



# The State Bar of California

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## AGENDA ITEM

### **MAY 10 – Open Session Minutes Approval – March 12, 2020, Meeting**

Regular Meeting of the Board of Trustees

The State Bar of California  
Teleconference with meeting locations at the  
Los Angeles and San Francisco State Bar offices

Thursday, March 12, 2020  
10:30 a.m.

**Time meeting commenced:** 10:35 a.m.

**Time meeting adjourned:** 5:20 p.m.

**Chair:** Alan Steinbrecher

**Secretary:** Sarah Cohen

**Members Present at Roll Call:** Mark Broughton, Hailyn Chen, José Cisneros, Juan De La Cruz, Sonia Delen, Ruben Duran, Chris Iglesias, Renée LaBran, Debbie Manning, Sean SeLegue, Brandon Stallings

**Members Joined in Progress:** n/a

**Members Absent:** Joshua Perttula

## **Open Session**

### **Public Comment:**

**Stephen Ferruolo:** Mr. Ferruolo, Dean of the University of San Diego School of Law, commented on an issue relating to the July 2020 California Bar Examination (CBX). Dean Ferruolo expressed concern about the lack of a San Diego testing site for nonaccommodated examinees [test takers who receive disability-related reasonable accommodation]. Dean Ferruolo stated that none of the law schools located in San Diego County were given advance notice that there would not be a San Diego testing site, so they were unable to help students plan for the additional expenses associated with traveling to a remote location to take the exam, i.e.,

accommodations. Dean Ferruolo expressed concern that the lack of advance notice will disproportionately impact socio-economically disadvantaged students, especially underrepresented minority students. Also, according to Dean Ferruolo, his staff offered to assist the Office of Admissions in locating alternative testing sites in San Diego County and believed they had found potentially viable locations, but none of the options were considered suitable. Dean Ferruolo stated that several hundred examinees will endure the added stress and cost of having to travel to a test site during what is already a stressful time. Dean Ferruolo asked the Board to investigate this matter further and hold a special meeting to direct State Bar staff to work with the law school to secure a test site in San Diego for the July CBX.

**Raquel Hines:** Ms. Hines, District Labor Council President with SEUI Local 1000 (the union that represents State Bar employees) and Program Analyst in the Office of Attorney Regulation & Consumer Resources, addressing Closed Session Item #7001 (status of collective bargaining) , expressed concern about the rising cost of living in Los Angeles and the Bay Area, two of the most expensive places to live in the country. Ms. Hines commented that it can be difficult to attract talent when other agencies are receiving regular cost of living adjustments. Ms. Hines recalled that the union supported the fee increase not only to support the stability of the State Bar's technology and infrastructure, but also to support employees who have chosen a career in public service.

**Catherine Blackmore:** Ms. Blackmore, Vice-Chair of the California Commission on Access to Justice, addressing Open Session agenda item #701, commended the Board for undertaking the Justice Gap survey in California and spoke in favor of adding the proposed new access objectives relating to strategies to address the knowledge gap and the recruitment and retention of legal aid lawyers. Ms. Blackmore expressed concern about the economic turn down driving down interest rates for the Interest on Lawyers' Trust Accounts program and the impact that will have on legal aid funding.

**Salena Copeland:** Ms. Copeland, Executive Director of the Legal Aid Association of California, addressing Open Session agenda item #701, expressed support for the recommendations relating to the strategic plan access objectives, including the recommendation to use some of the Justice Gap funds to help increase the pipeline for legal aid attorneys in California given the recruitment/retention crisis caused by rising housing costs and law school debt and the insecurity of the federal loan forgiveness program. Ms. Copeland encouraged the State Bar to consider taking positions on legislative bills related to access to justice, including AB 2272 (increased access to attorneys in housing eviction matters) and SB 1267 (loan repayment assistance).

**Natalie Knowlton:** Ms. Knowlton, Director of Special Projects at the Institute for the Advancement of the American Legal System at the University of Denver, addressing Open Session agenda item #702, applauded the ATILS Task Force for recognizing that the access to justice problem extends beyond the extremely low income populations. Ms. Knowlton spoke in favor of the regulatory sandbox proposal.

