

TENTATIVE DRAFT

NOTE: It is requested that suggested corrections be sent to the Office of the Secretary, San Francisco, as soon as possible.

MINUTES

BOARD OF GOVERNORS MEETING

LOS ANGELES

AUGUST 24, 2002

The Board of Governors of the State Bar of California convened in the Board Room of the State Bar Offices at 1149 South Hill Street, Los Angeles, California, at 9:13 a.m., Saturday, August 24, 2002, Karen S. Nobumoto presiding.

The following members of the Board of Governors were present: Anthony P. Capozzi, Matthew E. Cavanaugh, Judith M. Copeland, Patrick R. Dixon, Janet M. Green, James E. Herman, Carl A. Lindstrom, Jr., Scott H. McNutt, Robert K. Persons, Ann M. Ravel, Russell Roeca, Windie O. Scott, James C. Sherwood, John G. Snetsinger, John K. Van de Kamp, Maria D. Villa, Chantel L. Walker, Scott Wylie and Nancy Hoffmeier Zamora.

The following members of the staff were present: Starr Babcock, Francis P. Bassios, Kathleen Beitiks, Jerome Braun, Bill Davis, Larry Doyle, Scott Drexel, Robert A. Hawley, Judy Johnson, Luanne Kamiya, Dean Kinley, Marie M. Moffat, Mike Nisperos, Sam Quan, Cathy Torney, Russell Weiner and Larry Yee.

Also present: Don J. DeBenedictis, *Los Angeles Daily Journal*; Robert Green, *Met News*; James O. Heiting, deemed elected Board member from District 6; Samuel L. Jackson, Vice-Chair, Committee of Bar Examiners; Steven J. Ipsen, newly elected member from District 7, Office No. 1; Stephen L. Marsh, Chair, Conference of Delegates Executive Committee; Roderick A. McLeod, newly elected member from District 4; Mike McKee, *The Recorder*; Joel S. Miliband, newly elected member from District 8; and Margaret P. Stevens, newly elected CYLA representative to the Board.

10 Upon motion made, seconded and adopted, it was

RESOLVED that the minutes of the Board of Governors' Special Meeting for the Election of Officers held on June 22, 2002, in San Francisco, hereby are approved as written.

Voting yes: Mr. Capozzi, Mr. Cavanaugh, Ms. Copeland, Mr. Dixon, Ms. Green, Mr. Herman, Mr. Lindstrom, Mr. McNutt, Mr. Persons, Mr. Roeca, Ms. Scott, Mr. Sherwood, Mr. Snetsinger, Mr. Van de Kamp, Ms. Villa, Ms. Walker, Mr. Wylie and Ms. Hoffmeier Zamora
Abstaining: Ms. Ravel

10 Upon motion made, seconded and adopted, it was

RESOLVED that the minutes of the meeting of the Board of Governors held on June 22, 2002, in San Francisco, hereby are approved as written.

Voting yes: Mr. Capozzi, Mr. Cavanaugh, Ms. Copeland, Mr. Dixon, Ms. Green, Mr. Herman, Mr. Lindstrom, Mr. McNutt, Mr. Persons, Mr. Roeca, Ms. Scott, Mr. Sherwood, Mr. Snetsinger, Mr. Van de Kamp, Ms. Villa, Ms. Walker, Mr. Wylie and Ms. Hoffmeier Zamora
Abstaining: Ms. Ravel

30 The President reported on the following:

- A. She, Mr. Herman, Ms. Johnson, Ms. Moffat and several members of staff attended the first meeting of the newly created ABA Committee—Attorney Discipline; the charge of this committee is to review and analyze the proposals contained in the ABA Report on the Bar's discipline system and to make its recommendations to the Supreme Court.
- B. She, Ms. Johnson and Ms. Scott attended the National Bar Association Conference, which was held recently in San Francisco.
- C. She also attended the Annual Meeting of the ABA in Washington, DC, where the Bar's delegation to the ABA House of Delegates determined not to support the ABA's recommendation on multi-disciplinary practice, because it does not allow reciprocity of non-accredited ABA law schools.
- D. The Unauthorized Practice of Law (UPL) bill passed the State Assembly by a vote of 77-0, and it is now awaiting the Governor's signature.
- E. She mentioned that the separation agreement between the State Bar and the Conference of Delegates is almost finalized and will be presented to the Board at its next meeting.
- F. She stated that a special meeting of the Board will be held in September to complete all unfinished Bar business. Also, in the event that the labor negotiations are successfully concluded before the next regularly scheduled meeting of the Board, this matter may be on the agenda for the special Board meeting or, if necessary, the agreement could be ratified via a conference call meeting. Suggested dates for the special meeting are: September 4, 16 or 19; Board members will be polled regarding their availability.

42 PART I The Secretary brought to the Board's attention the schedule for the 2002 Special Election of the Board of Governors in District 3; said vacancy occurred when Board member Marie Weiner was appointed to the San Mateo County Superior Court. The successful candidate will complete Judge Weiner's unexpired term, i.e., at the Bar's Annual Meeting in 2004.

30-1 The President introduced Natalie Aran, President, Margaret Hampton, Project Leader of *When You Become 18: A Survival Guide for Teenagers*, and members Glenna Gil and Katie Robinson of the California Law Advocates to the Board. President Nobumoto presented a

plaque to the CLA representatives and thanked them for their invaluable work in developing the original of the publication, and for helping the Bar upgrade its own public education program with the acquisition of *When You Become 18*.

