



The State Bar of California

OPEN SESSION AGENDA ITEM 701 MARCH 2022

DATE: March 24, 2022

TO: Members, Board of Trustees

FROM: Vanessa Holton, General Counsel

SUBJECT: Approval of Exception to CalPERS 180-Day Wait Period and Waiver of Board of Trustees Policy Manual 12-Month Wait Period for Appointment of Dag MacLeod as a Retired Annuitant under Government Code Section 21224

EXECUTIVE SUMMARY

To comply with the California Public Employee Retirement System (CalPERS) requirements, Board of Trustees action is required to waive the 180-day waiting period for the State Bar to appoint a former employee retired under CalPERS as a retired annuitant within 180 days of that individual's retirement date. In addition, to comply with the State Bar's Policy Restricting Business with the State Bar After Leaving Office, a waiver under the terms of that policy is also necessary from the Board. Dag MacLeod, Chief Mission Officer in the Office of Mission Advancement & Accountability, will retire from the State Bar on April 2, 2022. His departure creates a critical need to replace the duties he performed for the State Bar while it is recruiting for a new chief mission officer to assume Mr. MacLeod's responsibilities. Mr. MacLeod has unique institutional knowledge and specialized skills needed for operational continuity; thus, the State Bar seeks interim short-term assistance from Mr. MacLeod immediately after his retirement and through the process of transitioning those duties to his successor.

BACKGROUND

The State Bar of California participates in the CalPERS retirement system. A CalPERS retiree can be appointed to work for the former employer as a retired annuitant. Under pension reform standards (see Government Code sections 7522.56 and 21224), the retired individual to be appointed must meet the following standards:

1. The individual must have specialized skills needed to perform work of limited duration;
2. The individual cannot work more than 960 hours in a fiscal year (July 1–June 30);
3. The contracted compensation rate cannot be less than the minimum nor exceed the maximum paid to other employees, if any, performing comparable duties;
4. Compensation must be limited to wage rates as set forth in paragraph 3 above and not take the form of other nonwage benefits;
5. The individual cannot have received unemployment insurance benefits for prior retired annuitant work;
6. The individual cannot work as a retired annuitant within 180 days following their retirement date unless the governing board of the contracting entity certifies a critical need for the individual's skills within this 180-day period, as set forth in the resolution passed during public session, which must then be filed with CalPERS; and
7. The individual must be the normal retirement age or older at the time of retirement.

DISCUSSION

Mr. MacLeod has served in two leadership roles during his tenure with the State Bar. In April 2016, Mr. MacLeod joined the State Bar as the director of the Office of Research & Institutional Accountability. In 2018, he was promoted to his current role as chief of Mission Advancement & Accountability. Between 2017 and 2020, Mr. MacLeod led the production of the statutorily mandated Annual Discipline Report. He has served as the lead staff member on the Governance in the Public Interest Task Force, the Applicant Evaluation and Nomination Committee, and the Judicial Nominees Evaluation (JNE) Commission. He also currently serves as a member of the State Bar's team that is responsible for developing case processing standards mandated by Senate Bill 211.

As a result of Mr. MacLeod's unique knowledge and relevant experience, he is the most qualified person to provide the extra help required to advance ongoing policy initiatives, including: development and implementation of case processing standards as mandated by Senate Bill 211; finalizing the reorganization of the work of the JNE Commission; finalizing the transition of the work of the Applicant Evaluation and Nominations Committee; and risk assessment modeling for the Attorney Supervision and Assistance Redesign project. Accordingly, the State Bar seeks to appoint Mr. MacLeod as a retired annuitant immediately upon his retirement.

Because of CalPERS restrictions on contracting with a CalPERS retiree, the State Bar is seeking a Board resolution certifying the critical need to appoint Mr. MacLeod as a retired annuitant within 180 days of his retirement date, as required by CalPERS under Government Code sections 7522.56 and 21224.

