



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM 50-4 JANUARY 2023**

**DATE:** January 19, 2023

**TO:** Members, Board of Trustees

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

**SUBJECT:** Approval of Revisions to Rules and Regulations Pertaining to the Benefits, Terms, and Conditions Governing State Bar Court Judge Service

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### **EXECUTIVE SUMMARY**

This agenda item requests the Board of Trustees to approve revisions to the Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms, and Conditions Governing State Bar Court Judge Service (Judge Rules), to align certain benefits provided to judges with those provided to State Bar employees.

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### **BACKGROUND**

On December 22, 2022, the Board of Trustees approved new Memoranda of Understanding (MOUs) between the State Bar and its employees' union, Service Employees International Union, Local 1000. The new MOUs made changes to various benefits provided to represented rank-and-file staff, and changes to various terms and conditions of their employment. No similar changes were made to the rules affecting Executive, Management, and Confidential staff or State Bar Court judges.

### **DISCUSSION**

The adoption of the MOUs for Bargaining Unit Staff included added benefits or clarifications to existing benefits. To ensure fairness and equity, comparable or related changes for Executive, Management, and Confidential staff are proposed in a separate agenda item, and for State Bar Court judges here. The proposed changes, with references to the section numbers in the in the attached proposed rules, are as follows:

**Vacation:** Increases vacation cash-out option from three weeks to four weeks per year. (Section 6)

**Paid Child Bonding Leave:** Clarifies that Paid Child Bonding Leave runs concurrently with other leaves of absence. (Section 10)

**Holidays:** Establishes Juneteenth as a new paid holiday. Changes name of existing Columbus Day holiday to Indigenous Peoples' Day. (Section 12)

The proposed revisions also make a few minor technical updates, such as replacing references to the Regulation & Discipline Committee Chair with the Board of Trustees Chair, and replacing references to State Bar Executive Staff with State Bar Executive and Management Staff, to reflect a change in terminology proposed in another agenda item before the Board.

## **FISCAL/PERSONNEL IMPACT**

The proposed changes do not have any material fiscal impact.

## **AMENDMENTS TO RULES**

Amendments are sought to the Judge Rules, as described above.

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

None

## **STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS**

None – core business operations

## **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 revised Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms, and Conditions Governing State Bar Court Judge Service, as set forth above and in Attachment A.

## **ATTACHMENT LIST**

- A. Proposed Judge Rules, as Revised

**RULES AND REGULATIONS OF THE  
STATE BAR OF CALIFORNIA  
PERTAINING TO THE BENEFITS, TERMS, AND  
CONDITIONS GOVERNING  
STATE BAR COURT JUDGE SERVICE**

[Revised January ~~2220~~, ~~2021~~2023]

**Section 1.**                    **GENERAL PROVISIONS**

- A. The following Rules and Regulations are adopted to govern the benefits, terms and conditions under which the judges appointed by the Supreme Court, the Governor, the Senate Committee on Rules, and the Speaker of the Assembly serve the State Bar Court.
- B. These Rules and Regulations are promulgated by the Board of Trustees of the State Bar and may be amended from time to time by the Board.
- C. Nothing herein shall be construed as limiting or altering the plenary authority of the Supreme Court over the admissions and disciplinary system including but not limited to the service of State Bar Court judges.

**Section 2.**                    **DEFINITIONS**

- A. "Board" is the Board of Trustees of the State Bar of California.
- B. "Day(s)" are calendar days unless otherwise specified.
- C. "Executive ~~and Management~~ Staff" is the Executive ~~and Management~~ Staff of the State Bar governed by the Rules and Regulations Pertaining to the Employment of Executive ~~and Management~~ Staff Employees.
- D. "Judge" is a judge of the State Bar Court appointed pursuant to Bus. & Prof. Code §§ 6079.1 and/or -6086.65. ~~Pro Tem~~ judges are not subject to these Rules and Regulations.
- E. "Rules and Regulations" are these Rules and Regulations Pertaining to the Benefits, Terms and Conditions Governing ~~the~~ State Bar Court Judge Service.
- F. "State Bar" is the State Bar of California

- G. "State Bar Court" is the State Bar Court established by the Board of Trustees pursuant to Bus. & Prof. Code § 6086.5.
- H. "Supreme Court" is the Supreme Court of California.