30-2 She introduced Leonard López, Inland Empire Latino Lawyers Legal Aid, who is also Student Activities Coordinator at San Bernardino Valley College, to the Board. Mr. López stated that he was addressing the Board as an attorney member. He gave a brief history of the Teen Parents Program and thanked the Board for continuing to provide Equal Access Grants that help fund this very worthwhile program.

30-3 The President requested the Board's ratification on the appointment of Ann M. Ravel, newly appointed interim Board member, to the Board Committees on Member Oversight and Volunteer Involvement; Ms. Ravel replaces Marie Weiner, who was appointed to the bench.

Voting yes: Mr. Capozzi, Mr. Cavanaugh, Ms. Copeland, Mr. Dixon, Ms. Green, Mr. Herman, Mr. Lindstrom, Mr. McNutt, Mr. Persons, Mr. Roeca, Ms. Scott, Mr. Sherwood, Mr. Snetsinger, Mr. Van de Kamp, Ms. Villa, Ms. Walker, Mr. Wylie and Ms. Hoffmeier Zamora

Abstaining: Ms. Ravel

30-4 The President requested the Board's ratification on the appointment of chair and members to the recently created Board Development Working Group: Janet M. Green, Chair; Members: Gary Greenebaum; James E. Herman; Maria D. Villa; Chantel L. Walker; Scott Wylie; and Karen S. Nobumoto (ex officio member).

Voting yes: Mr. Capozzi, Mr. Cavanaugh, Ms. Copeland, Mr. Dixon, Ms. Green, Mr. Herman, Mr. Lindstrom, Mr. McNutt, Mr. Persons, Mr. Roeca, Ms. Scott, Mr. Sherwood, Mr. Snetsinger, Mr. Van de Kamp, Ms. Villa, Ms. Walker, Mr. Wylie and Ms. Hoffmeier Zamora

Abstaining: Ms. Green and Ms. Villa

The roll-call vote was taken and upon motion made, seconded and unanimously adopted, it was

RESOLVED that the roll-call vote will be substituted for the vote unless otherwise noted.

51 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Member Oversight and the Board Regulation, Admissions and Discipline Oversight Committee, that the Board hereby receives the financial statements for the quarter ended June 30, 2002, as certified by the Director of the Office of Finance and on file in the San Francisco office of the State Bar.

All members present and recorded on the roll-call slip voted yes on the above matter.

52 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Member Oversight and the Board Regulation, Admissions and Discipline Oversight Committee, that the Board hereby receives the investment reports for the quarter ended June 30, 2002, as certified by the Director of Finance and on file in the San Francisco office of the State Bar.

All members present and recorded on the roll-call slip voted yes on the above matter.

53 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Regulation, Admissions and Discipline Oversight Committee, that the Board hereby receives the Client Security Fund reports for the quarter ended June 30, 2002, as certified by the Director of the Office of Finance and on file in the San Francisco office of the State Bar.

All members present and recorded on the roll-call slip voted yes on the above matter.

54-111 The following is the report of emergency action taken by the Board between regularly scheduled Board meetings, via conference call, on August 9, 2002.

Upon motion made, seconded and adopted, it was

RESOLVED that the Board hereby supports in concept the amendments proposed by staff to SB 1897 (Kuehl), as that bill was amended on July 25, 2002, to limit for one year the provisions of *Business and Professions Code* section 6065 requiring failed applicant review of the Bar Examination for only those examination papers in the actual, physical possession of the examining committee at the time the request for inspection is made, and to add an urgency clause to the bill.

54-121 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Regulation, Admissions and Discipline Oversight Committee, that the Board hereby amends rule 262 (dismissals) of the *Rules of Procedure of the State Bar of California*, in the form attached to these minutes and made a part hereof, effective September 1, 2002.

All members present and recorded on the roll-call slip voted yes on the above matter.

54-122 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Regulation, Admissions and Discipline Oversight Committee, that the Board hereby ascertains and determines:

- (a) that each of the persons whose names appear in the list attached to these minutes, and made a part hereof, is a member of the State Bar of California;
- (b) that each such person has failed to fully pay fees, and/or penalties and/or

- (c) that there has been sent to each such person, two months' written notice of his or her delinquency which included notice of Section 6143.
- (d) that as shown by the records of the State Bar, the address of each such person is as set forth on the list attached to these minutes and made a part hereof;
- (e) and hereby recommends to the Supreme Court of the State of California that each such person be suspended from membership in the State Bar, and from the practice of law in the State of California, until such time as he or she may be reinstated, upon the payment of the delinquent fees and/or penalties and/or costs and of such additional fees or penalties or costs as may have accrued at the time of such payment, in the form attached to these minutes, and made a part hereof; and it is

FURTHER RESOLVED that for the purpose of withdrawing the foregoing recommendation for suspension in particular cases, the Secretary is authorized and directed to strike from the foregoing list the name of any member of the State Bar who by proper remittance (e.g., cash, money order, certified or cashier's check) and prior to the effective date of the Supreme Court order of suspension based hereon, pays to the State Bar fees or penalties or costs in the amount in which he or she is delinquent; and to notify the Clerk of the Supreme Court of the fact of such payment and of the consequent withdrawal of the Board's recommendation for suspension; and it is

FURTHER RESOLVED that for the purpose of modifying the recommendation to the Supreme Court for suspension for nonpayment of fees and/or penalties and/or costs, the Secretary is authorized and directed to change the data as to status or the amounts of delinquency on said list and will forthwith notify the Clerk of the Supreme Court accordingly of the consequent modification of the Board's recommendation for suspension.

All members present and recorded on the roll-call slip voted yes on the above matter.