**John Lund:** Mr. Lund, speaking on behalf of the Utah Regulatory Reform Task Force in addressing Open Session agenda item #702, highlighted the similarity in the public protection mission of the Utah Bar and the State Bar of California. Mr. Lund expressed support for the recommendation to form a group to explore using a regulatory sandbox, the key driver in Utah for finding innovative ways to solve the access to justice gap.

**Jessica Cole:** Ms. Cole, representing the Aspen Institute's Tech Policy Hub, addressing Open Session agenda item #702, expressed support for the recommendations of the ATILS Task Force, specifically the regulatory sandbox. Ms. Cole believes that by acting early, the State Bar can guide the field. Ms. Cole offered to make her team available to assist and support the State Bar if the recommendations are approved.

**Jayne Reardon:** Ms. Reardon, Executive Director of the Illinois Supreme Court Commission on Professionalism, addressing Open Session agenda item #702, commended the Board for the work it has done, spoke in support of the recommendations of the ATILS Task Force, including revision to rule 5.4, and urged the Board to authorize the formation of the regulatory sandbox. Ms. Reardon also commented on market inefficiencies, the other half of the equation. Ms. Reardon explained that there are not enough legal services going to the public and at the same time attorneys are struggling to maintain a sustainable practice. Ms. Reardon believes there should be ways to free attorneys from nonlawyer tasks so that they can focus on delivering legal services to the public.

**Art Lachman:** Mr. Lachman, Co-Chair of the Association of Professional Responsibility Lawyers Committee, addressing Open Session agenda item #702, believes the ATILS recommendations are an important next step in increasing access to legal services. The Committee believes that the ATILS recommendations are modest and thoughtful and contemplates careful study of important and challenging issues. Mr. Lachman, in voicing support for the regulatory sandbox, emphasized that the ATILS recommendations do not serve to deregulate alternative legal service providers but rather to regulate in a way that assesses the real risks to consumers, ensures that they will be sufficiently protected, and generates data for measuring outcomes in improving access at all income levels to legal services. Mr. Lachman stated that the American Bar Association and the Conference of Chief Justices recently adopted similar resolutions to support regulatory innovations that have the potential to improve accessibility, affordability, and quality of civil legal services while also ensuring necessary and appropriate protections.

**Jason Solomon:** Mr. Solomon, Executive Director of the Stanford Center on the Legal Profession, addressing Open Session agenda item #702, expressed strong support for the final recommendations of the ATILS Task Force. Mr. Solomon's concern is that the recommendations do not go far enough or quickly enough, urging the Board to consider who the recommendations are about and what the balance of risks are. Regarding who it is about, Mr. Solomon talked about a lawyer and a consumer; the lawyer is a family law lawyer who built an innovative model for delivering legal services, but it was much harder than it needed to be given current regulations; the client is one of the lawyer's satisfied customers who was unable to file for divorce on her own but through the lawyer's online service could successfully get her divorce processed expeditiously at an affordable cost. Mr. Solomon explained that clients like

this are not wealthy people, but they do not qualify for legal aid either, and are the ones who will benefit from this access to justice initiative. Regarding the balance of risks, Mr. Solomon asserted that the risk of consumer harm is low and the profit motive already exists; according to Mr. Solomon, there is no conflict between serving people of modest means and making a profit.

