



The State Bar of California

OPEN SESSION AGENDA ITEM 707 MAY 2020

DATE: May 14, 2020

TO: Members, Board of Trustees

FROM: Vanessa Holton, General Counsel
Sean Strauss, Assistant General Counsel

SUBJECT: Approval of Revisions to Rules and Regulations Pertaining to the Employment of State Bar Court Judges

EXECUTIVE SUMMARY

In agenda item 706 MAY 2020, staff requests that the Board of Trustees approve amendments of the State Bar of California Post-Retirement Welfare Benefits Plan (Plan) necessary to incorporate the terms and conditions of the post-retirement medical and vision insurance benefits provided to State Bar Court (SBC) judges. Board authority is also required to amend the Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service (Rules) to conform to the changes proposed in agenda item 706 MAY 2020.

This agenda item requests that the Board approve revisions to the Rules that will coincide with amendments to the Plan proposed in agenda item 706 MAY 2020. Staff also proposes additional non-substantive revisions of the Rules to: (1) clarify the relationship between benefits for active SBC judges and active Executive Staff; (2) address historical inaccuracies still present in the Rules attributable to subsequent statutory changes; and (3) remedy typographical errors.

BACKGROUND

Originally adopted in July 2008, the State Bar of California established the Plan to govern post-retirement benefits offered to Executive Staff employees. On November 14, 2019, the Board amended the Plan to, among other things, extend benefits to confidential employees. On April 16, 2020, the Board again amended the Plan to extend benefits to represented employees and also approved changes to the Executive Staff Rules and the Confidential Staff Rules to explicitly

reflect the fact that the terms and conditions of any post-retirement benefits for those employees are established by the Public Employees' Medical and Hospital Care Act and the Plan. Agenda item 706 MAY 2020 requests, among other things, that the Board again amend the Plan to govern the terms and conditions of post-retirement benefits provided to SBC judges.

The Rules establish and govern the benefits, terms, and conditions under which judges appointed to the SBC serve. Although the salaries of SBC judges are established by statute, the other benefits of service as a SBC judge are fixed and provided by the Board through the Rules. Section 20(C) of the Rules is presently the only authority establishing the terms and conditions of SBC judges' post-retirement health and vision insurance benefits. Once the terms and conditions of SBC judges' post-retirement benefits are incorporated into the Plan, pursuant to agenda item 706 MAY 2020, the Rules should be amended to confirm that the Plan is the ultimate authority for those post-retirement benefits.

DISCUSSION

Staff proposes changes to the Rules in order to reflect that, moving forward, the terms and conditions of SBC judges' retiree health benefits will be governed by the Plan. Section 20(C) of the Rules would accordingly be amended in a manner consistent with the amendment of the Executive Staff Rules and the Confidential Staff Rules approved by the Board on April 16, 2020, to state simply that:

The State Bar will offer judges a medical insurance benefit and a vision insurance benefit in retirement pursuant to the terms of (a) the Public Employees' Medical and Hospital Care Act, and (b) The State Bar of California Post-Retirement Welfare Benefits Plan. A copy of the State Bar of California Post-Retirement Welfare Benefits Plan is available from the Office of Human Resources upon request.

Staff also proposes additional non-substantive revisions of the Rules in order to (1) clarify the relationship between employment benefits for active SBC judges and active Executive Staff employees; (2) address historical inaccuracies still present in the Rules which are attributable to subsequent statutory changes; and (3) remedy typographical errors. A copy of the current Rules redlined to reflect the revisions necessary to carry out staff's requested changes to the Rules is contained in Attachment A hereto.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 3. Improve the fiscal and operational management of the State Bar, emphasizing integrity, transparency, accountability, and excellence.

Objective: b. Improve staff morale and career satisfaction through recognition of performance, career path development, transparent and collaborative communication, and recognition and encouragement of innovation, efficiencies, and money saving ideas.

RECOMMENDATIONS

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

RESOLVED, that the Board of Trustees approves amendment of the Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service as reflected by the redlined revisions in Attachment A hereto.