54-131 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Member Oversight, and following compliance with the *Procedure for Adoption, Amendment or Repeal of State Bar Regulations*, that the Board hereby amends Article 1, Section 1, *Rules and Regulations of the State Bar of California*, regarding the confidentiality of certain residential addresses, effective immediately, in the form attached to these minutes and made a part hereof.

All members present and recorded on the roll-call slip voted yes on the above matter.

54-132 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, following publication for public comment, consideration of comments received, and upon recommendation of the Board Committee on Member Oversight, that the Board hereby amends the *Rules Governing the California Program for Certifying Legal Specialists* and the Standards for Certification and Recertification in

each specialty area, except Workers' Compensation Law, effective January 1, 2003, in the form this day before the Board; and it is

FURTHER RESOLVED that the Board hereby directs the publication of proposed revisions to the Standards for Certification and Recertification in Workers' Compensation Law be circulated for the 30-day public comment period; and it is

FURTHER RESOLVED that publication of the foregoing is not, and shall not be construed as, a recommendation by the Board Committee.

All members present and recorded on the roll-call slip voted yes on the above matter.

54-133 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Member Oversight, that the Board hereby approves the accreditation of the American Board of Professional Liability Attorneys' certification programs in accounting malpractice, legal malpractice and medical malpractice.

All members present and recorded on the roll-call slip voted yes on the above matter.

54-134 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Member Oversight, and pursuant to California Rule of Court 958 and the *MCLE Rules and Regulations*, that the Board hereby authorizes that those members of MCLE Compliance Group 3 who do not bring themselves into compliance with their MCLE requirement by September 3, 2002, shall be enrolled as inactive members of the State Bar of California and placed on the Not Entitled status, effective September 1, 2002; and it is

FURTHER RESOLVED that the Board hereby authorizes staff to remove members from administrative inactive status once the member has provided proof of compliance and paid all non-compliance fees.

All members present and recorded on the roll-call slip voted yes on the above matter.

54-141 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon the recommendation of the Board Planning, Program Development, and Budget Committee, that the Board hereby adopts the Workplans of the State Bar of California's Standing and Advisory Committees as listed below; and it is

FURTHER RESOLVED that the Board hereby directs that the Board Planning, Program Development, and Budget Committee refer the committees' workplans as listed below to the Board Operations Committee for assignment to the appropriate Board Oversight Committee:

Section 1. Voluntary Funds

A. Access and Fairness Committees

1. Committee on Legal Professionals with Disabilities
2. Committee on Sexual Orientation and Gender Identity Discrimination
3. Committee on Women in the Law
4. Ethnic Minority Relations Committee
5. Standing Committee on Senior Lawyers

2. Administration of Justice Committees

1. Committee on the Administration of Justice
2. Committee on Alternative Dispute Resolution
3. Committee on Appellate Courts
4. Committee on Federal Courts

Section 2. General Fund

1. California Commission on Access to Justice
2. California Young Lawyers Association
3. Commission for Revision of Rules of Professional Conduct
4. Committee on the Delivery of Legal Services
5. Committee on Mandatory Fee Arbitration
6. Committee on Professional Responsibility and Conduct

Section 3. Legal Education and Development Fund (Insurance Committees)

1. Committee on Group Insurance Programs
2. Committee On Professional Liability Insurance

Section 4. Other Restricted Funds

1. California Board of Legal Specialization
2. Committee of Bar Examiners
3. Lawyer Assistance Program Oversight Committee
4. Legal Services Trust Fund Commission

All members present and recorded on the roll-call slip voted yes on the above matter.

54-142 This matter pertaining to the interim adoption of the *Rules Governing the Financial Assistance Plan of the State Bar of California's Lawyer Assistance Program*, was removed from the Board's consent agenda, and will be considered in open session later in the meeting.

54-163 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Stakeholder Relations, that the Board hereby supports the proposed position for funding for the Legal Services Corporation; such requested support is within the parameters established by the United States Supreme Court in *Keller v. State Bar of California*; and it is

FURTHER RESOLVED that the Board hereby joins with the American Bar Association in seeking an increase of \$45 million for the Legal Services Corporation for fiscal year 2003.

All members present and recorded on the roll-call slip voted yes on the above matter.

54-311 The following is the report of emergency action take by the Board between regularly scheduled Board meeting, via conference call, on August 9. 2002.

RESOLVED, upon recommendation of the Committee on Professional Liability Insurance, that the Board hereby delegates to the Committee on Professional Liability Insurance the authority to establish and finalize the terms governing the change in insurance carriers underwriting the State Bar sponsored Professional Liability Insurance Program subject to the approval of the State Bar Executive Director and General Counsel; and it is

FURTHER RESOLVED that the Committee on Professional Liability Insurance Programs, in carrying out this delegation, shall act in accordance with the standard principles of prudence and due diligence applicable under industry standards and in the best interests of the sponsored professional liability insurance program and the State Bar; and it is

FURTHER RESOLVED that this delegation pertains to this sole issue.

55 The following is the report of emergency action taken by the Board on a legislative matter, SB 1897 (Kuehl), between regularly scheduled Board meetings, via fax poll June 12 - 14, 2002.

Upon motion made, seconded and adopted, it was

RESOLVED that the Board hereby approves the proposed amendments to SB 1897 (Kuehl) relating to the Conference of Delegates, California Supreme Court Historical Society and Board of Governors Elections, in the form this day before the Board, and authorizes their presentation to the California Legislature for enactment.

All members who participated in the fax poll voted yes on the above matter, except Mr. Cavanaugh, who voted no and requested the record so to show.

55 The following is the report of emergency action taken by the Board on a legislative matter, AB 363 (Steinberg), between regularly scheduled Board meetings, via fax poll June 12 - 14, 2002.

