



The State Bar of California

Regular Meeting of the Board of Trustees Zoom

Open Session Minutes
Thursday, March 16, 2023
9:28 a.m.–5:55 p.m.

Time meeting Commenced: The Board meeting commenced in open session at 9:28 a.m. The Board moved into closed session at 1:30 p.m. The Board returned to open session at 5:55 p.m.

Time meeting Adjourned: 5:55 p.m.

Chair: Ruben Duran

Board Secretary: Louisa Ayrapetyan

Members Present: Mark Broughton, José Cisneros, Ruben Duran, Sarah Good, Greg Knoll, Melanie Shelby, Arnold Sowell, Brandon Stallings, Mark Toney

Members Absent: Raymond Buenaventura, Hailyn Chen

Staff Present: Leah Wilson, Ellin Davtyan

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 comments were provided to the Board:

1. Benjamin Kohn:
 - Benjamin Kohn addressed the Board on the new public comment policy, specifically concerns that the agenda item attachments are often not posted until sometime after the agenda is posted. It creates problems informing the substance of public comment when agenda item attachments are delayed. Mr. Kohn also spoke on the ongoing budgetary difficulties, specifically regarding grant funding, and underutilization of government grants from state and federal agencies.
2. Jean Cha:
 - Jean Cha addressed the Board regarding a case that is affiliated with an action against the Board of Trustees. Ms. Cha raised a conflict of interest under Rule 2201 of the rules of procedure, and that a request was made for the case to be

assigned to an outside counsel; however, the assistant chief trial counsel who reviewed the case determined that it will not be assigned to an outside counsel. Ms. Cha raised concerns with this decision.

3. Jeremy Sorenson:

- Jeremy Sorenson stated that they are a plaintiff in a class-action case against Delta Airlines. Sorenson stated that they filed an attorney complaint against three former attorneys with the help of an ethics attorney, Jean Cha, a former State Bar attorney. Sorenson iterated that their case identified numerous violations and misrepresentations that they believe arose to attorney misconduct worthy of discipline. Sorenson claimed that they requested their complaint be moved to more competent staff, but it has not happened.

4. Mary McNamara:

- Mary McNamara, in their capacity as a former president of the Bar Association of San Francisco and current member of the bar association's Legal Alliance for Reproductive Rights, spoke in support of new Rule 8.3, part C. McNamara iterated that without part C, lawyers performing reproductive rights work in restrictive states may be disciplined there and may then be disciplined in California under reciprocal discipline. McNamara states further that rule 8.3 without part C may lead to an increase of complaints against attorneys for their reproductive rights work.

5. Laurie Taylor:

- Laurie Taylor spoke in support of Mary McNamara's comments regarding Rule 8.3, subsection C. Taylor stated that in the wake of the overturning of *Roe v. Wade*, many attorneys have done work in areas that could violate restrictive laws from other states. Taylor's concern is these actions would arise to discipline by the State Bar. They iterated that they have written to the State Bar to receive an assurance that reproductive rights lawyering would not lead to discipline, as well as making public comment at the March 8, 2023, COPRAC meeting regarding a possible chilling effect. Taylor voiced their strong support for paragraph C.

6. Todd Hill:

- Todd Hill provided the public with the number for their lawsuit against their former law school and the State Bar, 2:3-CV-1298-JLS, and spoke of its claims.

10 MINUTES

Approval of February 27, 2023, Open Session Minutes

Approval of February 7, 2023, Open Session Minutes

Approval of January 19–20, 2023, Open Session Minutes

Moved by Knoll, seconded by Stallings

Ayes – (9) Broughton, Cisneros, Duran, Good¹, Knoll, Sowell, Shelby, Stallings², Toney

Noes – (0)

Abstain – (2) Good, Stallings (abstained from voting on the February 7 and February 27, 2023, meeting minutes)

Absent – (2) Buenaventura, Chen

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:

RESOLVED, that the Board of Trustees appoints Raymond Buenaventura and Sarah Good to serve as members of the Finance Committee, effective March 16, 2023; and it is

FURTHER RESOLVED, that the Board of Trustees appoints Gregory Knoll to serve as a member of the Audit Committee, effective March 16, 2023.

Moved by Stallings, seconded by Broughton

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

Noes – (0)

Abstain – (0)

Absent – (2) Buenaventura, Chen

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 Adoption of Employee Pay Schedule

RESOLVED, that the Board of Trustees approves the 2023 employee pay schedule included as Attachment A, as described herein.

50-3 Adoption of State Bar Court Judge Pay Schedule

¹ Trustee Good abstained from voting on the February 7, 2023, meeting minutes due to her absence.

² Vice-Chair Stallings abstained from voting on the February 27, 2023, meeting minutes due to his absence.

RESOLVED, that the Board of Trustees approves the State Bar Court judge pay schedule included as Attachment A, as described herein.

50-5 Approval of 2022 Quarter Four Board and Management Travel Expense Report

RESOLVED, that the Board of Trustees, upon recommendation of the Audit Committee, approves the fourth quarter of 2022 Board and management travel expense report in the form presented this day before the Board, for the three months ended December 31, 2022, as certified by the chief financial officer, and on file with the San Francisco office of the State Bar.

Consent calendar moved by Stallings, seconded by Cisneros

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

Noes – (0)

Abstain – (0)

Absent – (2) Buenaventura, Chen

Motion carries.

This item was pulled off the consent calendar for a separate discussion.

50-4 Receipt and Annual Filing of Annual Lawyers Assistance Program Oversight Committee Report Pursuant to Business and Professions Code Section 6238

RESOLVED, that the Board of Trustees receive and file the Lawyers Assistance program 2022 Annual Report.

