



The State Bar of California

Regular Meeting of the Board of Trustees Hybrid

Open Session Minutes
Thursday, May 18, 2023
11:39 a.m.–6:38 p.m.

Time meeting Commenced: The Board meeting commenced in open session at 11:39 a.m. The Board of Trustees moved into closed session at 4:58 p.m. The Board returned to open session at 6:38 p.m.

Time meeting Adjourned: 6:38 p.m.

Chair: Ruben Duran

Board Secretary: Louisa Ayrapetyan

Members Present: Mark Broughton, Raymond Buenaventura, Hailyn Chen, José Cisneros, Ruben Duran, Sarah Good, Greg Knoll, Melanie Shelby, Arnold Sowell Jr., Brandon Stallings, Mark Toney

Members Absent: None

Staff Present: Ellin Davtyan, Leah Wilson

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. Gil Peles:
Gil Peles spoke to the Board about agenda item 701, the Blue Ribbon Commission report and recommendations on the future bar exam, particularly the removal of three fundamental subjects. Additionally, 27 bar associations wrote a letter opposing the removal of these subjects (family, estates, and business law) and a bar exam bypass option.
2. Lorena Peñaloza:
Lorena Peñaloza, a current JNE Commission member, discussed agenda item 703 with the Board, opposing the proposed changes to rules 7.52 and 7.60, especially the removal of the JNE's in-person meeting requirement. She agreed with statements

submitted by current chair Justin Palmer, former chair Stella Ngai, and other commissioners.

3. Claire Solot:

Claire Solot addressed the Board regarding agenda item 701, the Blue Ribbon Commission report and recommendations on the future of the bar exam. She specifically critiqued the decision to dismiss alternative licensure methods, despite expert evidence confirming their efficacy for assessing minimum competency.

4. Susan Bakhshian:

Susan Bakhshian addressed the Board regarding agenda item 701, the Blue Ribbon Commission report and recommendations on the future of the bar exam. She supported the proposed changes for a skill-focused exam reducing memorization and tested subjects. Yet, she criticized the commission's lack of exploration of alternative exams, referencing expert Professor Deborah Merritt's comments.

5. Corey Weber:

Corey Weber addressed the Board about agenda item 703, the proposed changes to rules 7.52 and 7.60, aligning with the JNE Commission's views. Despite sharing common goals with rule proposers and commentators—ensuring fairness, quality, integrity, and diversity within the judiciary—Weber expressed concern that the changes, specifically moving JNE meetings to remote, could significantly affect these objectives. He stressed the importance of in-person meetings for the JNE's mission.

6. Reann Pacheco:

Reann Pacheco, representing the Legal Aid Association of California, discussed with the Board agenda item 701, the Blue Ribbon Commission's future bar exam recommendations. She opposed the underdeveloped and poorly supported proposal to explore a California-specific bar exam.

7. Salena Copeland:

Salena Copeland addressed the Board on three agenda items:

1. For item 704, concerning amendments to the Legal Services Trust Fund program rules, she expressed her support.
2. On item 710, regarding admissions fee increase proposals, she backed the staff's plan to focus on attorney special admissions increases. However, she suggested that the State Bar consider scaling law study and other bar exam costs if a nonprofit employer is footing the bill.
3. Finally, for item 60-5, related to rules governing MCLE attorney activities and providers, she spoke about rule 3.611 that would scale MCLE provider fees for nonprofit and government MCLE providers.

