



The State Bar of California

AGENDA ITEM

JULY 10 – Open Session Minutes Approval – May 14, 2020, Meeting

Regular Meeting of the Board of Trustees

The State Bar of California
Zoom

Thursday, May 14, 2020
9:00 a.m.

Time meeting commenced: 9:04 a.m.

Time meeting adjourned: 3:14 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, Joshua Perttula, Sean SeLegue, Brandon Stallings

Members Joined in Progress: n/a

Members Absent: n/a

Open Session

Public Comment:

Cindy Panunco – Panunco, vice-president and chief program officer at Public Counsel, the largest pro bono law firm, addressed item 703, urging rejection of options one and two, relating to the licensing of paraprofessionals. Panunco cited to the existing problem with immigration consultants or “notarios” who use their title to perpetuate fraud on unsuspecting immigrants knowing that their title shields them from law enforcement. Panunco believes that the licensing of paraprofessionals presents similar problems and that priority should be given to cleaning up the immigration consultant sandbox that currently exists and learning how the regulatory

system fails to protect against fraud and abuse. Panunco stated that paralegal fraud extends beyond immigration to eviction proceedings, bankruptcy petitions, and consumer and real estate matters. Public Counsel would like the Board to de-authorize the current paraprofessional working group, ban immigration consultants, enforce consumer protections, issue mandatory pro bono requirements for practicing attorneys, as well as support loan forgiveness and other initiatives that would give resources to legal services organizations.

Unidentified Person – This person expressed two concerns about taking the bar exam online. One is how time consuming it would be to scroll up and down the performance test. The other is how difficult it would be to sit at a computer for eight hours taking the multistate bar exam. This person asked the Board to keep in mind the challenges of taking an online exam.

Emilio Varanini – Varanini, President of the California Lawyers Association (CLA), commended the Board for its leadership in appointing additional delegates to the American Bar Association House of Delegates and also commended the Board for its leadership on diversity, equity, and inclusion. CLA supports the Council on Access and Fairness (COAF) revised work plan and looks forward to convening the diversity pipeline summit. CLA also commended the Board for its leadership on ATILS, reiterating its support for option three, and looks forward to working with the Board in considering the changes needed in the legal profession to address the very real access to justice gap.

Patricia Squitiero – Squitiero, a public consumer and immigrant, expressed concern with nonlawyers representing the community without proper training. Squitiero worries that individuals without a law degree and not bound by rules of professional conduct will take advantage of the underrepresented, vulnerable populations, especially the undocumented, who have no recourse or resources.

Florita Ruiz – Ruiz, a victim of fraud and Public Counsel client, opposed item 703 relating to the licensing of paraprofessionals. Ruiz operates a daycare from home and hired a contractor to build an addition to expand the business; the contractor did not complete the work and allegedly stole over \$27,000 in equity. Ruiz was referred to a paralegal who promised to help file a case for a \$2,500 retainer. The paralegal demanded more money, but did nothing. Ruiz knows at least five other individuals who have been victims of paralegal fraud. Ruiz would like the State Bar to find ways to provide high quality and affordable attorneys.

William Winslow – Winslow, recent chair of the trusts and estates section and board member of the Los Angeles County Bar Association (LACBA), opposed the ATILS proposal in item 703 to license nonlawyers. Winslow stated that the comments in opposition to the proposal outnumber those in support. According to Winslow, the great majority of opposition comments were not from corporate lawyers, but from attorneys in small firms who are on the front lines in dealing with the consequences of the shoddy or dishonest work of unsupervised nonlawyers. Winslow objected to the disparagement of small firm private practitioners opposing the proposal by a member of the task force who characterized the opposition as arising out of lawyer self-interest. Winslow stated that a number of deregulation schemes that turned out to be a disaster for consumers, and expressed concern that there is no realistic plan, including

funding sources for an effective regulation and compliance regime. Winslow asked to Board to set aside all nonemergency matters and concentrate its efforts on funding and preserving the courts.