ATTACHMENT(S) LIST

- A.** Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service, revised July 23, 2018, with redlined changes reflecting the revisions proposed by this item.

RULES AND REGULATIONS OF THE
STATE BAR OF CALIFORNIA
PERTAINING TO THE BENEFITS, TERMS AND
CONDITIONS GOVERNING
STATE BAR COURT JUDGE SERVICE

[Revised ~~July 23, 2018~~ May 14, 2020]

Section 1. **GENERAL PROVISIONS**

- A. The following Rules and Regulations are adopted to govern the benefits, terms and conditions under which the judges appointed by the Supreme Court, the Governor, the Senate Committee on Rules, and the Speaker of the Assembly serve the State Bar Court.
- B. These Rules and Regulations are promulgated by the Board of ~~Governors~~ Trustees of the State Bar and may be amended from time to time by the Board.
- C. Nothing herein shall be construed as limiting or altering the plenary authority of the Supreme Court over the admissions and disciplinary system including but not limited to the service of State Bar Court judges.

Section 2. **DEFINITIONS**

- A. “Board” is the Board of ~~Governors~~ Trustees of the State Bar of California.
- B. “Day(s)” are calendar days unless otherwise specified.
- C. “Executive Staff” is the Executive Staff of the State Bar governed by the Rules and Regulations Pertaining to the Employment of Executive Staff Employees.
- D. “Judge” is a judge of the State Bar Court appointed pursuant to Bus. & Prof. Code ~~§§§~~ 6079.1 and/or 6086.65. Pro Tem judges are not subject to these Rules and Regulations.
- ~~E. “Lay Judge” is the non-attorney judge appointed pursuant to Bus. & Prof. Code §6086.65(a).~~
- ~~F.~~ E. “Rules and Regulations” are these Rules and Regulations Pertaining to the Benefits, Terms and Conditions ~~of Employment~~ Governing ~~the~~ State Bar Court Judge Service ~~of State Bar Court Judges~~.

~~G.F.~~ “State Bar” is the State Bar of California

~~H.G.~~ “State Bar Court” is the State Bar Court established by the Board of ~~Governors~~ Trustees pursuant to Bus. & Prof. Code § 6086.5.

~~I.H.~~ “Supreme Court” is the Supreme Court of California.

Section 3. **APPOINTMENT, TERM, DISCIPLINE**

As set forth in Bus. & Prof. Code §§6079.1, §6086.65, and rule 9.61, California Rules of Court, judges are appointed and reappointed by the Supreme Court, the Governor, the Senate Committee on Rules, and the Speaker of the Assembly. Judges are subject to admonition, censure, removal, or retirement by the Supreme Court on the same grounds as provided for judges of California courts of record.

Section 4. **STATUS**

- A. ~~With the exception of the Lay Judge, J~~ judges are, during their term, to be “Inactive” members of the State Bar not entitled to practice law.
- B. Judges are not judges of a court of record as defined in California Constitution, article 6, section 1. For salary and benefit purposes, judges are employees of the State Bar. With respect to the performance of their adjudicatory responsibilities, judges are independent from the State Bar.
- C. By directive of the Supreme Court, State Bar Court judges are subject to the provisions of the California Code of Judicial ~~Conduct~~ Ethics.

Section 5. **SALARY AND BENEFITS**

- A. The Board shall fix and pay the salary and benefits of judges. In accordance with Business and Professions Code §§6079.1(d) and 6086.65(a), the salary for Hearing Department judges shall be ~~the same as for Municipal Court judges~~ 91.3225 percent of the salary of Superior Court judges and the salary for Review Department judges, including the Presiding Judge, shall be the same as ~~for~~ Superior Court judges.
- B. The salary of judges shall adjust automatically in accordance with salary increases received by ~~Municipal and~~ Superior Court judges.
- C. The Board shall also fix and provide benefits of employment, ~~in addition to salary,~~ to judges at levels to be determined and adjusted from time to time in the discretion of the Board.