55 Upon motion made, seconded and adopted, it was

RESOLVED that the Board hereby authorizes staff to communicate to appropriate legislative representatives the following position of the State Bar regarding AB 363 (Steinberg) [Public Agency Attorney Accountability Act]. To allow necessary flexibility in addressing the fast-moving legislative process, the following alternatives are set forth in order of preference:

1. The State Bar OPPOSES AB 363 as it is proposed to be amended, in the form this day before the Board, and SUPPORTS instead an amendment to *Business and Professions Code* Section 6068 that would provide that Section 6068(e) be subject to a rule to be adopted by the Supreme Court.

2. In the alternative:

The State Bar OPPOSES AB 363 as it is proposed to be amended, and SUPPORTS instead legislative adoption of the principles set forth in the Rule 3-600 amendment that the State Bar submitted to the Supreme Court, in the form this day before the Board. The State Bar further proposes that any such enactment be subject to an express sunset provision that would allow the Supreme Court to adopt a Rule of Professional Conduct that would supercede the legislation upon expiration of the legislation.

All members who participated in the fax poll voted yes on the above matter, except Mr. Cavanaugh, who voted no and requested the record so to show.

56 The following is the report of emergency action taken by Board between regularly scheduled Board meetings, via conference call, on August 9, 2002.

Upon motion made, seconded and adopted, it was

RESOLVED that the Board hereby suspends for 2002 the delegation of authority to the Council of State Bar Sections to determine the allocation of the State Bar's overhead charge among the individual Sections and directs that the Per Capita Allocation, as petitioned by the Antitrust and Unfair Competition, Criminal Law, Environmental Law, International Law, Law Practice Management and Technology, Public Law, Real Property Law, Solo and Small Firm, Taxation, Workers' Compensation Sections, and shown as Proposal No. 1 on the Council of State Bar Sections Overhead Allocation Proposals Chart, in the form this day before the Board, be applied to the State Bar Sections for 2002.

Voting yes: Ms. Copeland, Mr. Dixon, Ms. Green, Mr. Herman, Mr. McNutt, Mr. Persons, Ms. Scott, Mr. Snetsinger, Mr. Van de Kamp, Ms. Villa, Mr. Wylie and Ms. Zamora

Voting no: Mr. Cavanaugh

Abstaining: Mr. Capozzi and Mr. Lindstrom

Not voting: Ms. Ravel, Mr. Sherwood and Ms. Walker

110 President Nobumoto, Chair, Board Committee on Operations, stated that the committee had met recently to consider various referrals of items to the Board and Board Committees. The committee also considered and denied a request for an amicus curiae participation.

111 Mr. Hawley, Deputy Executive Director, gave a status report on the ongoing labor negotiations, saying that although there is a mutual hope to expedite the process, there are some issues which in today's economic climate are of major concern to both sides. He stated that management and the union are in the middle of the negotiating process, that meetings have been scheduled, and that he is hopeful that a mutually satisfactory agreement

will be reached in time for ratification by the Board at its special meeting in September. He stated that if consensus is not reached by year end, that the current contract will be extended on a monthly basis. He also mentioned that a three-year contract is one of the components of the offer on the table.

President Nobumoto mentioned that the Chief Trial Counsel's evaluation had been completed.

120 Mr. Dixon, Chair, Board Regulation, Admissions and Discipline Oversight Committee, expressed his appreciation to Board members and staff for their support and collegiality during his tenure.

124 Mr. Dixon reported that the American Bar Association's Report on the Lawyer Regulation System was discussed at the meeting of his committee the previous day and the committee approved that the report be circulated for a 90-day public comment period.

125 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon the recommendation of the Board Regulation, Admissions and Discipline Oversight Committee, and pursuant to *Business and Professions Code* section 6079.1, subdivision (e), that the Board hereby appoints Scott J. Drexel and Patsy J. Cobb as judges pro tempore of the State Bar Court for terms of one year from the date this resolution is adopted; and it is

FURTHER RESOLVED that the assignment of the above-referenced pro tempore judges to adjudicate or conduct particular proceedings shall be subject to the discretion of the Presiding Judge of the State Bar Court pursuant to rule 12 of the *Rules of Procedure of the State Bar of California*.

All members present and recorded on the roll-call slip voted yes on the above matter.

130 Mr. McNutt, Chair, Board Committee on Member Oversight, stated that he enjoyed his tenure on the Board and expressed his thanks to Board members and staff for their support.

140 Mr. Herman, Chair, Board Committee on Planning, Program Development, and Budget, reported briefly on this year's budget process. He mentioned that several scenarios were contained in agenda item AUGUST 143, and that an explanation of the budget and the Bar's funds is special set for presentation to the Board at 10:00 a.m. today.

145 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Planning, Program Development, and Budget Committee, that the Board hereby accepts the Statement of Chargeable and Nonchargeable Expenses for the year ending, December 31, 2001, and the accompanying auditors' report prepared by the accounting firm of Deloitte & Touche (hereinafter "audited statement"), in the form this day before the Board; and it is

FURTHER RESOLVED that staff is directed to publish the audited statement in the December 2002 issue of the *California Bar Journal*.

All members present and recorded on the roll-call slip voted yes on the above matter.

146 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, following publication for comment, upon consideration of comments received, and upon the recommendation of the Board Planning Program Development, and Budget Committee, that the Board hereby adopts the final *State Bar of California's Long-Range Strategic Plan*, in the form this day before the Board; and it is

FURTHER RESOLVED that the Board hereby adopts Planning Policies to institutionalize and guide future planning activities of the State Bar of California.

All members present and recorded on the roll-call slip voted yes on the above matter.