Christopher Sanchez – Sanchez, with the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), California’s largest membership-based immigrant rights organization, strongly opposed item 703 because it would further disenfranchise immigrant communities, the population the proposal purports to assist. According to Sanchez, immigrant legal services should be provided by legal service organizations authorized by federal law. Sanchez discussed the problems with immigration consultants or notarios who ruin lives in the communities served by CHIRLA, and told the story of one family whose father was placed in detention solely for filing a botched application that was completed by an immigration consultant.

Unidentified Person – This person addressed the issue of an online bar exam, expressing concern about the time it takes to scroll up and down on a performance test. This person advocated for an in-person exam with physical distancing and temperature checks.

Ryan Harrison – Harrison, executive committee member of the California Lawyers Association, general counsel of the California Association of Black Lawyers, Vice-President of the Wiley Manuel Bar Association (African-American affinity bar), and board member of the Sacramento chapter of the 100 Black Men (national mentoring organization for black youth), urged the Board to support COAF’s request to expand its mandate. Harrison stated that mentorship engagement encourages good citizenship among the youth, encourages them to become legal practitioners, and inspires them to believe in the legal profession as a noble profession.

Banafsheh Akhlaghi – Akhlaghi, Chair of the Legal Services Trust Fund Commission (LSTFC), thanked Judge Brenda Harbin-Forte, COAF Chair, for the invitation to speak. Akhlaghi urged the Board to adopt the recommendation in item 701 to expand COAF’s mandate, which ties in with the Justice Gap Study and its identification of barriers to access to justice. LSTFC looks forward to collaborating with COAF where the work intersects to promote access to justice. Akhlaghi believes that reaching down the pipeline will ensure more lawyers come through the pipeline to potentially serve as legal aid lawyers and thereby provide more access to justice for more low-income Californians.

Joanna Adler – Adler, staff attorney at Public Counsel, commented on item 703. Public Counsel provides free legal services to low-income individuals and has clients defrauded by nonlawyers who lie about their qualifications, drain their bank accounts, and, in the immigration context, trigger permanent immigration consequences, like deportation. Adler told the story of a client scammed by a woman who claimed to be an attorney and who offered to help the client apply for lawful permanent residence in exchange for a fee. The client paid the fee, but the fraudster failed to file a single document and, as a result, the client unknowingly fell out of legal status and subsequently was apprehended and placed in removal proceedings after passing through an immigration checkpoint while traveling with family. Public Counsel works closely with city and county law enforcement agencies to combat the negative impact of the unauthorized practice of law, which largely goes unpunished. Adler contended that by relaxing the regulation,

the number of fraudsters will dramatically increase and will be allowed to operate with impunity. Public Counsel commends the State Bar's commitment to increasing access to justice, but strongly opposes any proposals that consider relaxing the rules regarding the unauthorized practice of law.

Art Lachman – Lachman, a Seattle lawyer and Co-Chair of the Association of Professional Responsibility Lawyers Future of Lawyering Committee, spoke in individual capacity in support of option one as originally proposed by the ATILS task force. Lachman referred to page five of the Executive Director's memorandum, which states that "traditionally" nonlawyer ownership arrangements have been viewed as "potentially" undermining lawyers' independent professional judgment and duty of loyalty with adverse consequences to clients. Lachman believes that the point is to challenge the traditional approaches that have had an effect on legal services delivery, and that the specific rules governing conflict of interest are sufficient to protect public and client interests. Lachman's research also shows that the absolute prohibition against nonlawyer ownership in ethics rules is not based on evidence or data regarding client or consumer harm, but on the notion of speculative harm. Lachman contends that option two would hamstring the working group by restricting consideration of relevant ethic rules that impact innovation in the delivery of legal services.

Lucy Ricca – Ricca, an inactive licensed California lawyer and member of the Utah Regulatory Task Force, urged the Board to adopt option one of the ATILS recommendations to move forward with the regulatory sandbox. Ricca clarified that the regulatory sandbox is separate from the paraprofessional licensing proposal, which is in the hands of a different working group. Ricca contends that the regulatory sandbox is not about deregulation or permitting unauthorized providers to act with impunity. According to Ricca, the sandbox is a controlled pilot program to license legal services entities to practice law, permit lawyers to work with and for those entities, and enable policy makers to determine its effectiveness. With a regulatory sandbox, entities must apply, provide detailed information on their proposed services, and undergo a review process conducted by lawyers and other experts. Utah has not seen interest from the big four, hedge funds, or private equity firms, but has seen interest from lawyers and others with innovative ideas on how to serve individuals with modest incomes and small businesses. In Utah, potential innovations include technology platforms and remote assistance for those seeking unemployment and other COVID relief related benefits and the creation of legal services entities that would enable lawyers to serve more clients in rural areas and work with other professionals in the family law and estate planning spaces.

