



The State Bar of California

AGENDA ITEM

SEPTEMBER 10 – Minutes Approval – July 23, 2021, Meeting, Open Session

Regular Meeting of the Board of Trustees
Teleconference

Open Session Minutes
Friday, July 23, 2021
10:00 a.m.–

Time meeting commenced: The Board meeting commenced in open session at 10:04 a.m. The Board moved to closed session at 1:50 p.m. The Board returned to open session at 3:22 p.m.

Time meeting adjourned: 3:24 p.m.

Chair: Sean SeLegue

Secretary: Sarah L. Cohen

Other Members Present: Mark Broughton, Hailyn Chen, José Cisneros, Juan De La Cruz, Sonia Delen, Ruben Duran, Christine Gonong, Joshua Perttula, Melanie Shelby, Arnold Sowell, Brandon Stallings, Mark Toney

Members Absent: n/a

PUBLIC COMMENTS

Zach Newman, Senior Attorney, Legal Aid Association of California

- a. [Agenda Item 54-113: Legal Services Trust Fund Commission – Annual Appointment of Officers](#)
 - Supports agenda item
 - Believe all four candidates are extremely competent and have a deep understanding of the work
- b. [Agenda Item 704: Approval of Interest on Lawyers' Trust Accounts \(IOLTA\) Grant Distribution for 2022](#)
 - Supports agenda item
 - Applauds the efforts of State Bar staff in working closely with banks to ensure higher yields on IOLTA accounts

10 MINUTES

Open Session Minutes – May 13-14, 2021

Open Session Minutes – July 1, 2021

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Duran, Gonong, Shelby, Sowell, Stallings, Toney

Noes – n/a

Absent – Perttula

Minutes adopted.

30 CHAIR'S REPORT – *oral report*

30-1 Approval of Revised Board Committee Committees

RESOLVED, that the Board of Trustees ratify the attached revised 2020–2021 Board of Trustees Committee Assignments.

Moved by Duran, seconded by De La Cruz.

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Duran, Gonong, Shelby, Sowell, Stallings, Toney

Noes – n/a

Absent – Perttula

Motion carries.

40 STAFF REPORTS

41 Executive Director

41-1 Report from Executive Director – *oral report*

50 CONSENT AGENDA

Agenda items 54-111, 54-114 and 54-141 were pulled from consent for discussion. All other items on the consent agenda were voted on as proposed and approved together.

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

1. For coordination and training related to Homelessness Prevention Legal Services Grants, with: Legal Aid Association of California
2. For examination question management system, with: Prometric, LLC
3. For legal materials subscription, with: Thomson Reuters

RESOLVED, that the Board of Trustees approves execution of the contracts listed herein.

50-2 Approval of Financial Resolution to Update Authorized Bank Account Signatories

RESOLVED, that the Board of Trustees approve the financial resolution to update authorized bank account signatories as contained in ATTACHMENT A.

54-112 Council on Access and Fairness - Annual Appointment of Members and Officers

RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee, approves the appointment of Ryan Harrison Sr. as COAF Chair and Judge Kristin L. Rosi as COAF Vice-Chair for the 2021–2022 term, commencing at the close of the September 2021 meeting of the Board and expiring at the close of the September 2022 meeting of the Board; and it is

FURTHER RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee, approves the appointment of Angélica H. Salceda as a COAF member for one four-year term, commencing at the close of the September 2021 meeting of the Board and expiring at the close of the September 2025 meeting of the Board.

54-113 Legal Services Trust Fund Commission - Annual Appointment of Officers

RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee, approve the appointment of Kim Savage and Richard Reinis as co-chairs, and Christina Vanarelli and Christian Schreiber as co-vice-chairs of the Legal Services Trust Fund Commission for one-year terms commencing at the close of the September 2021 meeting of the Board of Trustees and expiring at the close of the September 2022 meeting of the Board of Trustees.

54-115 Committee on Professional Responsibility and Conduct - Annual Appointment of Members and Officers

RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee authorize the appointment of the advisor position to serve on the Committee of Professional Responsibility and Conduct beginning in the 2021–2022 committee year; and it is

FURTHER RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee approve the appointment of the following new members, officers, and special one-year reappointment to serve on the Committee of Professional Responsibility and Conduct beginning in the 2021–2022 committee year:

Officers

Dena Roche, Advisor
Justin Fields, Chair
Sarah Banola, Vice-Chair

Member Appointments

Elizabeth Bradley
Cassidy Chivers
Eleanor Mercado
William Munoz

One-Year Reappointment

Tobi Inlender

Alternate Member Appointments

Erin Rowe
Erin Joyce
Anthony Khoury

54-116 Client Security Fund Commission - Annual Appointment of Members and Officers

RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee, approves the recommended appointments for members and officers of the Client Security Fund Commission as set forth in this agenda item.

