



The State Bar of California

OPEN SESSION AGENDA ITEM 704 SEPTEMBER 2023

DATE: September 22, 2023

TO: Members, Board of Trustees

FROM: Ellin Davtyan, General Counsel
Robert G. Retana, Deputy General Counsel
Brady R. Dewar, Assistant General Counsel
Shelby King, Assistant General Counsel

SUBJECT: Proposed Amendments to Rules 9.11 and 9.90 of the California Rules of Court:
Return from Public Comment and Approval; Update on Conflict of Interest
Code for the Board of Trustees of the State Bar of California

EXECUTIVE SUMMARY

This item requests that the Board of Trustees approve the proposed amendments to the California Rules of Court, Rules 9.11 and 9.90, and direct staff to submit the rules to the California Supreme Court for its approval. These proposed changes are based on direction from the California Supreme Court (Supreme Court). The Supreme Court requested that the amendments require the Applicant Evaluation and Nomination Committee (AENC) and the Trustees Nominating Committee (TNC), which evaluate candidates for State Bar Court and the Board, respectively, to identify any “actual and potential conflicts of interest” in order to select “independent and unbiased candidates.” The amendments to rules 9.11 and 9.90 require the AENC and TNC to develop procedures to evaluate candidates selected to be interviewed for actual and potential conflicts of interest. The conflict analysis will inform the AENC and TNC about the candidates’ rankings or whether the candidate should be disqualified. The analysis will be kept confidential but included in the evaluation and ratings shared with the respective appointing authorities.

On July 25, 2023, the proposed amendments to rules 9.11 and 9.90 were circulated for public comment for a period of 45 days. As directed at the July Board meeting, staff also requested public comment on whether the Board should recommend that other authorities that appoint members to the Board adopt a similar process for evaluating candidates’ actual and potential

conflicts of interest. The State Bar received five public comments on the proposed amendments and no responses about recommending a similar process for the other appointing authorities.

Based on the public comments received, staff does not recommend any further revisions to the proposed amendments. Accordingly, staff recommends that the Board approve the proposed revisions to Rules 9.11 and 9.90 and direct staff to submit the proposed amendments to the California Supreme Court for approval. It is also recommended that staff inform the other appointing authorities about these rule changes and request that they consider adopting similar procedures to identify or otherwise consider actual and potential conflicts of interest.

BACKGROUND

APPLICANT EVALUATION AND NOMINATION COMMITTEE

California Rules of Court, rule 9.11 (rule 9.11) authorizes and establishes the AENC. The AENC, supported by State Bar staff, collects applications for appointment and reappointment to the State Bar Court, and evaluates and rates applicants for appointment to the State Bar Court by all of the State Bar Court's appointing authorities (the Supreme Court, the governor, the Senate Committee on Rules, and the Speaker of the Assembly).

The AENC consists of seven members appointed by the Supreme Court. No more than four members may be licensees of the State Bar in good standing; no more than three members may be public members who have never been a State Bar licensee or admitted to practice before any court in the United States; two members must be retired or active judicial officers; and two members must be present members of the Board of Trustees.¹

Pursuant to rule 9.11(a)(3), the AENC must adopt, subject to Supreme Court approval, procedures for notice to potential applicants of vacancies, receipt of applications, solicitation and receipt of public comment, evaluation and rating of applicants, and transmittal of information to the Supreme Court and other appointing authorities. The current AENC procedures (Attachment A) establish a process in which, after an initial review, a subset of applicants is identified for interviews, with the list of applicants to be interviewed subject to modification by the Supreme Court or other appointing authorities. Those applicants are then interviewed, evaluated, and rated. (Attachment A at sections F(3)–F(4).)

AENC evaluations are confidential pursuant to rule 9.11 and the procedures adopted by the AENC and approved by the Supreme Court.

The AENC evaluates candidates for appointment to the State Bar Court based on a wide array of factors set forth in rule 9.11(b)(3). The committee must rate all candidates as “not recommended,” “recommended,” or “highly recommended,” and must transmit the ratings, as well as a report stating the reasons therefore, to the Supreme Court and, if applicable, other appointing authorities. Only applicants rated as recommended or highly recommended by the AENC or the Supreme Court may be appointed.

¹ When the AENC last met, its Trustee members were Trustee Mark Toney and former Trustee Sonia Delen.

While the factors AENC is currently directed to consider include “objectivity, community respect, and integrity,” AENC is not currently expressly required to consider candidates’ actual or potential conflicts of interest.

The AENC is anticipated to begin soliciting applications for appointments and reappointments to the State Bar Court in late 2023, in preparation for the end of three State Bar Court judges’ current terms in 2024.

STATE BAR TRUSTEES NOMINATING COMMITTEE

California Rules of Court, rule 9.90 (rule 9.90) authorizes and establishes the TNC. The TNC, supported by State Bar staff, collects, evaluates, and rates applicants for appointment by the Supreme Court to the Board. The TNC is not involved in appointments to the Board by other appointing authorities.

The TNC consists of seven members appointed by the Supreme Court. Five members must be licensees of the State Bar in good standing; two members must be retired or active judicial officers.

Pursuant to rule 9.90(a)(4), the TNC must adopt, subject to Supreme Court approval, procedures for receipt and initial screenings of applicants, receipt of evaluation of selected applicants, evaluation and rating of applicants, and transmittal of information to the Supreme Court. The current TNC procedures (Attachment B) establish a process in which, after an initial review, a subset of applicants is identified for interviews, with the list of applicants to be interviewed subject to modification by the Supreme Court. Those applicants are then interviewed, evaluated, and rated. (Attachment B at sections 8–10.)

TNC evaluations are confidential pursuant to rule 9.90 and the procedures adopted by the TNC and approved by the Supreme Court.

The TNC evaluates candidates for appointment to the Board based on a wide array of factors set forth in rule 9.90(a)(5). The committee must rate all candidates as “not recommended,” “recommended,” or “highly recommended,” and must transmit the ratings, as well as a report stating the reasons therefore, to the Supreme Court.

While the evaluation factors TNC is currently directed to consider include “objectivity, community respect, and integrity,” they do not currently expressly include actual or potential conflicts of interest.

The TNC is not anticipated to begin soliciting applications for appointments and reappointments to the Board until early next year, as State Bar staff understands the Supreme Court to have a sufficient number of applications already evaluated by TNC to fill its one appointment and one reappointment this year.

SUPREME COURT DIRECTION FOR RULE OF COURT AMENDMENTS AND TIMELINE FOR AMENDMENTS

On March 22, 2023, the Supreme Court issued a letter to the State Bar’s executive director directing the State Bar to consider and draft amendments to rules 9.11 and 9.90 that would require the AENC and TNC, respectively, to “identify and assess each candidate’s actual and potential conflicts of interest” in order to “better achieve the goal of selecting independent and unbiased candidates.” The Court specifically directed that the amendments, at a minimum, should:

- (1) require candidates to disclose financial and nonfinancial interests that might affect, or might be affected by, the candidate’s service in the State Bar office in question; (2) require candidates to provide a list of attorneys whom the candidate would identify as creating a conflict in any future service with the State Bar; and (3) require the committees to review this information and evaluate whether it might disqualify a candidate or reduce a candidate’s rating.²

The letter directed these new amendments to be put forth on an expedited basis. Accordingly, after consulting with Court staff regarding the appropriate timeline, State Bar staff developed the proposed amendments set forth in Attachments D and E for presentation to the Board at its July 2023 meeting. This is an expedited timeline from the usual procedure for new and amended rules, which are usually presented to the Board at its November or May meetings per the policy set forth in State Bar Administrative Advisory No. 22–04. Consistent with past practice for Rule of Court amendments and with the treatment of proposed amendments to the Rules of the State Bar of California pursuant to Rules of the State Bar of California, rule 1.10(a), State Bar [staff proposed](#), and the Board approved, at the July 2023 meeting circulating the proposed amendments for a 45-day period to allow for the Board’s approval for submission to the Supreme Court at its September 2023 meeting. This timeline will allow for the adoption of the new rules before AENC or TNC evaluate any new applications. Further, staff was also directed at the July Board meeting to inquire during public comment about whether the Board should recommend that other authorities appointing members to the Board adopt a similar process for evaluating candidates for actual and potential conflicts of interest.

DISCUSSION

RULE AMENDMENTS

State Bar staff developed proposed amendments to rules 9.11 and 9.90 that require AENC and TNC, respectively, to gather and consider information on actual and potential financial and nonfinancial conflicts of interest. (See Attachment D for proposed amendments to rule 9.11; Attachment E for proposed amendments to rule 9.90.) The proposed amendments require the AENC and TNC to evaluate the actual and potential conflicts of interest of all candidates to be

² Attachment C.

interviewed by the committees, and to consider that information in their evaluations of candidates.

State Bar staff initially considered identifying in the proposed amended rules 9.11 and 9.90 the specific information that candidates must disclose to the committees, but after input from the office of the Chief Justice of California, will instead work on including the details relating to the specific required disclosures in the amended AENC and TNC procedures, to be developed by the AENC and TNC following the adoption of the amended rules 9.11 and 9.90. These procedures will then be submitted to the Supreme Court for approval.

State Bar staff anticipates that the new procedures will require the disclosure of information including:

- The financial interests (including certain investments, sources of income, gifts, etc.) that the candidates would need to disclose on their Statements of Economic Interests (known as Form 700s)³ if they were appointed;
- Information about relationships with licensees that would be disclosed if the applicant were to complete the questionnaire State Bar employees and Trustees answer every year to assist in the recusal of the Office of Chief Trial Counsel pursuant to Rules of Procedure of the State Bar of California, rule 2201;
- Information about compensated and noncompensated membership on boards, professional association memberships, and volunteer positions;
- Information about personal or professional relationships with State Bar employees, Trustees, contractors, or committee or commission members;
- Information about business relationships with the State Bar;
- Information about past employment or volunteer positions with the State Bar; and
- For Trustees, because they make decisions regarding admissions requirements and procedures, information regarding known relationships with likely applicants to become a State Bar licensee during the term in office for which they are applying.