**Section 3.**                    **APPOINTMENT, TERM, DISCIPLINE**

As set forth in Bus. & Prof. Code §§ 6079.1, 6086.65, and rule 9.61, California Rules of Court, judges are appointed and reappointed by the Supreme Court, the Governor, the Senate Committee on Rules, and the Speaker of the Assembly. Judges are subject to admonition, censure, removal, or retirement by the Supreme Court on the same grounds as provided for judges of California courts of record.

**Section 4.**                    **STATUS**

- A. Judges are, during their term, to be "Inactive" members of the State Bar not entitled to practice law.
- B. Judges are not judges of a court of record as defined in California Constitution, article 6, section 1. For salary and benefit purposes, judges are employees of the State Bar. With respect to the performance of their adjudicatory responsibilities, judges are independent from the State Bar.
- C. By directive of the Supreme Court, State Bar Court judges are subject to the provisions of the California Code of Judicial Ethics.

**Section 5.**                    **SALARY AND BENEFITS**

- A. The Board shall fix and pay the salary and benefits of judges. In accordance with Business and Professions Code §§ 6079.1(d) and 6086.65(a), the salary for Hearing Department judges shall be 91.3225 percent of the salary of Superior Court judges and the salary for Review Department judges, including the Presiding Judge, shall be the same as Superior Court judges.
- B. The salary of judges shall adjust automatically in accordance with salary increases received by Superior Court judges.
- C. The Board shall also fix and provide benefits of employment to judges at levels to be determined and adjusted from time to time in the discretion of the Board.

**Section 6.**                    **VACATION**

- A. Throughout their terms, judges shall accrue vacation at the following rates:

Less than fifteen (15) years of service	1.67 days per month (20 working days per year)
Fifteen (15) or more years of service	2.08 days per month (25 working days per year)

- B. Vacation accrual shall be capped at 80 days. Upon accruing this maximum, a judge shall cease accruing vacation and shall not commence to accrue vacation again until the accrual is reduced below the maximum.
- C. Judges may cash in accrued and unused vacation in increments of one week, not to exceed a total of ~~three~~ four weeks per calendar year.
- D. Upon termination of service, a judge shall be paid for all unused, accrued vacation time.

#### **Section 7.**                    **HOURS OF EMPLOYMENT**

The hours of employment of judges are those reasonably necessary to perform their duties. -By the nature of their duties, judges are exempt from the overtime provisions of state or federal law and are not entitled to overtime payments or compensatory time.

#### **Section 8.**                    **PAID SICK LEAVE AND DISABILITY LEAVE**

Paid sick leave, short term and long term disability coverage shall be provided to active judges on the same terms and to the same extent as such benefits are provided to active State Bar Executive and Management Staff.

#### **Section 9.**                    **PAID PERSONAL DAYS**

Judges with less than ten (10) years of continuous service may take a maximum of three (3) Paid Personal Days per calendar year. Judges with ten (10) or more years of continuous service may take a maximum of four (4) Paid Personal Days per calendar year. Judges will not be paid for Paid Personal Days not taken and Personal Days will not accumulate or carry over from year to year.