54-117 Approval of Per Diem for Public Members of Board Subentities

RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee, approves the creation of a policy establishing a \$50 per diem for public members of State Bar-created subentities not to exceed \$500 in any month.

54-121 Proposed Amendments to Rule 9.23 of the California Rules of Court: Return from Public Comment and Request for Submission to the California Supreme Court for Approval

RESOLVED, that the Board of Trustees authorizes staff to submit the proposed amended rule 9.23 of the California Rules of Court, attached hereto as Attachment A, to the California Supreme Court for approval and adoption.

54-142 Approval of Licensee Requests for Adjustment of Fees, Penalties, and Charges

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

Above consent agenda items moved by Cisneros, seconded by De La Cruz.

*Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Duran, Gonong, Shelby, Sowell, Stallings, Toney
Noes – n/a
Absent – Perttula*

Motion carries.

Pulled from Consent to record recusals in 54-111 and 54-114, and for discussion in 54-141:

54-111 Commission on Judicial Nominees Evaluation - Annual Appointment of Members Alternates, and Officers

RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee, appoints Adam Hofmann to serve as the chair of the 2022 Judicial Nominees Evaluation (JNE) Commission and Justin Palmer to serve as the vice-chair of the 2022 JNE commission, each for a one-year term commencing at the close of the last business meeting of the 2021 JNE commission on April 23, 2022, and expiring at the close of the last business meeting of the 2022 JNE commission on April 15, 2023, or until further order of the Board s, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee, appoints new members and alternates to the 2022 Judicial Nominees Evaluation (JNE) Commission per Attachment C; each for a three-year term commencing upon administration of the oath of office at the orientation meeting on January 28–29, 2022, and expiring at the close of the last business meeting of the 2024 JNE commission in April 2025, or until further order of the Board, whichever occurs earlier.

Moved by Cisneros, seconded by Shelby.

*Ayes – Broughton, Cisneros, De La Cruz, Delen, Duran, Gonong, Shelby, Sowell, Toney
Noes – n/a
Recused – Chen, Stallings
Absent – Perttula*

Chair SeLegue's recusal noted for the record.

Motion carries.

54-114 California Board of Legal Specialization - Annual Appointment of Members and Officers

RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee, reappoint Mark A. Lester to the California Board of Legal Specialization, and appoint him as chair, each for a one-year term commencing at the close of the September 2021 meeting of the Board of Trustees, and concluding at the close of the September 2022 meeting of the Board of Trustees;

RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee, appoint Natalie P. Vance as vice-chair, for a one-year term commencing at the close of the September 2021 meeting of the Board of Trustees, and concluding at the close of the September 2022 meeting of the Board of Trustees; and it is

FURTHER RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee, appoint Michael T. O'Halloran to the California Board of Legal Specialization as member, for a four-year term commencing at the close of the September 2021 meeting of the Board of Trustees, and concluding at the close of the September 2025 meeting of the Board of Trustees.

Moved by Cisneros, seconded by Shelby.

Ayes – Chen, Cisneros, De La Cruz, Delen, Duran, Gonong, Shelby, Sowell, Stallings, Toney

Noes – n/a

Recused – Broughton

Absent – Perttula

Motion carries.

54-141 Approval of 2021 Q1 Financial Statements Report, Investment Report, and Client Security Fund Report

Presenter: Wallace Tang, Chief Financial Officer

RESOLVED, that the Board of Trustees, upon recommendation of the Finance Committee, the Board of Trustees approves the 2021 First Quarter Financial Reports in the form presented this day before the Board, for the three months ended March 31, 2021, as certified by the chief financial officer and filed with the San Francisco office of the State Bar.

Moved by Cisneros, seconded by De La Cruz.

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Gonong, Perttula, Shelby, Sowell, Stallings, Toney
Noes – n/a
Absent – Duran

Motion carries.

100 REPORTS OF BOARD COMMITTEES

The member presenter is presumed to be the “mover” of the recommended action. No second is required because the motion is brought by the committee.