Bridget Gramme – Gramme, Director of the Center for Public Interest Law and member of the ATILS task force, referred to written comments submitted earlier and provided further oral comment on the ATILS proposal for a regulatory option. Gramme reminded the Board of its statutory charge: "whenever the protection of the public is inconsistent with other interest ought to be promoted the protection of the public shall be paramount" and contended that, in light of the fact that 70 percent of Californians who needed legal help last year did not have a lawyer, the Board is not fulfilling its public protection mission. Gramme believes that the ATILS proposal will change that and assured the Board that the sandbox proposal is based on significant research and careful consideration of comments from all sides. According to

Gramme, it will provide the means to gather data about consumer harm and access to legal services before recommendations are made to change rule 5.4 and related fee sharing rules. Gramme believes that with a significant justice gap and certain economic crisis, maintaining the status quo by adopting options two and three is unconscionable.

Jane Reardon – Reardon, Executive Director of the Illinois Supreme Court Commission on Professionalism, referred to written comments submitted earlier, stating an intention not to repeat what is in the written comments. Reardon commended the Board for its leadership, urging the adoption of option one. Reardon highlighted two points: (1) the Board should embrace the convening of a working group to look creatively and critically at all available tools given the changed world, explosion in the need for legal services, and increased pressures faced by lawyers in sustaining their law practices; and (2) the Board's leadership in commissioning the Henderson report was the catalyst to a national dialogue about whether certain regulations may be contributing to the justice gap, and served as a springboard for Arizona, Utah, and Illinois in developing similar proposals to those proposed by the ATILS task force.

Tom Gordon – Gordon, Executive Director of Responsive Law, a national nonprofit that works on behalf of legal services consumers to make the civil legal system more accessible and affordable, referred to written comments submitted earlier and highlighted certain points in requesting that the Board approve option one of the ATILS task force recommendations. Gordon explained that option one does not repeal the prohibition on nonlawyer ownership nor does it establish a regulatory sandbox, but rather it establishes a working group to consider a sandbox to allow lawyers to work in the same business structure as the vast majority of the American workforce. Gordon believes that option three has been proposed only to make option two look like a compromise and option two, which prohibits the working group from considering nonlawyer ownership, is at best illogical and at worst pre-textual and would mean that no meaningful regulatory change could ever be explored, let alone adopted. Gordon claimed that the most strident opposition comes from lawyers who fear change in a status quo that has made them a lot of money and asserted that the State Bar as a regulatory agency, not trade association, should not be guided by the perceived self-interest of California lawyers. Gordon noted that Trustee LaBran recused herself.

Gretchen Nelson – Nelson, board member of Consumer Attorneys of California and Los Angeles, referred to earlier written comments submitted jointly with the California Defense Counsel, and voiced support for option three. Nelson stated that the purpose of the ATILS task force was to find ways to provide legal services to low-income or lower-income individuals. Nelson asserted that nonlawyer ownership of law firms is not driven by the underlying goal of the proposal, i.e., expanding legal services to low-income or lower-income individuals. According to Nelson, option three provides the best opportunity to look for ways that will provide services that are necessary to reach that goal.

