



# The State Bar of California

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## Regular Meeting of the Board of Trustees Teleconference

Open Session Minutes  
Thursday, March 24, 2022  
2:27 p.m.–5:17 p.m.

**Time meeting Commenced:** The Board meeting commenced in open session at 2:27 p.m. The Board moved to closed session at 4:53 p.m.

**Time meeting Adjourned:** 5:17 p.m.

**Chair:** Ruben Duran

**Secretary:** Louisa Ayrapetyan

**Members Present:** Mark Broughton, Hailyn Chen, José Cisneros, Juan De La Cruz, Ruben Duran, Sean SeLegue, Melanie Shelby, Arnold Sowell, Brandon Stallings, Mark Toney

**Members Absent:** Sonia Delen

### OPEN SESSION

#### ROLL CALL

The Board of Trustees meeting was called to order by Chair Duran. Roll call was taken and a quorum was established.

#### PUBLIC COMMENT

Chair Duran called for public comment, inquiring as to whether there were person(s) who wished to comment on any agenda item. The following comment was provided to the Board:

1. Tom Gordon, Executive Director, Responsive Law:
  - Urged the Board to consider changes to the composition of the Closing the Justice Gap Working Group

#### 10 MINUTES

Open Session Minutes: January 20–21, 2022

Open Session Minutes: February 25, 2022

*Moved by Stallings, seconded by Cisneros.*

*Ayes – (8) Broughton, Chen, Cisneros, De La Cruz, Shelby, Sowell, Stallings, Toney*

*Noes – (0)*

*Abstain – (0)*

*Absent – (2) Delen, SeLegue*

*Minutes adopted.*

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

Chair Duran provided an oral report.

### **40 STAFF REPORTS**

#### **41 Executive Director**

##### **41-1 Report from Executive Director**

Executive Director Leah Wilson provided an oral report.

### **50 CONSENT AGENDA**

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

1. For Online Legal Research Services, with: LexisNexis
2. For Offsite Document Storage, with: Iron Mountain
3. For Maintenance and Support for Legacy AS400 System, with: Midrange Support Group, LLC

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

#### **50-2 Receipt and Filing of Annual Lawyer Assistance Program Oversight Committee Report Pursuant to Business and Professions Code Section 6238**

**RESOLVED**, that the Board of Trustees receive and file the Lawyer Assistance Program 2021 Annual Report.

#### **50-5 Approval of Guiding Principles in Examination Development to Minimize Potential Bias in Bar Exam Questions**

No recommendation.

#### **54-121 Proposed Amendment to Rule 5.80 of the Rules of Procedure (Default Procedure for Failure to File Timely Response): Return from Public Comment and Request for Approval**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Regulation and Discipline Committee, hereby approves and adopts rule 5.80 of the Rules of Procedure of the State Bar of California, attached here as Attachment A, effective as of April 4, 2022.

#### **54-142 Approval of Investment Report and Client Security Fund Report for Twelve Months Ended December 31, 2021**

**RESOLVED**, that upon recommendation of the Finance Committee, the Board of Trustees approves the Financial Reports in the form presented this day before the Board, for the twelve months ended December 31, 2021, as certified by the chief financial officer and filed with the San Francisco office of the State Bar.

*Moved by Cisneros, seconded by Stallings.*

*Ayes – (9) Broughton, Chen, Cisneros, De La Cruz, SeLegue, Shelby, Sowell, Stallings, Toney*

*Noes – (0)*

*Abstain – (0)*

*Absent – (1) Delen*

*Motion carries.*

The following agenda items were pulled from the consent calendar for a separate discussion.

### **50-3 Approval of 2022 Legislative Priorities**

**Presenters:** Donna Hershkowitz, Chief of Programs/Legislative Director  
Bridget Gramme, Deputy Chief of Programs, Programs Division

1. **RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, adopts as a legislative priority securing an annual inflationary adjustment to the mandatory portion of the licensing fees; and it is
2. **FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, adopts as a legislative priority increasing the funding available to use for efforts to improve diversity, equity, and inclusion in the legal profession; and it is
3. **FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, adopts as a legislative priority seeking amendments to the Vehicle Code to authorize investigators in the Office of Chief Trial Counsel to access DMV photos; and it is
4. **FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, adopts as a legislative priority increasing public protection by amending section 6007(c)(2) of the Business and Professions Code to allow involuntary inactive enrollment where the attorney has caused or is causing substantial harm to their clients or the public and there is a reasonable probability both that OCTC will prevail on the underlying misconduct matter and that the attorney will be subject to an actual suspension of 12 months or more; and it is
5. **FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, adopts as a legislative priority pursuing changes needed to implement the Client Trust Account Protection Program, including enhancing the reporting from banks, requiring attorneys to have compliance reviews conducted by independent CPAs, and authorizing audits of client trust accounts based on risk assessments and random selection; and it is

