



The State Bar of California

OPEN SESSION AGENDA ITEM 710 JULY 2022

DATE: July 21, 2022

TO: Members, Board of Trustees

FROM: Robert Retana, Deputy General Counsel, Office of 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 Vanessa Holton 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. Vanessa Holton, General Counsel for the State Bar of California, retired from the State Bar on July 11, 2022. Her departure creates a critical need to transition the duties she performed to the new General Counsel, who will assume Ms. Holton's responsibilities. Ms. Holton has unique institutional knowledge and specialized skills needed for operational continuity; thus, the State Bar seeks interim short-term assistance from Ms. Holton immediately after her retirement and through the process of transitioning those duties to her 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

Ms. Holton has served as the General Counsel for the State Bar since 2015. In that capacity, she has led the Office of General Counsel (OGC), and has advised the State Bar Board of Trustees and State Bar leadership on legal matters including all pending and threatened litigation against the State Bar and its officers, subentities, and employees. During her tenure as General Counsel, Ms. Holton has developed a deep understanding of the legal issues that are of critical importance to the State Bar, as well as State Bar governance. She is familiar with all current legal issues impacting the State Bar, and she has continued to provide legal counsel on those issues up until her retirement. Ms. Holton's experience makes her uniquely qualified to continue to advise the Board of Trustees, State Bar leadership, and OGC staff on pending matters, and to transition her duties to her successor.

As a result of Ms. Holton's unique knowledge and relevant experience, she is the most qualified person to provide the extra help required to transition her work to her successor and to ensure continuity of operations with respect to providing legal advice and counsel to the Board of Trustees and State Bar leadership. Accordingly, the State Bar seeks to appoint Ms. Holton as a retired annuitant immediately upon her 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 Ms. Holton as a retired annuitant within 180 days of her 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 an 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 Ms. Holton's appointment as a retired annuitant will allow for operational continuity on significant State Bar matters during the period until those duties can be transitioned to Ms. Holton's successor.

FISCAL/PERSONNEL IMPACT

Ms. Holton's hourly rate of pay as a retired annuitant will be \$137.94, based on Ms. Holton's current rate of pay, which is within the General Counsel classification salary range. Staff does not anticipate that Ms. Holton'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 & IMPLEMENTATION STEPS

Updates are being made to this section of the agenda template to reflect the 2022–2027 Strategic Plan.

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 Ms. Holton 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 Vanessa Holton.

ATTACHMENT LIST

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

**RESOLUTION
JULY 21, 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, Vanessa Holton retired under CalPERS as the General Counsel effective July 11, 2022; and

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, Ms. Holton certifies that she 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 Ms. Holton as a retired annuitant beginning on July 21, 2022, which is within 180 days of her July 11, 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 (\$23,909.75) paid to State Bar employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the hourly rate paid to Ms. Holton for her work as a retired annuitant will be \$137.94; and

WHEREAS, Ms. Holton 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; and

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 July 21, 2022.