140 Finance Committee

143 Approval of (1) Refinancing of the 2016 Bank of America Loan (Related to 180 Howard Street), (2) Financing of Additional Capital Improvement and Information Technology Projects, and (3) Related Documents and Actions

Presenters: Trustee José Cisneros, Chair of Finance Committee
Leah Wilson, Executive Director

WHEREAS, the State Bar of California (the State Bar) previously financed certain tenant improvements at its San Francisco office building located at 180 Howard Street, San Francisco, California, (the “San Francisco Office Building”) pursuant to a real estate loan agreement dated as of March 1, 2016, (as amended, the 2016 Loan Agreement), by and between the State Bar and Bank of America, N.A. (the 2016 Lender), pursuant to which the 2016 Lender made a term loan (the 2016 Loan) to the State Bar;

WHEREAS, the State Bar has determined that it is in the best interests of the State Bar at this time to refinance the 2016 Loan, which can be prepaid on any date without premium;

WHEREAS, the State Bar also wishes to finance all or a portion of certain capital projects, including (1) improvements to the San Francisco Office Building, (2) improvements to the State Bar’s Los Angeles office building located at 845 South Figueroa Street, Los Angeles, California, and (3) the acquisition of certain hardware and software necessary to operate the State Bar (collectively, 2021 Capital Projects);

WHEREAS, in order to raise funds for prepayment of the 2016 Loan and the financing of the 2021 Capital Projects, the State Bar wishes to (1) lease the San Francisco Office Building to the Public Property Financing Corporation of California (the Corporation) under a Site Lease (described below) for an up-front rental payment that will be used to prepay the 2016 Loan and finance the 2021 Capital Projects; and (2) sublease the San Francisco Office Building from the Corporation under a Lease Agreement (described below);

WHEREAS, pursuant to an Assignment Agreement, the Corporation will assign to Sterling National Bank (the Bank) its right to receive the State Bar's lease payments under the Lease Agreement (the "Lease Payments") and its right to enforce the provisions of the Lease Agreement;

WHEREAS, the 2016 Loan cannot be refinanced on a federally tax-exempt basis and only a portion of the 2021 Capital Projects can be financed on a federally tax-exempt basis, so the Lease Payments will consist of (1) a stream of Lease Payments, the interest component of which will be excluded from gross income for federal income tax purposes (the "Tax-Exempt Lease Payments"); and (2) a stream of Lease Payments, the interest component of which is not intended to be excluded from gross income for federal income tax purposes (the "Taxable Lease Payments");

WHEREAS, in order to comply with Government Code section 5852.1, certain information relating to the proposed Lease Agreement is set forth in Appendix A attached to this Resolution, and such information is hereby disclosed and made public.

Upon motion made, seconded, and unanimously adopted:

RESOLVED, that the Board of Trustees recommends proceeding with the refinancing of the 2016 Bank of America Loan and the financing of the 2021 Capital Projects with Sterling National Bank; and it is

FURTHER RESOLVED, that the Board of Trustees hereby approves (1) Refinancing the 2016 Bank of America Loan related to 180 Howard Street, (2) Financing of 2021 Capital Projects, and (3) related documents and actions; and it is

FURTHER RESOLVED, that the Board of Trustees hereby approves the proposed lease financing as long as the principal component of the aggregate Lease Payments does not exceed \$20,600,000 and the interest rate applied to the principal component of the Lease Payments does not exceed 2.30% for the Tax-Exempt Lease Payments and 2.76% for the Taxable Lease Payments (not including any default lease rate); and it is

FURTHER RESOLVED, that the Board of Trustees hereby approves each of the following agreements required for the refinancing of the 2016 Loan and the financing of the 2021 Capital Projects, in substantially the forms attached to the agenda item presented to the Board regarding this transaction together with any changes therein or additions thereto deemed advisable by the Executive Director, the Chief Administrative Officer or the Chief Financial Officer (each, an Authorized Officer), each acting independently, who are authorized to execute such agreements and whose execution thereof shall be conclusive evidence of the approval of any such changes or additions:

- Site Lease, between the State Bar as lessor and the Corporation as lessee, under which the State Bar leases the San Francisco Office Building to the Corporation in consideration of the

payment of an amount which will be applied by the State Bar to refinance the 2016 Loan and to finance the 2021 Capital Projects;