4. David Fu:
David Fu discussed with the Board agenda item 703, the proposed amendments to rules 7.52 and 7.60. Mr. Fu opposed these changes, questioning their benefit to the commission and its duties. He suggested exploring potential changes for substantial travel cost savings, urging that the commission should assess its finances and identify ways to realize these savings, aligning with their public protection mission.
5. Stella Ngai:
Stella Ngai discussed with the Board agenda item 703, the proposed changes to rules 7.52 and 7.60. She opposed these changes, claiming they impact judicial evaluations rather than operations. Ms. Ngai also requested consultation with JNE leadership for any further rule changes, asserting that the proposed and implemented changes are inadequate measures for promoting diversity, equity, and inclusion.
6. Rick Gilbert:
Rick Gilbert spoke to the Board about agenda item 703, the proposed changes to rules 7.52 and 7.60. He advocated for deferring any JNE rule changes until an interactive process with State Bar staff and current/former JNE commissioners could provide specific recommendations.
7. Chhaya Malik:
Chhaya Malik addressed the Board on agenda item 703, the proposed changes to rules 7.52 and 7.60. She expressed her opposition, arguing that these proposed changes, which appear to limit the commission's discretion in investigations and reporting, may facilitate future cuts without proper evaluation. She suggested that such changes undervalue the JNE process, discrediting its support for the governor in appointing diverse bench candidates.
8. Judge Brenda Harbin-Forte:
Judge Harbin-Forte discussed with the Board agenda item 703, the proposed changes to rules 7.52 and 7.60, expressing concern about potential impacts on judicial diversity. Specifically, she questioned the necessity to alter rule 7.60, given no apparent issues with its current form.
9. Justin Palmer:
Justin Palmer discussed with the Board agenda item 703, the proposed changes to rules 7.52 and 7.60, particularly opposing the removal of the in-person requirement for JNE meetings. He urged the Board to reject these changes due to potential impacts on diversity, equity, and inclusion issues.
10. Michele Pincus:
Michele Pincus discussed with the Board agenda item 703, the proposed changes to rules 7.52 and 7.60. Concurring with other speakers, she suggested postponing the vote on in-person meeting changes until after a thorough budget review. Pincus expressed concern that these changes might compromise the quality of judicial candidates.

11. Michael Sternberg:

Michael Sternberg addressed the Board, expressing concern over the State Bar's complaint process and its refusal to accept evidence or investigate. While he praised staff and the Board for acknowledging past indiscretions, he critiqued the State Bar's culture and rules, which he believes allow excessive discretion. Mr. Sternberg, having submitted multiple complaints, hopes the Board will explore why these complaints haven't been appropriately investigated.

12. Aundrea Brown:

Andrea Brown discussed with the Board agenda item 703, the proposed changes to rules 7.52 and 7.60. She opposed these changes, particularly those potentially affecting the JNE's diversity, including not just racial, ethnic, and gender diversity, but also geographic diversity and diversity of practice areas.

13. Rozanna Velan:

Representing the Family Law Executive Committee of the Los Angeles County Bar Association, Rosanna Velan discussed with the Board agenda item 701, the Blue Ribbon Commission's bar exam recommendations. She specifically opposed the proposed elimination of the community property portion, stressing its relevance in Californians' lives and businesses, extending beyond marital issues to encompass business formation, dissolution, bankruptcy proceedings, and domestic violence cases.

14. Benjamin Kohn:

Benjamin Kohn spoke to the Board about agenda item 706, the proposed amendments to Admissions rules related to testing accommodations. He opposed advancing this revision initiative without adjusting those rules suggested by the Committee of Bar Examiners to remedy significant flaws.

10 MINUTES

Approval of March 16, 2023, Open Session Minutes

Approval of March 24, 2023, Open Session Minutes

Moved by Stallings, seconded by Cisneros

Ayes – (9) Buenaventura, Chen, Cisneros, Duran, Good, Shelby, Sowell, Stallings, Toney

Noes – (0)

Abstain – (0)

Absent – (2) Broughton, Knoll

Minutes adopted.

30 CHAIR'S REPORT

Chair Duran provided an oral report. Of note, Chair Duran referred the exploration of the impacts and the effects of artificial intelligence to the Committee on Professional Responsibility and Conduct (COPRAC). By the Board's November 2023 meeting, COPRAC is advised to issue its recommendations, which may include practical guidance, an advisory opinion or other resources, changes to the Rules of Professional Conduct or other rules or statutes, or other

recommendations to ensure that artificial intelligence is used competently and in compliance with the professional responsibility obligations of lawyers.

40 EXECUTIVE DIRECTOR'S REPORT

Executive Director Leah Wilson provided an oral report.

RESOLVED, that item 704 – Proposed Amendments to State Bar Rules Related to Legal Services Trust Fund Program (Rules 3.671, 3.672, 3.680, 3.690, 3.692; Proposed New State Bar Rule 3.674, and Appendix A): Return from Public Comment and Request for Approval be added to the consent calendar as agenda item 50-8.