Jason Solomon – Solomon, Executive Director of the Stanford Center on the Legal Profession, strongly urged support for option one, asserting that option two is a retreat, not a compromise, because nonlawyer ownership is the key to all recommendations and taking it off the table at this stage would undermine the work of Justice Edmon's task force. Solomon offered three

points. First, the center released a white paper, provided to the Board and co-authored by faculty director Deborah Rody, the leading authority on access to justice and legal ethics, on nonlawyer ownership, analyzing and synthesizing the evidence on its impact on access to justice. According to Solomon, the report showed that the introduction of these alternative business structures, particularly in England, has resulted in more choices and lower cost for consumers, and no consumer harm. Second, Jim Sandman, former managing partner of Arnold and Porter, outgoing president of the Legal Services Corporation, and current Chair of the American Bar Association's Task Force on Legal Needs, sent a letter urging the Board to follow Utah's lead and move forward with regulatory reform especially given the great need for legal services for individuals and small businesses arising out of the 2020 pandemic. Solomon commented that the Board delayed the vote at the March meeting in order to consult with stakeholders and returned with a watered down proposal. Solomon quoted from an article co-authored by Chair Steinbreher and Vice-Chair SeLegue—"We need fresh thinking around delivery systems regulatory reform that could stimulate the creation of new service models experimentation and innovation."—and concluded that option one is the only way to achieve that fresh thinking. [Unclear whether Solomon did not make a third point or consolidated three points into two.]

Zachariah DeMelola – DeMelola, manager at the Institute for the Advancement of the American Legal System, a national independent research institute at the University of Denver dedicated to improving the justice system, remarked that this is the third public comment given on ATILS Task Force recommendations. The Institute voiced strong support for option one, believing that the debate in the legal profession surrounding the delivery of legal services is rife with assumptions that are often rooted in paternalistic fears that any change may harm the public, fears often used by lawyers to justify what is at the root, an anti-competitive, protectionist impulse. DeMelola believes that lost in that debate is the notion that the power to regulate the delivery of legal services is based on a duty to serve the public interest, a duty requiring a balancing of the risks and benefits to the public, not to lawyers. DeMelola asserted that the sandbox will provide the data needed to regulate based on evidence, not assumptions. DeMelola highlighted Utah, which has opened its regulatory sandbox for proposals to specifically address the COVID-19 crisis.

Paul Kramer – Kramer, former member of the Board of Governors and current member of the Committee of Bar Examiners (CBE) and Chair of the CBE Examination Subcommittee, spoke in individual capacity in observing that several duties have been removed from the committee, chief among them the conduct of moral character interviews, in order to free the committee to focus on policy making. As Kramer remarked, the Board is considering a recommendation regarding the future of the bar exam, a policy issue that jumped from the CBE to a blue-ribbon commission. Kramer believes that, as partial mitigation, CBE members should be appointed to that commission and the commission's recommendations should be reviewed by the CBE before they are presented to the Board and then to the Supreme Court.

Julian Sarkar – Sarkar, an attorney admitted in California and New York, has advocated on behalf of attorney applicants against the State Bar's administration of the bar exam since 2016 when a friend was driven to suicide the night that the exam results were released. Sarkar

requested that the State Bar not administer future bar exams and instead establish a diploma privilege system. Sarkar commented that the State Bar restructured the bar exam into a two-day exam in 2017 for cost reduction purposes, but no savings were passed on to applicants, which for Sarkar demonstrates that the bar exam primarily serves the State Bar's financial interests. Sarkar commented that a group of law school deans requested that the Supreme Court consider changing the cut score, to which Sarkar claims that the State Bar's psychometrician responded with a dismissive and condescending email, demonstrating, according to Sarkar, the futility of efforts by academic institutions to collaborate with the State Bar. Sarkar claims that a 2017 report prepared by the State Bar for the Supreme Court on minimum competency standards included comments and survey responses from people who expressed a preference for maintaining the current cut score of 1440, but omitted the definition of public protection. Sarkar asserted that there is no reference in the related agenda item to the Supreme Court's letter recommending that the State Bar collaborate with law school deans and believes that this omission tends to show that the State Bar is not interested in any solution that would cut into its 20 million dollar profits, or rather revenues. Sarkar told the State Bar to cease and desist collecting bar exam fees and administering future bar exams and to implement a diploma privilege system before judicial intervention is necessary.

Unidentified Person – This person stated that the State Bar's consideration of replacing the California bar exam with the uniform bar exam is troubling because the Committee of Bar Examiners has not considered the idea and prominent states are signaling that they may stop using it. This person urged the Board to read an 80-page March 5, 2020, report by the New York State Bar task force, which includes a scathing rebuke of the uniform bar exam as an unreliable and inappropriate measure of a person's minimum competency to practice law. This person quoted passages from the report and offered to send it to the committee, and urged the State Bar to survey California licensed attorneys on major proposals to change the exam before arriving at any conclusions.