**Gretchen Nelson:** Ms. Nelson, an attorney and former member of the State Bar Board of Trustees, addressing Open Session agenda item #702, stated that the work of the ATILS Task Force is laudatory, as there is no dispute that there are problems with people having access to lawyers. Ms. Nelson asserted that there are many drivers (e.g., court/service costs) not just monopolies, as plaintiffs' lawyers have been accused of being, or lawyers protecting their own interests, a characterization Ms. Nelson finds offensive in many respects. The issue of concern to Ms. Nelson is nonlawyer ownership in law firms, an issue of grave concern to all lawyers in California who practice on different levels, especially on the plaintiffs' side. According to Ms. Nelson, an entrepreneur or venture capital company that invests in a law firm is not doing it for charitable purposes, but to make a profit. Ms. Nelson believes the Board needs to be concerned about the risk that there will be a great divide between the lawyer and the client, positing the example of a law firm with a case against a driver and an insurance company owned by a venture capital company that has invested in the law firm. Ms. Nelson believes there are ways to open up levels of capital to increase access to justice, but not through the medium of nonlawyer ownership in law firms. Ms. Nelson expressed concern that nonlawyer ownership in law firms will drive lawyers out of business and ultimately decrease access. Ms. Nelson concluded by stating that although the sandbox is an interesting concept, it would be better to watch what happens in Utah before jumping in.

**Stacy Butler:** Ms. Butler, Member of the Arizona Task Force on Legal Service Delivery and Director of the Innovation for Justice Program at the University of Arizona, requested that the Board vote in favor of the recommendations presented in agenda item #702. Ms. Butler believes regulatory reform is a key to improving access to justice for low-income individuals. These comments were submitted by e-mail, and read into the record by the Board Secretary.

#### **End of Public Comment**

#### **10 MINUTES**

#### **January 24, 2000 – Open Session Minutes**

***Deemed approved by unanimous consent.***

#### **30 CHAIR'S REPORT**

#### **40 STAFF REPORTS**

#### **41 Executive Director**

#### **1. Report from Executive Director**

## 50 CONSENT

*The following items on the consent calendar were collectively deemed approved by unanimous consent.*

### 50-1 Approval for Specified Contracts Pursuant to Business and Professions Code Section 6008.6

1. For implementation of Microsoft Office 365, with: Planet Technologies
2. For legal specialist examination laptop licenses, with: ExamSoft Worldwide, Inc.
3. For inspection of law schools, with: Heather Georgakis
4. For bar exam accommodation, with: DoubleTree Los Angeles Westside

**RESOLVED**, that the Board of Trustees approves execution of the contracts listed herein.

### 50-2 Annual Report on Use of Outside Counsel for 2019 - *informational*

Updated 2017–2022 Strategic Plan Rev. 2: 3.a.

### 50-3 Receipt and Filing of Annual Lawyer Assistance Program Oversight Committee Report Pursuant to Business and Professions Code Section 6238

**RESOLVED**, that the Board of Trustees receive and file the 2019 Lawyer Assistance Program Annual Report.

### 50-4 Financial Resolution to Update Authorized Bank Account Signatories

**RESOLVED**, that the Board of Trustees approve the financial resolution to update authorized bank account signatories as contained in Attachment A.

### 54-111 Lawyer Assistance Program Oversight Committee – Appointment of Member

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee approves the recommended appointment for a member of the Lawyer Assistance Program Oversight Committee.

### ~~54-121 Amendment to Rule 9.21(a) of the California Rules of Court to Update Address for Receipt of Licensees' Written Resignation: Request for Adoption by Board for Approval by Supreme Court of California~~

*Withdrawn at the Board Executive Committee meeting.*

## **54-141 Q4 Financial Statement Report, Investment Report, Client Security Fund Report**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Finance Committee approve the 2019 4th Quarter Financial Report in the form this day before the Board, for the period ending December 31, 2019, as certified by the Chief Financial Officer, approved by the Finance Committee, and on file with the San Francisco office of the State Bar.

## **100 REPORTS OF BOARD COMMITTEES**

**The committee member presenter is presumed to be the “mover” of the recommended action; no second is required because the motion is being brought by the committee.**

### **110 Board Executive Committee**

#### **112 Approval and Ratification of Revised Board of Trustees Policy Manual**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee approves the revised Board of Trustees Policy Manual.

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Duran, Iglesias, LaBran, Manning, SeLegue, Stallings

***Motion carries.***

#### **113 Approval of Addition to 2020 Legislative Priorities**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, approve the additions to the State Bar’s 2020 Legislative Priorities included in this item.