Moved by Cisneros, seconded by Stallings

Ayes – (9) Buenaventura, Chen, Cisneros, Duran, Good, Shelby, Sowell, Stallings, Toney

Noes – (0)

Abstain – (0)

Recused – (1) Knoll

Absent – (1) Broughton

Motion carries.

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 Annual Report on the Use of Outside Counsel for 2022

No recommendation. Report only.

50-3 Approval of 2023 Quarter One Board and Management Travel Expense Report

RESOLVED, that the Board of Trustees, upon recommendation of the Audit Committee, approves the first quarter of 2023 Board and management travel expense report in the form presented this day before the Board, for the three months ended March 31, 2023.

50-4 Correction of 2022 Quarterly Board and Management Travel Expense Report

RESOLVED, that the Board of Trustees approves the revised 2022 quarterly Board and Management Travel Expense reports in the form presented this day before the Board.

50-5 Licensee Requests for Adjustment of Fees, Penalties, and Charges

RESOLVED, that the Board of Trustees, upon recommendation of the Finance Committee, approves the fee adjustments for the State Bar licensees as presented this day, and on file in the San Francisco office of the State Bar.

50-6 Approval of Annual Reappointment of State Bar Members to the Judicial Council of California

RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee, reappoint Rachel W. Hill and Gretchen M. Nelson to the Judicial Council of California for a three-year term to commence on September 14, 2023, and to expire September 14, 2026, or until further order of the Board, whichever occurs earlier.

50-7 Approval to Fill a Vacancy on the Judicial Nominees Evaluation Commission

RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee appoint Winnifred Gin to complete the vacant term for a resigned public member on the 2023 JNE Commission, commencing immediately, and expiring at the close of the last business meeting of the 2025 JNE Commissions in April 2025, or until further order of the Board whichever occurs earlier; and it is

FURTHER RESOLVED, the Board of Trustees appoint additional public members for the 2024 JNE Commission to fill the remaining vacancies of the eight available public member slots on the commission.

50-8 Proposed Amendments to State Bar Rules Related to Legal Services Trust Fund Program (Rules 3.671, 3.672, 3.680, 3.690, 3.692; Proposed New State Bar Rule 3.674, and Appendix A): Return from Public Comment and Request for Approval

RESOLVED, that the Board of Trustees, hereby approves and adopts the proposed amendments to the Rules of the State Bar relating to the Legal Services Trust Fund Program—Rules 3.671, 3.672, 3.674 (new rule), 3.680, 3.690, 3.692, and Appendix A of the Schedule of Charges and Deadlines regarding 3.680(E)(1)—as set forth in Attachment D.

Consent calendar moved by Stallings, seconded by Buenaventura

Ayes – (10) Buenaventura, Chen, Cisneros, Duran, Good, Knoll¹, Shelby, Sowell, Stallings, Toney

Noes – (0)

Abstain – (0)

Absent – (1) Broughton

Motion carries.

60 BOARD OF TRUSTEES SITTING AS THE REGULATION AND DISCIPLINE COMMITTEE

60-1 Proposed New Rule of Professional Conduct Governing Attorney Reporting Requirement (Rule 8.3): Return from Public Comment and Request for Approval

Presenter: Erika Doherty, Program Director, Office of Professional Competence

¹ Trustee Knoll recused, due to financial interest, from voting on agenda item 704, which was approved to be included as part of the consent calendar as agenda item 50-8.

RESOLVED, following notice and publication for comment, that the Board of Trustees, sitting as the Regulation and Discipline Committee, recommends that the Board of Trustees approve Alternatives 1 and 2 of the proposed new Rule 8.3 of the Rules of Professional Conduct, with the nonsubstantive amendments as presented by State Bar staff, with an indication that the Board strongly supports Alternative 1; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed new rule 8.3 to the Supreme Court of California with a request that a rule be approved, together with a request that if approved, the new rule be made operative on an expedited basis.

Moved by Good, seconded by Stallings

Ayes – (5) Broughton, Buenaventura, Cisneros, Good, Stallings

Noes – (6) Chen, Knoll, Shelby, Sowell, Toney, Duran

Abstain – (0)

Absent – (0)

Motion fails.