147 Mr. Drexel, Administrative Officer for State Bar Court/Chief Court Counsel, addressed the Board regarding agenda item AUGUST 147 concerning the State Bar Court's Pilot Drug Program. He stated that rules 800-806 of the *Rules of Procedure of the State Bar of California*, which pertain to the pilot program, had been presented to the Supreme Court for comment. He assured the Board that the pilot program would not be implemented until such time as the Court's approval is received.

147 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon the recommendation of the Board Planning, Program Development, and Budget Committee, that the Board hereby adopts Rules 800- 806 of the *Rules of Procedure of the State Bar of California* relating to the State Bar Court's Pilot Program for respondents with substance abuse and/or mental health issues, in the form attached to these minutes and made a part hereof, on an emergency basis effective September 1, 2002; and it is

FURTHER RESOLVED that Rules 800-806 of the *Rules of Procedure of the State Bar of California* shall be released for a ninety-day public comment period, effective September 1, 2002, and that the Board of Governors may, at a subsequent meeting, make appropriate amendments to the aforementioned rules in light of the public comment received.

All members present and recorded on the roll-call slip voted yes on the above matter.

54-142 Mr. Herman, Chair, Board Planning, Program Development, and Budget Committee, stated that the committee's original recommendation on the *Rules Governing the Financial Assistance Plan of the State Bar of California's Lawyer Assistance Program* was amended at the committee meeting the previous day, hence its removal from the Board's consent agenda. The Board is now requested to consider the proposed substitute motion.

54-142 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Planning, Program Development and Budget Committee, that the Board hereby approves in principle the draft *Rules Governing the Financial Assistance Plan of the State Bar of California's Lawyer*

Assistance Program (SB 479, Burton—Attorney Diversion and Assistance Program), in the form attached to these minutes and made a part hereof, to establish a financial assistance program, as required by section 6235(b) of the California Business and Professions Code, to assist those attorneys who are unable to pay to participate in the treatment and recovery services offered by the Lawyer Assistance Program; and it is

FURTHER RESOLVED that the rules establishing the financial assistance program, in a final form approved by the General Counsel in consultation with the LAPOC, be presented to the Board by a fax poll for its approval and adoption on an interim basis, effective immediately, pending a ninety-day public comment period pursuant to the provisions of section 3 of the *Procedure for Adoption, Amendment or Repeal of State Bar Regulations*.

All members present and recorded on the roll-call slip voted yes on the above matter.

143 Mr. Quan, Director, Office of Finance, made a PowerPoint presentation on the budget, during which he gave an explanation of the Bar's several funds, the budgetary process, and the rationale which governed the various proposed scenarios contained in the agenda item.

Following this presentation, Mr. Herman moved to adopt Scenario 4 as recommended by his committee; said scenario provides for the seismic retrofitting of the Bar's San Francisco office and the implementation of the newly created Member Services Center for 2003; the center would provide assistance to the members when they are unable to get it from the website or elsewhere.

Mr. Persons spoke against the motion, stating that the Board should consider staff's recommendation, which is for a balanced budget and is more realistic in the current economic climate. This recommendation proposes deferring seismic retrofitting and funding for the Member Services Center until such time as the economy improves and funds are available. These, and the other scenarios contained in the agenda item, were discussed at length.

Also discussed were proposals to generate non-dues revenue. The Executive Director stated that the Bar is constantly exploring various opportunities to generate revenue, such as fee payments by credit card, the expansion of the Bar's insurance programs, etc. She mentioned that the Los Angeles facilities are regularly rented to outside entities.

The Bar's current investments were discussed and the Executive Director stated that the Bar would further explore investment strategies that may result in obtaining greater interest income on its investments.

The Executive Director stated that the initial proposed rental of the vacant floors in the San Francisco office failed to materialize because of the demise of the dot com companies, which has resulted in an excess of desirable office space available in San Francisco. She further stated that funds are not available to build out the vacant floors, and that the Bar has been advised by experts that it is not fiscally viable to lease space for short-term periods at the present low rate per square foot. Nor would it be viable to lease space long-term, because the Bar would be contractually obligated to honor its leasing agreements and would not be in a position to take advantage of the more favorable market rates when the economy improves.

Upon being questioned about the Bar's different funds, she explained that restricted funds, such as Admissions, cannot be used to fund general fund expenses, stating that restricted funds are either statutorily mandated or Board policy. She further stated that general fund monies can subsidize the restricted funds, but the restricted funds cannot subsidize the general fund.

The Executive Director mentioned that although the Bar is further along technology-wise than some years ago, its software programs are outdated in the sense that they are not interdepartmentally compatible. She suggested that to achieve such compatibility, it would behoove the Bar to explore the upgrading of its software programs and the feasibility of purchasing a program that would serve this purpose.

Ms. Johnson said that the amount of the fee statement, which is considerably less than years ago, precludes creation and/or implementation of any new programs, including the proposed Member Services Center and that to implement proposed programs, the fees would have to be increased. Responding to a question regarding the staffing of the Center, she stated that the budget assumption is based on a fee of \$390 and that does not allow for the hiring and training of additional staff. Currently, staff members are dedicated to their positions and are double- or triple-tasking; there is no available staff to assign to the center. She further stated that staff levels are lower than those recommended by Justice Lui in his report on the discipline system, and this is due to the fact that attorneys do not want their fees increased. While fees remain at \$390, the Bar has no option but to aggressively maintain its present staffing level, but will look at further creative methods to generate revenue in order to better serve the members. Ms. Johnson stated that she would abide by the Board's decision in any or all areas.