Vincent Bezares – Bezares informed the Board that Julian is returning.

Julian Sarkar – Commenting on the closed meeting agenda, Sarkar reported sending a Department of Consumer Affairs report to the Chair and the Secretary, which pertains to the closed session exception to the open meeting laws for matters dealing with the security of bar exams. Sarkar claimed that there is important discussion in the closed session that does not have to be in closed session because it does not pertain to bar exam security. Sarkar also claimed that the State Bar is endeavoring to prevent implementation of a diploma privilege system because such a system would harm its financial interests.

End of Public Comment

10 MINUTES

Open Session Minutes–March 12, 2020

Open Session Minutes–April 14, 2020

Open Session Minutes - April 16, 2020

Adoption of Open Session Minutes – Moved by Duran, seconded by Stallings.

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

Noes – n/a

Motion carries.

30 CHAIR'S REPORT

40 STAFF REPORTS

41 Executive Director

1. Report from Executive Director

50 CONSENT

50 CONSENT

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

1. For translation services, with: Language Line

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

50-2 Adoption of Revised Judge Pay Schedules

RESOLVED, that the Board of Trustees approves the State Bar Court Judge pay schedules included as Attachment A, as described herein.

50-3 Receipt and Filing of 2019 Annual Legal Services Trust Fund Program Report Pursuant to Business and Professions Code Sections 6145 & 6222

Informational

50-4 Receipt and Filing of Annual Discipline Report

Informational

50-5 Report of Action Taken by Audit Committee – Receipt and Filing of Annual Financial Statements and Report of Independent Auditors Pursuant to Business and Professions Code Section 6145(a)

RESOLVED, that the Board of Trustees hereby affirms the action taken by the Board Audit Committee on April 28, 2020, when it received and reviewed draft financial statements and adopted a resolution directing staff to submit the Audited Financial Statements for Years Ended December 31, 2019 to the Legislature and Supreme Court on behalf of the Board of Trustees, as it is authorized to do; and it is

FURTHER RESOLVED, that when the billing of the 2021 license fees is mailed to licensees of the State Bar, staff is directed to post the Statement of Expenditures of Mandatory Fees for the year ended December 31, 2019, on the State Bar's website.

54-111 American Bar Association (ABA) House of Delegates, Annual Appointment of Members

Updated 2017-2022 Strategic Plan Rev. 3 : 1.a.

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.

54-112 Judicial Council, Annual Appointment of Members

RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee, reappoint Rachel Hill and appoint David Fu to the Judicial Council, each for a three-year term to commence on September 15, 2020, and to expire on September 14, 2023, or until further order of the Board, whichever occurs earlier.

54-141 1st Quarter 2020 Reports from the Office of Finance

RESOLVED, that the Board of Trustees, upon recommendation of the Finance Committee approves the 2020 First Quarter Financial Report in the form this day before the Board, for the three months ended March 31, 2020, as certified by the Chief Financial Officer, and on file with the San Francisco office of the State Bar.

54-142 Licensee Requests for Adjustment of Fees, Penalties and Charges

RESOLVED, that the Board of Trustees, upon recommendation of the Finance Committee, approves the fee adjustments for the State Bar licensees as presented this day, and on file in the San Francisco office of the State Bar.

54-181 4th Quarter 2019 Board and Management Travel Expenses

RESOLVED, that the Board of Trustees, upon recommendation of the Audit Committee approve the fourth quarter of 2019 Board and Management Travel Expenses in the form this day before the Board, for the three months ending December 31, 2019, as certified by the Chief Financial Officer, and on file with the San Francisco office of the State Bar.

54-182 1st Quarter 2020 Board and Management Travel Expenses

RESOLVED, that the Board of Trustees, upon recommendation of the Audit Committee approve the first quarter of 2020 Board and Management Travel Expenses in the form this day before the Board, for the three months ending March 31, 2020, as certified by the Chief Financial Officer, and on file with the San Francisco office of the State Bar.

