



# The State Bar of California

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## **OPEN SESSION**

## **AGENDA ITEM**

**54-115 JULY 2021**

## **BOARD EXECUTIVE COMMITTEE III.E**

**DATE:** July 22, 2021

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

**FROM:** Melanie Shelby, Appointments Liaison, Board Executive Committee  
Brandon Stallings, Appointments Liaison, Board Executive Committee

**SUBJECT:** Committee on Professional Responsibility and Conduct – Annual Appointment  
of Members and Officers

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### **EXECUTIVE SUMMARY**

This item presents the candidates recommended for appointment to the Committee on Professional Responsibility and Conduct for the 2021–2022 committee year. This item recommends the appointment of four new committee members along with the chair and vice-chair. In addition, the permanent reinstatement of an advisor to the committee is also being recommended.

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### **BACKGROUND**

The Committee on Professional Responsibility and Conduct (COPRAC) addresses matters involving professional ethics. The committee helps educate and provide guidance to attorneys, judges, and the public about the ethical duties of an attorney. The committee's work includes: (1) drafting advisory opinions on issues of professional responsibility; (2) drafting arbitration advisories to provide guidance to fee arbitrators; (3) studying and recommending changes to the Rules of Professional Conduct; (4) conducting special studies and providing consultation to the Board of Trustees on professional responsibility issues; and (5) engaging in educational and outreach programs on legal ethics topics, including conducting an annual ethics symposium.

In addition to the usual annual appointment recommendations, this item presents two special requests: (1) the permanent appointment of the advisor position to serve on COPRAC; and (2) the reappointment of a current member whose term is expiring for an additional year to improve the staggering of future appointments by avoiding an appointment year of only one new member.

## **DISCUSSION**

Currently, 13 volunteers serve on COPRAC, including a chair, vice-chair, and an advisor. The committee normally has 12 members. The size is currently 13 because last year the Board appointed an advisor to serve a one-year term to assist in the committee's work—studying a request for a new rule of professional conduct concerning campaign contributions to candidates for district attorney. This year, the terms of six members are expected to end: four committee members, the chair, and the committee advisor. This item recommends the permanent appointment of the advisor position, which would create a set committee size of 13 members. In order to achieve this size, as well as address balance with the appointment cycle for future years, we recommend the appointment of four new individuals to the committee this year, reappointing the chair to serve as the advisor, and retaining the current nonattorney member of the committee to serve one additional year.

The four individuals recommended for appointment will continue to provide a core of committee members with a strong background in legal ethics, which is critical to the committee's ability to issue opinions and develop educational programs. The applicant pool was particularly strong this year, and all four of the individuals recommended for appointment have extensive experience in legal ethics and professional responsibility.

## **PROPOSED NEW MEMBERS**

The State Bar received 44 applications. In order to fill four vacancies, the Board appointment liaisons reviewed the applications and considered recommendations from committee leadership and from staff. The Board appointment liaisons believe that the four individuals recommended for appointment will serve COPRAC and the Board well. The criteria used to consider the applications included, in no particular order: (1) experience in the legal ethics field; (2) experience in fee arbitration matters; (3) prior volunteer experience, particularly involvement in legal and other professional groups; and (4) diversity, including race, gender, ethnicity, sexual orientation, and geographic region.

The four individuals recommended for appointment to COPRAC are: Elizabeth Bradley, Cassidy Chivers, Eleanor Mercado, and William Munoz.

### **Elizabeth Bradley**

Elizabeth Bradley currently serves as the chair of the Los Angeles County Bar Association Professional Responsibility and Ethics Committee. She is also a member of the California Lawyers Association Ethics Committee. Ms. Bradley has experience in a variety of professional responsibility matters, including conflicts of interest and breach of fiduciary duty cases. She also

has experience in representing plaintiffs in these matters, which assists the committee's deliberations by providing a broad perspective.

### **Cassidy Chivers**

Cassidy Chivers is a member of the Bar Association of San Francisco's legal ethics committee. She is also a member of both the Association of Professional Responsibility Lawyers and the Association of Discipline Defense Counsel. As part of her law practice, she is the co-leader of her law firm's risk management program, which offers risk management and ethics services to lawyers and law firms nationwide.