Additionally, the State Bar seeks from the Board of Trustees a waiver for good cause of the Board Policy 11.2, Restricting Business with the State Bar After Leaving Office. Section 11.2 states:

Members of the Board of Trustees and senior managers designated by the executive director for a period of 12 months following expiration of their term of office or termination of employment shall not:

Seek to do, or do, business with the State Bar for monetary gain, or act as a agent or attorney for, or otherwise represent any person, for compensation by making any formal or informal appearance, or any oral or written communication before the State Bar, or any officer or employee or agent thereof, if the appearance or communication is for the purpose of influencing official State Bar action, including the awarding or revocation of services, contracts, or the sale or purchase of goods or property.

The Board, or its designee, may waive the requirements of this policy for good cause.

Good cause exists to waive the 12-month waiting period as Mr. MacLeod's appointment, as a retired annuitant will allow for operational continuity on significant State Bar initiatives during the period until those duties can be transitioned to Mr. MacLeod's successor.

FISCAL/PERSONNEL IMPACT

Mr. MacLeod's hourly rate of pay as a retired annuitant will be \$71.90, based on the top of the salary range of the principal program analyst classification. Staff does not anticipate that Mr. MacLeod's retired annuitant appointment will have any significant impact on the State Bar's finances.

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 2. Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California.

RECOMMENDATIONS

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

RESOLVED, that the Board of Trustees adopts the resolution set forth in Attachment A and certifies that there is a critical need to appoint Mr. MacLeod as a retired annuitant prior to the 180-day CalPERS waiting period; and it is

FURTHER RESOLVED, that the Board of Trustees, for good cause, waives the 12-month waiting period provided for in section 11.2 of the Board of Trustees Policy Manual (Policy Restricting Business with the State Bar After Leaving Office), as applied to Dag MacLeod.

ATTACHMENT LIST

- A.** Resolution for Exception to the 180-Day Wait Period, Government Code sections 7522.56 and 21224.

**RESOLUTION
MARCH 24, 2022**

**RESOLUTION FOR EXCEPTION TO THE 180-DAY WAIT PERIOD
GOVERNMENT CODE SECTIONS 7522.56 and 21224**

WHEREAS, in compliance with Government Code sections 7522.56 and 21224, the State Bar of California Board of Trustees must provide CalPERS this certification resolution when hiring retirees before 180 days has passed since their retirement date; and

WHEREAS, Dag MacLeod plans to retire under CalPERS as the chief of Mission Advancement & Accountability effective April 2, 2022;

WHEREAS, Government Code sections 7522.56 and 21224 prohibit the appointment of a CalPERS retiree as a retired annuitant earlier than 180 days after their retirement date without a certification resolution, such as this; and

WHEREAS, Government Code sections 7522.56 and 21224 provide that a certification resolution will not waive the 180-day wait period if the retiree has received any unemployment insurance benefits; and

WHEREAS, Mr. MacLeod certifies that he has not and will not receive any unemployment insurance benefits; and

WHEREAS, the State Bar of California Board of Trustees and the State Bar of California certify that there is a critical need to hire Mr. MacLeod as a retired annuitant beginning on April 3, 2022, which is within 180 days of his April 2, 2022, retirement date; and

WHEREAS, no matters, issues, terms, or conditions related to this appointment as a retired annuitant have been or will be placed on a consent calendar; and

WHEREAS, the appointment as a retired annuitant shall be limited to 960 hours per fiscal year; and

WHEREAS, the compensation paid to the retiree is equal to the monthly base salary (\$12,462) paid to State Bar employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the hourly rate paid to Mr. MacLeod for his work as a retired annuitant will be \$71.90; and

WHEREAS, Mr. MacLeod has not and will not receive any other benefit, incentive, or compensation in lieu of benefits or other form of compensation in addition to this hourly pay rate;

THEREFORE, BE IT RESOLVED THAT the State Bar of California Board of Trustees hereby certifies the nature of the appointment as described herein and that this appointment is necessary to perform critically needed duties for the State Bar of California beginning April 3, 2022.