Pursuant to the input from the office of the Chief Justice of California, the conflicts information is anticipated to be collected from all applicants selected to be interviewed by the AENC or TNC, rather than from all applicants in their initial application materials. Collecting and evaluating this information at a later stage in the application and review process will reduce the burden on

³ Candidates for Trustee will disclose as Trustees would pursuant to the Conflict of Interest Code for the Board of Trustees of the State Bar of California. An update about the amendments to this Conflict of Interest Code is included below. Candidates for State Bar Court judge will disclose as State Bar Court judges would pursuant to the Conflict of Interest Code for Designated Employees of the State Bar of California.

staff and applicants—potentially reducing barriers to applying—while ensuring that detailed conflicts information is considered for all applicants who are ultimately considered for appointment.

Additionally, as noted above, while rules 9.11 and 9.90 already provide for confidentiality, the proposed amendments specifically provide that candidates' disclosures regarding financial and nonfinancial interests shall be made on a confidential basis.

The proposed rule amendments, together with the required updates to the AENC and TNC procedures to follow the adoption of the amended rules, meet the requirements of the Supreme Court's directive and will assist the Supreme Court (and, for the State Bar Court, other appointing authorities) in appointing State Bar Court judges and Trustees who will make decisions unaffected by conflicts of interest and who will support the public perception of the State Bar Court and Board as objective bodies dedicated to public protection. Accordingly, State Bar staff circulated the proposed amendments to rules 9.11 and 9.90 as set forth in Attachments D and E for public comment. Additionally, during the July Board meeting, staff was also directed to inquire during public comment about whether the Board should recommend that other authorities appointing members to the Board adopt a similar process for evaluating candidates' actual and potential conflicts of interest. This will help to ensure that the State Bar Court and Board are objective bodies dedicated to public protection and that individuals appointed to serve on them can fulfill their duty of loyalty to the State Bar.

PUBLIC COMMENTS

The State Bar circulated the proposed amendments to rules 9.11 and 9.90 and the question about conflicts and the other appointing authorities for public comment by posting the request on the State Bar's website for 45 days, ending on September 7, 2023. The State Bar received five public comments in response, and each individual provided largely the same feedback in response to both rule amendments. A complete set of comments received is provided as Attachment F. Staff does not recommend further updates to the proposed amendments in response to the public comments, but staff does recommend notifying the other appointing authorities about the amendments and suggesting that these authorities consider implementing similar processes.

Of the five public comments,⁴ two commenters agreed with the proposed amendments, one commenter agreed only if the proposal is further amended, one commenter stated no position, and one commenter disagreed with the proposed amendments.

Among the public commenters that agreed with the proposed recommendations, little additional feedback was received. However, one individual stated that "[a]pplicants' biases should be on their personnel records" without further explanation.

⁴ Three California licensed attorneys responded, and two additional individuals declined to state whether they are attorneys. One comment was submitted on behalf of the Legal Aid Association of California.

The public commenter that agreed with the proposals only if modified expressed concerns about the lack of public input and public access to the applicant review processes conducted by the AENC and TNC as outlined in rules 9.11 and 9.90. This public commenter requested the opportunity to comment on at least the final three candidates for State Bar Court judgeships and the Board. The commenter also requested that “[t]he process, at least in its final stage, should be open to the public.” As to the amendments to rule 9.90, regarding applicants to the Board, this public commenter recommended legislative confirmation as an additional check. While public input is of the utmost importance, this comment is outside the scope of what was requested from the California Supreme Court. As stated above, both rules require confidentiality during the evaluation process.

One public comment was submitted by the Legal Aid Association of California. While the comment did not express a position on either rule amendment, it requested that the AENC and TNC consider how to screen applicants who may work for a legal aid organization that receives grant funds from the State Bar. Specifically, the Legal Aid Association of California urged that legal aid attorneys are not automatically disqualified. This public comment relates to the actual evaluation process, and is not taking a position on the proposed rules. However, it will be considered and related to AENC and TNC during their respective consideration of the detailed processes around the evaluation of conflicts.

Lastly, the public commenter who disagreed with the proposals submitted comments outside the scope of the public comment request. The individual expressed their concerns about the Board being majority controlled by active licensed attorneys and the conflict of interest that is posed when attorneys regulate their own profession. This commenter also submitted a larger and unrelated proposal dealing with federal antitrust regulations, a disciplinary process outside of the Office of Chief Trial Counsel and State Bar Court, the replacement of the Commission on Judicial Nominees Evaluation, and the transition of the Client Security Fund to the California State Auditor, among other proposals.

Staff asked the public if the Board should recommend that other bodies appointing members to the Board adopt a similar process for evaluating candidates’ actual and potential conflicts of interest; however, no public comment was received on this topic. Nevertheless, staff recommends sharing this suggestion with appointing authorities.

Based on the public comments received and the request from the California Supreme Court, the staff does not believe that further revisions are necessary to the proposed amendments to rules 9.11 and 9.90, and staff recommends that the rule be approved for submission to the California Supreme Court for adoption.

UPDATE ON THE CONFLICT OF INTEREST CODE FOR THE BOARD OF TRUSTEES

At its July meeting, the Board also approved for submission to the California Supreme Court a proposed amended Conflict of Interest Code for the Board of Trustees of the State Bar of California (code). The State Bar submitted the proposed amended code on July 24, 2023.

On August 31, 2023, the Court provided the State Bar with [revisions](#) to the code. The revisions provide further clarity about Trustees’ disclosure and disqualification obligations. The Court directed the State Bar to circulate the revised amended code for a 30-day public comment period, and to resubmit the proposed amended code to the court, with any additional revisions, by October 30, 2023.

The revised proposed amended Board Conflict of Interest Code is currently being circulated for [public comment](#), with the public comment period closing on October 5, 2023. After public comments are reviewed, a meeting of the Board or Executive Committee (if a quorum of the full Board is not available) is expected to be held to approve the proposed amended code for resubmission to the Court by October 30, 2023. We anticipate that, in addition to any revisions based on public comment, there may be minor additional revisions to the proposed amended code presented to the Board at that time. Specifically, we anticipate including the amendments to California Business and Professions Code section 6036—broadening Trustees’ recusal obligations to cover all State Bar decisions explicitly and to require recusal where a personal interest *may* prevent a Trustee from applying disinterested skill and undivided loyalty to the State Bar—in the code should these changes be adopted by the legislature. As the Board may recall, these amendments to section 6036, along with expressly extending conflicts of interest requirements of Government Code Section 1090 *et seq.*,⁵ were approved as legislative priorities by the Board and are included in the current fee bill, Senate Bill 40.

FISCAL/PERSONNEL IMPACT

If adopted by the Supreme Court, the proposed amendments to Rules 9.11 and 9.90 would result in additional work for existing State Bar staff in supporting the collection and review of conflicts of interest information by AENC and TNC, as well as assistance in analyzing potential conflicts.

AMENDMENTS TO RULES OF COURT

Title 9, Division 2, Chapter 2, rule 9.11 (State Bar Court judges)

Title 9, Division 7, rule 9.90 (Nominations and appointments of State Bar trustees)

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None.

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 4. Protect the Public by Engaging Partners

⁵ Government Code sections 1090, *et seq.*, imposes strict requirements to avoid government contracting decisions affected by personal financial interests. Although not subject by law to the requirements of this section, the State Bar’s policy and practice has in fact been to act in accordance with its requirements. Staff recommended and the Board approved as legislative priority codifying that practice in the State Bar Act.

- d. 1. Collaborate with the legislature and other stakeholders to increase public protection and support the State Bar's mission.

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, following notice and publication for comment, that the Board of Trustees approves the proposed amendments to Rules of Court 9.11 and 9.90 as set forth in Attachments D and E; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed amendments to Rules of Court 9.11 and 9.90 to the California Supreme Court with a request that the proposed amendments be approved; and it is

FURTHER RESOLVED, that staff is directed to inform the other appointing authorities, including the governor, the Senate Committee on Rules, and the Speaker of the Assembly, for the Board of Trustees about these proposed rule changes and request that they consider adopting similar procedures or otherwise consider actual or potential conflicts of interest in their appointment process.

ATTACHMENTS LIST

- A.** Procedures of the Applicant Evaluation and Nomination Committee
- B.** Revised TNC Evaluation and Nominations Process
- C.** March 22, 2023, Letter to Leah Wilson from Clerk and Executive Officer of the Supreme Court
- D.** Proposed Amendments to Rule 9.11 of the California Rules of Court – Redline Version
- E.** Proposed Amendments to Rule 9.90 of the California Rules of Court – Redline Version
- F.** Compilation of Public Comments Received

Procedures of the Applicant Evaluation and Nomination Committee

A. Definitions

- (1) “Committee” refers to the Applicant Evaluation and Nomination Committee established by the Supreme Court to assist in the appointment or reappointment of judges of the State Bar Court.
- (2) “Position” refers to the office of each appointed judge of the State Bar Court that would become vacant on October 31 in any year because of the expiration of the judge’s six year term.
- (3) “Other Appointment Authorities” refers to the Governor, the Senate Committee on Rules, and the Speaker of the Assembly.
- (4) “Rule 9.11” refers to California Rules of Court, Rule 9.11.

B. Timeline

In each year in which the six-year term of a judge of the State Bar Court will expire, the committee must establish a specific timeline for that year’s nominations process and present it to the Supreme Court, which may request changes as it deems appropriate.

C. Confidentiality

Except as may be provided by the Supreme Court, and the procedures herein, the committee’s communications, meetings, records, opinions expressed to the committee by raters or others with regard to an applicant’s qualifications, interviews with applicants, the comments of any individual committee members or the committee as a whole, and all other committee activities are confidential.