### **Eleanor Mercado**

Eleanor Mercado provides in-house law firm risk management and legal ethics advice and counsel to a large law firm as its general counsel. Law firm general counsels provide a unique set of perspectives and experiences related to legal ethics issues. The committee has not had someone with this background since 2017.

### **William Munoz**

William Munoz is a certified specialist in legal malpractice law. He also acts as an expert witness on ethical issues and standard-of-care issues regarding legal malpractice and attorney-client fee disputes. Mr. Munoz writes a quarterly column that addresses legal malpractice and legal ethics issues. He is also a volunteer arbitrator with the State Bar's mandatory fee arbitration program.

Collectively, these individuals would offer the following attributes to the committee: (1) experience in areas emphasizing the law governing lawyers; (2) experience in both prosecuting and defending civil cases related to attorney conduct; (3) experience in fee arbitration matters; (4) experience with State Bar disciplinary matters; (5) ethics committee experience; and (6) experience providing large law firm risk management advice and serving as general counsel.

## **PROPOSED OFFICERS**

Current appointment practice provides that the vice-chair be recommended as chair for the upcoming committee year.<sup>1</sup> Following this practice, we recommend Justin Fields be appointed as the next chair of the committee. Mr. Fields is currently serving a one-year term as the vice-chair, and we are recommending he be appointed for another one-year term to serve as chair.

This year, there was one candidate who requested consideration for the vice-chair position. The candidate is Sarah Banola from San Francisco. She is in her second year on the committee and well qualified to serve as vice-chair based on her active involvement in the work of the committee. Therefore, we are recommending the appointment of Ms. Banola for a one-year term to serve as vice-chair.

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<sup>1</sup> See [Appendix E to the Board of Trustees Policy Manual](#). Appointment and Composition Requirements or Guidelines: "For leadership continuity, committee staff will generally nominate the committee member serving as Vice-Chair to serve as Chair in the committee year following service as Vice-Chair."

## REINSTATEMENT OF THE ADVISOR POSITION

Provided as Attachment B is a letter from COPRAC requesting the Board's approval to reinstate the advisor position on a permanent basis. Following the 2017 Governance in the Public Interest Task Force report, the advisor position for all committees and commissions was removed. However, the [Board of Trustees Policy Manual](#), under section 4.3, provides that advisors, ex officio members, and consultants may be appointed to State Bar subentities if authorized by the Board. This policy was adopted, in part, to guard against committees and commissions appointing ancillary members without Board oversight of the number of those ancillary members or the length of their ongoing participation after the end of their original Board-appointed term.

COPRAC spent the 2019–2020 committee year without an advisor, and they have spent this past committee year with the advisor position restored, as authorized by the Board, to assist with a special project. Based on this experience, COPRAC recognizes the great value the advisor position brings in both helping with the work load of the committee, as well as providing continuity and institutional knowledge from year to year as the committee loses their most senior members at the end of each committee each year.<sup>2</sup> As set forth in their letter, the committee strongly believes the role of advisor is important for several reasons, including the ability to retain an experienced and knowledgeable individual to assist the chair in carrying the committee's work forward and onboarding a new set of appointees each year.

If approved by the Board, the advisor would be appointed to serve a single year, would be expected to be the individual who had served as the chair in the immediate proceeding year, and would be subject to Board appointment as part of the yearly committee appointment process. Reinstating the advisor position would increase the size of the committee from 12 to 13.

An actual budget calculation for adding an advisor to the committee is unavailable from this past year because all meetings were held remotely via Zoom. Staff has provided an estimate that anticipates an additional cost of approximately \$2,088, calculated as follows: There are usually eight committee meetings a year, alternating between San Francisco and Los Angeles, requiring an average of four plane tickets. A conservative estimate of roundtrip airfare, plus ground transportation, to either San Francisco or Los Angeles is \$500 [4 x \$500 = \$2,000]. Lunch is budgeted at the per diem rate of \$11 per person [8 x \$11 = \$88]. \$2,000 + \$88 = \$2,088. Staff believes this cost can be absorbed in either COPRAC's current budget, or the Office of Professional Competence's current budget.