#### **Section 10.**                    **PAID CHILD BONDING LEAVE**

Judges who have been employed with the State Bar for at least one calendar year and who have worked at least 1,250 hours in the preceding twelve (12) months, shall be eligible to receive, in a lump sum amount, one hundred sixty (160) hours of paid leave to be used after the birth, adoption, or foster care placement of a child of the judge, and/or being unable to work due to pregnancy or childbirth (paid bonding leave). Judges

eligible for paid bonding leave need not exhaust any of their other accrued paid leave balances before accessing or using the 160 hours of paid bonding leave. Judges remain eligible to use available paid sick leave, paid vacation, and paid personal days for child bonding purposes or not, at their option. While judges may coordinate the use of paid bonding leave to supplement their salaries while receiving Long Term Disability Insurance benefits, there is no requirement that they do so. Eligible judges may use the 160 hours of paid bonding leave intermittently, although not in increments of less than a full eight (8) hour workday. Eligible judges must use the 160 hours of paid bonding leave within twelve (12) months of either the day of birth, adoption or foster-placement of the child, or the day judges take leave from work due to a pregnancy or childbirth related condition. Paid bonding leave not used at the end of this twelve month period will expire and be lost. Any remaining paid bonding leave that a judge may have will not be paid upon termination of employment, but will be lost.

Judges shall also be permitted to use paid sick leave, vacation leave, and personal days to cover leave taken for the same reasons the paid bonding leave may be taken, either to supplement Long Term Disability Insurance benefits or to take additional time for bonding with a new child.

[The 160 hours of Paid Child Bonding Leave provided for in this section runs concurrently with leaves of absence under Section 32 and shall not extend a leave of absence under Section 32 beyond 26 weeks.](#)

## **Section 11.**                    **HEALTH AND LIFE INSURANCE BENEFITS**

The State Bar shall provide the same health and life insurance benefits to active judges as are provided to active State Bar Executive [and Management](#) Staff (which may include medical/hospital, vision care, dental, and life coverage).

## **Section 12.**                    **HOLIDAYS**

A.        The following are recognized as paid holidays for judges:

- New Year's Day
- Martin Luther King's Birthday
- Presidents' Day
- César Chávez Day
- [Memorial Day](#)
- [Juneteenth](#)
- Independence Day
- Labor Day
- [Columbus-Indigenous Peoples'](#) Day
- Veteran's Day

- Thanksgiving Day
- Day after Thanksgiving Day
- Christmas Eve
- Christmas Day
- New Year's Eve

B. Holidays falling on Sunday shall be observed the following Monday.- Holidays falling on Saturday shall be observed the preceding Friday.

C. Judges not on paid status will not receive holiday time off or holiday pay.

### **Section 13.**                    **BEREAVEMENT LEAVE**

In the event of a death in the immediate family (i.e., spouse, including domestic partner; child, including foster, step or adopted; parent; brother; sister; father-in-law, including father of domestic partner; mother-in-law, including mother of domestic partner; grandparent; grandchild; aunt; uncle; niece; or nephew) judges shall be entitled to bereavement leave of five (5) work days with pay. Such leave shall not be charged to vacation or to paid sick leave.

### **Section 14.**                    **JURY DUTY**

In the event that a judge is called for jury duty or is subpoenaed to appear as a witness in a state or federal court proceeding in which the judge is not a party nor has an economic interest, the judge will receive ~~his/her~~their salary less that amount to which the judge is entitled as "juror's compensation" or "witness fees".- In no instance will the judge realize less salary than ~~he/she~~they would have otherwise received, had the judge not been called for jury duty or subpoenaed to appear as a witness.

### **Section 15.**                    **MILITARY LEAVE**

Military leave and accompanying rights will be granted as provided by law.

### **Section 16.**                    **PROFESSIONAL DUES AND FEES**

- The State Bar shall pay annual State Bar membership fees at the level required for "Inactive" membership for judges who are members of the State Bar.
- The State Bar shall also pay annual membership fees in job-related professional associations for judges in an amount not to exceed the difference between "Inactive" fees actually paid for a judge and the highest amount of annual membership fees that must be paid in order to maintain "Active" membership status in the State Bar.

**Section 17.**                    **OUTSIDE EMPLOYMENT**

During ~~his/her~~their term, a judge may not engage in any conduct which constitutes the practice of law or which is otherwise inconsistent with the Code of Judicial Conduct, which by Supreme Court directive, is applicable to State Bar Court judges.