D. Applications

- (1) Applications and supporting material for appointment or reappointment must be submitted in a form required by the committee. Applications will be solicited widely through advertisements in legal publications; on-line posting on the State Bar website and, in cooperation with the Supreme Court, on the court’s website; notices to local and specialty bar associations; and such other methods as the committee may find effective.
- (2) The application period must be open for a minimum of 21 days.

E. Initial Screening

- (1) The committee must conduct an initial screening of applicants meeting the minimum qualifications under Business and Professions Code section 6079.1, subdivision (b).

(2) After its initial screening, the committee must transmit in confidence to the Supreme Court and, as applicable to the Other Appointment Authorities, the committee's tentative list of the applicants that the committee intends to further evaluate and rate, together with copies of the applications and materials of all the applicants. The Supreme Court and the Other Appointment Authorities may add or remove names of applicants from the lists of applicants to be evaluated and rated, but only for the position or positions for which the particular authority will make an appointment.

F. Evaluation

(1) Following notification from the Supreme Court, and from the Other Appointment Authorities as applicable, of the names of those to be further evaluated, the committee must distribute confidential evaluation forms to obtain additional comments and information about the applicants.

(2) The confidential evaluation forms must be provided to those identified by an applicant and to others as determined by the committee to be reasonably likely to have knowledge of an applicant. Such forms shall contain an accurate disclosure regarding those who may review completed forms. Completed confidential evaluation forms must be submitted by the deadline set by the committee.

(3) Based on the confidential evaluation forms submitted, the committee must make a preliminary evaluation and rating of the applicants and select at least three applicants for each position for interviews. The committee must transmit to the Supreme Court, and to the Other Appointment Authorities as applicable, the list of applicants the committee intends to interview. The Supreme Court and the Other Appointment Authorities may add or remove applicants to be interviewed, but only for the position or positions for which the particular authority will make an appointment. The committee must then interview the applicants on the lists so approved.

(4) After the interviews, the committee must evaluate the qualifications of and rate each applicant. In determining the qualifications of an applicant, the committee will consider the factors under Rule 9.11(b)(3) and Government Code section 12011.5. Applicants are to be rated as "not recommended," "recommended," and "highly recommended." A rating of "not recommended" relates only to the position under consideration and does not indicate any lack of ability or expertise of the applicant generally. Applicants may also be given a numerical rating based on the following formula: "Highly Recommended +" = 9, "Highly Recommended" = 8, "Highly Recommended -" = 7; "Recommended +" = 6, "Recommended" = 5, "Recommended -" = 4; and "Not Recommended +" = 3, "Not Recommended" = 2, "Not Recommended -" = 1.

(5) Supreme Court Appointments. Not less than 90 days before the expiration of the term of office of a judge of the State Bar Court on October 31, the committee must prepare a report with the committee's recommendations of at least three qualified candidates, ranked in order of preference, for each position. The committee's report must include its evaluation, rating, and recommendation of each applicant and the reasons

therefor, including a succinct summary of each recommended applicant's qualifications. The report must be marked "CONFIDENTIAL" and be transmitted to the Supreme Court together with all returned confidential evaluation forms with all personal identifying information redacted when appropriate.

(6) Appointments by Other Appointment Authorities. Not less than 90 days before the expiration of the term of office of a judge of the State Bar Court on October 31, the committee must prepare a report with the committee's recommendations of at least three qualified candidates, ranked in order of preference, for each position. The committee's report must include its evaluation, rating, and recommendation of each applicant and the reasons therefor, including a succinct summary of each recommended applicant's qualifications. The report must be marked "CONFIDENTIAL" and be transmitted to the Other Appointment Authorities as applicable together with all returned confidential evaluation forms with all personal identifying information redacted when appropriate.

G. Vacancies

Except for the timelines described herein, these procedures apply to filling vacancies occurring during the term of any judge appointed by the Supreme Court, the Governor, the Senate Committee on Rules and the Speaker of the Assembly.

Revised TNC Evaluation and Nominations Process

The TNC nominations process includes the following steps and procedures:

1. Application and outreach

Available positions and application materials will be posted on the State Bar website. This information will also be widely distributed and publicized through other means including social media, all-licensee quarterly emails, and local and specialty bar associations, and, in cooperation with the Supreme Court, on the Court's website, and such other methods as the committee may find effective.

2. Initial staff screening

Upon receipt of the applications, TNC staff will screen the applications. This screening will include a determination of whether the applicant is a licensee in good standing of the State Bar. All applications meeting the minimum qualifications will be transmitted to members of the TNC along with staff's initial assessment of the candidate pool, and options for independent references for the committee to consider.

3. Initial committee screening

The TNC will conduct its initial conference call to determine which applicants should be considered for further evaluation. During this call and throughout the evaluation and recommendation process, the TNC will consider the factors set forth in Rule 9.90(a)(5), which provides:

(5) In recommending candidates, in order to provide for the appointment of trustees who bring to the board a variety of experiences, the committee should consider:

- (A) Legal services attorneys, solo practitioners, attorneys with small firms, and attorneys with governmental entities;
- (B) Historically underrepresented groups, such as those underrepresented because of race, ethnicity, gender, and sexual orientation;
- (C) Legal academics;
- (D) Geographic distribution;
- (E) Years of practice;
- (F) Attorneys who are in their first five years of practice;
- (G) Participation in voluntary local or state bar activities;
- (H) Participation in activities to benefit the public; and
- (I) Other factors demonstrating a background that will help inform the work of the board.

The TNC will also consider the following, as provided in Rule 9.90(b)(2):

In determining the qualifications of an applicant for appointment or reappointment the committee should, in addition to the factors cited in subsection (a)(5), consider the following: focus on the

Revised TNC Evaluation and Nominations Process

public interest, public service, commitment to the administration of justice, objectivity, community respect, integrity, ability to work collaboratively, and balanced temperament.

During this initial screening, for any candidate chosen for further evaluation, the TNC will finalize a list of at least 2-3 suggested independent references beyond those provided in the application for staff to contact for confidential evaluations.

4. Supreme Court initial review

The TNC will transmit the committee's tentative list of applicants recommended for further evaluation, along with the application materials, to the Supreme Court for initial informal consideration. The TNC will submit to the Supreme Court all applicant materials in the format specified by the Court. The TNC will seek the Supreme Court's direction on whether any names should be added to, or removed from, the TNC's tentative list of applicants to be considered further.

Following receipt of the Court's response, the TNC will notify the applicants who have been selected for further consideration.

5. Confidential reference checks

Staff will request prior discipline history and conduct confidential reference checks for all candidates. Each candidate will have at least five reference checks, to include both candidate-provided and independent references.

6. TNC individual ranking

A reference check summary and individual preliminary ranking form will be sent to the members of the TNC, so that the individual members of the TNC may rank candidates based on application materials and confidential reference checks.

7. TNC selection for interviews

The TNC will meet to discuss their individual rankings and confirm a list of at least three candidates to be interviewed for each opening.

8. Supreme Court formal review of final candidate list

The TNC will transmit its interview list to the Supreme Court for formal consideration.

9. TNC interviews

Once the Supreme Court has provided its direction on the final candidates list, the TNC will schedule and conduct interviews of all applicants on the final candidates list.

10. TNC rating

Following the interviews, the TNC will meet to evaluate the qualifications of and rate all the interviewed applicants. Candidates will be rated as "not recommended," or "recommended," or "highly recommended. A rating of "not recommended" relates only

Revised TNC Evaluation and Nominations Process

to the position under consideration and does not indicate any lack of ability or expertise of the applicant generally.

11. Recommendations to Supreme Court

The TNC will transmit to the Supreme Court its recommended nomination of at least three qualified candidates, ranked in order of preference, for each vacancy.

12. The Supreme Court will notify the TNC of its selection for each vacancy.

13. The Supreme Court will notify each appointee of his or her selection.

14. Following notification of the appointee(s), the TNC will send letters to those not appointed thanking them for their interest and willingness to devote their time and expertise to serve the profession.

15. Each new appointee will be sworn in at the State Bar Annual Meeting

Throughout this process, the TNC ensures the confidentiality of its evaluations.



Supreme Court of California

JORGE E. NAVARRETE
CLERK AND EXECUTIVE OFFICER
OF THE SUPREME COURT

EARL WARREN BUILDING
350 McALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

March 22, 2023

SENT VIA USPS AND EMAIL

Leah Wilson, Executive Director
State Bar of California
180 Howard Street
San Francisco, CA 94105
leaht.wilson@calbar.ca.gov

RE: Selection of State Bar Court Judges and Board of Trustees

Dear Ms. Wilson:

At present, California Rules of Court, rules 9.11 and 9.90, establish independent committees that review the qualifications of candidates and present recommendations to the court regarding its appointments to the State Bar Court and State Bar Board of Trustees. To better achieve the goal of selecting independent and unbiased candidates, the court directs the State Bar to consider and draft amendments to rules 9.11 and 9.90 that would require the committees established by those rules to identify and assess each candidate's actual and potential conflicts of interest. At a minimum, these amendments should: (1) require candidates to disclose financial and nonfinancial interests that might affect, or might be affected by, the candidate's service in the State Bar office in question; (2) require candidates to provide a list of attorneys whom the candidate would identify as creating a conflict in any future service with the State Bar; and (3) require the committees to review this information and evaluate whether it might disqualify a candidate or reduce a candidate's rating.

The court further requests that these new amendments be put forth on an expedited basis.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Navarrete", is written over the printed name.

JORGE E. NAVARRETE
Clerk and
Executive Officer of the Supreme Court

cc: Ruben Duran, Chair, State Bar Board of Trustees
Brandon Stallings, Vice-Chair State Bar Board of Trustees

Rule 9.11. State Bar Court Judges**(a) Applicant Evaluation and Nomination Committee**

(1) In order to ensure that individuals appointed by the Supreme Court or by the executive or legislative branches have been evaluated objectively, the Supreme Court has established an independent Applicant Evaluation and Nomination Committee to solicit, receive, screen, and evaluate all applications for appointment or reappointment to any position of judge of the State Bar Court (hearing judge, presiding judge, and review department judge). The role of the committee is to determine whether appointees possess not only the statutorily enumerated qualifications, but also any qualifications that may be required by the Supreme Court to assist in the exercise of its ultimate authority over the discipline and admission of attorneys (see *Obrien v. Jones* (2000) 23 Cal.4th 40; *In re Attorney Discipline System* (1998) 19 Cal.4th 582; Cal. Const., art. VI, sec. 9).