6. **FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, adopts as a legislative priority earmarking the \$5 legal services opt out for a strategic funding initiative to improve access to legal services for low-income Californians, instead of simply allocating the new funding pursuant to the IOLTA formula; and it is
7. **FURTHER RESOLVED** that the Board of Trustees, upon recommendation of the Board Executive Committee, adopts as a legislative priority creating a loan repayment assistance program to improve recruitment and retention of legal aid lawyers; and it is
8. **FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, adopts as a legislative priority clarifying that the Lawyer Assistance Program funds may be used for the statutorily required outreach and education about substance use issues, as well as for wellness, mental health, behavioral health, cognitive decline and other similar issues; and it is
9. **FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, directs staff to take a support position on AB 1733 in its current form and as further amended in a manner generally consistent with its current form and the State Bar's Strategic Plan; and it is
10. **FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, delegates to staff, in consultation with the Board's Legislative Liaisons, and as informed by feedback from relevant stakeholders where appropriate, the authority to determine the appropriate strategy, method, and timing in which to pursue the above legislative priorities; and it is
11. **FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, delegates to staff the authority to take action on pending legislation in between Board of Trustees meetings, so long as the position is consistent with the State Bar's Strategic Plan, the action is taken in consultation with the Board's Legislative Liaisons, and staff report back at the next Board meeting on actions taken between meetings; and it is.
12. **FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, directs that staff return to the Board at the May meeting with revisions to Attachment A of the present agenda item.

*Moved by Stallings, seconded by De La Cruz.*

*Ayes – (9) Broughton, Chen, Cisneros, De La Cruz, SeLegue, Shelby, Sowell, Stallings, Toney*

*Noes – (0)*

*Abstain – (0)*

*Absent – (1) Delen*

*Motion carries.*

**50-4 Rules of Procedure to Continue to Conduct State Bar Court Proceedings Remotely:  
Return from Public Comment and Request for Adoption of Rules 5.7, 5.18, and 5.154  
and Request for Rescission of Interim Rule 5.19**

Motion for reconsideration of agenda item 50-4.

*Moved by Cisneros, seconded by Stallings.*

*Ayes – (8) Broughton, Chen, Cisneros, De La Cruz, Shelby, Sowell, Stallings, Toney*

*Noes – (0)*

*Abstain – (1) SeLeague*

*Absent – (1) Delen*

**RESOLVED**, that the Board of Trustees hereby approves and adopts rules 5.17, 5.18, and 5.154 of the Rules of Procedure of the State Bar of California, permitting the State Bar Court to continue to conduct court proceedings remotely on a permanent basis, as set forth in Attachment A, effective April 4, 2022; and it is

**FURTHER RESOLVED**, that the Board of Trustees hereby rescinds interim rules 5.17, 5.18, 5.19, and 5.154, which permitted the State Bar Court to conduct court proceedings remotely on an interim basis, as set forth in Attachment D, effective April 4, 2022.

*Moved by Toney, seconded by Cisneros.*

*Ayes – (8) Broughton, Chen, Cisneros, De La Cruz, Shelby, Sowell, Stallings, Toney*

*Noes – (0)*

*Abstain – (1) SeLeague*

*Absent – (1) Delen*

**54-122 Proposed Amendment to Rule 5.21 of the Rules of Procedure (Limitations Period):  
Return from Public Comment and Request for Approval**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Regulation and Discipline Committee, hereby approves and adopts rule 5.21 of the Rules of Procedure of the State Bar of California, attached here as Attachment A, provided that subdivision G will remain unchanged, effective as of April 4, 2022.

*Moved by Stallings, seconded by Cisneros.*

*Ayes – (9) Broughton, Chen, Cisneros, De La Cruz, SeLeague, Shelby, Sowell, Stallings, Toney*

*Noes – (0)*

*Abstain – (0)*

*Absent – (1) Delen*

*Motion carries.*

**54-141 Approval of Financial Statements Report, Investment Report, and Client Security Fund Report for Nine Months Ended September 30, 2021**

**RESOLVED**, that upon recommendation of the Finance Committee, the Board of Trustees approves the Financial Reports in the form presented this day before the Board, for the nine months ended September 30, 2021, as certified by the chief financial officer and filed with the San Francisco office of the State Bar.