We recommend Dena Roche be appointed as the next advisor of the committee. Ms. Roche is currently serving a one-year term as the chair, and we are recommending she be appointed to another one-year term to serve as advisor.

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<sup>2</sup> Staff reports that typically the committee loses the chair and three senior members each year.

## **RETAINING A THIRD-YEAR MEMBER FOR AN ADDITIONAL YEAR**

As part of the Board's global recommendations for subentity appointments, beginning in the 2019–2020 committee year, appointment terms for COPRAC changed from three years to four years. As a result, the committee is expected to lose only one member from the committee next year. In order to achieve a more balanced appointment cycle in the years ahead, we recommend that a current member who is scheduled to cycle off the committee this year be reappointed for an additional year.

If a third-year member is not retained for an additional year, and instead four new committee members are appointed, the anticipated appointment rotation for the committee in future years would be as follows: five persons in 2021, **one** person in 2022; three persons in 2023; three persons in 2024; five persons in 2025; **one** person in 2026; three persons in 2027; three persons in 2028; five persons in 2029; **one** person in 2030, etc. Staff believes having an appointment cycle with only one vacancy is extremely undesirable. Reappointing a committee member to serve an additional one-year term next year is expected to result in a slightly more balanced appointment rotation in future years as follows: four persons in 2021; **two** persons in 2022; three persons in 2023; three persons in 2024; four persons in 2025; **two** persons in 2026; three persons in 2027; three persons in 2028; four persons in 2029; **two** persons in 2030, etc.

Tobi Inlender is a current third-year member whom we recommend be appointed to serve an additional one-year term to avoid creating a recurring appointment cycle resulting in the appointment of only one new committee member every four years. Ms. Inlender is a nonattorney public member on the committee. A public member brings value to the work of the committee by providing a client perspective. If Ms. Inlender is not reappointed, then the committee will not have a public member for the next committee year, as there were no public member applicants in this year's applicant pool. Ms. Inlender also served on the Rules Revision Commission, which provides her with experience and understanding in the development of the recently adopted new rules of professional conduct. Ms. Inlender is well-suited to serve an additional year on the committee.

However, the recommendation to appoint Ms. Inlender for an additional one-year term is based on the reinstatement of the advisor position. If the advisor position is not reinstated, our recommendation would be to reappoint Dena Roche to serve the additional one-year term in order to avoid creating a recruitment cycle that results in the appointment of only one new committee member every four years. Ms. Roche's expertise in legal ethics and the law of lawyering, along with her institutional knowledge regarding the committee's ongoing work, is highly valuable to the work of the committee.

## **ALTERNATE MEMBERS**

In the event the Board Executive Committee or the Board do not agree with one or more of the recommendations for appointment, or should a vacancy occur within COPRAC during the upcoming committee year, we recommend the following individuals as alternates: 1) Erin Rowe; 2) Erin Joyce; and, 3) Anthony Khoury.

## **APPLICANTS NOT SELECTED**

The list of applicants not currently recommended for appointment is listed alphabetically as Attachment C.

## **FISCAL/PERSONNEL IMPACT**

The fiscal impact of reinstating the advisor position is described above.

## **AMENDMENTS TO RULES OF THE STATE BAR**

None

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

Staff to make corresponding amendments to Appendix E of the Board of Trustees Policy Manual reflecting committee composition changes as described above.