(2) The committee serves at the pleasure of the Supreme Court. It shall consist of seven members appointed by the court of whom no more than four may be licensees of the State Bar in good standing, two must be retired or active judicial officers, and no more than three may be public members who have never been a licensees of the State Bar or admitted to practice before any court in the United States. Two members of the committee must be present members of the Board of Trustees of the State Bar.

(3) The committee must adopt, and implement upon approval by the Supreme Court, procedures for:

(A) Timely notice to potential applicants of vacancies;

(B) Receipt of applications for appointments to those positions from both incumbents and other qualified persons;

(C) Solicitation and receipt of public comment;

(D) Review and evaluation of applicants' actual and potential conflicts of interest, with the procedures to require, at a minimum, confidential disclosure by each applicant to be interviewed by the committee of financial and nonfinancial interests that might affect or be affected by service as a State Bar Court judge and a list of attorneys whom each applicant would identify as creating a conflict in any future service as a State Bar Court judge;

~~(D)~~ (E) Evaluation and rating of applicants; and

~~(E)~~ (F) Transmittal of the materials specified in (b) of this rule to the Supreme Court and, as applicable, other appointing authorities.

The procedures adopted by the committee must include provisions to ensure confidentiality comparable to those followed by the Judicial Nominees Evaluation Commission established under Government Code section 12011.5.

(4) The Board of Trustees of the State Bar, in consultation with the Supreme Court if necessary, must provide facilities and support staff needed by the committee to carry out its obligations under this rule.

(b) Evaluations

(1) The committee must evaluate the qualifications of and rate all applicants for positions appointed by the Supreme Court and must submit to the Supreme Court the nominations of at least two candidates for each vacancy. Candidates shall be rated as "not recommended," "recommended," or "highly recommended." A rating of "not recommended" relates only to the position under consideration and does not indicate any lack of ability or expertise of the applicant generally. The committee must report in confidence to the Supreme Court its evaluation, rating and recommendation for applicants for appointment and the reasons therefore, including a succinct summary of their qualifications, at a time to be designated by the Supreme Court. The report must include written comments received by the committee, which must be transmitted to the Supreme Court together with the nominations.

(2) The committee must evaluate the qualifications of and rate all applicants for positions appointed by the Governor, the Senate Committee on Rules, or the Speaker of the Assembly, and must submit in confidence to the Supreme Court and, as applicable, to other appointing authorities, all applications for such positions together with the committee's evaluation, rating and recommendation for these applicants, including any written comments received by the committee, at a time to be designated by the Supreme Court.

(3) In determining the qualifications of an applicant for appointment or reappointment the committee must consider, among other appropriate factors, the following: industry, legal and judicial experience (including prior service as a judge of the State Bar Court), judicial temperament, honesty, objectivity, community respect, integrity, and ability. The committee must consider legal work experience broadly, including, but not limited to, litigation and non-litigation experience, legal work for a business or nonprofit entity, experience as a law professor or other academic position, legal work in any of the three branches of government, and legal work in dispute resolution.

The committee shall consider whether an applicant has demonstrated the ability to write cogently and to analyze legal provisions and principles. Among the issues the committee may also consider are (1) the applicant's demonstrated capacity to work independently and to set and meet performance goals, (2) the applicant's knowledge and experience relevant to issues that give rise to the majority of State Bar Court proceedings, including professional ethics and fiduciary obligations, (3) knowledge of practice and demeanor in the courtroom, and (4) whether the applicant has been in practice for 10 or more years. The committee shall accord weight to all experience that has provided the applicant with legal experience and exposure during which the individual has demonstrated the underlying skills necessary to serve as an effective State Bar Court judge. The committee shall apply the same criteria to candidates seeking appointment from all of the appointing authorities. Any evaluation or rating of an applicant and any recommendation for appointment or reappointment by the committee must be made in conformity with Business and Professions Code section 6079.1(b) and in light of the factors specified in Government Code section 12011.5(d), and those specified in this paragraph.

(4) Each applicant to be interviewed by the committee must disclose on a confidential basis all information required under the procedures developed pursuant to subsection(a)(3)(D) of this rule, for the committee to evaluate that applicant's actual or potential conflicts of interest. The committee must then consider whether the applicant's actual or potential conflicts of interest should disqualify the applicant or reduce their rating. In making this determination, the committee should consider whether financial or nonfinancial interests would impact the applicant's ability to perform the duties of a State Bar Court judge with disinterested skill and undivided loyalty to the State Bar or impact the State Bar Court's appearance to the public as a body that conducts its work with disinterested skill and undivided loyalty. The committee shall include the committee's determinations on this issue in its submission of evaluations and ratings to the Supreme Court and, as applicable, other appointing authorities.

(45) Upon transmittal of its report to the Supreme Court, the committee must notify any incumbent who has applied for reappointment by the Supreme Court if he or she is or is not among the applicants recommended for appointment to the new term by the committee. The applicable appointing authority must notify as soon as possible an incumbent who has applied for reappointment but is not selected.

(c) Appointments

Only applicants who are rated as recommended or highly recommended by the committee or by the Supreme Court may be appointed. At the request of the Governor, the Senate Committee on Rules, or the Speaker of the Assembly, the Supreme Court will reconsider a finding by the committee that a particular applicant is not recommended. The Supreme Court may make such orders as to the appointment of applicants as it deems appropriate, including extending the term of incumbent judges pending such order or providing for staggered terms.

(d) Discipline for misconduct or disability

A judge of the State Bar Court is subject to discipline or retirement on the same grounds as a judge of a court of this state. Complaints concerning the conduct of a judge of the State Bar Court must be addressed to the Executive Director-Chief Counsel of the Commission on Judicial Performance, who is the Supreme Court's investigator for the purpose of evaluating those complaints, conducting any necessary further investigation, and determining whether formal proceedings should be instituted. If there is reasonable cause to institute formal proceedings, the investigator must notify the Supreme Court of that fact and must serve as or appoint the examiner and make other appointments and arrangements necessary for the hearing. The Supreme Court will then appoint one or more active or retired judges of superior courts or Courts of Appeal as its special master or masters to hear the complaint and the results of the investigation, and to report to the Supreme Court on the resulting findings, conclusions, and recommendations as to discipline. The procedures of the Commission on Judicial Performance must be followed by the investigator and special masters, to the extent feasible. The procedures in the Supreme Court after a discipline recommendation is filed will, to the extent feasible, be the same as the procedures followed when a determination of the Commission on Judicial Performance is filed.

Rule 9.90. Nominations and Appointments of State Bar Trustees

(a) State Bar Trustees Nominating Committee

(1) The Supreme Court appoints five attorneys to the State Bar Board of Trustees, each for a four-year term. The court may reappoint an attorney for one additional term. The court may also fill any vacancy in the term of, and make any reappointment of, any appointed attorney member. Each appointee must be an active licensee of the State Bar and have his or her principal office in California.

(2) In order to ensure that individuals appointed by the Supreme Court to the State Bar Board of Trustees have been evaluated objectively, the court has established an independent "State Bar Trustees Nominating Committee" to receive applications and screen and evaluate prospective appointees. The role of the committee is to determine whether applicants possess not only the statutorily enumerated qualifications, but also any other qualifications that may be required to carry out the duties of the Board of Trustees.

(3) The committee serves at the pleasure of the court. The committee will consist of seven members appointed by the court of whom five must be active licensees of the State Bar in good standing, and two must be active or retired judicial officers. A committee chair and vice-chair are designated by the court. The court will seek to create a broadly representative body to assist it in its considerations.

Except as provided below, all full terms are for three years. Members may not serve more than two consecutive full terms. Members will continue to serve until a successor is appointed. Appointments to fill a vacancy will be for the balance of the term vacated. Members who are appointed to fill a vacancy for the balance of a term are eligible to serve two full terms in addition to the remainder of the term for which they were appointed.

To create staggered terms among the members of the committee, the Supreme Court will appoint initial members of the committee as follows:

(A) Four members each to serve a term of three years. The court may reappoint these members to one full term.

(B) Three members each to serve a term of two years. The court may reappoint these members to one full term.

(4) The committee must adopt, and implement upon approval by the Supreme Court, procedures for:

(A) Receipt of applications and initial screening of applicants for appointments to fill the vacant positions, including adoption of a comprehensive application form;

(B) Receipt of evaluations concerning selected applicants;

(C) Review and evaluation of applicants' actual and potential conflicts of interest, with the procedures to require, at a minimum, confidential disclosure by each applicant to be interviewed by the committee of financial and nonfinancial interests that might affect or be

affected by service as a Trustee and a list of attorneys whom each applicant would identify as creating a conflict in any future service as a Trustee;

(~~CD~~) Evaluation and rating of applicants;

and

(~~DE~~) Transmittal of the materials specified in (b) of this rule to the Supreme Court.

The procedures adopted by the committee must include provisions to ensure the confidentiality of its evaluations.

(5) In recommending candidates, in order to provide for the appointment of trustees who bring to the board a variety of experiences, the committee should consider:

(A) Legal services attorneys, solo practitioners, attorneys with small firms, and attorneys with governmental entities;

(B) Historically underrepresented groups, such as those underrepresented because of race, ethnicity, gender, and sexual orientation;

(C) Legal academics;

(D) Geographic distribution;

(E) Years of practice;

(F) Attorneys who are in their first five years of practice;

(G) Participation in voluntary local or state bar activities;

(H) Participation in activities to benefit the public; and

(I) Other factors demonstrating a background that will help inform the work of the board.

