



The State Bar of California

Regular Meeting of the Board of Trustees Hybrid

Open Session Minutes
Thursday, September 21, 2023
10:53 a.m.–6:18 p.m.

Time meeting Commenced: The Board meeting commenced in open session at 10:53 a.m. The Board moved into closed session at 12:34 p.m. The Board returned to open session at 3:19 p.m.

Time meeting Adjourned: 6:18 p.m.

Chair: Ruben Duran

Board Secretary: Louisa Ayrapetyan

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

Members Absent: None

Staff Present: Ellin Davtyan, Leah Wilson

OPEN SESSION

ROLL CALL

The Board of Trustees meeting was called to order by Chair Duran. Roll call was taken and a quorum was established.

PUBLIC COMMENT

Chair Duran called for public comment, inquiring as to whether there were person(s) who wished to comment on any agenda item. The following comments were provided to the Board:

1. Neha Malik:
Neha Malik, speaking on behalf of the Legal Funders Network, stated their support for the Portfolio Bar Exam (PBE) as an alternative method of licensure. Malik stated that an alternative method for licensure would help alleviate the civil legal aid crisis, improve public safety, and improve diversity, equity, and inclusion. Malik further iterated that supervised practice is the gold standard for licensure, rather than an exam-based process.
2. Lucas Wright:
Lucas Wright, speaking on behalf of the Bigglesworth Family Foundation, stated their support for the PBE as an alternative method of licensure. Wright mentioned that a PBE program would increase the number of attorneys working in rural areas, citing the

working group's report and findings from the provisional licensure lawyer (PLL) program. Wright also mentioned that the PBE would result in more attorneys able to help low-income individuals and work in public interest law. It would also increase diversity. The Biggleworth Family Foundation further encouraged the State Bar to submit a grant to aid in covering the start up costs for the PBE pilot program.

3. Marlene Lara:

Marlene Lara began by giving a brief tribute to recently passed Trustee Greg Knoll. Lara mentioned Trustee Knoll's commitment to enhancing equity, equality, and advocating for the vulnerable members of society. Lara also mentioned Trustee Knoll's desire for exploring an alternative pathway to licensure and asked the Board to honor Trustee Knoll's legacy by approving the PBE proposal.

4. Jules Sarkar:

Jules Sarkar spoke in support for the PBE as an alternative method of licensure and thanked Susan Bakhshian and the working group for their efforts. Sarkar spoke against item 701, an increase in admission fees, stating that an increase is unwarranted given the costs associated with the bar exam and the lack of explanation provided. Sarkar asked the governor-appointed members if they knew where the State Bar's funds were and they could access those funds, citing an argument made by the State Bar in a case heard in the 9th Circuit Court of Appeals.

5. Maria Dominguez:

Maria Dominguez, who serves on the Board of Directors of the East Bay La Raza Lawyers Association, asked the Board to approve the PBE proposal. Dominguez stated that having to take the bar multiple times served as a detriment to their community and as well as her personal finances (having to take time to study prevented her from earning credit towards her loans). Citing the State Bar's diversity report card, Dominguez argued that the PBE could help make California's attorney population better reflect California's actual population, amongst Latinos in particular. Dominguez stated that the East Bay La Raza Lawyers Association submitted a letter in support of the PBE.

6. Sandra Brooks:

Sandra Brooks, the dean of California Northern School of Law and speaking on behalf of the California Accredited Law Schools (CALS), wanted to register their objection to the proposed 2024 Admission fees increases. Brooks stated that while regular increases are a normal part of business, it is unprecedented for the CALS to absorb increases of 955 percent and 80 percent. Brooks claims that the proposed per student impact of \$224 is misleading because the impact is disproportionately large for smaller schools. Brooks thanked staff for the tiered proposal and encouraged trustees to adopt option 3: where all schools pay \$90 per enrolled student.

