



# The State Bar of California

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## Regular Meeting of the Board of Trustees Hybrid

Open Session Minutes  
Thursday, January 19, 2023  
12:33 p.m.–5:16 p.m.

**Time meeting Commenced:** The Board meeting commenced in open session at 12:33 p.m.  
**Time meeting Adjourned:** 5:16 p.m.  
**Chair:** Ruben Duran  
**Board Secretary:** Louisa Ayrapetyan  
**Members Present:** Mark Broughton, Hailyn Chen, José Cisneros, Ruben Duran, Greg Knoll (joined late), Melanie Shelby, Arnold Sowell, Brandon Stallings, Mark Toney  
**Members Absent:** Juan De La Cruz

### 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. Todd Hill:
  - Todd Hill spoke on the agenda item regarding the proposed creation of confidential class employees, specifically the public's access to meetings and closed session discussions.
2. Andrew Tuft:
  - Andrew Tuft joined to recognize Randall Difuntorum who has served the State Bar for 36 years and will be retiring in just a few weeks.

#### 10 MINUTES

Approval of December 3, 2022, Open Session Minutes  
Approval of November 17–18, 2022, Open Session Minutes

*Moved by Knoll, seconded by Shelby*

*Ayes – (9) Broughton, Chen, Cisneros, Duran, Knoll, Sowell, Shelby, Stallings, Toney*

Noes – (0)  
Abstain – (0)  
Absent – (1) De La Cruz

*Minutes adopted.*

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

Chair Duran provided an oral report.

The following resolution was presented and voted on by the Board of Trustees:

**WHEREAS**, Randall Difuntorum will retire on February 10, 2023, after nearly 36 years of dedication and invaluable service to the State Bar of California;

**WHEREAS**, Randall Difuntorum served in various positions within the State Bar's Office of Professional Competence beginning as a General Clerk III and a Law Clerk that staffed the Ethics Hotline, then promoted through the ranks of Attorney I, II, III, and IV, and, for the past 21 years, serving as the Director of Professional Competence;

**WHEREAS**, Randall Difuntorum has staffed a variety of committees and commissions during his tenure, including the Standing Committee on Professional Responsibility and Conduct, two iterations of the Commission for the Revision of the Rules of Professional Conduct, the State Bar Anti-Bias Rule Committee, the Lawyer Advertising Task Force, the AB 1101 Task Force on the Duty of Confidentiality, the Access Through Innovation of Legal Services Task Force, the Joint Task Force of the Judicial Council and the State Bar on AB 2069, the Closing the Justice Gap Working Group, and the State Bar Multidisciplinary Practice Task Force;

**WHEREAS**, Randall Difuntorum oversaw the Ethics Hotline; the Annual Statewide Ethics Symposium; the Certified Lawyer Referral Service Program; the Mandatory Fee Arbitration Program; various e-learning programs, including the development of the New Attorney Training program curriculum; the MCLE provider certification program, and was instrumental in the drafting of the rules for the Client Trust Account Protection Program;

**WHEREAS**, Randall Difuntorum established a reputation for expertise in legal ethics and professional responsibility, taught as an adjunct professor at Golden Gate University School of Law, and was a speaker for the American Bar Association Center on Professional Responsibility, the Practising Law Institute, and the Hitotsubashi School of Law in Japan;

**WHEREAS**, after nearly 36 years, Randall Difuntorum is a State Bar historian, and is relied on for his institutional knowledge of the State Bar and the Rules of Professional Conduct;

**WHEREAS**, Randall Difuntorum is known State Bar-wide for his willingness to take on any initiative, no matter how challenging, and for getting things done, no matter how short the timeline;

**WHEREAS**, if anyone ever looked for any document, regardless of its age or the manner in which it was produced, Randall Difuntorum with his eidetic-like memory could locate it;

**WHEREAS**, Randall Difuntorum will be sorely missed and never forgotten for his kindness and compassion; therefore, be it

**RESOLVED**, that the State Bar Board of Trustees and the leadership of the State Bar of California express their deepest appreciation to Randall Difuntorum for his invaluable contributions to the State Bar of California.