Approval of Consent Calendar – Moved by Manning, seconded by Duran.

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

Noes – n/a

Motion carries.

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 (ExCom)

113 Approval of Addition to Legislative Priorities

Updated 2017-2022 Strategic Plan Rev. 3 : 4.a.

Presenter/Mover: ExCom Chair Alan Steinbrecher

RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee, approves the addition to the State Bar’s 2020 legislative priorities included in this item.

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

Noes – n/a

Motion carries.

120 Regulation and Discipline Committee (RAD)

121 Request for Approval of Rule Changes to Permit Videoconference Appearances and Electronic Service of Process in Fee Arbitration Proceedings

Presenter/Move: RAD Chair Brandon Stallings

RESOLVED, that the Board of Trustees, upon recommendation of the Regulation and Discipline Committee, having determined that an emergency justifies the immediate enactment of this interim measure without public comment pursuant to Rule 1.10(C) of the Rules of the State Bar of California, hereby adopts the proposed interim amendment to Rule 5.3540(E)(2) as set forth in Attachment B.

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

Noes – n/a

Motion carries.

700 MISCELLANEOUS

701 Council on Access and Fairness (COAF) - Approval of Scope of Work and Revised Workplan

Updated 2017-2022 Strategic Plan Rev. 3 : 4.i., 4.o.

Presenter: Judge Brenda Harbin-Forte (Ret.), Chair, COAF

RESOLVED, that the Board of Trustees approves the additional workplan activities requested by the Council on Access and Fairness and as described in the accompanying revised draft workplan and authorizes staff to maintain the workplan, and make technical edits and corrections to it as needed.

FURTHER RESOLVED, that the Board of Trustees delegates further evaluation and approval of next steps for any of the approved items to the Board's Diversity Liaisons.

Moved by Stallings, seconded by Duran.

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

Noes – n/a

Not present – Chen

Motion carries.

700 MISCELLANEOUS

702 Consideration of Options for Licensees Not in Compliance with Fingerprinting Requirement

Presenter: Dina DiLoreto, Director, Attorney Regulation & Consumer Resources

Should the Board of Trustees concur that the deadline should be extended, passage of the following resolutions is recommended:

RESOLVED, that the Board of Trustees, pursuant to Rule 2.46 of the Rules of the State Bar, hereby resets from June 30, 2020, to September 30, 2020, the final deadline for compliance with the fingerprinting requirement for noncompliant licensees identified in Groups 1 through 4 of Agenda Item 704 November 2019 or be administratively enrolled on Involuntary Inactive status; and it is

FURTHER RESOLVED, that the Board of Trustees hereby authorizes, pursuant to California Rule of Court 9.9.5 and Rule 2.46 of the Rules of the State Bar, that those licensees subject to the September 30, 2020, fingerprinting deadline who do not bring themselves into compliance with the fingerprinting requirement by September 30, 2020, be enrolled as inactive and placed on “Not Eligible to Practice” status effective October 1, 2020; and it is

FURTHER RESOLVED, that the Board hereby authorizes staff to remove individual attorneys from inactive status once they have submitted proof of compliance.

~~Should the Board of Trustees concur that the deadline should not be extended, passage of the following resolutions is recommended:~~

~~RESOLVED~~, that the Board of Trustees hereby authorizes, pursuant to California Rule of Court 9.9.5 and Rule 2.46 of the Rules of the State Bar, that those licensees subject to the June 30, 2020, fingerprinting deadline who do not bring themselves into compliance with the fingerprinting requirement by June 30, 2020, be enrolled as inactive and placed on “Not Eligible to Practice” status effective July 1, 2020; and it is

~~**FURTHER RESOLVED, that the Board hereby authorizes staff to remove individual attorneys from inactive status once they have submitted proof of compliance.**~~

Moved by SeLegue, seconded by De La Cruz.

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

Noes – n/a

Not present – Chen

Motion carries.

703 Approval of Final Recommendations of the Task Force on Access Through Innovation of Legal Services (ATILS)

Updated 2017-2022 Strategic Plan Rev. 3 : 4.d.

