If two vacancies, Toby Rothschild and Sal Torres; and
- If three vacancies, Toby Rothschild, Sal Torres, and Donna Hershkowitz.

ATTACHMENT(S) LIST

- A.** American Bar Association (ABA) House of Delegates, Annual Appointment of Members Delegation Roster



The State Bar of California

ATTACHMENT A

State Bar of California Delegation Roster American Bar Association (ABA) House of Delegates 2020

Term Expiration: Annual Meeting August 4, 2020

Anthony H. Barash

Donna Hershkowitz (Staff)

Sandra McCandless

Michelle A. Philo (Young Lawyer)

Roger Royse

ALTERNATE

Elizabeth Meyers

Term Expiration: Annual Meeting August 20, 2021

Esther P. Lin

CALIFORNIA STATE DELEGATE

Laura Farber