*Moved by Duran, seconded by Stallings*

*Ayes – (9) Broughton, Chen, Cisneros, Duran, Knoll, Sowell, Shelby, Stallings, Toney*

*Noes – (0)*

*Abstain – (0)*

*Absent – (1) De La Cruz*

*Motion carries.*

#### **40 EXECUTIVE DIRECTOR’S REPORT**

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**

**RESOLVED**, that the Board of Trustees approves execution of the contract(s) listed herein.

##### **50-2 Approval of New Member and Alternate Members to the Judicial Nominees Evaluation Commission**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee appoints Hon. Alan Jaroslovsky (Ret.) to complete the vacant term for a retired judicial officer on the 2022 JNE Commission, commencing immediately, and expiring at the close of the last business meeting of the 2022 JNE Commission in April 2025, or until further order of the Board whichever occurs earlier; and it is

**FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee appoint Hon. Andrew Kauffman, (Ret.) to complete the vacant term for a retired judicial officer on the 2023 JNE Commission, commencing in June 2023, and expiring at the close of the last business meeting of the 2023 JNE Commission in April 2026, or until further order of the Board whichever occurs earlier; and it is

**FURTHER RESOLVED**, the Board of Trustees adds Andy Yang to the approved list of alternates for the 2023 JNE Commission.

**50-3 Approval of Revisions to Rules and Regulations Pertaining to the Employment of Executive, Management, and Confidential Staff**

**RESOLVED**, that the Board of Trustees adopts the revised Rules and Regulations Pertaining to the Employment of Executive and Management Staff Employees and the revised Rules and Regulations Pertaining to the Employment of Confidential Employees, as set forth above and in Attachments A and B.

**50-4 Approval of Revisions to Rules and Regulations Pertaining to the Benefits, Terms, and Conditions Governing State Bar Court Judge Service**

**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.

**50-5 Approval of Rule Proposals Public Comment Deadline Extension**

**RESOLVED**, that the Board of Trustees approves to extend the public comment period for the following four rule proposals until March 1, 2023:

1. Proposed Amendments to Rules Governing Minimum Continuing Legal Education
2. Proposed Amendments to the Rules of Professional Conduct Addressing Incivility
3. Proposed Amendment Requiring Attorneys to Complete Annual Civility Pledge
4. Proposed Amendments to State Bar Rules Related to Grants Administration

**50-6 Annual Review of Investment Policy**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Finance Committee approve the amendments to the Investment Policy as proposed by the chief financial officer.

*Consent calendar moved by Stallings, seconded by Sowell*

*Ayes – (9) Broughton, Chen, Cisneros, Duran, Knoll, Sowell, Shelby, Stallings, Toney*

*Noes – (0)*

*Abstain – (0)*

*Absent – (1) De La Cruz*

*Motion carries.*

**60 BOARD OF TRUSTEES SITTING AS THE REGULATION AND DISCIPLINE COMMITTEE**

**60-1 Approval of November 17, 2022, Open Session Minutes**

*Moved by Knoll, seconded by Stallings*

*Ayes – (9) Broughton, Chen, Cisneros, Duran, Knoll, Sowell, Shelby, Stallings, Toney*

*Noes – (0)*

*Abstain – (0)*

*Absent – (1) De La Cruz*

*Motion carries.*

## **60-2 Overview of Legislative Analyst Office's Report Regarding SB 211 Proposed Standards**

Presenters: George Cardona, Chief Trial Counsel  
Yun Xiang, Chief Mission Officer

Presentation and discussion only.

## **60-3 Discussion and Approval of the Ad Hoc Commission on the Discipline System Report and Recommendations**

Presenter: Lisa Chavez, Director, Mission Advancement & Accountability Division

Trustee Toney proposed a substitute motion to continue this item until the Board's March meeting.

*Moved by Toney, seconded by Shelby*

*Ayes – (4) Duran, Shelby, Sowell, Toney*  
*Noes – (5) Broughton, Chen, Cisneros, Knoll, Stallings*  
*Abstain – (0)*  
*Absent – (1) De La Cruz*

*Motion fails.*

Resolution as presented in the agenda item:

**RESOLVED**, that the Regulation and Discipline Committee receives the updated final report of the Ad Hoc Commission on the Discipline System; and it is

**FURTHER RESOLVED**, that the Regulation and Discipline Committee, upon recommendation of the Ad Hoc Commission on the Discipline System, directs staff to reevaluate its current discipline cost model with a focus on reducing costs, including, but is not limited to, restructuring the costs structure so that attorneys are not penalized for going to trial or review and scaling fees when charges are dismissed; and it is

**FURTHER RESOLVED**, that the Regulation and Discipline Committee directs staff to assess the need for a statutory amendment to eliminate disciplinary sanctions given the commission's concerns and report its findings to the Board; and it is

**FURTHER RESOLVED**, that the Regulation and Discipline Committee, upon recommendation of the Ad Hoc Commission on the Discipline System and staff, directs staff to work with stakeholders to propose revisions to all applicable rules to promote the use of Early Neutral Evaluation Conferences as a mechanism for arriving at settlements of State Bar disciplinary proceedings; and it is