Amended motion:

RESOLVED, following notice and publication for comment, that the Board of Trustees, sitting as the Regulation and Discipline Committee, recommends that the Board of Trustees approve Alternatives 1 and 2 of proposed new Rule 8.3 of the Rules of Professional Conduct, with the nonsubstantive amendments as presented by State Bar staff; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed new rule 8.3 alternatives to the Supreme Court of California with a request that a rule be approved, together with a request that if approved, the new rule be made operative on an expedited basis.

Moved by Stallings, seconded by Buenaventura

Ayes – (8) Broughton, Buenaventura, Chen, Cisneros, Duran, Good, Knoll, Stallings

Noes – (3) Shelby, Sowell, Toney

Abstain – (0)

Absent – (0)

Motion carries.

60-2 Proposed Amendments to California Rules of Court (Rules 9.8.5, 9.9, 9.32, 9.49 and New Rule of Court 9.8.1) and Rules of the State Bar (Rules 2.2, 2.5, 2.15, 2.16, 2.30, 2.51, 2.53, 2.71, 2.111 and New State Bar Rules 2.140–2.153) Relating to Regulatory Function of the State Bar: Request to Circulate for Public Comment

Presenter: Steven Moawad, Special Counsel, Division of Regulation

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 60 days, proposed new rule 9.8.1 of the California Rules of Court as set forth in Attachment A; and it is

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 60 days, proposed amendments to rule 2.2 of the Rules of the State Bar, as set forth in Attachment C; and it is

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 60 days, proposed amendments to rule 9.9 of the California Rules of Court, as set forth in Attachment E; and it is

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 60 days, proposed amendments to rule 2.5 of the Rules of the State Bar, as set forth in Attachment G; and it is

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 60 days, proposed amendments to rule 9.8.5 of the California Rules of Court, as set forth in Attachment I; and it is

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 60 days, proposed amendments to rules 2.15 and 2.16 of the Rules of the State Bar, as set forth in Attachment K; and it is

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 60 days, proposed amendments to rule 2.30 of the Rules of the State Bar, as set forth in Attachment M; and it is

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 60 days, proposed amendments to rules 2.51, 2.53, 2.71, 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, and 2.153 of the Rules of the State Bar, as set forth in Attachment O; and it is

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 60 days, proposed new rule 9.32 and proposed amendments to rule 9.49 of the California Rules of Court, as set forth in Attachment Q; and it is

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 60 days,

proposed amendments to rule 2.111 of the Rules of the State Bar, as set forth in Attachment S; 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 Court or Rules of the State Bar; and it is

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to impose the NAT noncompliance penalty fee at 12 months, simultaneously issue a 60-day notice, and enroll as involuntarily inactive licensees who fail to comply within 60-days.

Moved by Knoll, seconded by Cisneros

Ayes – (11) Broughton, Buenaventura, Chen, Cisneros, Duran, Good, Knoll, Shelby, Sowell, Stallings, Toney

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

60-3 Proposed Amendments to Rules Governing Mandatory Fee Arbitration Program (Title 3, Division 4, Chapter 2): Request to Circulate for Public Comment

Presenter: Isabel Liou, Attorney, Office of Professional Support & Client Protection

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 proposed revisions to Title 3, Division 4, Chapter 2 of the rules of the State Bar, as provided in Attachment A (clean) and Attachment B (redline), 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 revised rules.

Moved by Stallings, seconded by Knoll

Ayes – (11) Broughton, Buenaventura, Chen, Cisneros, Duran, Good, Knoll, Shelby, Sowell, Stallings, Toney

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

60-4 Proposed Rule Amendments Based on Recommendations by the California Civility Task Force (Rule of Court 9.7 and Rules of Professional Conduct 1.2, 8.4, and New Rule 8.4.2): Request to Circulate for Second Public Comment Period

Presenter: Erika Doherty, Program Director, Office of Professional Competence

Part 1 resolution for agenda item 60-4:

RESOLVED, that the Board of Trustees sitting as the Regulation and Discipline System authorizes staff to make available for public comment, for a period of 30 days, proposed amendments to rule 9.7 of the California Rules of Court as set forth in Attachment A and proposed State Bar Rule 2.3 as set forth in Attachment C; 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 Rule of Court.