## **STRATEGIC PLAN GOALS & OBJECTIVES**

None

## **RECOMMENDATIONS**

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

**RESOLVED**, that the Board Executive Committee recommends that the Board of Trustees authorize the appointment of the advisor position to serve on the Committee of Professional Responsibility and Conduct beginning in the 2021–2022 committee year; and it is

**FURTHER RESOLVED**, that the Board Executive Committee recommends that the Board of Trustees approve the appointment of the following new members, officers, and special one-year reappointment to serve on the Committee of Professional Responsibility and Conduct beginning in the 2021–2022 committee year:

### **Officers**

Dena Roche, Advisor  
Justin Fields, Chair  
Sarah Banola, Vice-Chair

### **Member Appointments**

Elizabeth Bradley  
Cassidy Chivers

Eleanor Mercado  
William Munoz

**One-Year Reappointment**

Tobi Inlender

**Alternate Member Appointments**

Erin Rowe  
Erin Joyce  
Anthony Khoury

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

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee authorize the appointment of the advisor position to serve on the Committee of Professional Responsibility and Conduct beginning in the 2021–2022 committee year; and it is

**FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee approve the appointment of the following new members, officers, and special one-year reappointment to serve on the Committee of Professional Responsibility and Conduct beginning in the 2021–2022 committee year:

**Officers**

Dena Roche, Advisor  
Justin Fields, Chair  
Sarah Banola, Vice-Chair

**Member Appointments**

Elizabeth Bradley  
Cassidy Chivers  
Eleanor Mercado  
William Munoz

**One-Year Reappointment**

Tobi Inlender

**Alternate Member Appointments**

Erin Rowe  
Erin Joyce  
Anthony Khoury

## **ATTACHMENT(S) LIST**

- A.** Worksheet Presenting Executive Committee Liaisons' Recommendation
- B.** COPRAC Letter Re Importance of Advisor Role
- C.** Applicants Not Selected for Appointment





**ATTACHMENT A**

**PROPOSED: 2021–2022 COMMITTEE  
COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT**  
*(Appointed/Reappointed by the Board of Trustees, July 16, 2020)*

Officer and new member terms begin at the close of the September 2020 State Bar Board of Trustees meeting (September 24–25, 2020). Officer terms are one year and expire at the close of the September 2021 State Bar Board of Trustees meeting (September 23–24, 2021). Member terms expire at the close of the State Bar Board of Trustees meeting in the year indicated below.

<b>POSITION</b>	<b>MEMBER</b>	<b>CITY</b>	<b>TERM EXPIRATION</b>
<b>Advisor/ Continuing Member</b>	Dena M. Roche	San Francisco	2022
<b>Chair/ Continuing Member</b>	Justin J. Fields	San Francisco	2023
<b>Vice-Chair/ Continuing Member</b>	Sarah J. Banola	San Francisco	2024
<b>Continuing Member</b>	Tobi Inlender <b>(PM)*</b>	Sherman Oaks	2022
<b>Continuing Member</b>	Kenneth E. Bacon	Sacramento	2023
<b>Continuing Member</b>	Brandon N. Krueger	Laguna Beach	2023
<b>Continuing Member</b>	Joel Mark	Palm Desert	2024
<b>Continuing Member</b>	Kyla Rowe	Aptos	2024
<b>Continuing Member</b>	Hunter Starr	Bakersfield	2024
<b>New Member</b>	Elizabeth Bradley	Los Angeles	2025
<b>New Member</b>	Cassidy Chivers	San Francisco	2025
<b>New Member</b>	Eleanor Mercado	San Francisco	2025
<b>New Member</b>	William Munoz	Sacramento	2025

**\*Public Member**



# The State Bar *of California*

180 Howard Street, San Francisco, CA 94105

## COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT

### ATTACHMENT B

June 11, 2021

Board of Trustees  
The State Bar of California  
180 Howard Street  
San Francisco, CA 94105

RE: Advisor Role for the Committee on Professional Responsibility and Conduct

Dear Members of the Board of Trustees:

The Committee on Professional Responsibility and Conduct (COPRAC) is writing to request your consideration and permission for COPRAC to maintain the role of Advisor.

Below, we will discuss why COPRAC believes that the Advisor role should be permanently reinstated. If the Board requires more time to consider full reinstatement, we respectfully request that, at a minimum, COPRAC be allowed to maintain the Advisor role for the 2021-2022 year on an interim or trial basis pending a permanent decision.