Presenter: Donna Hershkowitz, Interim Executive Director

(1) Should the Board agree with working group Option 1, it is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees directs staff to form the Working Group on Closing the Justice Gap 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) as a means for evaluating possible changes to existing laws and rules that otherwise inhibit the development of innovative legal service delivery systems, including: (1) consumer facing technology that provides legal advice and services directly to clients at all income levels; and (2) other new delivery systems created through the collaboration of lawyers, law firms, technologists, entrepreneurs, paraprofessionals, legal services providers, and other persons or organizations. The working group will examine the propriety of relaxing rules regarding the unauthorized practice of law, fee sharing, and nonlawyer ownership among other issues; and it is

FURTHER RESOLVED, that staff is directed to prepare a proposed charter for the working group that emphasizes as twin goals of the working group public protection and enhanced access to legal services, and, in addition to the above, may include: (1) examination of amendments to rule 5.4 and rule 5.7 of the California Rules of Professional Conduct; (2) exploration of amendments to the California Rules of Professional Conduct governing lawyer advertising and solicitation; and (3) evaluation of 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.

~~(2) Should the Board of Trustees concur in the proposed action [working group Option Two], passage of the following resolution is recommended:~~

~~RESOLVED~~, that the Board of Trustees directs staff to form the Working Group on Closing the Justice Gap to explore the development of a regulatory sandbox (similar to that described in the Final Report and Recommendation of the Task Force on Access Through Innovation of Legal Services attached hereto as Attachment A) as a means for evaluating possible changes to existing laws and rules that otherwise inhibit the development of innovative legal service delivery systems, particularly: (1) consumer facing technology that provides legal advice and services directly to clients at all income levels; and (2) other new delivery systems created through the collaboration of lawyers, law firms, technologists, entrepreneurs, paraprofessionals, legal services providers, and other persons or organizations. The working group shall explore regulatory reforms related to changes to the prohibitions on the unauthorized practice of law and other related regulatory reforms, with the exception of nonlawyer ownership of traditional law firms; and it is

~~FURTHER RESOLVED~~, that staff is directed to prepare a proposed charter for the working group that emphasizes as twin goals of the working group public protection and enhanced access to legal services, and, in addition to the above, may include: (1) exploration of amendments to the California Rules of Professional Conduct governing lawyer advertising and solicitation; (2) consideration of amendments to rule 5.4 of the California Rules of Professional Conduct short of proposing nonlawyer ownership of traditional law firms; and (3) evaluation of 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.

~~(3) Should the Board agree with working group Option 3, it is recommended that the Board of Trustees approve the following resolution:~~

~~RESOLVED~~, that the Board of Trustees directs staff to form the Working Group on Closing the Justice Gap to develop methods to increase access to legal services, including through innovative reforms and legal services delivery systems to improve access to justice without material changes to current attorney regulatory principles restricting fee sharing with nonlawyers and prohibiting nonlawyer ownership of, or investment in, a traditional law firm; and it is

~~**FURTHER RESOLVED**, that staff is directed to prepare a proposed charter for the working group that emphasizes as twin goals for the working group ensuring public protection and enhancing access to legal services, that includes: (1) in depth analysis of the data from the Justice Gap Study to refine the analysis of access needs across the state and across income levels; and (2) examination the amendments to the California Rules of Professional Conduct governing lawyer advertising and solicitation and amendments to State Bar Rules regarding Certified Lawyer Referral Services.~~

Motion to Adopt Option One – Moved by Broughton, seconded by Duran.

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

Noes – SeLegue, Stallings

Recused – LaBran

Motion carries.

704 Approval of Moral Character Decision Making Tools and Related Document

Presenter: Amy Nuñez, Director, Office of Admissions

RESOLVED, that the Board of Trustees approve the Moral Character Determinations Statement and Guidelines, the Moral Character Determinations – Decision Matrix, and the Moral Character Determinations: Best Practices and Talking Points for Law Schools, set forth in Attachments A, B, and C, respectively; and it is

FURTHER RESOLVED, that the Board of Trustees directs staff, by July 31, 2020, to revise policies and procedures as needed to reflect the information in these documents, and to publish these documents on the State Bar website.

