

THE STATE BAR OF CALIFORNIA

MINUTES

BOARD OF GOVERNORS MEETING

SAN FRANCISCO

MAY 16 - 17, 2003

The Board of Governors of the State Bar of California convened in the Board Room of the State Bar Offices, 180 Howard Street, San Francisco, California, at 4:00 p.m., on Friday, May 16, 2003, James E. Herman presiding.

The following members of the Board of Governors were present: Anthony P. Capozzi, Matthew E. Cavanaugh, Judith M. Copeland, Janet M. Green, James O. Heiting, Steven J. Ipsen, Carl A. Lindstrom, Jr., David M. Marcus, Roderick A. McLeod, Joel S. Miliband, Robert K. Persons, Russell Roeca, Windie O. Scott, John G. Snetsinger, Margaret P. Stevens, Dorothy M. Tucker, Chantel L. Walker and Nancy Hoffmeier Zamora.

The following members of staff were present: Starr Babcock; Francis P. Bassios, Jerome Braun, Larry Doyle, Scott Drexel, Robert A. Hawley, Judy Johnson, Dean Kinley, Nancy McCarthy, Marie M. Moffat, Mike Nisperos, Victor Rowley, Mary Viviano and Larry Yee.

Also present: Senator Joseph Dunn, Garden Grove; Mike McKee, *The Recorder*; William C. Vickrey, Administrative Director, and Ronald G. Overholt, Chief Deputy Director, Administrative Office of the Courts; and Rex Heeseman, the bar's representative to the Judicial Council.

701 The President introduced Senator Joseph Dunn, William C. Vickrey, and Ronald G. Overholt, who each, in turn addressed the Board concerning the cuts to the judicial budget and the resultant impact on courts and the people throughout the state.

The Board recessed at 5:15 p.m., Friday, May 16, 2003, to reconvene at 10:00 a.m., Saturday, May 17, 2003, in the Board Room of the State Bar Offices, 180 Howard Street, San Francisco.

The Board of Governors of the State Bar of California reconvened in the Board Room of the State Bar Offices, 180 Howard Street, San Francisco, California, at 10:00 a.m. on Saturday, May 17, 2003, James E. Herman presiding.

The following members of the Board of Governors were present: Anthony P. Capozzi, Matthew E. Cavanaugh, Judith M. Copeland, Janet M. Green, James O. Heiting, Steven J. Ipsen, Carl A. Lindstrom, Jr., David M. Marcus, Roderick A. McLeod, Joel S. Miliband, Robert K. Persons, Russell Roeca, Windie O. Scott, John G. Snetsinger, Margaret P. Stevens, Dorothy M. Tucker, John K. Van de Kamp, Chantel L. Walker and Nancy Hoffmeier Zamora.

The following members of staff were present: Starr Babcock; Francis P. Bassios, Kathleen Beitiks, E.J. Bernacki, Larry Doyle, Kristina Horton Flaherty, Robert A. Hawley, Judy Johnson, Dean Kinley, Nancy McCarthy, Marie M. Moffat, Billie Sivanov, Cathy Torney and Larry Yee.

Also present: Don J. DeBenedictis, *Los Angeles Daily Journal*; Helen Karr; Abbe McCall, Chair, Commission on Judicial Nominees Evaluation; and Mike McKee, *The Recorder*.

10 The approval of the minutes of the Board of Governors meeting held on March 20-21, 2003, in Long Beach, California, has been deferred to the July Board meeting, pending requested revisions to these and previously approved minutes, and all will be circulated to Board members for review in the near future.

10 The approval of the minutes of the Special Meeting of the Board of Governors held on April 16, 2003, in San Francisco, California, has been deferred to the July Board meeting, pending requested revisions to these and previously approved minutes, and all will be circulated to Board members for review in the near future.

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.

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

30 The President reported on the following:

1. He introduced Kristina Horton Flaherty, Publications Specialist, and E.J. Bernacki, Public Information Officer, Office of Media and Information Services, and attorney member Helen Karr. He praised their outstanding contributions

in ensuring the success of the department's initiative: *Seniors and the Law: A Guide for Maturing Californians*, currently available in English and Spanish. He presented plaques to each, stating that Kristina had written and designed the publication, and mentioned her contributions to the bar's very successful and popular consumer pamphlets, *Kids in the Law*, and *When You Become 18*; that Helen had done all the necessary research, and is devoting her career to educating the public about elder abuse; and that E.J. had set up 14 statewide events to promote the publication among English- and Spanish-speaking seniors. To date, each forum has been attended by 50-100 people who are seeking assistance through the publication.