As you know, COPRAC helps facilitate the State Bar's public protection mission. We write ethics opinions that provide crucial guidance to California lawyers on ethical issues and professional responsibility. We conduct educational programs, including this year's State Bar ethics symposium. We also assist with programs at local bars or organizations upon request to the State Bar and publish educational articles regarding legal ethics. At the request of the State Bar, we also analyze diverse ethics questions; recently, for example, we analyzed an inquiry concerning conflict of interest rules for District Attorneys and, separately, offered recommendations for revisions to the Rules of Professional Conduct and related comments.

In addition to these established functions, we have assumed tasks of the Committee on Mandatory Fee Arbitration (CMFA). Thus, we now write Arbitration Advisories that assist volunteer fee arbitrators in the important public protection work through fee arbitration and in educating lawyers on ethical rules related to fees and fee agreements.

Despite the extraordinary disruptions created by the Covid-19 pandemic, the Committee has recently been highly productive. Since the start of the pandemic, the Committee has issued five published opinions and two arbitration advisories. While the 2020 Symposium was canceled

because of the pandemic, the 2021 Symposium, held remotely, had 500 registrants, at least 380 of whom attended. In addition, the Committee has undertaken several revisions of the Rules of Professional Conduct that have now been approved by the California Supreme Court, as well as an extensive report to the Board of Trustees on a significant proposed revision to those rules.

As we show below, the Advisor role is vital to COPRAC's ability to maintain its high level of productivity and high-quality analysis. We believe it can be continued with little cost to the State Bar.

### **COPRAC Membership Changes and the Advisor Role**

Prior to the 2019-2020 year, COPRAC consisted of 16 members, including two non-attorney members of the public and three leadership positions of Chair, Vice-Chair, and Advisor. The Advisor, who played a non-voting role, was the person who had served longest on the Committee and previously served in leadership as both Vice-Chair and Chair, positions traditionally awarded on the basis of productivity and understanding of Committee and the State Bar's institutional mission. Past experience has been that the Advisor continues to participate vigorously in the Committee's active work and deliberations. In terms of work, judgment, and experience, the Advisor's contributions were always invaluable, particularly given the unique nature of COPRAC's work which spans over more extended periods of time than many other committees and which benefits tremendously from essential continuity. For example, the process of developing, drafting, revising, and finalizing ethics opinions and advisories, which typically have two separate public comment periods (90 days and 60 days), usually involving further revisions, means that most opinions are with the Committee for at least a year. The Advisor provides much-needed continuity and institutional knowledge for COPRAC, particularly in effectively responding to public comments about our opinions, because the Advisor is usually the person most familiar with why decisions were made to address specific issues in a particular way or leave them out altogether, and critical related analysis. Historically, the Advisor's contributions have made COPRAC more productive and effective.

The excellent performance of past Advisors is attested to by the number of them subsequently selected to occupy important roles in the leadership of the State Bar itself, the State Bar's most important ethics initiatives, and other important state and national ethics bodies. Recent past Advisors include Mark Tuft, co-author of the leading treatise on California legal ethics and a central member of both Rules Revision Commissions; Sean SeLegue, current chair of the State Bar; the Honorable Wendy Chang, Fellow of the American Bar Foundation and Member of the ABA Standing Committee on Professional Ethics; Neil Wertlieb, co-founder and co-Chair of the CLA Ethics Committee; and Merri Baldwin, past President of BASF and Vice-Chair of the Closing the Justice Gap Working Group.

For the 2019-2020 year, COPRAC was reduced to 12 members, including one non-attorney member and two leadership positions of Chair and Vice-Chair. The Advisor role was eliminated as part of this reduction in membership. As we understand that decision, it was based on a consultant's recommendation that the Advisor position be eliminated for all Committees, rather

than on a specific appraisal of the historical performance of Advisors to COPRAC or the unique needs of our Committee. We did not have an Advisor in the 2019-2020 year.

COPRAC received special dispensation for an Advisor in the 2020-2021 year. This was due in large part to an ongoing project for the State Bar evaluating a request by four District Attorneys for a new rule of professional conduct to address perceived conflicts between District Attorneys and law enforcement. To this end, former Committee Chair Professor Stephen M. Bundy has served as the Advisor this year.