*Moved by Cisneros, seconded by Sowell.*

*Ayes – (9) Broughton, Chen, Cisneros, De La Cruz, SeLegue, Shelby, Sowell, Stallings, Toney*

*Noes – (0)*

*Abstain – (0)*

*Absent – (1) Delen*

*Motion carries.*

**700 MISCELLANEOUS**

**701 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**

**Presenter:** Jean Krasilnikoff, Attorney III, Office of the General Counsel

**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.

**702 Approval of Exception to CalPERS 180-Day Wait Period for Appointment of Linda Katz as a Retired Annuitant under Government Code Section 21224**

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

**703 Approval of Exception to CalPERS 180-Day Wait Period for Appointment of Sarah Cohen as a Retired Annuitant under Government Code Section 21224**

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

*Moved by Stallings, seconded by De La Cruz.*

*Ayes – (9) Broughton, Chen, Cisneros, De La Cruz, SeLegue, Shelby, Sowell, Stallings, Toney*

*Noes – (0)*

*Absent – (1) Delen*

*Motion carries.*

#### **704 Discussion Regarding California Civility Task Force Proposals – Proposed Action Plan**

**Presenters:** Randall Difuntorum, Program Director II, Office of Professional Competence  
Justice Brian S. Currey, Associate Justice, California Supreme Court

**RESOLVED**, that the Board of Trustees accepts for evaluation the September 2021 report of the California Civility Task Force with appreciation to the taskforce members for its work developing proposals for improving civility in California’s legal profession; and it is

**FURTHER RESOLVED**, that the Board of Trustees adopts the staff’s recommended action plan for evaluating the California Civility Task Force proposals as follows: (i) staff will review the proposal to add a new civility training requirement for minimum continuing legal education; (ii) COPRAC will review the proposal to amend the California Rules of Professional Conduct to address lawyer conduct that constitutes repeated incivility and to clarify that civility is not inconsistent with a lawyer’s zealous representation of a client; and (iii) staff will review the proposal to add a requirement that each lawyer annually affirm or reaffirm their commitment as an officer of the court to conduct themselves with dignity, courtesy, and integrity.

*Moved by Shelby, seconded by De La Cruz.*

*Ayes – (7) Chen, Cisneros, De La Cruz, Shelby, Sowell, Stallings, Toney*

*Noes – (2) Broughton, SeLegue*

*Abstain – (0)*

*Absent – (1) Delen*

*Motion carries.*

#### **705 Discussion and Update on Client Trust Account Protection Program: Request to Circulate for Public Comment**

**Presenters:** Leah Wilson, Executive Director, The State Bar of California  
Randall Difuntorum, Program Director II, Office of Professional Competence

**RESOLVED**, that the Board of Trustees authorizes staff to include and pursue mandatory bank reporting of CTA information in the CTAPP design.

**RESOLVED**, that the Board of Trustees authorizes staff to make available for public comment, for a period of 60 days, proposed new rule 9.8.5 of the California Rules of Court; and it is

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

**RESOLVED**, that the Board of Trustees authorizes staff to make available for public comment, for a period of 60 days, proposed amended rules 1.4 and 1.15 of the California Rules of Professional Conduct; and it is

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

*Moved by SeLeague, seconded by Cisneros.*

*Ayes – (8) Broughton, Cisneros, De La Cruz, SeLeague, Shelby, Sowell, Stallings, Toney*

*Noes – (0)*

*Abstain – (0)*

*Absent – (2) Chen, Delen*

*Motion carries.*

#### **706 Approval of Revised Charter for the Closing the Justice Gap Working Group**

**Presenter:** Bridget Gramme, Deputy Chief of Programs, Programs Division

**RESOLVED**, that the Board of Trustees adopted the revised charter, as it appears in Attachment C, and authorizes the chair of the working group and staff to adopt effective meeting procedures to implement the revised charter as appropriate, and it is

**FUTHER RESOLVED**, that the Board of Trustees appoint Trustee Mark Toney, a public member of the Board, and Trustee Hailyn Chen, an attorney member of the Board, to serve as Board liaisons to CTJG; and it is

**FURTHER RESOLVED**, that the Board of Trustees approve the extension of the Closing the Justice Gap Working Group and the terms of its officers and members until May 31, 2023, unless earlier terminated or extended by subsequent Board action.