Moved by Stallings, seconded by Shelby

Ayes – (11) Broughton, Buenaventura, Chen, Cisneros, Duran, Good, Knoll, Shelby, Sowell, Stallings, Toney

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

Part 2 resolution for agenda item 60-4:

RESOLVED, that the Board of Trustees sitting as the Regulation and Discipline System authorizes staff to make available for public comment, for a period of 30 days, proposed amendments to rules 1.2 and 8.4 of the California Rules of Professional Conduct and proposed new rule 8.4.2 as set forth in Attachment E; 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 Stallings, seconded by Buenaventura

Ayes – (11) Broughton, Buenaventura, Chen, Cisneros, Duran, Good, Knoll, Shelby, Sowell, Stallings, Toney

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

60-5 Proposed Amendments to Rules Governing Minimum Continuing Legal Education – Attorney Required Activities and Rules for Providers: Return from Public Comment and Request to Circulate Select Rules for an Additional Public Comment Period

Presenters: Catherine Ongiri, Managing Attorney, Office of Professional Competence
Arayeh Rahimitabar, Program Manager, Office of Professional Competence
Erika Doherty, Program Director, 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 30 days, proposed amendments to State Bar rules 2.84 (Mock Trial, Moot Court, and Other Competition Activity); 3.601 (Standards for MCLE activity approval); 3.602 (Responsibilities of every provider); 3.609 (Renewing Multiple Activity Provider status); and 3.610 (Applying for legal specialty provider status) as set forth in Attachment A; and it is

FURTHER RESOLVED, that, if the Board of Trustees authorizes the recommended fee increases and fee structure changes set forth in Agenda Item 709, then the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to make available for public comment, for a period of 30 days, proposed amendments to State Bar rule 3.611 (MCLE provider fees) as set forth in Attachment A; 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 State Bar Rules.

Moved by Stallings, seconded by Shelby

Ayes – (11) Broughton, Buenaventura, Chen, Cisneros, Duran, Good, Knoll, Shelby, Sowell, Stallings, Toney

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

60-6 Discussion Regarding Office of Chief Trial Counsel Performance Metrics

Presenter: George Cardona, Chief Trial Counsel

Presentation and discussion only.

60-7 Report on Implementation of Random Audit Recommendations

Presenter: George Cardona, Chief Trial Counsel

Presentation and discussion only.

60-9 Client Trust Account Protection Program: A First Look at the Data

Presenters: Steven Moawad, Special Counsel, Division of Regulation
Jennifer Stalvey, Principal Program Analyst, Division of Regulation

Presentation and discussion only.

Chair Duran stated that pursuant to Government Code section 11126(e)(1), Government Code section 11126(a), Government Code section 11126(a)(1), Government Code section 11126(c)(2), Government Code section 11126(c)(7), and Government Code section 11126(e)(2)(B)(i): 2 cases, 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 March 16, 2023, Closed Session Minutes

Approval of March 24, 2023, Closed Session Minutes

5000 CLOSED CONSENT

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

6000 BOARD OF TRUSTEES SITTING AS THE REGULATION AND DISCIPLINE COMMITTEE

6001 Discussion Regarding Chief Trial Counsel Performance Evaluation

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

7000 MISCELLANEOUS

7001 Los Angeles Times v. State Bar of California (California Supreme Court Case No. S269401 (filed June 17, 2021))

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

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

**Closed pursuant to Government Code § 11126(a)(1) and 11126(c)(2).*

7003 Discussion Regarding Special Audit Committee Directed Audit of Closed Office of Chief Trial Counsel Files

**Closed pursuant to Government Code § 11126(a)(1) and 11126(c)(2).*

7004 Discussion Regarding Sale Price and Terms and Leasing Price and Terms for 180 Howard Street, San Francisco

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

7005 Conference with Legal Counsel—Anticipated Litigation

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

OPEN SESSION

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

Regular Meeting of the Board of Trustees
Hybrid

Open Session Minutes
Friday, May 19, 2023
9:02 a.m.–6:19 p.m.

Time meeting Commenced: The Board meeting commenced in open session at 9:02 a.m. The Board moved into closed session at 9:03 a.m. The Board returned to open session at 9:45 a.m. The Board returned to closed session at 3:55 p.m.