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Duran, Iglesias, LaBran, Manning, SeLegue, Stallings

***Motion carries.***

## **700 MISCELLANEOUS**

### **701 Adoption of Strategic Plan Access Objectives**

#### **Updated 2017–2022 Strategic Plan Rev. 2: 4.b., 4.e.**

**Presenter:** Hellen Hong, Program Director, Office of Access & Inclusion

**RESOLVED**, that the Board of Trustees approve updating the 2017–2022 Strategic Plan to include additional Access to Justice objectives in light of the California Justice Gap Study; and it is

**FURTHER RESOLVED**, that the following objectives are added to Goal 4 of the Strategic Plan:

- Support public education about key problems not recognized as legal issues.
- Support efforts to attract and retain lawyers in legal aid organizations.

Moved by Stallings, seconded by Cisneros.

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Duran, Iglesias, LaBran, Manning, SeLegue, Stallings

***Motion carries.***

## **702 Report and Recommendations of the Task Force on Access Through Innovation of Legal Services (ATILS)**

**Updated 2017–2022 Strategic Plan Rev. 2: 4.d.**

**Presenters:** Justice Lee Smalley Edmon and Toby Rothschild, Chair and Vice-Chair, ATILS; and ATILS members Andrew Arruda, Bridget Gramme, Kevin Mohr, and Dan Rubins

**(1) Should the Board agree with the recommendation of ATILS to create a new working group to develop a regulatory sandbox approach that will provide data on any potential benefits to access to legal services and any possible consumer harm if prohibitions on unauthorized practice of law, fee sharing, nonlawyer ownership, and other legal restrictions are modified or completely suspended for authorized sandbox participants, it is recommended that the Board of Trustees approve the following resolution:**

**RESOLVED**, that the Board of Trustees directs staff to form a working group to explore the development of a regulatory sandbox as described in the Final Report and Recommendation of the Task Force on Access Through Innovation of Legal Services attached hereto as Attachment A, that includes consideration of unauthorized practice of law, fee sharing, nonlawyer ownership and other possible regulatory reforms; and it is

**FURTHER RESOLVED**, that staff is directed to prepare a proposed charter for the new working group that, in addition to the regulatory sandbox assignment, includes assignments to consider: (i) amendments to rule 5.4 of the California Rules of Professional Conduct; (ii) the concepts for proposed amendments to the California Rules of Professional Conduct governing lawyer advertising and solicitation; and (iii) amendments to the statutes and Rules of the State Bar governing Certified Lawyer Referral Services as described in the Final Report and Recommendation of the Task Force on Access Through Innovation of Legal Services attached hereto as Attachment A.

***Substitute motion to table the recommendation until the May 2020 Board meeting.***

Moved by Duran, seconded by Stallings.

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Duran, Iglesias, Manning, SeLegue, Stallings

Recused – LaBran

***Motion carries.***

**(2) Should the Board agree with the recommendation to authorize public comment on proposed amended rule 1.1 of the California Rules of Professional Conduct, it is recommended that the Board of Trustees approve the following resolution:**

**RESOLVED, that the Board of Trustees hereby authorizes a 60-day public comment period on proposed amended rule 1.1 of the California Rules of Professional Conduct attached hereto as Attachment C; and it is**

**FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed changes.**

**Proposed Rule 1.1 Competence**

**(a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.**

**(b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably\* necessary for the performance of such service.**

**(c) If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes\* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes\* to be competent.**

**(d) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required if referral to, or association or consultation with, another lawyer would be impractical. Assistance in an emergency must be limited to that reasonably\* necessary in the circumstances.**



## Comment

[1] The duties set forth in this rule include the duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology.

~~[12]~~ This rule addresses only a lawyer's responsibility for his or her own professional competence. ~~See rules 5.1 and 5.3 with respect to a lawyer's disciplinary responsibility for supervising subordinate lawyers and nonlawyers.~~

~~[23]~~ See rule 1.3 with respect to a lawyer's duty to act with reasonable\* diligence.