2. Mr. Herman said that he had polled members regarding interest in being assigned to the newly created ABA Working Group, and had appointed Mr. Van de Kamp and Mr. McLeod. He stated that the charge of this group is to work closely with the State Bar delegates to the ABA House of Delegates, the California ABA Host Committee and representatives of the Bar Association of San Francisco to ensure a successful Annual Meeting of the ABA in San Francisco in August.
3. He stated that there was nothing to report on the Supreme Court's Advisory Committee on Lawyer Regulation (Lui Report) at this time.
4. He briefly reported on the issue of Board members participating in meetings via teleconference.
5. He congratulated Mr. Heiting on his imminent induction into the Western State University Law School Hall of Fame.
6. He congratulated Ms. Scott on her important recent promotion as Deputy Controller for Policy on California State Controller Steve Westly's executive team.

41 The Executive Director reported on the following:

1. Ms. Johnson stated that several of the members have paid their dues, and gave a breakdown of the total amount received as of April 30, 2003, including voluntary fees and contributions.
2. She mentioned that the bar's new tenant, W. Hayward Burns Institute, will soon occupy suite 320 on the third floor of the bar's San Francisco office building, and that a six-year lease has been signed.

3. She stated that the already distributed minutes of the Board's meetings this year are in the process of being revised and will be distributed to the Board in the near future.
4. She explained that the reason why Mr. Cavanaugh and Mr. Heiting were unable to telephonically reconnect to the Board's special meeting held on April 16, 2003, was due to a technological fault.

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 March 31, 2003, 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 March 31, 2003, 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.

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 March 31, 2003, 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 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon the recommendation of the Board Operations Committee, that the Board hereby authorizes an extension of the current Memorandum of Understanding between the State Bar of California and the Foundation of the State Bar of California to and including July 31, 2003.

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

54-112 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Operations and pursuant to Article V, Section 1, *Rules and Regulations of the State Bar of California*, that 10:00 a.m., on Thursday, September 4, 2003, at the Anaheim Hilton & Towers Hotel, 777 Convention Way, Anaheim, California 92802, hereby are fixed as the time and place for the commencement of the 2003 Annual Meeting of the State Bar of California.

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, that the Board hereby approves the fee adjustments requested by the following State Bar members in the amounts noted:

Henry Amsden Burr III adjust \$507.50 upon condition of \$250 payment in 30 days.

Tatiana Doran adjust \$390.

Nieves M. Martinez de Osaba adjust \$229.

Kelly A. Prichett adjust \$105.25 upon condition of \$2,171 payment in 30 days.

David L. Ring adjust \$39.

D. Kate Rubin adjust \$1,166.75 upon condition of \$1,200 payment in 30 days.

Robert Herman Silver adjust \$195 and send refund.

Daphne C. Somkin adjust \$402.50.

Chad M. Steur adjust \$901.25 upon condition of \$1,000 payment in 30 days.

Crystal A. Stovall adjust \$1,365 upon condition of \$1,500 payment in 30 days.

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, upon recommendation of the Board Committee on Member Oversight, that the Board hereby receives the 16th Annual Report of the Board of Legal Specialization for the period January 1 through December 31, 2002; and it is

FURTHER RESOLVED that the Board hereby directs staff to send copies of the report to the California Supreme Court as required by section 21.0 of the *Rules Governing the State Bar of California Program for Certifying Legal Specialists* to aid the Court's continued review of the legal specialist program.

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

54-133 The 2001-2002 Annual Reports for the following Office of Legal Services, Access and Fairness Committees and Commissions were received by the Board:

California Commission on Access to Justice
California Young Lawyers Association
Committee on Ethnic Minority Relations
Committee on Sexual Orientation and Gender Identify Discrimination
Committee on Women in the Law
Standing Committee on Delivery of Legal Services
Standing Committee on Legal Professionals with Disabilities
Standing Committee on Senior Lawyers

54-151 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby extends the terms of the 2002-2003 Commission on Judicial Nominees Evaluation through February 2004, 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.

54-164 This item relating to the "Board Member's Role in Public and Member Outreach" document was removed from the Board's consent agenda and placed on the Board's regular agenda.

55 The following is a report of emergency action taken by the Board by fax poll April 25-30, 2003, between regularly scheduled Board meetings:

RESOLVED that the Board hereby accepts with thanks and orders filed the Annual Independent Auditors' Report for the year ended December 31, 2002, prepared by Deloitte & Touche, in the form this day before the Board.

110 Mr. Herman, Chair, Board Committee on Operations, reported on the work of the committee.

113 This item relating to the Conflict of Interest Code disclosure level for the State Bar's Group Insurance Committees was removed from the Board's agenda.

114 This item relating to the request for amicus curiae participation in *Olson v. Cohen* was removed from the Board's agenda.

116 Mr. Herman reported that the Task Force on Sections had a very positive meeting on Thursday, May 15, 2003.

117 The newly created ABA Working Group did not make a report to the Board at this meeting.

118 This discussion item regarding an oral report on the governance structure was not addressed at this meeting.

119 Mr. Herman stated that the Fee Bill, AB 1708, had received an unanimous bipartisan vote from the Assembly Judiciary Committee, and had received bipartisan support from the entire Assembly. He reported briefly on the proposal amendments to AB 1708. Following his report, the Board took action as recorded below.