Time meeting Adjourned: 6:19 p.m.

Chair: Ruben Duran

Board Secretary: Louisa Ayrapetyan

Members Present: Mark Broughton (joined late), Raymond Buenaventura, Hailyn Chen, José Cisneros, Ruben Duran, Sarah Good, Greg Knoll, Melanie Shelby (joined late), Arnold Sowell Jr. (joined late), Brandon Stallings, Mark Toney

Members Absent: None

Staff Present: Ellin Davtyan, Leah Wilson

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 May 18, 2023, meeting and therefore no call for public comment was made.

60 BOARD OF TRUSTEES SITTING AS THE REGULATION AND DISCIPLINE COMMITTEE

60-8 Initial Discussion of Potential Policy/Rule Changes Regarding: (1) Notice to Respondents of All Closed Complaints; and (2) Elimination of Private Reprovals

Presenter: George Cardona, Chief Trial Counsel

Presentation and discussion only.

60-10 Formal Advisory Ethics Opinion 2023–208: Ethical Obligations When Working Remotely: Request for Approval for Publication

Presenter: Erika Doherty, Program Director, Office of Professional Competence

RESOLVED, that, following publication for public comment and consideration of the comments received, and upon the recommendation of the State Bar Standing Committee on Professional Responsibility and Conduct, the Board of Trustees, sitting as the Regulation and Discipline

Committee, approves the publication of Formal Ethics Advisory Opinion 2023–208, provided as Attachment A.

Moved by Cisneros, seconded by Knoll

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

Noes – (0)

Abstain – (0)

Absent – (2) Broughton, Chen

Motion carries.

700 MISCELLANEOUS

701 Recommendations from the Blue Ribbon Commission: Request for Adoption Following Public Comment and Transmission to the Supreme Court for Approval

Presenters: Joshua Perttula, Chair, Blue Ribbon Commission
Audrey Ching, Director, Office of Admissions
Amy Nuñez, Assistant Program Director, Office of Admissions

RESOLVED, that the Board of Trustees receives the Final Report and Recommendations of the Blue Ribbon Commission; and it is

FURTHER RESOLVED, that the Board direct staff to transmit the Final Report and Recommendations of the Blue Ribbon Commission to the Supreme Court indicating the Board’s support for the recommendations; and it is

FURTHER RESOLVED, that the Board directs staff to ask Blue Ribbon Commission members who indicated support for a bar exam alternative to develop a proposal for this pathway—drawing on the Blue Ribbon Commission guiding principles, deliberations, and materials—with input from experts and other stakeholders they identify, to be submitted to the Board for consideration at its July or September 2023 meeting.

Moved by Buenaventura, seconded by Stallings

Ayes – (11) Broughton, Buenaventura, Chen, Cisneros, Duran, Good, Knoll, Shelby, Sowell, Stallings, Toney

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

702 Proposed Amendments to the Admissions Rules Regarding Examinations and Moral Character for Out-of-State Applicants (Rules 4.41 and 4.62): Request to Circulate for Public Comment

Presenters: Tara Clark, Assistant Director, Office of Admissions
Christina Doell, Program Manager, Office of Admissions

RESOLVED, that the Board of Trustees approves circulating for a 60-day public comment period the changes to the rule regarding access to exam answers and scores as set forth in Attachment A; and it is

FURTHER RESOLVED, that the Board of Trustees approves circulating for a 60-day public comment period the changes to moral character rule 4.41 as set forth in Attachment B; and it is

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

Moved by Stallings, seconded by Buenaventura

Ayes – (10) Broughton, Buenaventura, Cisneros, Duran, Good, Knoll, Shelby, Sowell, Stallings, Toney

Noes – (0)

Abstain – (0)

Absent – (1) Chen

Motion carries.

703 Proposed Amendments to State Bar Rules Related to Commission on Judicial Nominees Evaluation In-Person Candidate Interviews (Rules 7.52 and 7.60): Return from Public Comment and Request for Approval

Presenter: Bridget Gramme, Deputy Chief of Programs

RESOLVED, that the Board of Trustees approves continuing proposed amendments to State Bar Rules related to Commission on Judicial Nominees Evaluation in-person candidate interviews to the Board's July 2023 meeting.