Moved by Duran, seconded by De La Cruz.

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Duran, Iglesias, LaBran, Manning, SeLegue, Stallings

*Motion, as amend to direct that the proposed rule will return after a 60-day public comment period to the Committee on Professional Responsibility and Conduct (COPRAC), carries.*

**(3) Should the Board agree with the recommendation to authorize public comment on proposed amended rule 5.4 of the California Rules of Professional Conduct, it is recommended that the Board of Trustees approve the following resolution:**

**RESOLVED**, that the Board of Trustees hereby authorizes a 60-day public comment period on proposed amended rule 5.4 of the California Rules of Professional Conduct attached hereto as Attachment D; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed changes.

### **Proposed Rule 5.4 Financial and Similar Arrangements with Nonlawyers (Redline Version)**

**(a) A lawyer or law firm\* shall not share legal fees directly or indirectly with a nonlawyer or with an organization that is not authorized to practice law, except that:**

**(1) an agreement by a lawyer with the lawyer's firm,\* partner,\* or associate may provide for the payment of money or other consideration over a reasonable\* period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;\***

(2) a lawyer purchasing the practice of a deceased, disabled or disappeared lawyer may pay the agreed-upon purchase price, pursuant to rule 1.17, to the lawyer's estate or other representative;

(3) a lawyer or law firm\* may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, provided the plan does not otherwise violate these rules or the State Bar Act;

(4) a lawyer or law firm\* may pay a prescribed registration, referral, or other fee to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for Lawyer Referral Services; or

(5) where a nonprofit organization employs, retains, recommends, or facilitates employment of a lawyer in a matter, (i) the lawyer or law firm\* may share with or pay a court-awarded legal fee to that nonprofit organization, and (ii) where the legal fee in the matter is not court awarded but arises from a settlement or other resolution of the matter, the lawyer or law firm may share or pay the legal fee to the nonprofit organization, provided that the nonprofit organization qualifies under Section 501(c)(3) of the Internal Revenue Code.

~~(5) — a lawyer or law firm\* may share with or pay a court-awarded legal fee to a nonprofit organization that employed, retained or recommended employment of the lawyer or law firm\* in the matter.~~

(b) A lawyer shall not form a partnership or other organization with a nonlawyer if any of the activities of the partnership or other organization consist of the practice of law.

(c) A lawyer shall not permit a person\* who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's independent professional judgment or interfere with the lawyer-client relationship in rendering legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or other organization authorized to practice law for a profit if:

(1) a nonlawyer owns any interest in it, except that a fiduciary representative of a lawyer's estate may hold the lawyer's stock or other interest for a reasonable\* time during administration;

(2) a nonlawyer is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or

(3) a nonlawyer has the right or authority to direct or control the lawyer's independent professional judgment.

(e) The Board of Trustees of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on lawyers. A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with such Minimum Standards for Lawyer Referral Services.

(f) A lawyer shall not practice with or in the form of a nonprofit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person\* to interfere with the lawyer's independent professional judgment, or with the lawyer-client relationship, or allows or aids any person\* to practice law in violation of these rules or the State Bar Act.

#### Comment

[1] Paragraph (a) does not prohibit a lawyer or law firm\* from paying a bonus to or otherwise compensating a nonlawyer employee from general revenues received for legal services, provided the arrangement does not interfere with the independent professional judgment of the lawyer or lawyers in the firm\* and does not violate these rules or the State Bar Act. However, a nonlawyer employee's bonus or other form of compensation may not be based on a percentage or share of fees in specific cases or legal matters.

[2] Paragraph (a) also does not prohibit payment to a nonlawyer third-party for goods and services provided to a lawyer or law firm;\* however, the compensation to a nonlawyer third-party may not be determined as a percentage or share of the lawyer's or law firm's overall revenues or tied to fees in particular cases or legal matters. A lawyer may pay to a nonlawyer third-party, such as a collection agency, a percentage of past due or delinquent fees in concluded matters that the third-party collects on the lawyer's behalf.