Moved by Stallings, seconded by Cisneros.

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

Noes – n/a

Motion carries.

705 Report on and Approval of Recommendations Regarding the California Bar Examination Studies (MacLeod/Nuñez)

Updated 2017-2022 Strategic Plan Rev. 3 : 2.n., 4.i.

Presenters: Dag, MacLeod, Chief, Mission Advancement & Accountability Division
Lisa Chavez, Director, Office of Research & Institutional Accountability
Amy Nuñez, Director, Office of Admissions

RESOLVED, that the Board of Trustees directs State Bar staff to:

Establish a Blue Ribbon Commission on the Future of California Bar Exam in partnership with the California Supreme Court. The recommended charge of this Commission, to be finalized in consultation with the Supreme Court, would include:

- Review of the results of the California Attorney Practice Analysis and the recommendations of the CAPA Working Group;
- Review of the results of the 2020 National Conference of Bar Examiners job analysis and any next steps articulated by that body as related to CBX, or MBE or UBE content or format; and
- Development of recommendations for the California Supreme Court and the State Bar of California regarding:
 - Adoption of the Uniform Bar Exam (UBE):
 - Specifications for a California-specific supplementary bar exam should the UBE be recommended for adoption.
 - Revisions to the California Bar Exam if the UBE is not recommended for adoption:
 - Legal topics to be tested;
 - Skills to be tested;
 - Testing format; and
 - Specifications for a supplementary professional responsibility exam if that topic were eliminated from the CBX.
 - Bar exam cut score

and it is

FURTHER RESOLVED, that the Board of Trustees directs the Committee of Bar Examiners to:

- Review CAPA Working Group recommendations regarding the definitions of an entry-level attorney and minimum competence and:

- Recommend that the Board approve and recommend to the California Supreme Court as recommended by the Working Group; or
- Recommend that the Board approve and recommend to the California Supreme Court amended definitions.
- Review Bar Exam grading policies:
 - Revisit grader eligibility criteria and compensation levels as outlined in the 2020 DCA report; and
 - Examine the recommended timeline for the development and content of grading rubrics as outlined in the 2020 DCA report.
- Modify Exam administration policies:
 - Revisit flagrant cheating policy as outlined in the 2020 DCA report.
- Work with the Council on Access and Fairness to:
 - Convene a panel charged with:
 - Reviewing questions flagged for DIF in the 2020 differential item function analysis; and
 - Developing guidelines for minimizing the risk of future differential item functioning.

Moved by Stallings, seconded by De La Cruz.

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

Noes – n/a

Not present – SeLegue

Motion carries.

706 Approval of Amendments to Retiree Health Plan for Retirees of the State Bar

Updated 2017-2022 Strategic Plan Rev. 3 : 3.b.

Presenter: Sean Strauss, Assistant General Counsel

RESOLVED, that the Board of Trustees approves amendment and restatement of the State Bar of California Post Retirement Welfare Benefits Plan as reflected by the redlined revisions in Attachment A hereto.

Moved by Cisneros, seconded by Delen.

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

Noes – n/a

Not present – SeLegue

Motion carries.

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

Updated 2017-2022 Strategic Plan Rev. 3 : 3.b.

Presenter: Sean Strauss, Assistant General Counsel

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.

Moved by Cisneros, seconded by Duran.

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

Noes – n/a

Not present – SeLegue

Motion carries.

708 Approval of Revisions to Rules and Regulations Pertaining to the Employment of Executive Staff Employees and to the Rules and Regulations Pertaining to the Employment of Confidential Employees

Presenter: Steve Mazer, Chief, Administration Division

RESOLVED, that the Board of Trustees adopt the amended Rules and Regulations Pertaining to the Employment of Executive Staff Employees and the amended Rules

and Regulations Pertaining to the Employment of Confidential Employees, as set forth above and in Attachments B and C.

Moved by Cisneros, seconded by De La Cruz.

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

Noes – n/a

Not present – SeLegue

Motion carries.

709 Presentation of Draft 2020 Governance in the Public Interest Task Force Report

Presenter: Dag MacLeod, Chief, Mission Advancement & Accountability Division

Informational.