(6) The State Bar must provide the support the committee requires to discharge its obligations under this rule.

(b) Evaluations

(1) The committee must evaluate the qualifications of and rate all applicants and must submit to the court the nominations of at least three qualified candidates for each vacancy. Candidates are to be rated as "not recommended," "recommended," and "highly recommended." A rating of "not recommended" relates only to the position under consideration and does not indicate any lack of ability or expertise of the applicant generally. The committee must report in confidence to the Supreme Court its evaluation, rating, and recommendation for applicants for appointment and the reasons therefore, including a succinct summary of their qualifications, at a time to be designated by the Supreme Court. The report must include written comments regarding the nominees received by the committee, which must be transmitted to the Supreme Court together with the nominations.

(2) In determining the qualifications of an applicant for appointment or reappointment the committee should, in addition to the factors cited in (a)(5), consider the following: focus on the public interest, public service, commitment to the administration of justice, objectivity, community respect, integrity, ability to work collaboratively, and balanced temperament.

(3) Each applicant to be interviewed by the committee must disclose on a confidential basis all information required under the procedures developed pursuant to subsection(a)(4)(C) of this rule, for the committee to evaluate that applicant's actual or potential conflicts of interest. The committee must then consider whether the applicant's actual or potential conflicts of interest should disqualify the applicant or reduce their rating. In making this determination, the committee should consider whether financial or nonfinancial interests would impact the applicant's ability to perform the duties of a Trustee with disinterested skill and undivided loyalty to the State Bar or impact the Board of Trustees's appearance to the public as a body that conducts its work with disinterested skill and undivided loyalty. The committee shall include the committee's determinations on this issue in its submission of evaluations and ratings to the Supreme Court.

Comment #	Name	Attorney or Public Member?	Position on the proposed amendments to rule 9.11 (A/AM/D/NP)*	Public Comments on the proposed amendments to rule 9.11
1	Justin S. Beck	Public Member	D	<p>According to U.S. Supreme Court (N.C. State Bd. of Dental Examiners v. Fed. Trade Comm'n, 574 U.S. 494, 135 S. Ct. 1101, 191 L. Ed. 2d 35, 83 U.S.L.W. 4110 (2015)) -- The State Bar of California already possesses too much influence on the California (and U.S.) judicial system.</p> <p>The State Bar of California requires active state supervision by non-attorneys because it is controlled by majority of active market participants (7 attorneys out of 13 Board of Trustees) in the same industry it regulates. This makes The State Bar of California's nomination of judicial officers -- to any court, including State Bar Court -- an egregious violation of federal antitrust laws that is harming the public every day. It is difficult for active market participants to discern their own anticompetitive behavior. The passive supervision of California Supreme Court, respectfully, is not sufficient to avoid federal antitrust violations.</p> <p>This means that the committees themselves will be conflicted under U.S. law because the committees will be comprised of active market participants in the same industry (be it lawyers or judges who are lawyers).</p> <p>These decisions, just like attorney discipline (as a matter of U.S. law) should be relegated to non-attorneys in an outside agency who are completely separate of The State Bar of California without its undue influence.</p> <p>Unless and until California Supreme Court addresses The State Bar of California's broken governance (by adhering to FTC guidance issued October 2015), the people of this state (and the United States) will continue to be subject to anticompetitive behavior by active market participants protecting each other.</p> <p>*See attached proposal.*</p>
2	The Legal Aid Association of California	Attorney Member	NP	See below

*A = Agree with proposal; AM = Agree if modified; D = Disagree with proposal; NP = No position on proposal

Comment #	Name	Attorney or Public Member?	Position on the proposed amendments to rule 9.11 (A/AM/D/NP)*	Public Comments on the proposed amendments to rule 9.11
3	J. Michael Brown	Attorney Member	AM	State Bar Court judges, unlike state court judges, function largely outside of public scrutiny. Great care should be exercised in their selection. When lawyers are suggested for appointment to the courts public comment is solicited. That same requirement should be added at least to the final three candidates for State Bar Court judge applicants. The process, at least in its final stage, should be open to the public. If State Bar Court judges are selected in secrecy from the public and from practicing members of the bar it is no better than courts in dictatorial governments. That would not be reflective of the open constitutional government that makes the United States the great nation that we are. The process should be open to public scrutiny, at least as to the finalists. Those finalists should not be anonymous. They should be open for public comment, especially by lawyers, and also by the public. The public should be kept informed and allowed to comment.
4	Martin Homec	Attorney Member	A	Applicants' biases should be on their personnel records.
5	Kailin Wang	Public Member	A	

*A = Agree with proposal; AM = Agree if modified; D = Disagree with proposal; NP = No position on proposal

Comment #	Name	Attorney or Public Member?	Position on the proposed amendments to rule 9.90 (A/AM/D/NP)*	Public Comments on the proposed amendments to rule 9.90
1	Justin S. Beck	Public Member	D	<p>According to U.S. Supreme Court (N.C. State Bd. of Dental Examiners v. Fed. Trade Comm'n, 574 U.S. 494, 135 S. Ct. 1101, 191 L. Ed. 2d 35, 83 U.S.L.W. 4110 (2015)) -- The State Bar of California already possesses too much influence on the California (and U.S.) judicial system.</p> <p>The State Bar of California requires active state supervision by non-attorneys because it is controlled by majority of active market participants (7 attorneys out of 13 Board of Trustees) in the same industry it regulates. This makes The State Bar of California's nomination of judicial officers -- to any court, including State Bar Court -- an egregious violation of federal antitrust laws that is harming the public every day. It is difficult for active market participants to discern their own anticompetitive behavior. The passive supervision of California Supreme Court, respectfully, is not sufficient to avoid federal antitrust violations.</p> <p>This means that the committees themselves will be conflicted under U.S. law because the committees will be comprised of active market participants in the same industry (be it lawyers or judges who are lawyers).</p> <p>These decisions, just like attorney discipline (as a matter of U.S. law) should be relegated to non-attorneys in an outside agency who are completely separate of The State Bar of California without its undue influence.</p> <p>Unless and until California Supreme Court addresses The State Bar of California's broken governance (by adhering to FTC guidance issued October 2015), the people of this state (and the United States) will continue to be subject to anticompetitive behavior by active market participants protecting each other.</p> <p>*See attached proposal.*</p>
2	The Legal Aid Association of California	Attorney Member	NP	<p>Generally, we just wanted to make the point that, as these rules, apply to those affiliated with, in any way, legal aid, it should not preclude them from participation and that, under the current process, recusal will remain an efficacious manner to deal with any relation with legal aid grantees and grantors at the Bar. We recognize there is a lot of attention on the Bar right now, and do not want it to taint participation by those involved at all with a nonprofit grantee. In other words, legal aid grant-making should not be impacted, and just those matters the Bar is navigating that have to do with wrongdoing or discipline.</p>

*A = Agree with proposal; AM = Agree if modified; D = Disagree with proposal; NP = No position on proposal

Comment #	Name	Attorney or Public Member?	Position on the proposed amendments to rule 9.90 (A/AM/D/NP)*	Public Comments on the proposed amendments to rule 9.90
3	J. Michael Brown	Attorney Member	AM	Members of the Board of Trustees are a State of California regulatory agency, the State Bar. However, they operate largely with no public scrutiny. Great care should be exercised in their selection. When lawyers are suggested for appointment to the courts public comment is solicited. That same requirement should be added at least to the final candidates for the State Bar Board of Trustees. The process, at least in its final stage, should be open to the public. If State Bar Trustees are selected in secrecy from the public and from practicing members of the bar it is no better than courts in dictatorial governments. That would not be reflective of the open constitutional government that makes the United States the great nation that we are. The process should be open to public scrutiny, at least as to the finalists. Those finalists should not be anonymous. They should be open for public comment, especially by lawyers, and also by the public. The public should be kept informed and allowed to comment. Legislative confirmation would be appropriate.
4	Martin Homec	Attorney Member	A	
5	Kailin Wang	Public Member	A	

*A = Agree with proposal; AM = Agree if modified; D = Disagree with proposal; NP = No position on proposal

Legislative Proposal Request Form

1. Proposal Summary

This “Public Protection Act” proposal addresses systemic failures of governance in The State Bar of California (“State Bar”) to sustainably restore public trust and reduce disparate impacts upon marginalized communities within family, civil, and criminal justice systems.

2. Problems

Public corruption adversely affects marginalized communities the most ([See DOJ Archives](#)). Expert Robert Klitgaard says it follows a simple formula: Corruption = Monopoly – Accountability. As presently comprised, State Bar is a recipe for corruption in that it has total monopolistic power without any accountability for its staff, leadership, or its attorneys who abuse the public trust.

The prior Thomas V. Girardi/Girardi-Keese and current Kenneth Catanzarite/Catanzarite Law Corporation/Ruben Duran scandals reflect symptoms of a systemwide disease that Legislature has a duty to resolve meaningfully and impartially without regard of politics or favors.

a. ***State Bar is a monopoly that violates federal antitrust laws for regulators.***

In *N.C. State Bd. of Dental Examiners v. Fed. Trade Comm'n*, 574 U.S. 494, 135 S. Ct. 1101, 191 L. Ed. 2d 35, 83 U.S.L.W. 4110 (2015), U.S. Supreme Court held that a regulator majority-controlled (seven out of 13 Board of Trustees) by “active market participants” (i.e., lawyers) in the same industry it regulates “is not the sovereign.” Additionally, in order to avoid felony violation of federal antitrust laws under 15 U.S.C. § 1, conduct of State Bar favoring lawyers over the public must be undertaken only according to “clearly articulated state policy” and with “active state supervision.” In October 2015, [Federal Trade Commission](#) released guidelines on what meets this threshold: it requires active, non-attorney oversight because it is difficult for attorneys to understand their anticompetitive behavior. (i.e., Fair Political Practices Commission and California State Auditor need absolute jurisdiction over State Bar and its actors. Non-attorney ombuds need to be in place with power to intervene where State Bar engages in protectionist behavior for allegedly bad actors like Thomas V. Girardi, Kenneth Catanzarite, and Ruben Duran).