[3] Paragraph (a)(5), as just one example,—permits a lawyer to share with or pay court-awarded legal fees to nonprofit legal aid, mutual benefit, and advocacy groups that are not engaged in the unauthorized practice of law. (See *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]; see also rule 6.3.) Regarding a lawyer's contribution of legal fees to a legal services organization, see rule 1.0, Comment [5] on financial support for programs providing pro bono legal services.

[4] Depending on the specific facts and circumstances, a lawyer's sharing of fees as permitted by paragraph (a)(5) might constitute a "significant development" that must be communicated to a client under rule 1.4 and Business and Professions Code section 6068(m).

[5] This rule is not intended to affect case law regarding the relationship between insurers and lawyers providing legal services to insureds. (See, e.g., *Gafcon, Inc. v. Ponsor Associates* (2002) 98 Cal.App.4th 1388 [120 Cal.Rptr.2d 392].)

[5] Paragraph (c) is not intended to alter or diminish a lawyer's obligations under rule 1.8.6 (Compensation from One Other than Client).

Moved by Stallings, seconded by De La Cruz.

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Duran, Iglesias, LaBran, Manning, SeLegue, Stallings

***Motion, as amend to direct that the proposed rule will return after a 60-day public comment period to the Committee on Professional Responsibility and Conduct (COPRAC), carries.***

**(4) Should the Board agree with the recommendation to authorize public comment on proposed new rule 5.7 of the California Rules of Professional Conduct, it is recommended that the Board of Trustees approve the following resolution:**

**RESOLVED**, that the Board of Trustees hereby authorizes a 60-day public comment period on proposed new rule 5.7 of the California Rules of Professional Conduct attached hereto as Attachment E; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed changes.

#### **Proposed Rule 5.7 Responsibilities Regarding Nonlegal Services**

**(a) A lawyer is subject to these rules and the State Bar Act with respect to the provision of nonlegal services, as defined in paragraph (c)(1), if the nonlegal services are provided by the lawyer:**

**(1) in circumstances that are not distinct from the lawyer's provision of legal services to clients; or**

**(2) in other circumstances by an organization other than a law firm\* that is (i) owned separately by the lawyer or (ii) owned with others unless written disclosure as defined in paragraph (c)(2) is provided to the recipient of the**

services that (i) the services are not legal services and (ii) that the protections of the lawyer-client relationship do not exist.

(b) When a lawyer knows\* or reasonably should know\* that a recipient of nonlegal services provided pursuant to paragraph (a)(2) does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role with respect to the provision of nonlegal services and the lawyer's role as one who represents a client.

(c) For purposes of this rule:

(1) "Nonlegal services" means services that might reasonably be performed in conjunction with the practice of law, including services that may be lawfully performed by a person who is not authorized to practice law.

(2) "Written disclosure" means advance written notice is communicated to the person receiving the services that explains that the services are not legal services and that the protections of a lawyer-client relationship do not exist with respect to the nonlegal services.

#### Comments

[1] Rule 5.7 applies to the provision of nonlegal services as defined in paragraph (c)(1) by a lawyer even when the lawyer does not provide legal services to the person for whom the nonlegal services are performed and whether the nonlegal services are performed through a law firm or a separate entity. The rule identifies the circumstances in which all of the Rules apply to the provision of nonlegal services. Even when those circumstances do not exist, the conduct of a lawyer involved in the provision of nonlegal services is subject to those rules and provisions of the State Bar Act that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. (see, e.g., Rule 8.4 and Business and Professions Code § 6106).

[2] When nonlegal services are provided by a lawyer under circumstances that are not distinct from the provision of legal services to clients, the lawyer involved in the provision of nonlegal services is subject to the Rules and the State Bar Act. For example, a lawyer must conform to the Rules and the State Bar Act as to all nonlegal services the lawyer renders in a dual capacity along with legal services for a single client or in a single matter, even if the nonlegal services might otherwise be performed by nonlawyers. (See, e.g., *Layton v. State Bar* (1990) 50 Cal.3d 889, 904 [268 Cal.Rptr. 845] (serving as executor and lawyer for estate); *Kelly v. State Bar* (1991) 53 Cal.3d 509, 517 [280 Cal.Rptr. 298] (serving as lawyer and business agent).)