Section 6. **VACATION**

A. Throughout their terms, judges shall accrue vacation at the following rates:

Less than fifteen (15) years of service	1 and 2/3 days per month (20 working days per year)
Fifteen (15) or more years of service	2 and ½ days per month (25 working days per year)

B. Vacation accrual shall be limited as follows:

1. A judge with less than ten (10) years of continuous service may accrue a maximum of forty-five (45) working days of vacation;
2. A judge with at least ten (10) but less than fifteen (15) years of continuous service may accrue a maximum of fifty (50) working days of vacation;
3. A judge with fifteen (15) or more years of continuous service may accrue a maximum of fifty-five (55) working days of vacation.

Upon accruing this maximum, a judge shall cease accruing vacation and shall not commence to accrue vacation again until the accrual is reduced below the maximum.

C. Upon termination of service, a judge shall be paid for all unused, accrued vacation time.

Section 7. **HOURS OF EMPLOYMENT**

The hours of employment of judges are those reasonably necessary to perform their duties. By the nature of their duties, judges are exempt from the overtime provisions of state or federal law and are not entitled to overtime [payments](#) or compensatory time ~~payments~~.

Section 8. **PAID SICK AND DISABILITY LEAVE**

Paid sick leave, short term and long term disability coverage shall be provided to [active](#) judges on the same terms and to the same extent as such benefits are provided to [active](#) State Bar Executive Staff.

Section 9. **HEALTH AND LIFE INSURANCE BENEFITS**

The State Bar shall provide [the same](#) health and life insurance benefits to [active](#) judges as are provided to [active](#) State Bar Executive Staff (which may include medical/hospital, vision care, dental, and life coverage).

Section 10. **HOLIDAYS**

- A. The following are recognized as paid holidays for judges:
1. New Year's Day
 2. Martin Luther King's Birthday
 3. Presidents' Day
 4. César Chávez Day
 5. Memorial Day
 6. Independence Day
 7. Labor Day
 8. Columbus Day
 9. Veteran's Day
 10. Thanksgiving Day
 11. Day after Thanksgiving Day
 12. Christmas Eve
 13. Christmas Day
 14. New Year's Eve
- B. Holidays falling on Sunday shall be observed the following Monday.
Holidays falling on Saturday shall be observed the preceding Friday.
- C. Judges not on paid status will not receive holiday time off or holiday pay.

Section 11. **BEREAVEMENT LEAVE**

In the event of a death in the immediate family (i.e., spouse, children, including foster, step or adopted; parents; brother; sister; father-in-law; mother-in-law; grandparents; grandchildren and person assuming the role of spouse) judges shall be entitled to bereavement leave of five (5) work days with pay. Such leave shall not be charged to vacation or to paid sick leave.

Section 12. **JURY DUTY**

In the event that a judge is called for jury duty or is subpoenaed to appear as a witness in a state or federal court proceeding in which the judge is not a party nor

has an economic interest, the judge will receive his/her salary less that amount to which the judge is entitled as “juror’s compensation” or “witness fees”. In no instance will the judge realize less salary than he/she would have otherwise received, had the judge not been called for jury duty or subpoenaed to appear as a witness.

Section 13. **MILITARY LEAVE**

Military leave and accompanying rights will be granted as provided by law.

Section 14. **PROFESSIONAL DUES AND FEES**

- A. The State Bar shall pay annual State Bar membership fees at the level required for “Inactive” membership for judges who are members of the State Bar.
- B. The State Bar shall also pay annual membership fees in job-related professional associations for ~~the lay judge and the other~~ judges in an amount not to exceed the difference between “Inactive” fees actually paid for a judge and the highest amount of annual membership fees that must be paid in order to maintain “Active” membership status in the State Bar.

Section 15. **OUTSIDE EMPLOYMENT**

During his/her term, a judge may not engage in any conduct which constitutes the practice of law or which is otherwise inconsistent with the Code of Judicial Conduct, which by Supreme Court directive, is applicable to State Bar Court judges.

Section 16. **EDUCATION AND TRAINING**

- A. Subject to budgetary constraints, the Board of ~~Governors~~ Trustees shall provide funding for the education and training of judges consistent with the standards set forth in rule ~~970~~10.451 et seq., California Rules of Court.
- B. Subject to the efficient administration of justice and in the discretion of the Presiding Judge, State Bar Court judges shall be entitled to paid leave for education and training consistent with the standards set forth in rule ~~970~~10.451 et seq., California Rules of Court.