Moved by Toney, seconded by Cisneros

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

Noes – (0)

Abstain – (0)

Absent – (2) Buenaventura, Chen

Motion carries.

60 BOARD OF TRUSTEES SITTING AS THE REGULATION AND DISCIPLINE COMMITTEE

60-1 Proposed Rule of Professional Conduct 8.3 (Reporting Professional Misconduct): Request to Circulate for Public Comment

Presenters: Bridget Gramme, Deputy Chief of Programs
Erika Doherty, Program Director III, Office of Professional Competence

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to make available for public comment, for a period of 45 days, the Committee on Professional Responsibility and Conduct's proposed new rule 8.3 of the California Rules of Professional Conduct with staff revisions as provided in Attachment A;

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to make available for public comment, for a period of 45 days, the expanded proposed new rule 8.3 of the California Rules of Professional Conduct as provided in Attachment B; 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 Professional Conduct.

Moved by Knoll, seconded by Cisneros

Ayes – (8) Broughton, Cisneros, Duran, Good, Knoll, Shelby, Stallings, Toney

Noes – (0)

Abstain – (0)

Absent – (3) Buenaventura, Chen, Sowell

Motion carries.

60-2 Report on Random Audit of the Office of Chief Trial Counsel Files Closed Between March 1, 2021, and August 31, 2021

Presenter: George Cardona, Chief Trial Counsel

Presentation and discussion only.

60-3 Board Directive Regarding Archiving of Prior Closed Complaints

Presenter: George Cardona, Chief Trial Counsel

Chair Duran noted for the record that an important issue that the State Bar must address is the fact that it can and will be reformed by refreshed data is a key in addressing what Trustee Toney has identified as an issue. One very specific purpose of the renewed study in 2024 is to take a look at the archiving directive in particular. However, this did not address Trustee Toney's concern.

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, modifies its prior July 16, 2020 direction to the Office of Chief Trial Counsel, and hereby directs that the office should implement as an interim reform that prior, closed complaints and reportable actions more than five-years old, as measured from either the opening date or, in the event of reopened complaints and reportable actions, the reopening date, should not ordinarily be considered in evaluating and investigating a new complaint, with exceptions permitted based on a written showing to an attorney at the level of assistant chief trial counsel or higher within the Office of Chief Trial Counsel; and it is

FURTHER RESOLVED, that closed complaints and reportable actions for purposes of this resolution shall include those resolved with a resource letter but shall not include those

resolved with a directional letter, warning letter, admonition, or agreement in lieu of discipline, or those resulting in the imposition of discipline; and it is

FURTHER RESOLVED, that exceptions to the archiving policy may include the following, at the discretion of the Office of Chief Trial Counsel: (1) closed complaints and reportable actions will not be archived if the lawyer has been disbarred or resigned; and (2) closed complaints and reportable actions that otherwise meet the five-year criteria for archiving while the lawyer has another pending case in the Office of Chief Trial Counsel in the investigation or prefiling stage or in the State Bar Court will not be archived until the case pending in the Office of Chief Trial Counsel in the investigation or prefiling stage or in the State Bar Court is resolved.

Moved by Cisneros, seconded by Good

Ayes – (6) Broughton, Cisneros, Duran, Good, Knoll, Stallings

Noes – (1) Toney

Abstain – (1) Shelby

Absent – (3) Buenaventura, Chen, Sowell

Motion carries

60-4 Discussion Regarding Office of Chief Trial Counsel Performance Metrics

Presenter: George Cardona, Chief Trial Counsel

Presentation and discussion only.

700 MISCELLANEOUS

701 Proposed Amendments to State Bar Rules 7.52 and 7.60 Regarding Judicial Nominees Evaluation Commission Operations

Presenter: Bridget Gramme, Deputy Chief of Programs

RESOLVED, that the Board of Trustees authorizes staff to make available for a 45-day public comment period the proposed amended rule 7.52 of the State Bar Rules attached hereto as Attachment A; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to make available for a 45-day public comment period the proposed amended rule 7.60 of the State Bar Rules attached hereto as Attachment B.

Moved by Stallings, seconded by Cisneros

Ayes – (8) Broughton, Cisneros, Duran, Good, Shelby, Sowell, Stallings, Toney

Noes – (0)

Abstain – (0)

Absent – (3) Buenaventura, Chen, Knoll

Motion carries

702 Update Regarding 2023 Legislative Priorities

Presenters: Donna Hershkowitz, Chief of Programs
Bridget Gramme, Deputy Chief of Programs

Presentation and discussion only.

Chair Duran stated that pursuant to Business and Professions Code section 6026.7(c), Government Code section 11126(a), Government Code section 11126(a)(1), Government Code section 11126(c), Government Code section 11126(e)(2)(B)(i), and Government Code section 11126.2, 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 February 27, 2023, Closed Session Minutes
Approval of February 7, 2023, Closed Session Minutes
Approval of January 19–20, 2023, Closed Session Minutes

5000 CLOSED CONSENT

5001 Approval of Contract Relating to the Preparation of Examination Materials, the Approval, the Grading, or the Security of Test Administration of the California Bar Examination or the First-Year Law Students' Examination

**Closed pursuant to Business and Professions Code § 6026.7(c).*

7000 MISCELLANEOUS

7001 Discussion Regarding Executive Director Performance Evaluation

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

7002 Discussion Regarding Audit of Closed Office of Chief Trial Counsel Files

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

7003 Conference with Legal Counsel—Anticipated Litigation

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

7004 Discussion Regarding Draft Report by the California State Auditor

**Closed pursuant to Government Code § 11126.2*

OPEN SESSION

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

ADJOURN