Moved by Shelby, seconded by Toney

Ayes – (5) Buenaventura, Good, Shelby, Sowell, Toney

Noes – (4) Cisneros, Knoll, Stallings, Duran

Abstain – (0)

Absent – (2) Broughton, Chen

Motion carries.

705 Proposed Amendments to Admissions Rules Related to Moral Character, Law Office Study, and the Practical Training of Law Students Program (Rule of Court Title 9, Division 4, Rule 9.42, and State Bar Rules 3.2–3.10, 4.3, 4.5, 4.6, 4.29, 4.40–4.52, 4.80–4.93, and Appendix A)” Return from Public Comment and Request for Adoption Following Transmission to the Supreme Court for Approval

Presenter: Tara Clark, Assistant Director, Office of Admissions

RESOLVED, that following the 60-day public comment period, the Board of Trustees adopts the changes to the rules regarding moral character as set forth in Attachment A, with an effective date of July 1, 2023; and it is

FURTHER RESOLVED, that following the 60-day public comment period, the Board of Trustees adopts the changes to the rules regarding the Law Office Study program as set forth in Attachments C and D; and it is

FURTHER RESOLVED, that following the 60-day public comment period, the Board of Trustees adopts the changes to the rules regarding the Practical Training of Law Students program as set forth in Attachments F, G, and H; and it is

FURTHER RESOLVED, that the Board of Trustees directs staff, consistent with the requirements of rule 9.5 of the California Rules of Court, to submit the proposed rule changes regarding the Law Office Study Program and the Practical Training of Law Students Program to the Supreme Court for review and approval with the intent that the rules have an effective date sixty days after approval by the Supreme Court.

Moved by Knoll, seconded by Shelby

Ayes – (10) Broughton, Buenaventura, Cisneros, Duran, Good, Knoll, Shelby, Sowell, Stallings, Toney

Noes – (0)

Abstain – (0)

Absent – (1) Chen

Motion carries.

706 Proposed Amendments to Admissions Rules Related to Testing Accommodations (Rules 4.80–4.92): Request to Circulate for Second Public Comment Period

Presenter: Christina Doell, Program Manager, Office of Admissions

RESOLVED, that the Board of Trustees approves circulating for a 45-day public comment period, the revisions to the Chapter 7 Rules of the State Bar set forth in Attachment A.

Moved by Duran, seconded by Knoll

Ayes – (9) Broughton, Buenaventura, Duran, Good, Knoll, Shelby, Sowell, Stallings, Toney
Noes – (0)
Abstain – (0)
Absent – (2) Chen, Cisneros

707 Discussion and Adoption of Additional Legislative Priorities

Presenter: Bridget Gramme, Deputy Chief of Programs

RESOLVED, that the Board of Trustees adopts as a legislative priority establishing an Inspector General/Discipline Monitor position, as contemplated by the Ad Hoc Committee on Accountability & Oversight Reforms, and directs staff to continue to explore where the position should be housed so long as sufficient resources and time are provided; and it is

FURTHER RESOLVED, that the Board of Trustees adopts as a legislative priority making statutory changes to the Political Reform Act and statutes relating to government contracting to strengthen conflict of interest rules that apply to the Board of Trustees and State Bar staff in furtherance of the Board's commitment to transparency and accountability; and it is

FURTHER RESOLVED, that the Board of Trustees adopts as a legislative priority incorporating the State Bar into the state budget process so long as sufficient resources and time are provided to make the necessary alterations to current processes, and directs staff to work with the Department of Finance and the Legislature to address those matters; and it is

FURTHER RESOLVED, that the Board of Trustees directs staff to continue to explore with the Legislature other measures to enhance transparency and accountability; and it is

FURTHER RESOLVED, that the Board of Trustees adopts as a legislative priority changing the term of the Board chair from one-year to two-years; and it is

FURTHER RESOLVED, that the Board of Trustees adopts as a legislative priority amending Business and Professions Code section 6065 to align the statutory language with current practice.

Moved by Buenaventura, seconded by Sowell

Ayes – (10) Broughton, Buenaventura, Cisneros, Duran, Good, Knoll, Shelby, Sowell, Stallings, Toney
Noes – (0)
Abstain – (0)
Absent – (1) Chen

Motion carries.