7. Benjamin Kohn:

Benjamin Kohn spoke first on the proposed changes to the February 2024 and July 2024 bar exams, mentioning their earlier comments on the usage of body exams to permit remote accommodations for some test takers. Kohn mentioned that Trustee Knoll seemed in favor of this proposal, quoting that Trustee Knoll felt the State Bar "wasn't

thinking hard enough” with regards to remote accommodations for disabled applicants. Kohn mentioned that their proposals were seen as too burdensome for staff and not brought before the Board.

8. Ray Hayden:

Ray Hayden spoke in support of Benjamin Kohn’s comments regarding testing accommodations and Jules Sarkar’s comments on Admissions fees. Hayden stated their support for the PBE and reiterated their proposal for an alternative pathway to licensure modeled off programs utilized by the military and air traffic controllers. Hayden also advocated support for the State Bar’s creation of their own multiple-choice exam.

9. Todd Hill:

Todd Hill asked the State Bar how long someone should have to wait for the State Bar to fulfil an action that is within the agency’s duty. Hill mentioned their federal case against the State Bar (2:23-CV-01298-JLS-PD). Hill stated that’s the State Bar held the People’s College of Law in noncompliance and still has not provided relief by providing Hill’s transcripts. Hill stated that the State Bar has a moral imperative to respond promptly to their complaint.

10. Mitchel Winick:

Mitchel Winick, the president and dean of Monterey College of Law, spoke on item 701 and asked the Board to remove or delay the decision regarding fee increases to CALS. Winick claims that while the proposal asks for a 955 percent increase in fees, it does not provide cost-cutting measures or previous cost-cutting measure preposed in prior rules changes. Winick further spoke in support of the PBE.

11. Jessica Juarez:

Jessica Juarez, a current PLL, spoke that while they and other PLLs appreciate the extension, the extension does not address the issues inherent in preparation for and having to take the bar exam. Juarez stated that the Board addressing an alternative pathway for licensure it critical to their and other’s livelihoods. Juarez mentioned that if PLLs were permitted to serve as a pilot group in 2024, this would allow for the results of the pilot program to coincide with the release of 2024 exam results and resolve the question of licensure before the expiration of the PLL program.

12. Reann Pacheco:

Reann Pacheco, with the Legal Aid Association of California, stated their complete support for the PBE and urged the Board to approve the pilot today. Pacheco claimed that legal aid organization would like to get their PLLs on a pathway to licensure now and use these well-trained lawyers to fill open positions.

10 MINUTES

Approval of July 20–21, 2023, Open Session Minutes

Moved by Stallings, seconded by Buenaventura

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

Noes – (0)
Abstain – (1) Broughton
Absent – (0)

Minutes adopted.

30 CHAIR'S REPORT

Chair Duran provided an oral report. Chair Duran also presented the following resolutions for adoption:

WHEREAS, the members of the Board of Trustees of the State Bar of California express our sincerest gratitude to Mark Broughton for nearly 7 years of tireless service to the State Bar; and

WHEREAS, Mark Broughton's contributions as a member of the Board of Trustees spanned the historic transformation of the State Bar to a purely regulatory agency, a process in which he played a critical leadership role, forging the path between the “old” and “new” State Bar; and

WHEREAS, Mark Broughton's participation in the former California Commission on Access to Justice and his tireless advocacy for increased access to court and legal services in rural communities, exemplified his deep dedication to improving access to justice for all Californians; and

WHEREAS, Mark Broughton's illustrious legal career, spanning from San Diego to Fresno, California, has encompassed criminal law, civil litigation, and personal injury, demonstrating his versatility and dedication to protecting the Constitutional rights of his clients; and

WHEREAS, Mark Broughton, has represented clients in over 200 jury trials across federal and state courts and is regularly called upon by the Fresno County Superior Court to handle special circumstances/death penalty cases; and

WHEREAS, Mark Broughton's active involvement in the Fresno County Bar Association, his dedicated work with the Northern California Innocence Project, and his roles as a mock trial attorney judge, team coach, and educator, have all contributed to the enrichment and growth of the legal profession, showcasing his commitment to mentoring and fostering the next generation of legal leaders; so let it be

RESOLVED, that the State Bar Board of Trustees expresses its profound appreciation to Mark Broughton for his exceptional service, leadership, and enduring contributions to ensuring that the State Bar of California truly fulfills its public protection mission.