The State Bar of California fails both of these prongs to avoid antitrust violations. “In this case the [Board of Trustees believes] its members were invested by [California] with the power of the State and that, as a result, the Board's actions are cloaked with *Parker* immunity. This argument fails, however. A nonsovereign actor controlled by active market participants—such as the Board—enjoys *Parker* immunity only if it satisfies two requirements: ‘first that ‘the challenged restraint ... be one clearly articulated and affirmatively expressed as state policy,’ and second that ‘the policy ... be actively supervised by the State.’ ” *FTC v. Phoebe Putney Health System, Inc.*, 568 U.S. 216, 225, 133 S.Ct. 1003, 1010, 185 L.Ed.2d 43 (2013) (quoting *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105, 100 S.Ct. 937, 63 L.Ed.2d 233 (1980)).” *N.C. State Bd. of Dental Examiners v. Fed. Trade Comm'n*, 574 U.S. 494, 503-4 (2015)

There was no clearly articulated policy to protect Thomas V. Girardi, Kenneth Catanzarite, or Ruben Duran using The State Bar of California as a veil of sovereignty. The State Bar of California is not the State, and Legislature must ensure it stops acting as if it is. State agencies are not simply by their governmental character sovereign actors for purposes of state-action immunity. See *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 791, 95 S.Ct. 2004, 44 L.Ed.2d 572 (1975) ("The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its [licensees]"). Immunity for state agencies, therefore, requires more than a mere facade of state involvement, for it is necessary in light of *Parker*'s rationale to ensure the States accept political accountability for anticompetitive conduct they permit and control. See *Ticor, Supra*, at 636, 112 S.Ct. 2169." *N.C. State Bd. of Dental Examiners v. Fed. Trade Comm'n*, 574 U.S. 494, 505 (2015)

On January 1, 2019, Assembly Bill AB 3249 made amendments to State Bar Act that spun out the trade association function of State Bar (California Lawyers Association), and enacted changes to Cal. Bus. & Prof. Cod. § 6094(a) making "The State Bar and officers and employees are subject to the rules governing liability of public entities, officers, and employees specified in Division 3.6 (commencing with Section 810) of Title 1 of the Government Code." Nevertheless, because of its monopolistic powers and nomination of judicial officers, The State Bar of California continues to propound materially false statements of fact and law to Courts in order to protect its illegal conduct and allegedly bad actors like Thomas V. Girardi, Kenneth Catanzarite, and Ruben Duran.

b. *Public rights delayed/prejudiced in favor of attorneys who violate public trust.*

State Bar reviews approximately 16,000 "Attorney Misconduct Complaints" through its Office of Chief Trial Counsel ("OCTC") using an annual budget of \$61.6 million (+ \$14.27 million for State Bar Court) in 2022 and \$64.16 million for OCTC + \$13.26 million in 2023. It's revenues for the same period were a meager \$60,000 in 2022 and \$75,000 in 2023, respectively even though it has collection authority to impose fines and fees for misconduct (but refuses to do so, generally).

State Bar manages "Attorney Misconduct Complaint" which is controlled by OCTC (and sometimes involves [Board of Trustees and OGC](#)); "Abatement" which is controlled by OCTC to delay public rights in favor of attorneys who abuse the public trust; "Complaint Review Unit" which is controlled by Office of General Counsel ("OGC"), [in some instances while it is defending civil claims related to the same conduct](#); "Client Security Fund" which is only available if a suspension or disbarment is imposed (~1% of all "Attorney Misconduct Complaints").

According to one former State Bar employee on December 22, 2019, "I was an investigator in the OCTC. The idea is NOT to investigate attorney misconduct but to draft memo after memo in an effort to make it look as if there had actually been an investigation. Nor is it designed to discipline attorneys. Last year, out of 15,000 complaints made to the State Bar, only 25 got to an actual hearing...I don't know what it's like to work in other areas of the State Bar but OCTC is for all intents [and] purposes a fraudulent enterprise. OCTC is horrible place to work for an honest person. Finally, as far as attorney positions it's a great place to work if you don't want to practice law, on any given day half the attorney offices are empty." (This is allegedly mail/wire fraud.)

Finally, assuming State Bar provides timely disposition of an “Attorney Misconduct Complaint” (meaning, OCTC isn’t unlawfully retaining public rights within “Abatement” as it allegedly did with Girardi and allegedly is with Catanzarite as set forth within Morgenstern’s letter; Duran/Grandt’s letter; and leaked emails below) and OGC provides timely disposition of “Complaint Review Unit,” someone can file in California Supreme Court an “Accusation.” Undisclosed to the public, between the years 2010 and 2023, only 14 of 1,732 of these “Accusations” were granted – for a meager success rate of .008%. (See Background Information for Sources of Information).

During this entire period of time which can last *years*, the public has no recourse against attorneys no matter the scale or veracity of their conduct. They are enabled to lie, cheat, steal, and harass with impunity. As demonstrated by Thomas V. Girardi previously, and Kenneth Catanzarite now, the greater harm, the less likely State Bar is to protect the public from attorneys.

c. ***Attorneys who most violate public trust are least likely to be held accountable.***

Had Edelson PC not filed racketeering allegations against Girardi-Keese, where Federal Judge Thomas Durkin deemed Thomas V. Girardi’s conduct “unquestionably criminal” and a “stain on the legal profession” – Mr. Girardi might still be practicing law. As Edelson PC partners Jay Edelson and Ari Scharg explain on “Lawyers Behaving Badly” podcast [“Collapse of a Titan,”](#) Edelson PC’s California lawyers were threatened by State Bar staff for targeting Girardi with RICO allegations. This happened under *current* Ruben Duran and Leah Wilson leadership. The public that was harmed by Girardi for forty years has virtually no recourse whatsoever except for an extremely limited “Client Security Fund” and its subjective limitations or litigation now that Girardi is broke.

After learning of court orders and public records reflecting at least six different fraudulent schemes involving deliberate abuse of the judicial system and pursuit of hundreds of millions of dollars in patently false claims, George Cardona, Ruben Duran, and others at State Bar determined Kenneth Catanzarite’s conduct did not warrant public disclosure on the malicious basis that State Bar was being sued (with liabilities concealed from State and external auditors).

Cardona, Duran, and staff decisions regarding Catanzarite emphasize that nothing has changed at today’s State Bar, and that Cardona, Duran, and Ellin Davtyan may have made materially false statements to Legislature on May 23, 2023, during the Joint Judiciary Committee Hearing.

d. ***State Bar improperly controls nomination and advancement of judges.***

State Bar’s Board of Trustees, controlled by 7 of 13 active market participants in violation of federal antitrust laws, also controls “Commission on Judicial Nominee Evaluation.” This means State Bar not only controls virtually all aspects of public rights and equity regarding attorneys, but they also control the judiciary. An organization with such a historical record of corruption should have nothing to do with the judiciary. State Bar faces Government Claims Act litigation in Orange County Superior Court. Overtly, on exact dates of two cases, State Bar nominated Associate Justices Honorable Maurice Sanchez (11/10/21), Honorable Joanne Motoike (5/2/22), and Honorable Thomas Delaney (8/8/22) to Fourth District, Division Three Court of Appeal.

e. ***Client Security Fund is misrepresented and prone to improper influence.***

Recall, it can take years for the protectionist functions of “Attorney Misconduct Complaint,” “Abatement,” “Complaint Review Unit,” and “Accusation” to run their course. Approximately 1% of “Attorney Misconduct Complaints” result in suspension or disbarment. This means “Client Security Fund” obligations are arbitrary – and they reflect a mere fraction of actual public harm.

Additionally, Client Security Fund is limited to theft capped at \$100,000 and does not remunerate people subject to criminal conduct or misconduct unrelated to trust account theft. It also has extreme limitations on documentation, meaning attorneys who violate the public trust are most likely to game the system. Where they have relationships as cultivated like Thomas V. Girardi previously, and allegedly Kenneth Catanzarite currently, the public still has no recourse because staff of State Bar ensure that no “suspension” or “disbarment” take place which is the prerequisite to Client Security Fund’s extremely limited remuneration schemes. As Leah Wilson described during the Joint Judiciary Committee hearing on May 23, 2023, the CSF is making repayments to Girardi’s victims, but it is virtually always too little, too late. This would not happen but for active market participants’ processes favoring attorneys who violate the public trust.

f. ***Government Claims Act program lacks separation of powers or transparency.***

The State Bar of California, its officers, and employees are expressly subject to Government Claims Act, which is a recent development as of January 1, 2019. (Bus. & Prof. Cod. § 6094(a).) However, where OGC manages this program concurrent to “Complaint Review Unit,” it again prejudices the public and decisions are made with malice. Worse, Board of Trustees assigns decisions to OGC as concurrent regulator/civil defense law firm.

Facing material claims that remain concealed from State and external auditors (no GAAP-compliant material contingent liabilities are disclosed on a subjective basis), Assistant General Counsel Suzanne Grandt, assigned by Ruben Duran to make decisions, conceded that Board of Trustees would not make public information it knew about Catanzarite Law Corporation because State Bar was being sued. In other words, State Bar made decisions unrelated to the public interest, aiding and protecting attorneys known to violate the public trust reflected by court orders dating back to 2007, with malice. There is no objective oversight of these overt acts.

g. ***Office of General Counsel defends civil claims as it regulates the same conduct.***

“[W]hen the State seeks to delegate its regulatory power to active market participants... established ethical standards may blend with private anticompetitive motives in a way difficult even for market participants to discern. Dual allegiances are not always apparent to an actor. In consequence, active market participants cannot be allowed to regulate their own markets free from antitrust accountability. See *Midcal, supra*, at 106, [100 S.Ct. 937](#) *N.C. State Bd. of Dental Examiners v. Fed. Trade Comm'n*, 574 U.S. 494, 505 (2015).” In concert with Catanzarite Law Corporation, OGC is defending claims in tort under Government Claims Act as it makes regulatory decisions on that basis while seeking to conceal the conduct of Duran, Davtyan, and Grandt.