**Section 18.**                    **EDUCATION AND TRAINING**

- A.     Subject to budgetary constraints, the Board of Trustees shall provide funding for the education and training of judges consistent with the standards set forth in rule 10.451 et seq., California Rules of Court.
- B.     Subject to the efficient administration of justice and in the discretion of the Presiding Judge, State Bar Court judges shall be entitled to paid leave for education and training consistent with the standards set forth in rule 10.451 et seq., California Rules of Court.

**Section 19.**                    **PERSONNEL FILES**

- A.     The State Bar shall maintain, in its Office of Human Resources, personnel files containing the personnel records of judges. ~~At~~ reasonable times, upon request, the State Bar shall permit a judge to inspect ~~his/her~~their personnel file and any material referred to in such personnel file. ~~A~~ judge's personnel file shall also be made available to the Supreme Court.
- B.     Documents and materials pertaining to the evaluation and appointment of judges shall not be part of the judge's personnel file and shall be maintained in accordance with the directives of the Supreme Court.

**Section 20.**                    **TRAVEL REIMBURSEMENT**

Judges shall be reimbursed for travel and related expenses in the course of performing their duties in accordance with the travel reimbursement policies adopted by the Board and applicable to all who travel on State Bar business.

**Section 21.**                    **PARKING**

Parking and/or transit benefits shall be provided to active judges on the same terms and to the same extent as such benefits are provided to active State Bar Executive and Management Staff



**Section 22.**

**RETIREMENT**

- A. For any judge whose State Bar Court terms ~~begins~~began before November 1, 2018, the State Bar shall pay to the California Public Employees' Retirement System ("CalPERS") the full amount of the employer and employee contribution for each such judge who is or becomes a member of CalPERS. ~~For any judge~~ whose State Bar Court terms ~~begins~~began on or after November 1, 2018, the employer and the employee contributions to CalPERS shall be shared between the judge and the State Bar in the same manner as provided for State Bar Executive and Management Staff.
- B. Nothing contained in this section shall be deemed to abrogate the right of the State Bar to require a waiting period of ninety (90) days prior to enrolling a judge into CalPERS.
- C. The State Bar will offer judges a medical insurance benefit and a vision insurance benefit in retirement pursuant to the terms of (a) the Public Employees' Medical and Hospital Care Act, and (b) The State Bar of California Post-Retirement Welfare Benefits Plan. A copy of the State Bar of California Post-Retirement Welfare Benefits Plan is available from the ~~Office of Human Resources~~ upon request.

**Section 23.**

**DEFERRED COMPENSATION PLAN**

Judges shall be eligible to participate in an Internal Revenue Code section 457B deferred compensation plan to the same extent and on the same terms as State Bar employees.

**Section 24.**

**PROCEDURE FOR INVESTIGATION AND RESPONSE TO  
ALLEGATIONS OF MISCONDUCT AGAINST STATE BAR COURT JUDGES**

- A. This policy sets forth the State Bar's procedure for responding to allegations regarding conduct by State Bar Court judges that, if true, could create liability on the part of the State Bar. It is independent of Rule 9.11(d) of the California Rules of Court, which reserves to the California Supreme Court the exclusive authority to discipline or retire a State Bar Court judge.
- B. Whenever allegations are made that a State Bar Court judge has engaged in conduct that could create liability on the part of the State Bar, such allegations must be promptly transmitted to the Executive Director, who will promptly evaluate the allegations to determine whether if true, they state a claim that could result in liability for the State Bar.

- C. In the event that the Executive Director determines that the allegations, if true, state a claim that could result in liability for the State Bar, the Executive Director will report the allegations to the chair of the [Board Regulation and Discipline \(RAD\) Committee](#). The [RAD-Board](#) chair, assisted by the Executive Director, will direct and oversee an independent investigation of the allegations.
- D. The [RAD-Board](#) chair and Executive Director will review the investigation findings and take all necessary remedial actions within their authority to address the findings of the investigator's report, subject to CRC 9.11(d), which reserves to the Supreme Court the exclusive authority to discipline or retire a State Bar Court judge.