Moved by Stallings, seconded by Cisneros

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

Motion carries.

Chair Duran stated that pursuant to Government Code section 11126(c)(7) the Board of Trustees will move to closed session to consider the items listed on the closed session agenda.

CLOSED SESSION

1000 MINUTES

Approval of July 20–21, 2023, Closed Session Minutes

7000 MISCELLANEOUS

7001 Discussion Regarding Sale Price and Terms and Leasing Price and Terms for 180 Howard Street, San Francisco

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

OPEN SESSION

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

60 BOARD OF TRUSTEES SITTING AS THE REGULATION AND DISCIPLINE COMMITTEE

60-1 Ad Hoc Commission on the Discipline System Recommendations: Status Update Regarding Board Directed Follow Up Work

Presenters: Leah Wilson, Executive Director
George Cardona, Chief Trial Counsel
Lisa Chavez, Program Director, Office of Mission Advancement & Accountability Division
Steve Moawad, Special Counsel, Division of Regulation
Suzanne Grandt, Attorney, Office of General Counsel
Kathy Sher, Attorney, State Bar Court

Presentation and discussion only.

700 BUSINESS

702 Report from the Alternative Pathway Working Group: Request to Circulate for Public Comment

Presenter: Audrey Ching, Program Director, Office of Admissions

RESOLVED, that the Board of Trustees authorizes staff to circulate for public comment, for a period of 30 days, the Report to the Board of Trustees of the State Bar of California: Proposal for a Portfolio Bar Examination as set forth in Attachment A.

Moved by Shelby, seconded by Stallings

Ayes – (11) Broughton, Buenaventura, Chen, Cisneros, Good, Shelby, Sowell, Stallings, Toney, Trejo, Duran
Noes – (0)
Abstain – (0)
Absent – (0)

Motion carries.

Regular Meeting of the Board of Trustees
Hybrid

Open Session Minutes
Friday, September 22, 2023
9:34 a.m.–2:14 p.m.

Time meeting Commenced: The Board meeting commenced in open session at 9:34 a.m. The Board moved into closed session at 1:21 p.m. The Board returned to open session at 2:13 p.m.

Time meeting Adjourned: 2:14 p.m.

Chair: Brandon Stallings

Board Secretary: Louisa Ayrapetyan

Members Present: Raymond Buenaventura, Hailyn Chen, José Cisneros, Sarah Good, Mary Huser, Melanie Shelby, Arnold Sowell Jr., Brandon Stallings, Mark Toney, Genaro Trejo

Members Absent: None

Staff Present: Ellin Davtyan, Leah Wilson

OPEN SESSION

ROLL CALL

The Board of Trustees meeting was called to order by Chair Duran. Roll call was taken and a quorum was established. Chair Stallings was sworn in as the new chair and Trustee Duran resigned from the Board of Trustees.

30 CHAIR'S REPORT

Chair Stallings provided an oral report. Chair Stallings also presented the following resolution for adoption:

RESOLVED, that the Board of Trustees approves the committee, officer, and liaison assignments, as presented in Attachment A, effective September 22, 2023.

Moved by Buenaventura, seconded by Cisneros

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

40 EXECUTIVE DIRECTOR'S REPORT

Executive Director Leah Wilson provided an oral report and an update on case processing and operational metrics.

50 CONSENT AGENDA

50-2 Report on Action Taken by the Board Executive Committee Approving Specified Contracts Pursuant to Business and Professions Code Section 6008.6

WHEREAS, the contracts listed herein required execution before the next regularly scheduled meeting of the Board of Trustees; and

WHEREAS, on August 10, 2023, the Board Executive Committee approved said contracts; it is hereby

RESOLVED, that the Board of Trustees affirms the action taken by the Board Executive Committee on behalf of the Board.

50-3 Approval of Quarter Two 2023 Investment Report

RESOLVED, that the Board of Trustees, upon recommendation of the Finance Committee approve the 2023 Second Quarter Investment Report in the form presented this day, for the six months ended June 30, 2023.