*Moved by Cisneros, seconded by Stallings.*

*Ayes – (6) Broughton, Cisneros, De La Cruz, Sowell, Stallings, Toney*

*Noes – (0)*

*Abstain – (0)*

*Absent – (4) Chen, Delen, SeLeague, Shelby*

*Motion carries.*



**707 Update on Case Management System Vulnerability Regarding Confidential Attorney Discipline Records**

**Presenter:** Steve Mazer, Chief Administrative Officer

Presentation and discussion only.

Chair Duran stated that pursuant to Government Code section 11126(e)(1) and Government Code section 11126(c)(7) the Board will move into closed session to discuss the closed session agenda.

**CLOSED SESSION**

**1000 MINUTES**

Closed Session Minutes: January 20–21, 2022

**7000 MISCELLANEOUS**

**7001 Discussion Regarding Threatened Litigation Concerning Odyssey Case Management System Data Breach**

*\*Closed pursuant to Government Code section 11126(e)(1).*

**7002 Discussion Regarding Sale Price and Terms and Leasing Price and Terms for 180 Howard Street, San Francisco**

*\*Closed pursuant to Government Code section 11126(c)(7).*

**7003 *The State Bar of California v. LegalMatch.com*, SF Superior Court, Case No. CGC-20-584278**

*\*Closed pursuant to Government Code section 11126(e)(1).*

**7004 Discussion Regarding Potential Litigation Concerning the July 2021 California Bar Examination**

*\*Closed pursuant to Government Code section 11126(e)(1).*

**OPEN SESSION**

The Board returned to open session and reported that there is no action to report from closed session.

**ADJOURN**

Regular Meeting of the Board of Trustees  
Teleconference

Open Session Minutes  
Friday, March 25, 2022  
9:03 a.m.–12:34 p.m.

**Time meeting Commenced:** The Board meeting commenced in open session at 9:03 a.m. The Board moved to closed session at 11:08 a.m. The Board returned to open session at 11:10 a.m.

**Time meeting Adjourned:** 12:34 p.m.

**Chair:** Ruben Duran

**Secretary:** Louisa Ayrapetyan

**Members Present:** Mark Broughton, Hailyn Chen, José Cisneros, Sonia Delen, Ruben Duran, Sean SeLegue, Melanie Shelby, Arnold Sowell, Brandon Stallings, Mark Toney

**Members Absent:** Juan De La Cruz

**OPEN SESSION**

**ROLL CALL**

The Board of Trustees was called to order by Chair Duran. Roll call was taken and a quorum was established.

**PUBLIC COMMENT**

Chair Duran called for public comment, inquiring as to whether there were person(s) who wished to comment on any agenda item. There were no members of the public who wished to speak on any agenda item.

**708 Adoption 2022–2027 Strategic Plan**

**Presenters:** Leah Wilson, Executive Director, The State Bar of California  
Cassandra Pye, Executive Vice-President, Lucas Public Affairs

**RESOLVED**, that the Board of Trustees adopts the 2022–2027 Strategic Plan.

*Moved by Toney, seconded by Cisneros.*

*Ayes – (9) Broughton, Chen, Cisneros, Delen, SeLegue, Shelby, Sowell, Stallings, Toney*

*Noes – (0)*

*Abstain – (0)*

*Absent – (1) De La Cruz*

*Motion carries.*

Chair Duran stated that pursuant to Government Code section 11126(e)(1) and Government Code section 11126(c)(7) the Board will move into closed session to discuss the closed session agenda.

#### **1000 MINUTES**

Closed Session Minutes: January 20–21, 2022

#### **7000 MISCELLANEOUS**

**7001 Discussion Regarding Threatened Litigation Concerning Odyssey Case Management System Data Breach**

*\*Closed pursuant to Government Code section 11126(e)(1).*

**7002 Discussion Regarding Sale Price and Terms and Leasing Price and Terms for 180 Howard Street, San Francisco**

*\*Closed pursuant to Government Code section 11126(c)(7).*

**7003 *The State Bar of California v. LegalMatch.com*, SF Superior Court, Case No. CGC-20-584278**

*\*Closed pursuant to Government Code section 11126(e)(1).*

**7004 Discussion Regarding Potential Litigation Concerning the July 2021 California Bar Examination**

*\*Closed pursuant to Government Code section 11126(e)(1).*

#### **OPEN SESSION**

The Board returned to open session and reported that there is no action to report from closed session.

#### **ADJOURN**