[3] A lawyer who assumes a fiduciary relationship in the provision of nonlegal services to a person who is not a client of the lawyer or the lawyer's firm and who violates a fiduciary duty in a manner that would justify disciplinary action if there was an lawyer-client relationship may be subject to discipline for the misconduct. (See, e.g., *Schneider v. State Bar* (1987) 43 Cal.3d 784, 796-797 [239 Cal.Rptr. 111] (lawyer acting as a trustee); *Worth v. State Bar* (1976) 17 Cal.3d 337, 341 [130 Cal.Rptr. 712] (lawyer acting as a real estate broker); *Sodikoff v. State Bar* (1975) 14 Cal.3d 422, 429 [121 Cal.Rptr. 467] (lawyer representing administrator of estate and acting as agent for estate beneficiary in sale of estate property held to be in fiduciary relationship with beneficiary); *Crooks v. State Bar* (1970) 3 Cal.3d 346, 355 [90 Cal.Rptr. 600] (lawyer acting as an escrow holder); *In the Matter of Schooler* (Rev. Dept. 2016) 5 Cal. State Bar Ct. Rptr. 494 (lawyer acting as trustee).)

[4] When a lawyer-client relationship exists with a person and the lawyer refers that client to a separate organization owned by the lawyer individually or with others for the provision of nonlegal services, the lawyer must comply with rule 1.8.1. (See, e.g., *Beery v. State Bar* (1987) 43 Cal.3d 802, 8112-813 [239 Cal.Rptr. 121].)

[5] Under some circumstances the legal and nonlegal services rendered in the same matter may be so closely entwined that they cannot be distinguished from each other, and the requirements of paragraph (a) cannot be met. In such a case, the lawyer is responsible for assuring that the lawyer's conduct, and to the extent required by rule 5.3, the conduct of non-lawyers in the firm or in separate organization complies with the rules.

[6] A lawyer who is obligated to accord recipients of nonlegal services the full protection of the rules and the State Bar Act must adhere to the requirements of the rules addressing conflicts of interest (rules 1.7 – 1.11), the requirements of rules 1.6 and 1.8.2 relating to the protection of client confidential information, and lawyer advertising rules (rules 7.1 – 7.5).

***Substitute motion to bundle the recommendations regarding Rule 5.7, advertising, and lawyer referral services, and bring them back to the Board at the May 2020 Board meeting.***

Moved by Stallings, seconded by Delen.

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Duran, Iglesias, LaBran, Manning, SeLegue, Stallings

***Motion carries.***

(5) Should the Board agree with the recommendation to include the regulatory concepts and principles identified by ATILS' Final Report in the State Bar's present effort to develop a

**licensing program for authorized eligible nonlawyers to provide limited legal services, it is recommended that the Board of Trustees approve the following resolution:**

**RESOLVED**, that the Board of Trustees hereby refers to the paraprofessional working group the regulatory concepts and principles described in the Final Report and Recommendation of the Task Force on Access Through Innovation of Legal Services attached hereto as Attachment A.

Moved by Duran, seconded by Delen.

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Duran, Iglesias, Manning, SeLegue, Stallings

Recused – LaBran

***Motion carries.***

### **703 Paraprofessional Program Working Group – Approval of Charter and Appointment of Members**

**Updated 2017-2022 Strategic Plan Rev. 2: 4.f.**

**Presenter:** Russia Chavez, Principal Program Analyst, Programs Division

**RESOLVED**, that the Board of Trustees approves the Paraprofessional Program Working Group Charter as set forth in Attachment A; and it is

**FURTHER RESOLVED**, that the Board of Trustees approves the appointment of members to the Paraprofessional Program Working Group set forth in Attachment B; and it is

**FURTHER RESOLVED**, that the Board of Trustees provides authority to the Board-appointed Working Group Chair to fill the vacant appointment slots; and it is

**FURTHER RESOLVED**, that the Board of Trustees approves an amended due date of July 31, 2021, for submission of the Paraprofessional Program Working Group final report and directs staff to update Goal 4, objective f. of the State Bar's 2017–2022 Strategic Plan accordingly.