50-4 Approval of Quarter Two 2023 Board and Management Travel Expenses Report

RESOLVED, that the Board of Trustees, upon recommendation of the Audit Committee, approves the second quarter of 2023 Board and management travel expense report in the form presented this day, for the three months ended June 30, 2023.

Consent calendar moved by Toney, seconded by Sowell

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings
Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

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

50-1 Approval of Specified Contracts Pursuant to Business and Professions Code Section 6008.6

RESOLVED, that the Board of Trustees approves execution of the contracts listed herein, excluding contract line item 13.

Moved by Shelby, seconded by Sowell

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings
Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

60 BOARD OF TRUSTEES SITTING AS THE REGULATION AND DISCIPLINE COMMITTEE
60-2 Report on Random Audit of Office of Chief Trial Counsel Files Closed Between
September 1, 2021, and February 28, 2022, and Office of Chief Trial Counsel Response

Presenter: George Cardona, Chief Trial Counsel

Presentation and discussion only.

60-3 Proposed Amendments to California Rules of Court (Rules 9.8.5, 9.9, 9.32, and 9.49)
and Rules of the State Bar (Rules 2.2, 2.5, 2.15, 2.30, 2.51, 2.53, 2.71, 2.111 and New
State Bar Rules 2.140–2.153) Relating to Regulatory Function of the State Bar: Return
from Public Comment and Request for Adoption

Presenter: Steve Moawad, Special Counsel, Division of Regulation

RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 2.2 of the Rules of the State Bar, as set forth in Attachment A; and it is

FURTHER RESOLVED, that the approval of the proposed amendments to rule 2.2 of the Rules of the State Bar is subject to the California Supreme Court's approval of proposed amendments to Rule of Court 9.9 without any material changes; and it is

FURTHER RESOLVED, that the effective date of the amendments to rule 2.2 of the Rules of the State Bar would be the effective date of proposed amendments to Rule of Court 9.9 if the California Supreme Court approves proposed amendments to Rule of Court 9.9 without any material changes; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 9.9 of the California Rules of Court, as set forth in Attachment C; and it is

FURTHER RESOLVED, that staff is directed to submit proposed new Rule of Court 9.9 to the California Supreme Court with a request that the proposed amendments to Rule of Court 9.9 be approved; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 2.5 of the Rules of the State Bar, as set forth in Attachment E; and it is

FURTHER RESOLVED, that the approval of the proposed addition of subdivision (L) to rule 2.5 of the Rules of the State Bar is subject to the California Supreme Court's approval of proposed amendments to Rule of Court 9.8.5 without any material changes; and it is

FURTHER RESOLVED, that the effective date of the proposed amendments to rule 2.5 of the Rules of the State Bar will be December 1, 2023, with the exception of the addition of rule 2.5(L) of the Rules of the State Bar which will be effective on the effective date of proposed amendments to Rule of Court 9.8.5 if the California Supreme Court approves proposed new Rule of Court 9.8.5 without any material changes; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 9.8.5 of the California Rules of Court, as set forth in Attachment G; and it is

FURTHER RESOLVED, that staff is directed to submit proposed new Rule of Court 9.8.5 to the California Supreme Court with a request that the proposed amendments to Rule of Court 9.8.5 be approved; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 2.15 of the Rules of the State Bar, as set forth in Attachment I; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 2.30 of the Rules of the State Bar, as set forth in Attachment K; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rules 2.51, 2.53, 2.71, 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, and 2.153 of the Rules of the State Bar, as set forth in Attachment M; and it is

FURTHER RESOLVED, that the approval of the proposed amendments to rules 2.51, 2.53, 2.71, 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, and 2.153 of the Rules of the State Bar is subject to the California Supreme Court's approval of proposed new rule 9.32 and proposed amendments to rule 9.49 of the California Rules of Court without any material changes; and it is