3. Solutions

a. ***Governance and oversight conforming with federal antitrust laws.***

Fair Political Practices Commission and California State Auditor must have immediate, unfettered jurisdiction over The State Bar of California in every manner. Federal Trade Commission provides explicit guidance on how to achieve “active state supervision.” This active state supervision cannot be defined by California attorneys or California Supreme Court as a matter of law.

Non-attorneys (non-active market participants) must be in charge of oversight, otherwise, the same vacuum of monopolistic power will unduly influence it because State Bar controls its entire attorney base in fact. The logic behind this is described in *N.C. State Bd. of Dental Examiners v. Fed. Trade Comm'n*, 574 U.S. 494, 135 S. Ct. 1101, 191 L. Ed. 2d 35, 83 U.S.L.W. 4110 (2015). The requirements and need of “active state supervision” are described in “*California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, [445 U.S. 97](#), [105](#), [100 S.Ct. 937](#), [63 L.Ed.2d 233](#) (1980)” *N.C. State Bd. of Dental Examiners v. Fed. Trade Comm'n*, 574 U.S. 494, 504 (2015).

OGC cannot be assigned to make antitrust determinations for itself; this should be assigned to a rotating law firm selected by California State Auditor via procurement procedures, and outside of California. The current, antithetical process leads to corrupt decisions and more protectionist behavior. In one instance, a petition was filed against Ruben Duran (S276517) served on Federal Trade Commission September 21, 2022. What followed was deliberate obstruction of a public member’s petition by OGC (removal of four volumes of evidentiary exhibits), a frivolous legal determination that State Bar was “immune to federal antitrust laws,” and ultimately – filing of a fraudulent antitrust petition without authority (S276939). It is Legislature’s duty to ensure this never happens again, as it is allegedly criminal (see, i.e., 18 U.S.C. § 1512(c) and 15 U.S.C. § 1).

If non-attorneys were overseeing Thomas V. Girardi previously, and Kenneth Catanzarite now, would the attorneys be capable of their ongoing violations of public trust? The answer is no.

b. ***Original disciplinary writ as alternative to Office of Chief Trial Counsel.***

“Attorney Misconduct Complaint” and its subsequent processes are insufficient to protect the public, which is not a resource or funding issue. It is a governance and procedural issue. Courts of Appeal have jurisdiction with trial courts to conduct writ proceedings, on the record. Rotating panels of Justices improve the likelihood that the public can achieve rulings as a matter of law, which rulings can still be made as a recommendation to California Supreme Court. Court of Appeal can make findings of fact and law, including violations of State Bar Act and California Rules of Professional Conduct. A statutory “Disciplinary Writ” proceeding is a viable solution, now.

c. ***Imposition of costs, fines, restitution against bad actors w/license as collateral.***

State Bar Court, Courts of Appeal, and/or California Supreme Court must impose costs, fines, and restitution so there exists real deterrents that presently do not exist against bad actors.

d. ***Remove or replace “Commission on Judicial Nominees Evaluation.”***

Commission on Judicial Nominees Evaluation lends an improper influence when viewed holistically with other State Bar operations – indeed – compromising careers of judicial officers and decisions. These judicial officers should not be beholden to State Bar, but they currently are.

State Bar is willing to appoint Associate Justices to the Fourth District, Division Three overtly in an alleged attempt to obstruct Government Claims Act litigation (Case Nos. 30-2021-01237499 + 30-2020-01145998), even after State Bar protected Thomas V. Girardi and is currently protecting Kenneth Catanzarite. State Bar conceded to its own corruption and bribery schemes on March 10, 2023. Such an organization cannot be relied upon to nominate or evaluate judicial officers because it violates federal antitrust laws. It is also lacking integrity on its face.

Using Federal Trade Commission guidance, non-attorneys presently unassociated with State Bar should create a merits-based evaluation of judicial officers outside State Bar, permanently. This new organization should not have communication with State Bar *in any manner whatsoever*.

e. ***Transition Client Security Fund to Non-Attorneys at California State Auditor.***

Client Security Fund is presently under control of Board of Trustees and other attorneys controlled by State Bar. It is misrepresented to the public to create a false sense of security and could be viewed as a public insurance scam (objectively speaking when viewed with its method of presentation and its severe limitations).

California State Auditor is more equipped to audit complaints on client trust accounts (“CTA”) or interest on lawyer trust accounts (“IOLTA”), *exclusively*. California State Auditor’s new division (“Public Trust Division”) should feature a third-party audit of their functions by a firm other than Macias Gini & O’Connell LLP which currently audits State Bar and lacks disclosure of material contingent liabilities. This new function can make recommendations of suspension or disbarment directly to California Supreme Court when theft is identified and proven by objective evidence.

f. ***Transition Government Claims Act to Department of General Services + Auditor.***

Given its other conflicts as a regulator controlled by active market participants and concurrent civil defense of conduct it is regulating – Department of General Services should manage all Government Claims Act presentation, investigation, and denials with direct oversight from the Public Trust Division of California State Auditor to ensure no undue State Bar influence exists.

Material contingent liabilities can then be reported to Legislature together with Client Security Fund which will remove opacity and arbitrary decisions of State Bar staff and leadership that have previously undermined the Legislative process. State Bar will finally have the accountability necessary to adhere to federal antitrust laws, and more importantly, to regain public trust. The public will have assurance of neutral forums for claims when combined with the foregoing features (no more improper influence on judiciary; add objective evaluation of claims, etc.)

g. ***Replace “Complaint Review Unit” in OGC with non-attorney ombuds w/power.***

“Abatement” must end entirely as it unduly protects attorneys. The new “Public Trust Division” of California State Auditor must be tasked with all “Complaint Review Unit” functions presently managed by OGC, with audits by a third-party firm other than Macias Gini & O’Connell LLP.

Within Public Trust Division, non-attorney ombudspersons including forensic accountants and licensed, non-attorney private investigators will review evidence and allegations using California Rules of Professional Conduct and State Bar Act guideposts. In clear cut cases for which Court orders exist to demonstrate crimes or misconduct under Rules of Court 8.1115(b), Public Trust Division ombudspersons can make recommendations to California Supreme Court through its own “Ombuds Accusation” on the record within 1-year of factually discovering any attorney misconduct, theft, or crimes (without regard of when it occurred). Public Trust Division ombuds will also have authority to commence State Bar Court proceedings and retain counsel outside Office of Chief Trial Counsel to prosecute attorney misconduct and seek restitution for the public.

4. Cost

Costs, revenues and offsets from the foregoing legislation arise from:

a. ***Governance and oversight.***

There should be no material fiscal impact in year one of this program. Adherence to federal antitrust laws for regulators is not an option. Any increase in workload from California State Auditor and Fair Political Practices Commission can be subject to future appropriations. Placing active state supervision over State Bar will arguably result in more efficiency resulting from accountability, and reduced waste by protectionist activity presently occurring at State Bar.

b. ***Original disciplinary writs.***

There should be no material fiscal impact in year one of this program. Original disciplinary writs will feature the same statutory costs of an appeal for filers, who can also seek a fee waiver. It is anticipated that a reduction in frivolous litigation and appeals that presently saps Court of Appeal resources by bad actors will result in material cost savings over time. Any near-term increase in costs to Courts of Appeal can be appropriated there, where it is unlikely to lead to waste as would any increase in resources to Office of Chief Trial Counsel or Office of General Counsel to perform similar functions. Additionally, increased costs can be imposed on violators during writ proceedings according to violations of State Bar Act and Rules of Professional Conduct.

c. ***Impositions of fines, fees, and costs by Legislative mandate.***

Where the Public Trust Division of California State Auditor and Courts of Appeal will have statutory authority to impose costs and fines with a mandate, this will offset any cost burden.

d. *Remove/replace Commission on Judicial Nominees Evaluation.*

Present resources for this can be transitioned outside of State Bar without any cost increase.

e. *Transition of Client Security Fund to Non-Attorneys in Public Trust Division.*

Where the Public Trust Division of California State Auditor and Courts of Appeal will have statutory authority to impose costs and fines with a mandate, this can offset any cost burden.

f. *Government Claims Act functions transitioned away from State Bar.*

It is impossible to ascertain material contingent liabilities to The State Bar of California unless and until it is stripped of its Commission on Judicial Nominees Evaluation, Client Security Fund, and Complaint Review Unit functions with an outside agency managing Government Claims Act.

Future appropriations can be made according to need in accordance with Government Claims Act procedures codified by Gov. Cod. §§ 965 – 965.9, which will finally provide Legislature its proper understanding of State Bar's depth of conduct against the public. Importantly, the public that is presently harmed using State Bar's protection, or whose money is stolen by California attorneys, is undertaken as if it were an act of State itself. This makes it State liability anyway.

"Financial limitations of governments have never been, and cannot be, deemed an excuse for a public employee's failure to comply with mandatory duties imposed by law." (*Scott v. County of Los Angeles* (1994) 27 Cal.App.4th 125, 146 [32 Cal.Rptr.2d 643]). Federal antitrust laws impose mandatory duties on public employees of State Bar, but they avoid their imposition due to their control of the judiciary and protectionist conduct to the direct and ongoing detriment of the public they are bound by law to protect. This is not sustainable, and State Bar is not "fixed" yet.

g. *Complaint Review Unit transition to Public Trust Division of State Auditor.*

Where the Public Trust Division of California State Auditor and Courts of Appeal will have statutory authority to impose costs and fines with a mandate, this can offset any cost burden.

Alternatively, a fee increase to California attorneys can be made, which fee increase will go directly to California State Auditor in an intercompany/agency transaction (not to OCTC/OGC).