### **The Case for Restoring the Advisor Role on a Permanent Basis**

As shown above, our experience has been that the value of the Advisor position to COPRAC is high. The experience of the past year, when the Advisor position was temporarily restored, confirms that that value is higher than ever now, given the Committee's increased workload, due to our assuming the responsibilities of the CMFA, and our reduced membership, with four fewer members than in the past. The Advisor has the most experience serving on the Committee. Each draft opinion has a leadership member assigned to "advise" – with the addition of arbitration-related advisories to our Committee's responsibility, in addition to our ethics opinions, having an Advisor to share this responsibility has been crucial. In addition, much of our work occurs in our (currently virtual) meetings approximately every six weeks. Professor Bundy's significant contributions to our discussions on draft ethics opinions and other work at our meetings highlight the value gained by having someone with such insight and experience not only in analyzing legal ethics issues but with the workings and procedures of the Committee. There is a learning curve serving on this Committee and with approximately one-quarter of the membership being new each year in our current structure, having an experienced Advisor helps facilitate meaningful discussion and ensure our work product meets the standards the State Bar expects of us.

The experience of the pandemic also confirms that the Advisor position can be maintained at little expense to the State Bar. During the pandemic, COPRAC has used virtual meetings, which have avoided all the travel and related expenses associated with the Committee's work. Those meetings have been highly productive. We expect virtual meetings to continue for the foreseeable future, and expect that even when in-person meetings become an option, many Committee members will choose to attend virtually rather than travel for their own personal or health reasons. However, we strongly believe that any expense incurred as the result of reinstating the Advisor position would be significantly outweighed by the benefit of the many hours in which the Advisor would devote to the integrity and work of the Committee.

### **Maintaining the Advisor Role for the 2021-2022 Year**

We realize that this request comes late in the year. In the event that the Board requires more time to consider the permanent restoration of the Advisor position, we respectfully request that the Board continue the current allowance of an Advisor pending a final decision. Such a continuation is justified, we believe, by the experience of the past year and the continuing challenges presented to the Committee's members and its work by the transition out of the

pandemic, and, as noted above, will involve little cost to the State Bar. Whether the Board decides to restore the Advisor position permanently, or instead on an interim basis pending final decision, we anticipate that, consistent with historical practice, the advisory role would be filled by the outgoing Chair of the Committee. In order to make that possible, Dena Roche is prepared to serve as the Advisor for next year should our request be granted.

We want to conclude by emphasizing that because we believe the Advisor role is so essential to this Committee, we are very much open to any appropriate ways or suggestions to ensure that the Committee, State Bar, and legal community can benefit from having an Advisor to COPRAC while ensuring that there is limited financial burden on the State Bar.

Thank you for your time and consideration of this important matter.

Sincerely,

Committee on Professional Responsibility and Conduct

**APPLICANTS NOT SELECTED FOR APPOINTMENT**

1. Daniel Alexander
2. Melanie Alsworth
3. Jennifer Anisman
4. James Arnold
5. Jeffrey Baker
6. Philip Borowsky
7. Carol Ann Brown
8. Ariana Cernius
9. Ezekiel Cortez
10. K. Elizabeth Dahlstrom
11. Donald Dench
12. Carmen Dunbar
13. Shireef Elmakawi
14. Marlisa Ferreira
15. Kavita Gupta
16. Patrick Hammon
17. Benjamin Hanna
18. Martin Hirshland
19. Laura Kessner
20. Cindy Kim
21. Petro Kostiv
22. Carol Langford
23. Carlos Lloreda
24. Shahid Manzoor
25. Brian Martin
26. Tracey Merrell
27. Nicola Migliaccio
28. Christina Moore
29. John Moriarity
30. Taneashia Morrell
31. Laura Nelson
32. Veronica Randazzo
33. John Scott
34. Kristin Smith
35. Philip Stemler
36. Francis Tepedino
37. Joseph Weiner