FURTHER RESOLVED, that the effective date of the amendments to rules 2.51, 2.53, 2.71, 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, and 2.153 of the Rules of the State Bar would be the effective date of proposed new rule 9.32 and proposed amendments to rule 9.49 of the California Rules of Court without any material changes; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed new rule 9.32 and proposed amendments to rule 9.49 of the California Rules of Court, as set forth in Attachment O; and it is

FURTHER RESOLVED, that staff is directed to submit proposed new Rule of Court 9.32 and proposed amendments to rule 9.49 of the California Rules of Court to the California Supreme Court with a request that proposed new Rule of Court 9.32 and proposed amendments to rule 9.49 of the California Rules of Court be approved; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 2.111 of the Rules of the State Bar, as set forth in Attachment Q.

Moved by Good, seconded by Buenaventura

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings
Noes – (0)
Abstain – (0)
Absent – (0)

Motion carries.

60-4 Annual Discipline Report Review and Approval Timeline and Discussion of Inclusion of Demographic Data in Report

Presenter: Yun Xiang, Chief Mission Officer

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee will review, evaluate, and approve the Annual Discipline Report due annually on October 31; and it is

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee approves the procedures the State Bar will follow in its production of the Annual Discipline Report due October 31, 2023.

Moved by Good, seconded by Sowell

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings
Noes – (0)
Abstain – (0)
Absent – (0)

Motion carries.

60-5 Discussion Regarding State Bar Diversion Program

Presenters: George Cardona, Chief Trial Counsel
Melanie Lawrence, Program Director, Office of Professional Support & Client Protection
Enrique Zuniga, Public Trust Liaison

Presentation and discussion only.

60-6 Complaint Review Unit Overview and Recent Process Improvements

Presenters: Ellin Davtyan, General Counsel

Presentation and discussion only.

700 BUSINESS

701 Approval of 2024 Admissions Fee Increases and Fee Setting Policy; Update on February 2024 Bar Exam Locations; Discussion of July 2024 Bar Exam Administration

Presenters: Donna Hershkowitz, Chief of Programs/Legislative Director
Aracely Montoya-Chico, Chief Financial Officer

RESOLVED, that the Board of Trustees, directs staff to adjust the proposed fees related to California Accredited Law Schools downward to adjust the Options set forth in Attachment B, accordingly; it is

FURTHER RESOLVED, that the Board of Trustees directs staff to circulate the Options set for the in Attachment B, as modified, for a 30-day public comment period; and it is

FURTHER RESOLVED, that the Board of Trustees, directs that the Admissions fees be reviewed every three years and, in the intervening years, the fees be adjusted by the Consumer Price Index (CPI), if legally permissible, unless staff demonstrates that application of CPI adjustment to specific fees is unnecessary.

Moved by Buenaventura, seconded by Chen

Ayes – (9) Buenaventura, Chen, Cisneros, Good, Huser, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (1) Shelby

Motion carries.

703 Approval of 2023 Midyear Budget Variance Report (Including Quarter Two Financial Statements Report) and Projection

Presenter: Aracely Montoya-Chico, Chief Financial Officer

RESOLVED, that the Board of Trustees, upon recommendation of the Finance Committee approves the 2023 Midyear Budget Variance Report (including Q2 Financial Statements Report) and Projection, in the form presented this day, for six months ended June 30, 2023.

Moved by Sowell seconded by Trejo

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

704 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

Presenters: Ellin Davtyan, General Counsel
Robert Retana, Deputy General Counsel
Shelby King, Attorney, Office of General Counsel

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.

Moved by Chen, seconded by Buenaventura

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

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

CLOSED SESSION

7000 MISCELLANEOUS

7002 Discussion Regarding Special Audit Committee Directed Audit of Closed Office of Chief Trial Counsel Files – to be considered on September 22, 2023

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

7003 Conference with Legal Counsel—Anticipated Litigation
Agaton et al. v. State Bar of California et al. (L.A. Super. Ct. Case No. 23STCV21606)

**Closed pursuant to Government Code § 11126(e)(2)(A)*

OPEN SESSION

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

ADJOURN