- Lease Agreement, between the Corporation as sublessor and the State Bar as sublessee, under which the Corporation subleases the San Francisco Office Building back to the State Bar and the State Bar agrees to pay the Lease Payments as rental for the San Francisco Office Building;
 - Costs of Issuance Agreement, between the State Bar and The Bank of New York Mellon Trust Company, N.A. to provide for the payment of the costs of transaction;
 - Project Fund Custodian Agreement, between the State Bar and The Bank of New York Mellon Trust Company, N.A. to provide for the payment of Project Costs (as defined herein); and it is

FURTHER RESOLVED, that the Board of Trustees hereby authorizes and directs the Authorized Officers, for and in the name and on behalf of the State Bar, to do any and all things and take any and all actions, including execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance or reconveyance, warrants, and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the transactions described herein, including any documents related to the 2016 Loan; and it is

FURTHER RESOLVED, that whenever in this resolution each Authorized Officer of the State Bar is delegated the authority to execute or countersign any document or take any action, such execution, countersigning, or action may be taken on behalf of such officer by any person designated by such officer to act on their behalf in the case such officer is absent or unavailable.

Moved by Cisneros, seconded by Duran.

Ayes – Broughton, Chen, Cisneros, De La Cruz, Duran, Gonong, Perttula, Shelby, Sowell, Stallings, Toney

Noes – n/a

Recused – Delen

Motion carries.

700 MISCELLANEOUS

701 Report on Office of Chief Trial Counsel Workload Study

Presenter: Dag MacLeod, Chief of Mission Advancement & Accountability

Recommended resolution amended by Toney to read:

RESOLVED, that the Board of Trustees ~~approves~~ **authorizes staff to submit** the proposed case-processing time standards **to the legislature** and directs staff to work with the legislature to ~~replace~~ **modify and modernize** the existing 180-backlog standard ~~with~~ **based on** these case-processing time standards, and it is

FURTHER RESOLVED, that the Board of Trustees directs staff to return with updated staffing recommendations once a new time standard has been adopted.

Moved by Duran, seconded by Stallings.

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Duran, Gonong, Shelby, Sowell, Stallings, Toney

Noes – n/a

Absent – Perttula

Motion carries.

702 Implementation of Changes to Address Disparities in the Discipline System: Update

Presenters: Lisa Chavez, Program Director, Office of Research & Institutional Accountability
Randall Difuntorum, Program Director, Office of Professional Competence
Christopher Robertson, Professor of Law

RESOLVED, that the Board of Trustees directs staff to continue its work on projects that address disparities in the discipline system and provide an update to the State Bar of Trustees at its November 2021 meeting.

Moved by Stallings, seconded by Duran.

Motion withdrawn by Stallings. Informational only.

703 Approval of Proposed Plan for Preventative Education for Attorneys

Presenters: Donna S. Hershkowitz, Chief of Programs
Randall Difuntorum, Program Director, Office of Professional Competence

RESOLVED, that the Board of Trustees approves in concept the proposed five-year plan for a preventative education approach that includes self-assessment and e-learning components and contemplates the ongoing development of specific courses by staff in consultation with the leadership of the Regulation and Discipline Committee; and it is

FURTHER RESOLVED, that the Board of Trustees identifies the development of preventative education as a priority and directs staff to allocate appropriate funding for this purpose.

Moved by Stallings, seconded by Cisneros.

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Duran, Gonong, Shelby, Sowell, Stallings, Toney

Noes – n/a

Absent – Perttula

Motion carries.

704 Approval of Interest on Lawyers' Trust Accounts (IOLTA) Grant Distribution for 2022

Presenter: Doan Nguyen, Program Manager, Office of Access & Inclusion
Erik Isken, Co-Chair, Legal Services Trust Fund Commission

RESOLVED, that the Board of Trustees approve the 2022 IOLTA distribution in the amount of \$35,487,840, leaving a projected reserve of \$11,747,500 as of the end of 2022.

Moved by Cisneros, seconded by Gonong

Ayes – Broughton, Chen, Cisneros, De La Cruz, Delen, Duran, Gonong, Shelby, Sowell, Stallings, Toney

Noes – n/a

Absent – Perttula

Motion carries.

705 State Bar Metrics Report

Presenters: Lisa Chavez, Program Director, Office of Research & Institutional Accountability

Informational only.

706 Approval of Spend Down Plan for Legal Specialization Reserves

Withdrawn prior to meeting.