Alternatively, State Bar can pay the Public Trust Division for the resources that are presently used by OGC to perform Complaint Review Unit functions. With the imposition of costs and fines and related mandate, investigators instead of attorneys, this will cumulatively offset any cost burden.

5. Previous Legislation

There exists no prior legislation to reform State Bar in a manner that adheres to federal antitrust laws and regulations, and actually protects the public from attorneys who violate public trust.

6. Likely Organizational Support

- a. California Consumer/Legal Rights Organizations + 39 million non-attorneys in CA
- b. Senate & Assembly Judiciary Committees
- c. Democratic & Republican Caucuses

7. Arguments in Support (Top Three)

- a. State Bar cannot be trusted to reform itself as it currently violates antitrust laws.
- b. Public rights are presently and unduly subordinate to attorney rights in California.
- c. Legislature has a duty to remunerate public harmed by State Bar's systemic failures.

8. Likely Organizational Opposition

- a. The State Bar of California (Seeking to Avoid Scrutiny)
- b. California Lawyers Association (Seeking to Avoid Scrutiny)
- c. District Attorney's Offices (Seeking to Avoid Scrutiny)

9. Arguments in Opposition (Top Three)

- a. State Bar Has Inadequate Resources and Does Not Want to Change Status Quo

This new legislation does not rely upon State Bar's use of resources, rather, it properly addresses its systemic failures for decades by allocating State resources toward more reliable, objective uses that protect the public rather than protect and/or pay more attorneys.

b. Privilege of Information

New Public Trust Division of California State Auditor is capable of placing rigorous policies in place that preserve or enhance State Bar's. State Bar may argue that the use of an outside agency, and involvement of non-attorneys affect privilege – but there are already non-attorneys in State Bar.

c. Disparate Impact or Burdens

New Public Trust Division of California State Auditor is just as capable of implementing DEI or disparate impact programs, and will arguably be better without the burdens of State Bar's corrupt history. It is more likely this adverse impact already exists on marginalized victims of State Bar through undue protection of wealthy attorneys who repeatedly violate public trust.

10. Background Information Cited and Referenced Above

[Why Public Corruption is Not a Victimless Crime \(U.S. DOJ March 15, 1988\)](#)

[State Bar Board of Trustees is Majority Controlled by Active Market Participants](#)

[Morgenstern Shows How Abatement Protects Attorneys, Disregarding Court of Appeal Orders](#)

[Leaked Emails \[involving Duran\] Expose Failures of State Bar to Discipline Attorneys](#); Malice

[Ellin Davtyan Seeks to Intimidate Member of the Public to Conceal Catanzarite/Duran Schemes](#)

[George Cardona Explains State Bar's Monopoly to Beck](#)

[Client Security Fund \(Extremely Limited; Requires Suspension or Disbarment First\)](#)

["Accusation" Scheme is Not Protecting the Public with Abysmal Success Rate](#) (PRA Data)

[Judge Thomas M. Durkin Order 11/2/2022: Girardi Conduct "Unquestionably Criminal"](#)

[Edelson PC Explains How State Bar Staff Threatened Their CA Attorneys for Targeting Girardi](#)

[Commission on Judicial Nominee Evaluation](#) (Unlawfully Controlled by Board of Trustees)

[Associate Justice Maurice Sanchez Nominated on Date of Claims Form Denial \(11/10/21\)](#)

[Associate Justice Joanne Motoike Nominated on Date of First Amended Complaint \(5/2/22\)](#)

[Associate Justice Delaney Nominated Upon State/Duran/Grandt/Morgenstern Naming \(8/8/22\)](#)

[Report 2020-030: State Bar is Not Effectively Managing its Attorney Discipline System](#)

[Report 2022-030: State Bar's Weak Policies Limit its Ability to Protect the Public from Attorneys](#)

[Fair Political Practices Commission Lacks Jurisdiction Over State Bar and Staff](#)

[FTC on Active Supervision of State Regulatory Boards Controlled by Active Market Participants](#)

[Alleged Malice, Oppression, Fraud by Duran, Grandt, and Morgenstern Against Public](#)

[Exhibits in Support of Alleged Malice, Oppression, Fraud of Duran, Grandt, and Morgenstern \(I\)](#)

[Exhibits in Support of Alleged Malice, Oppression, Fraud of Duran, Grandt, and Morgenstern \(II\)](#)

[Binding Decisional Law in California and the United States Applied to State Bar Actors](#)

[State Bar's Adopted Budget for 2023 \(No Material Contingent Liabilities Listed\)](#)

[First Amended Complaint v. State Bar, Duran, Grandt, Morgenstern \(30-2020-01145998\)](#)

[Sample Misconduct of Catanzarite from PRAs and Court Orders Show Impunity like Girardi](#)

[Assistant General Counsel Suzanne Grandt Defrauds Federal Judge \(Gets a Promotion for It\)](#)

[State Bar Knew About Girardi Corruption in 2014 – Protected Him \(Just Like Catanzarite Now\)](#)

[Duran & Grandt Threaten Member of the Public by Abusing Anti-SLAPP Laws](#)

[Duran & Wilson Overtly Prioritize Payment to Attorneys as Public Suffers](#)

Sample News Coverage & Articles

[Adelanto City Attorney Ruben Duran Resigns \(Before Alleged Firing\) 8/24/18](#)

[Duran's Demonstrated Unquestioning Loyalty Gains Him Ontario Appointment](#)

[The State Bar of California is More Concerned with Being Right than Doing Right \(Op-Ed\)](#)

[The California State Bar's Failure to Hold Attorneys Accountable](#)

[Why Has California State Bar Not Disciplined Anaheim Attorney Kenneth Catanzarite?](#)

[Silicon Valley Judge Retires Amid Disclosure Scandal \(Former State Bar President James Towery\)](#)

[Fraudulent Petition for Antitrust Complaint v. State Bar, Duran Filed/Decided without Authority](#)

[Why Legal Reform is California's Most Pressing Issue – And How it Affects You Every Day \(Essay\)](#)

[Unpunished Prosecutorial Misconduct in California Focus of Major Report](#)

[Purportedly "Unfiled" CSC Accusation Used Against Member of the Public with Malice](#)

[Testimony of Elderly Carlson Shows Catanzarite Visited Him at Home when Not Seeking Counsel](#)

[Duran is Not Subject to Fair Political Practices Commission Oversight, Conceals Claims Act Cases](#)

[State Bar, Duran, Grandt Maliciously Protect Catanzarite due to Pending Case v. State Bar](#)

11. Contact

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State Auditor & Budget Comments Show Dire Need for Legislative Reform Immediately

State Bar will spend \$156 million on “Grants Expenses” (payments to lawyers horizontally), but \$3.8 million on “Payouts & Reimbursements” (Client Security Fund) in 2024. In other words, State Bar is 41X more interested in preventing current and future problems if it means paying lawyers, than it is interested in remunerating known theft by lawyers under its control.

Where California State Auditor called State Bar’s research into attorney trust complaints “high risk” (e.g., indicative of [money laundering](#)), Ruben Duran absurdly pushed back suggesting that investigating negative bank balances would be a “waste of limited investigative resources.”

Showing how harmful State Bar’s present practices are, State Bar appeared to acknowledge that 78 percent of bank reportable transactions had a negative balance in Report 2022-030. Again, this may be indicative of money laundering at significant scale.

[Report 2022-030](#) cites 700 attorneys “each had four or more cases...closed through nonpublic measures” like private letters. Similarly, 700 attorneys were disciplined outside California but not by State Bar. ***This may lead reasonable minds to conclude Girard-Keese and Catanzarite Law Corporation are but symptoms of a corruption disease. Legislature must act to stop it.***

Table 2. State Bar Expenses by Cost Type

	2022 Budget	2023 Budget	2024 Forecast
Personnel Costs	\$95,376,874	\$99,257,893	\$104,688,100
Building Operations	7,810,889	5,445,084	4,219,000
Services	15,971,831	13,589,600	14,166,504
Grants Expenses	147,387,837	147,576,416	155,988,300
Supplies	1,123,615	744,155	773,273
Equipment	4,601,816	3,739,257	3,954,914
Other Expenses	1,242,084	1,034,085	1,082,477
Exam Related Expenses	4,397,852	7,484,309	7,911,200
Payouts and Reimbursements	6,198,000	3,586,532	3,790,900
Debt Related	3,508,194	2,640,168	1,872,900
Total Expenses	\$287,618,992	\$285,097,499	\$298,447,569

9 Case Studies Reflect Current State Bar Operations – Show Abuse of the Public Now

Table 1. State Bar Expenses by Operating Area

Expenses	2022 Budget	2023 Budget
Access & Inclusion	\$152,598,325	\$153,204,691
Administration	-	7,400
Admissions	27,552,495	26,369,945
Chief Trial Counsel	61,598,806	64,162,857
Executive Director	2,498,399	2,662,109
Finance	3,221,613	3,347,717
General Counsel	4,864,838	5,478,694
General Services	10,373,620	7,951,165
Human Resources	3,209,200	2,987,408
Information Technology	12,933,058	15,803,842
Mission Advancement & Accountability	2,786,860	2,765,109
Nondepartmental	(37,488,722)	(39,025,937)
Professional Competence	4,101,926	4,793,224
Professional Support & Client Protection	14,433,797	11,872,015
Programs	1,477,197	1,303,540
Public Trust Liaison	-	1,931,099
Regulation	6,780,633	5,302,462
Special Projects	2,409,733	916,724
State Bar Court	14,267,214	13,263,435
Total Expenses	\$287,618,992	\$285,097,499

Revenue to OCTC Shows No Desire to Impose Costs, Fees, or Fines on Bad Actors

Table 1. Source of Revenue by Fund

Fund	2022 Budget	2023 Budget	2024 Forecast
General Fund			
Other Fees	\$60,000	\$75,000	\$75,975
General Fund Total	60,000	75,000	75,975
Total Fund Sources	\$60,000	\$75,000	\$75,975