**FURTHER RESOLVED**, that the Regulation and Discipline Committee directs staff to propose timelines for the removal of discipline from attorney profile pages on the State Bar website that are consistent with the practices of California regulatory agencies and other state attorney licensing agencies that currently have policies in place for both the display and removal of discipline histories from their respective websites and submit to Board for approval; and it is

**FURTHER RESOLVED**, that the Regulation and Discipline Committee directs staff to propose a definition of expungement of attorney discipline and submit the proposal to the Board for approval; and it is

**FURTHER RESOLVED**, that the Regulation and Discipline Committee, upon recommendation of the Ad Hoc Commission on the Discipline System, directs staff to work with stakeholders to study possible revisions to all applicable rules to determine the feasibility of conducting a pre-transmittal meeting similar to an Early Neutral Evaluation Conference in misdemeanor conviction matters subject to Rule 5.340–5.347 that would determine whether or not the facts and circumstances underlying the misdemeanor conviction involve moral turpitude or other misconduct warranting discipline, and if appropriate, evaluate a potential disposition of the matter, and report its findings to the Board; and it is

**FURTHER RESOLVED**, that the Regulation and Discipline Committee, upon recommendation of the Ad Hoc Commission on the Discipline System, directs staff to work with stakeholders to study and clarify all applicable rules involving referrals to the Alternative Discipline Program (ADP), specifically concerning whether or not moral turpitude has resulted in significant harm to a client(s) or the administration of justice; and it is

**FURTHER RESOLVED**, that the Regulation and Discipline Committee, upon recommendation of the Ad Hoc Commission on the Discipline System, directs staff to analyze and consider modifications to Standards 1.6 and 1.8 to permit the greater exercise of judicial discretion with regard to progressive discipline; and it is

**FURTHER RESOLVED**, that the Regulation and Discipline Committee, upon recommendation of the Ad Hoc Commission on the Discipline System, directs staff to develop a plan to implement a State Bar Appointed Counsel Program based on an hourly rate structure similar to the 6007 State Bar Court Appointed Counsel Program; and it is

**FURTHER RESOLVED**, that the Regulation and Discipline Committee will review the implementation plan and funding for the State Bar Appointed Counsel Program during the 2023 midyear budget review process and make decision to fund the program at that time; and it is

**FURTHER RESOLVED**, that the Regulation and Discipline Committee directs staff to develop a proposal that addresses the website posting of discipline history for attorneys who resign with or without charges pending and the implications of future reinstatement and submit the proposal to the Board for approval; and it is

**FURTHER RESOLVED**, that the Regulation and Discipline Committee directs staff to develop a timeline and procedure for removing administrative inactive enrollments from attorney profiles on the State Bar website and submit the proposal to the Board for approval; and it is

**FURTHER RESOLVED**, that the Regulation and Discipline Committee directs staff to explore the removal of criminal conviction transmittals and discipline from the profile page where the sole underlying basis for discipline was a criminal conviction that was expunged pursuant to Penal Code section 1203.4 and submit the proposal to the Board for approval; and it is

**FURTHER RESOLVED**, that the Regulation and Discipline Committee directs staff to update the Board on the status of resolutions adopted at the September 2023 meeting of the Board of Trustees.

*Moved by Stallings, seconded by Broughton*

*Ayes – (7) Broughton, Chen, Cisneros, Duran, Knoll, Shelby, Stallings*

*Noes – (2) Sowell, Toney*

*Abstain – (0)*

*Absent – (1) De La Cruz*

*Motion carries.*

#### **60-4 Discussion of Updated Case Processing Metrics**

Presenters: Yun Xiang, Chief Mission Officer  
Lisa Chavez, Director, Mission Advancement & Accountability Division

Presentation and discussion only.

#### **60-5 Discussion Regarding Rule 2201 Program Performance Metrics**

Presenter: Stacia Laguna, Special Deputy Trial Counsel Administrator

Presentation and discussion only.

### **700 MISCELLANEOUS**

#### **703 Five Years of Reform Continues: Discussion of Options for Governance and Oversight**

Presenters: Leah Wilson, Executive Director  
George Cardona, Chief Trial Counsel  
Ellin Davtyan, General Counsel  
Alex Bustamante, Senior Vice-President, Chief Compliance and Audit Officer,  
University of California  
Amarik Singh, Inspector General, California Office of the Inspector General

Presentation and discussion only.

Regular Meeting of the Board of Trustees  
Hybrid

Open Session Minutes  
Friday, January 20, 2023  
9:04 a.m.–2:39 p.m.