Section 17. **PERSONNEL FILES**

- A. The State Bar shall maintain, in its Office of Human Resources, personnel files containing the personnel records of judges. At reasonable times, upon request, the State Bar shall permit a judge to inspect his/her personnel file and any material referred to in such personnel file. A judge's personnel file shall also be made available to the Supreme Court.
- B. Documents and materials pertaining to the evaluation and appointment of judges shall not be part of the judge's personnel file and shall be maintained in accordance with the directives of the Supreme Court.

Section 18. **TRAVEL REIMBURSEMENT**

Judges shall be reimbursed for travel and related expenses in the course of performing their duties in accordance with the travel reimbursement policies adopted by the Board and applicable to all who travel on State Bar business.

Section 19. **PARKING**

To the extent the State Bar continues to provide parking to employees, parking shall be provided to [active](#) judges to the same extent and on the same basis as is provided for [active](#) Executive Staff employees. The State Bar, however, retains the right to eliminate free parking entirely or charge for parking, ~~in accordance with the above,~~ upon reasonable notice.

Section 20. **RETIREMENT**

- A. [For any judge whose State Bar Court terms begins before November 1, 2018,](#) ~~the~~ the State Bar shall pay to the California Public Employees' Retirement System ("CalPERS") the full amount of the employer and employee contribution for each [such](#) judge who is or becomes a member of CalPERS. ~~As to~~ [For](#) any judge whose State Bar Court terms begins on or after November 1, 2018, the employer and the employee contributions to CalPERS shall be shared between the judge and the State Bar in the same manner as provided for State Bar Executive Staff.
- B. Nothing contained in this section shall be deemed to abrogate the right of the State Bar to require a waiting period of ninety (90) days prior to enrolling a judge into CalPERS.
- C. [The State Bar will offer judges a medical insurance benefit and a vision insurance benefit in retirement pursuant to the terms of \(a\) the Public Employees' Medical and Hospital Care Act, and \(b\) The State Bar of](#)

California Post-Retirement Welfare Benefits Plan. A copy of the State Bar of California Post-Retirement Welfare Benefits Plan is available from the Office of Human Resources upon request.

~~C.—Under the following circumstances, the State Bar shall provide to regular, full-time Judges who receive benefits under CalPERS and who retire under CalPERS as a Judge on or after the date upon which these Judge Rules are adopted, comparable health care plan (providing medical/hospital and vision care coverage) benefits including dependent and domestic partner coverage benefits, as it provides from time to time to its then active, regular, full-time Employees, provided that:~~

- ~~1. For Judges employed as such as of the date these Rules are adopted August 1, 2016, eligibility requires fifteen years of service to the State Bar as a Judge.~~
- ~~2. The Employee must also have such medical/hospital coverage at the time of his/her retirement from employment with the State Bar;~~
- ~~3. The Employee must also elect to receive retirement benefits effective within one hundred twenty (120) days of retirement from State Bar employment under CalPERS;~~
- ~~4. If the State Bar's agreement with its medical/hospital insurance carrier does not permit the identical coverage to be provided to such retired Employee at the same group rate as the State Bar would pay if they were included, the State Bar may provide substantially similar coverage, or contribute to the purchase of substantially similar coverage in an amount equal to the amount that the State Bar contributes toward payment of medical/hospital and vision care coverage for any of its then active, full-time Employees and their dependents; and~~
- ~~5. If the State Bar subsequently adopts a retirement plan other than CalPERS, the State Bar shall also provide substantially similar medical/hospital and vision care benefits to those who retire from State Bar employment under the provisions of such other retirement plans.~~

Section 21.

DEFERRED COMPENSATION PLAN

Judges shall be eligible to participate in an Internal Revenue Code section 457B deferred compensation plan to the same extent and on the same terms as State Bar employees.

Section 22. — OTHER BENEFITS

~~In the discretion of the Board, judges may be provided other benefits.~~