708 Discussion and Approval of Agreement Regarding the California Department of Justice’s Investigation of State Bar Whistleblower and Whistleblower Retaliation Complaints

Presenter: Leah Wilson, Executive Director
Ellin Davtyan, General Counsel
Caroline Holmes, Attorney, Office of General Counsel

RESOLVED, that the Board of Trustees authorizes the general counsel and executive director to negotiate and enter into the agreement with DOJ in the amount not to exceed \$100,000, and subject to the general terms of the contract described herein.

Moved by Buenaventura, seconded by Good

Ayes – (8) Broughton, Buenaventura, Cisneros, Duran, Good, Knoll, Sowell, Stallings

Noes – (1) Toney

Abstain – (1) Shelby

Absent – (1) Chen

Motion carries.

709 Approval of Final Proposal for General Fund Service Fee Increases

Presenter: Aracely Montoya-Chico, Chief Financial Officer

RESOLVED, that the Board of Trustees, upon recommendation of the Finance Committee, approves the fee increases as shown in the General Fund Adjustments (Attachment B) and directs staff to implement these increases as soon as is practicable. Any Board action regarding Law Corporation and/or LLP fee changes is not to take effect until after submission to the Supreme Court for approval and/or a determination that approval by the Supreme Court is not needed.

Moved by Sowell, seconded by Buenaventura

Ayes – (10) Broughton², Buenaventura³, Chen⁴, Cisneros, Good⁵, Knoll⁶, Shelby, Sowell, Stallings⁷, Toney

² Trustee Broughton voted aye on the resolution, except with recusal from the decision with respect to fees concerning law corporations.

³ Trustee Buenaventura voted aye on the resolution, except with recusal from the decision with respect to fees concerning legal specialization.

⁴ Trustee Chen voted aye on the resolution, except with recusal from the decision with respect to fees concerning LLPs and MCLE provider certifications.

⁵ Trustee Good voted aye on the resolution, except with recusal from the decision with respect to fees concerning LLPs and MCLE provider certifications.

⁶ Trustee Knoll voted aye on the resolution, except with recusal from the decision with respect to fees concerning MCLE provider certifications.

⁷ Trustee Stallings voted aye on the resolution, except with recusal from the decision with respect to fees concerning law corporations.

Noes – (0)
Abstain – (0)
Absent – (0)
Recused – (1) Duran

Motion carries.

710 Discussion of Admissions Fee Increase Proposals Currently Out for Public Comment

Presenters: Aracely Montoya-Chico, Chief Financial Officer
Audrey Ching, Director, Office of Admissions

Presentation and discussion only.

711 Overview of State Bar Performance Metrics

This item was tabled until the Board's July 2023 meeting.

712 Approval of 2022 Quarter Four Financial Statements and Investment Report and 2023 Quarter One Investment Report

This item was tabled for discussion until the Board's July 2023 meeting.

Chair Duran stated that pursuant to Government Code section 11126(e)(1), Government Code section 11126(a), Government Code section 11126(a)(1), Government Code section 11126(c)(2), Government Code section 11126(c)(7), and Government Code section 11126(e)(2)(B)(i): 2 cases, 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 March 16, 2023, Closed Session Minutes

Approval of March 24, 2023, Closed Session Minutes

5000 CLOSED CONSENT

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

6000 BOARD OF TRUSTEES SITTING AS THE REGULATION AND DISCIPLINE COMMITTEE

6001 Discussion Regarding Chief Trial Counsel Performance Evaluation

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

7000 MISCELLANEOUS

7001 Los Angeles Times v. State Bar of California (California Supreme Court Case No. S269401 (filed June 17, 2021))

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

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

**Closed pursuant to Government Code § 11126(a)(1) and 11126(c)(2).*

7003 Discussion Regarding Special Audit Committee Directed Audit of Closed Office of Chief Trial Counsel Files

**Closed pursuant to Government Code § 11126(a)(1) and 11126(c)(2).*

7004 Discussion Regarding Sale Price and Terms and Leasing Price and Terms for 180 Howard Street, San Francisco

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

7005 Conference with Legal Counsel—Anticipated Litigation

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

OPEN SESSION

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

ADJOURN