Moved by De La Cruz, seconded by Stallings.

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Duran, Iglesias, Manning, SeLegue, Stallings

Recused – LaBran

***Motion carries.***

#### **704 Follow-up from Strategic Planning Session – Consideration of Options to Improve Payment of Restitution**

**Presenter:** Lori Meloch, Program Director, Office of Professional Support & Client Protection

**RESOLVED**, that the Board of Trustees adopts a new objective under Goal 2 of the State Bar Strategic Plan to read: The State Bar shall develop recommended statutory, rule, policy, or guideline changes to encourage the timely and complete payment of restitution; and it is

**FURTHER RESOLVED**, that the Board of Trustees directs staff to explore the activities to implement this objective described in this agenda item.

Moved by Stallings, seconded by Delen.

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Duran, Iglesias, LaBran, Manning, SeLegue, Stallings

***Motion carries.***

#### **705 Changes in Elimination of Bias (EOB) Requirement in Minimum Continuing Legal Education (MCLE) Rules – Request to Circulate for Public Comment**

**Updated 2017–2022 Strategic Plan Rev. 2: 4.m.**

**Presenters:** Elizabeth Hom, Program Supervisor, Office of Access & Inclusion  
Erica Carroll, Senior Program Analyst, Office of Access & Inclusion

**RESOLVED**, that staff is authorized to make available the proposed revisions to State Bar Rules relating to the minimum continuing legal education elimination of bias curriculum in the forms attached as Attachments B-E, for a public comment period of 45 days; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment is not, and shall not be, construed as a recommendation or approval by the Board of Trustees of the proposal; and it is

**FURTHER RESOLVED**, that staff may develop one hour of MCLE e-learning content related to implicit bias, and provide to licensees without charge; staff will consult with the Council on Access and Fairness in planning and producing the e-learning course, and the course will be reviewed and updated every three years.

Moved by Manning, seconded by Cisneros.

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Duran, Iglesias, LaBran, Manning, SeLegue, Stallings

***Motion carries.***



## **706 Council on Access and Fairness (COAF) – Approval of Scope of Work**

**Presenters:** Judge Brenda Harbin-Forte (ret.), Chair, COAF  
Donna Hershkowitz, Interim Executive Director

**RESOLVED**, that the Board of Trustees amends the charge of the Council on Access and Fairness to extend the pipeline work to efforts starting in high school, and that the COAF Work Plan be amended consistent with that expansion as set forth in the Work Plan presented to the Board Executive Committee on March 12, 2020; and it is

**FURTHER RESOLVED**, if COAF wishes to partner with another organization in a manner which has a more than minor fiscal impact to the State Bar, COAF will apply for, and obtain permission from the State Bar’s Board Executive Committee, prior to engaging in such a partnership; and it is

**FURTHER RESOLVED**, at the July 2020 meeting, COAF will report back to the Board about any financial impact realized or anticipated and steps taken by COAF to expand partnerships with potential funding sources and other organizations. This report will include an expanded workplan with specific courses of action.

Moved by Stallings, seconded by Duran.

Ayes – De La Cruz, Duran, Iglesias, Manning, Stallings

Nay – Broughton, Chen, Cisneros, Delen, LaBran, SeLegue

***Motion fails.***

## **707 Discussion and Selection of Executive Director Search Firm**

**RESOLVED**, that the Board delegates its authority to select a search firm to Debbie Manning and Ruben Duran.

Moved by Broughton, seconded by Cisneros.

Ayes – Broughton, Cisneros, Delen, Duran, Iglesias, LaBran, Manning, SeLegue

Not present – Chen, De La Cruz, Stallings

***Motion carries.***