It was the sense of the Board that the Bar has a public responsibility to protect its staff in the event of an earthquake, and that it would be fiscally prudent to complete the seismic retrofitting of the building. Although the building was in compliance with building codes when it was purchased, the codes have been updated and the building is no longer in compliance with today's codes.

143 Mr. Herman moved that Mr. Person's substitute motion, Scenario 3, be adopted regarding staff's recommendation of a five-year budget plan, which excludes funding seismic retrofitting and the Member Services Center; this motion was seconded, but failed of adoption.

Voting yes: Mr. Capozzi, Mr. Dixon, Ms. Green, Mr. Herman, Mr. Persons, Ms. Ravel, Ms. Scott, and Mr. Sherwood

Voting no: Mr. Cavanaugh, Ms. Copeland, Mr. Lindstrom, Mr. McNutt, Mr. Roeca, Mr. Snetsinger, Mr. Van de Kamp, Ms. Villa, Ms. Walker, Mr. Wylie and Ms. Hoffmeier Zamora

143 A motion was made and seconded to adopt Scenario 6, which provides for the seismic retrofitting of the San Francisco office building, but does not include funding for the implementation of the Member Services Center.

143

Upon motion made, seconded and adopted, it was

RESOLVED, that the Board hereby adopts the 2003 State Bar General Fund operating budget as presented under Scenario 6, in the form attached to these minutes and made a part hereof, whereby:

1. As of January 1, 2003, the General Fund shall contribute one million dollars (\$1,000,000) to the Public Protection Reserve Fund to provide additional funding for a seismic upgrade of the State Bar owned structure located at 180 Howard Street; and
2. That funds in the amount of three hundred and fifty thousand dollars (\$350,000) be transferred from the Legal Education and Development Fund to the General Fund during the 2003 operating year; and
3. As of January 1, 2003, the 2002 year-end fund balances of the General Fund and the Lawyers Assistance Program Fund, and funds from the Legal Education and Development Fund in the amount of five hundred and fifty thousand dollars (\$550,000) be transferred to the Public Protection Reserve Fund, and that these Public Protection Reserve funds be used to fund the operating budgets of the General Fund for years 2004 through 2006; and it is

FURTHER RESOLVED, that the Board hereby adopts the 2003 State Bar Restricted Fund operating budgets of the 2003 Budget in the form attached to these minutes and made a part hereof.

Voting yes: Ms. Copeland, Mr. Herman, Mr. Lindstrom, Mr. Persons, Mr. Roeca, Ms. Scott, Mr. Snetsinger, Mr. Van de Kamp, Ms. Villa, Ms. Walker and Mr. Wylie

Voting no: Mr. Capozzi, Mr. Cavanaugh, Mr. Dixon, Ms. Green, Mr. McNutt, Ms. Ravel, Mr. Sherwood and Ms. Hoffmeier Zamora

Ms. Ravel left the meeting and the roll-call slip was amended to reflect her departure.

123

Mr. Jackson, Vice-Chair, Committee of Bar Examiners, addressed the Board regarding this item entitled: Scope of Subjects Tested in the California Bar Examination. Various concerns were raised by Board members, including retitling "Corporations" as "Business Associations" and the expansion of some of the components contained in the item

Mr. Cavanaugh made a motion to divide, which was seconded. However, the President announced that the motion to divide was improper in that the motion on the floor would have to be defeated before a substitute motion could be introduced. The Board then proceeded to vote on the recommendation as originally presented.

123

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Regulation, Admissions and Discipline Oversight Committee, that the Board of Governors hereby approves that the scope of the California Bar Examination be changed by retitling Corporations as

Business Associations and that the scope of the topics tested be expanded to add partnerships of all forms, limited liability entities, related agency principles, uniform acts and the California Corporations Code; that the scope of the topic Civil Procedure include the California Code of Civil Procedure; and, that the topic Evidence include the California Evidence Code.

Voting yes: Mr. Capozzi, Mr. Dixon, Ms. Green, Mr. Herman, Mr. Lindstrom, Mr. McNutt, Mr. Persons, Mr. Roeca, Ms. Scott, Mr. Sherwood, Mr. Snetsinger, Mr. Van de Kamp, Ms. Villa, Ms. Walker and Ms. Hoffmeier Zamora
Voting no: Mr. Cavanaugh and Ms. Copeland
Abstaining: Mr. Wylie

Mr. Quan, Director, Office of Finance, reported briefly on the activities of the Client Security Fund.

144 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Planning, Program Development, and Budget Committee and pursuant to Senate Bill 352 (Kuehl), that the Board hereby authorizes that the annual membership fees for active members in 2003 shall be \$390, and inactive members shall be \$50; and it is

FURTHER RESOLVED that the penalties on delinquent 2003 annual membership fees shall be 10 percent and an additional 15 percent of the member's respective fees; and it is

FURTHER RESOLVED that the penalties on delinquent 2002 and 2003 annual membership fees of members billed on or after January 16, 2002 and 2003, shall be 10 percent and an additional 15 percent of the member's respective unpaid fees; and it is

FURTHER RESOLVED that the interest on assessed costs for reimbursement to the Client Security Fund shall be 10 percent as set forth by the Board, pursuant to *Business and Professions Code* section 6140.5(c); and it is

FURTHER RESOLVED that said penalties or interest in the precedent paragraphs shall attach to delinquent fees not paid by 5:00 p.m. PST on March 15, 2003, and this time and date for the attachment of penalties shall not be extended without further action by this Board; and it is

FURTHER RESOLVED that all payments submitted after the Board of Governors have recommended members' suspension for non-payment of fees must be made in certified funds (cash, certified check, money order or cashiers check); and it is

FURTHER RESOLVED that a \$5 deduction from the 2003 membership fee be fixed for legislative activities pursuant to section 6140.05 of the *Business and Professions Code* and that the funding of all legislative activities of the State Bar be restricted to the payments received from those members electing not to take the deduction; and it is

FURTHER RESOLVED that a \$5 deduction from the 2003 membership fee be fixed and that the funding be restricted to activities in the program area of elimination of bias in the legal profession and in bar relations to the payments received from those members electing not to take the deduction.