**Time meeting Commenced:** The Board meeting commenced in open session at 9:04 a.m. The Board moved into closed session at 11:23 a.m. The Board returned to open session at 2:36 p.m.

**Time meeting Adjourned:** 2:39 p.m.

**Chair:** Ruben Duran

**Board Secretary:** Louisa Ayrapetyan

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

**Members Absent:** None

**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 stated that this is a continuance of the January 19, 2023, meeting and therefore no call for public comment was made.

**60 BOARD OF TRUSTEES SITTING AS THE REGULATION AND DISCIPLINE COMMITTEE**

**60-6 State Bar's Use of Nonpublic Discipline**

Presenter: George Cardona, Chief Trial Counsel

Presentation and discussion only.

**700 MISCELLANEOUS**

**701 Discussion of State Bar 2023 Budget Pursuant to Business and Professions Code Section 61401.1 and Request for Spending Authority Pending Formal Budget Adoption**

Presenter: Aracely Montoya-Chico, Chief Financial Officer

Presentation and discussion only.

**702 Approval of 2023 Legislative Priorities**

Presenter: Donna Hershkowitz, Chief Programs Officer

**RESOLVED**, that the Board of Trustees adopts as a legislative priority securing an increase in the attorney licensing fee to support the operations of the State Bar; and it is

**FURTHER RESOLVED**, that the Board of Trustees adopts as a legislative priority seeking funding for the work of the JNE Commission, including staff necessary to support the efforts of the JNE Commission, and it is

**FURTHER RESOLVED**, that the Board of Trustees 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

**FURTHER RESOLVED**, that the Board of Trustees adopts as a legislative priority seeking the technical amendments identified in this agenda item to address inaccuracies in the discipline system statutes, and it is

**FURTHER RESOLVED**, that the Board of Trustees adopts as a legislative priority clarifying that reimbursement owed to the Client Security Fund is a penalty, payable to and for the benefit of the State Bar of California and is necessary to promote rehabilitation and to protect the public; and it is

**FURTHER RESOLVED**, that the Board of Trustees adopts as a legislative priority ensuring that the Audit Committee has sufficient ability to consider the report of outside auditors regarding the Bar's financial statement by delaying by 30 days the deadline to submit the audited financial statement to the Legislature; and it is

**FURTHER RESOLVED**, that the Board of Trustees adopts as a legislative priority both making adjustments to the timelines for submission of legislative mandated reports to allow the opportunity for Board review, and eliminating unnecessary reports; and it is

**FURTHER RESOLVED**, that the Board of Trustees adopts as a legislative priority updating incorrect references to the Committee of Bar Examiners or the examining committee to instead reference the State Bar.

*Moved by Knoll, seconded by Shelby*

*Ayes – (7) Broughton, Chen, Cisneros, De La Cruz, Duran, Knoll, Shelby, Stalling, Sowell, Toney*  
*Noes – (0)*

*Abstain – (0)*

*Absent – (0)*

*Motion carries.*

#### **704 Progress Update on the 2022–2027 Strategic Plan**

Presenter: Leah Wilson, Executive Director  
Kevin Thomte, Program Analyst, Mission Advancement & Accountability Division

Presentation and discussion only.

Chair Duran stated that pursuant to Government Code section 11126(a), Government Code section 11126(a)(1), Government Code section 11126(c), and Government Code section 11126(e)(2)(B)(i), the Board of Trustees will move to closed session to consider the items listed on the closed session agenda.

## **CLOSED SESSION**

### **1000 MINUTES**

Approval of December 3, 2022, Closed Session Minutes

Approval of November 17–18, 2022, Closed Session Minutes

### **7000 MISCELLANEOUS**

#### **7001 Discussion Regarding Executive Director Performance Evaluation**

*\*Closed pursuant to Government Code § 11126(a).*

#### **7002 Discussion Regarding General Counsel Performance Evaluation**

*\*Closed pursuant to Government Code §§ 11126(a).*

#### **7003 Discussion Regarding Audit of Closed Office of Chief Trial Counsel Files**

*\*Closed pursuant to Government Code § 11126(a)(1) and 11126(c).*

#### **7004 Conference with Legal Counsel–Anticipated Litigation**

*\*Closed pursuant to Government Code § 11126(e)(2)(B)(i): 1 case.*

#### **7005 Approval of Delegation of Authority to Special Deputy Trial Counsel in Connection with Discipline Proceeding**

*\*Closed pursuant to Government Code § 11126(a)(1) and 11126(c).*

## **OPEN SESSION**

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

## **ADJOURN**