Voting yes: Ms. Capozzi, Mr. Cavanaugh, Ms. Copeland, Mr. Dixon, Ms. Green, Mr. Herman, Mr. Lindstrom, Mr. McNutt, Mr. Persons, Mr. Roeca, Ms. Scott, Mr. Sherwood, Mr. Snetsinger, Mr. Van de Kamp, Ms. Villa, Ms. Walker, Mr. Wylie and Ms. Hoffmeier Zamora

151 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby authorizes each State Bar section to determine its membership dues in an amount not to exceed \$95 per member.

All members present and recorded on the roll-call slip voted yes on the above matter.

161 The report of Mr. Doyle, Chief Legislative Counsel, had been previously distributed.

162A Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Stakeholder Relations, that the Board is neutral on AB 363, as that bill was amended on August 22, 2002, which would establish a limited exception to an attorney's ethical duty of confidentiality by permitting, but not requiring, an attorney who learns of improper governmental activity in the course of representing a governmental organization to directly refer that matter to the law enforcement agency or official charged with oversight of the governmental organization.

All members present and recorded on the roll-call slip voted yes on the above matter.

162B Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Stakeholder Relations, that the Board hereby supports AB 1698, as that bill was amended on August 20, 2002, to delete the sunset clause from the Legal Document Assistants Act (LDAA) enacted in 1998 and make various consumer protective changes in the act recommended by the Judicial Council, the Department of Justice, and the Department of Consumer Affairs

All members present and recorded on the roll-call slip voted yes on the above matter.

162C Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Stakeholder Relations, the Board is neutral on AB 2648, as that bill was amended on August 6, 2002, and supports AB 1698, as that bill was amended August 20, 2002, to establish a review process for requests for funding for the San Diego County Law Library.

All members present and recorded on the roll-call slip voted yes on the above matter.

310 Ms. Hoffmeier Zamora, Chair, Board Task Force on Insurance, reported that she and Mr. Roeca had met yesterday and had a report from staff. The task force will be exploring a broad array of insurance issues, both professional liability and group insurance. She stated that they will be looking to the President-Elect for assistance in expanding the programs and increasing the membership in order to generate non-dues revenue. Also, they will be attending the upcoming insurance committee meetings, and have requested staff to bring back presentations from the two committees, including reports from the State Bar of Oregon on its insurance program on professional liability, and from the insurance brokerage agency regarding a variety of options to enhance non-dues revenue and to make the programs more effective for the members.

321 Mr. Capozzi, Co-Chair, Board Task Force on Elections, stated that the task force had met yesterday and had a memo from staff regarding the election rules. The memo contains proposed changes to the statute as it now exists. He requested that Board members review the proposed statutory amendments and provide any comments or recommendations to Dina Goldman in the Bar's Office of General Counsel.

He stated that one of the issues that should be examined is the potential of a recount of ballots in the recent Board election in Los Angeles (District 7). There are no provisions in the current rules to address this issue and he suggested that relevant language should be added to the rules in the event that a similar incident occurs in the future.

He suggested that candidates be notified not only of their and their opponents' vote counts, but also be advised of the number of ballots received that are not counted, i.e., those ballots that eligible members fail to sign, sign incorrectly, or do not clearly indicate their selected candidate.

With regard to special elections, he recommended that the President be authorized to appoint a Board member to serve the unexpired term if the current incumbent resigns in the middle of his or her tenure, thereby eliminating the cost of a special election.

The Board went into closed session at 12:52 p.m., and those other persons present in the meeting, except the Executive Director and members of the Senior Executive Team, left the meeting.

The Board resumed open session at 1:04 p.m.

The appointments were considered in confidential session and the action of the Board is reported below.

6011 Upon motion made, seconded and adopted, it was

RESOLVED, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints Joseph J. Brecher, Oakland, to the Board of Directors of California Indian Legal Services for a three-year term commencing September 1, 2002 and expiring August 31, 2005.

All members present and recorded on the roll-call slip voted yes on the above matter, except Ms. Hoffmeier Zamora, who abstained and requested the record so to show.

6012 Upon motion made, seconded and adopted, it was

RESOLVED, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints or reappoints, as the case may be, the following members to the Board of Directors of the California Rural Legal Assistance, each to serve for a two-year term commencing November 1, 2002, and expiring October 31, 2004:

Dino Barajas	Los Angeles
Gary Meastas	Pomona
Susan Scott	Sacramento
Stehanie Sontag	San Diego
Graciela Zavala	Imperial Beach

All members present and recorded on the roll-call slip voted yes on the above matter, except Ms. Hoffmeier Zamora, who abstained and requested the record so to show.

6013 Upon motion made, seconded and adopted, it was

RESOLVED, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints or reappoints, as the case may be, the following members to the Board of Directors, Foundation of the State Bar of California, each to serve for a term commencing January 1, 2003, and expiring December 31, 2003, or until further order of the Board, whichever occurs earlier:

Reappointments:

Eva S. Auchincloss	San Francisco
Judith A. Gilbert	Calabasas
Robert A. Goodin	San Francisco
Margaret Hampton	Calabasas
Valerie Miller	Chico
Harvey Saferstein	Los Angeles
Paul M. Shimoff	Redlands
Dorothy M. Tucker	Los Angeles

New Appointments:

Janet M. Green	Riverside
Geoffrey L. Robinson	Walnut Creek
Nancy Hoffmeier Zamora	Los Angeles

All members present and recorded on the roll-call slip voted yes on the above matter, except Ms. Green and Ms. Hoffmeier Zamora, who abstained and requested the record so to show.

6014 Upon motion made, seconded and adopted, it was

RESOLVED, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints the following members to the Review Committee, Commission on Judicial Nominees Evaluation, each to serve for a term effective at the close of the 2002 State Bar Annual Meeting, October 13, 2002, and expiring at as indicated, or until further order of the Board, whichever occurs earlier: Helen Zukin, Los Angeles, Chair, for a term expiring at the close of the 2003 Annual meeting, i.e., September 7, 2003, and Joel S. Miliband, Irvine, member, for a term expiring at the close of the 2005 Annual Meeting, i.e., September 11, 2005.

All members present and recorded on the roll-call slip voted yes on the above matter, except Ms. Hoffmeier Zamora, who abstained and requested the record so to show.

6015 Upon motion made, seconded and adopted, it was

RESOLVED, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints or reappoints, as the case may be, officers and members to the State Bar's standing committees and special commissions, boards and committees, as set forth on the forms attached to the minutes and made a part hereof, effective at the close of the 2002 State Bar Annual Meeting, i.e., October 13, 2002, or as indicated; each officer and member to serve a term expiring as indicated, or until further order of the board, whichever occurs earlier.

All members present and recorded on the roll-call slip voted yes on the above matter, except Ms. Hoffmeier Zamora, who abstained and requested the record so to show.

6016 Upon motion made, seconded and adopted, it was

RESOLVED, upon recommendation of the Board Committee on Volunteer Involvement and the Standing Committee on the Delivery of Legal Services, that the Board hereby approves the recommendations for the President's Pro Bono Services Awards recipients as set forth below:

Corporate:	H. Nelson Meeks, The Clorox Company, Oakland
Government:	Bruce Zucker, California State University, Northridge
Large Law Firm:	Arnold & Porter, Los Angeles
Medium Law Firm:	Gregory Ramirez, Ventura
Recently Admitted:	Thomas Kritzik, San Diego
Retired:	John P. Miller, Santa Ana
Small Law Firm:	Philip Hammer, San Jose
Solo Practitioner:	Thomas Andrews, Redding

Distinguished Pro Bono Service: Ventura County Bar Association Emeritus Attorney Team, Ventura

All members present and recorded on the roll-call slip voted yes on the above matter, except Ms. Hoffmeier Zamora, who abstained and requested the record so to show.

6017 Upon motion made, seconded and adopted, it was

RESOLVED, upon recommendation of the Board Committee on Volunteer Involvement and the Standing Committee on the Delivery of Legal Services, that the Board hereby approves the selection of Bernida M. Reagan, Berkeley, as the 2002 Loren Miller Legal Services Award recipient.

All members present and recorded on the roll-call slip voted yes on the above matter, except Hoffmeier Zamora, who abstained and requested the record so to show.

6018 Upon motion made, seconded and adopted, it was

RESOLVED, upon recommendation of the Board Committee on Volunteer Involvement and the Access and Fairness Committees, that the Board hereby approves the selection of the following for the 2002 State Bar of California Diversity Awards:

Individual Attorney: Eve L. Hill

Bar Associations:

Joint Award to: California Minority Counsel Program and
California Women Lawyers

All members present and recorded on the roll-call slip voted yes on the above matter, except Ms. Hoffmeier Zamora, who abstained and requested the record so to show.

6019 Upon motion made, seconded and adopted, it was

RESOLVED, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby selects Seth and Shirley Hufstedler as the joint recipients of the 2002 Bernard E. Witkin Medal Award.

All members present and recorded on the roll-call slip voted yes on the above matter, except Ms. Hoffmeier Zamora, who abstained and requested the record so to show.

6020 Upon motion made, seconded and adopted, it was

RESOLVED, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints Janet M. Green, Riverside, and Nancy Hoffmeier Zamora, Los Angeles, Appointed Directors, Center for Civic Education Board of Directors, each for a one-year term, effective at the close of the 2002 State Bar Annual Meeting, i.e., October 13, 2002, and expiring at the close of the 2003 State Bar Annual Meeting, i.e., September 7, 2003, or until further order of the Board, whichever occurs earlier.

All members present and recorded on the roll-call slip voted yes on the above matter, except Ms. Green and Ms. Hoffmeier Zamora, who abstained and requested the record so to show.

The Board went into executive session at 1:00 p.m., and those persons present, except the Executive Director, left the meeting.

The Board adjourned at 1:07 p.m., Saturday, August 24, 2002, to meet again at the call of the President at any time prior to the next regularly scheduled meeting of the Board or, if no such meeting be called, in the State Bar Office, 180 Howard Street, San Francisco, California, on Saturday, December 7, 2002.

ATTACHMENTS TO AUGUST 24, 2002 BOARD MEETING MINUTES

August 143
2003 State Bar General Fund -13-

August 147
Rules 800 through 806 of the Rules of Procedure of the State Ba -11-

August 54-121
Rules of Procedure of the State Bar of California, Rule 262 -4-

August 54-122
Delinquent list -4-

August 54-131
Article 1, Section 1, Rules and Regulations of the State Bar of -5-

August 54-142
Rules Governing the Financial Assistance Plan of the State Bar o -11-

August 6015
standing committees and special commissions, boards and committe -19-