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

RESOLVED, upon recommendation of the Board Committee on Operations, that the Board hereby directs the President and the Executive Director to continue working on the amendments to the bar's fee bill, AB 1708, and to *Business and Professions Code*, §6141.1 that would restore the original intent of the scaling provision by clarifying that it applies only to attorneys for whom the practice of law is the sole or predominant source of their individual business and/or employment income and seek amendments which would aid in the bar's Client Security Fund and discipline cost collection efforts.

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

120 Mr. Persons, Chair, Board Regulation, Admissions and Discipline Oversight Committee, mentioned that the Multijurisdictional Practice proposal received from

the Supreme Court has been referred to staff for study. He also reported briefly on the accomplishments, ongoing projects and goals of the committee.

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

RESOLVED, following publication for public comment, and upon recommendation of the Board Regulation, Admissions and Discipline Oversight Committee, that the Board hereby amends rule 60 [Service of Initial Pleading], *Rules of Procedure of the State Bar of California*, in the form attached to these minutes and made a part hereof, to be effective July 1, 2003.

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

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

RESOLVED, following publication for public comment, and upon recommendation of the Board Regulation, Admissions and Discipline Oversight Committee, that the Board hereby amends rule 465 [Evidence], *Rules of Procedure of the State Bar of California*, in the form attached to these minutes and made a part hereof, to be effective July 1, 2003.

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

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

RESOLVED, following publication for public comment, and upon recommendation of the Board Regulation, Admissions and Discipline Oversight Committee, that the Board hereby amends rule 621 [How Commenced; Notice of Disciplinary Charges; Response], *Rules of Procedure of the State Bar of California*, in the form attached to these minutes and made a part hereof, to be effective July 1, 2003.

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

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

RESOLVED, following publication for public comment, and upon recommendation of the Board Regulation, Admissions and Discipline Oversight Committee, that the Board hereby amends the *Rules of Procedure for Fee Arbitration and the Enforcement of Awards by the State Bar of*

California, in the form attached to these minutes and made a part hereof, to be effective July 1, 2003.

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

705 The President introduced Abbe McCall, Chair, Commission on Judicial Nominees Evaluation, who addressed the Board regarding the history and background of the commission. She also reported on how the commission conducts its investigations, interviews and deliberations of candidates, stating that the meetings are conducted according to *Robert's Rules of Order*, and the democratic process.

130 Mr. Lindstrom distributed a document, which he spoke to, regarding the accomplishments of the committee, and matters on the committee's inventory for the remainder of the year.

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

RESOLVED, following publication for public comment, on consideration of comment received, and upon recommendation of the Board Committee on Member Oversight, that the Board hereby amends rules 6.3 and 11.0 through 12.2, *MCLE Rules and Regulations*, effective May 19, 2003, 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.

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

RESOLVED, upon recommendation of the Board Committee on Member Oversight, that the Board hereby adopts article 1, section 7.2 of the *Rules and Regulations of the State Bar of California*, in the form attached to these minutes and made a part hereof, on an emergency interim basis without prior public comment, pursuant to section 11 of the Procedure for Adoption, Amendment, or Repeal of State Bar Regulations; and it is

FURTHER RESOLVED that should the Board adopt the proposed rule on an emergency basis, the Board Committee on Member Oversight hereby directs staff, in accordance with section 11 of the *Procedure for Adoption, Amendment, or Repeal of State Bar Regulations*, to publish the interim rule for a 90-day public comment period; and it is

FURTHER RESOLVED, that following the close of the public comment period, the Board Committee on Member Oversight shall consider any comments

received and determine whether to recommend that the Board of Governors permanently adopt the interim rule; and it is

FURTHER RESOLVED that the authorization for public comment circulation shall not be construed as a statement of permanent adoption of the rule.

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

54-164 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Stakeholder Relations, that the Board hereby approves the “Board Member’s Role in Public and Member Outreach,” in the form attached to these minutes and made a part hereof; said document is intended to guide Board members in fulfilling their public and member outreach duties; and it is

FURTHER RESOLVED that the Board hereby directs that this document be included as part of the orientation process for new members of the Board.

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

140 Mr. Capozzi, Chair, Board Planning, Program Development, and Budget Committee, reported on the accomplishments, ongoing projects and goals of the committee. He mentioned also that budget planning for the upcoming year is in process.

Mr. Roeca, Chair, Dues Revenue - Planning Subcommittee, reported on the work of the subcommittee.

150 Ms. Copeland, Chair, Board Committee on Volunteer Involvement, reported on the accomplishments, ongoing projects and goals of the committee.

Ms. Scott reported on Bar Leaders Conference, which will take place at the bar’s Annual Meeting in September.

160 Ms. Hoffmeier Zamora, Chair, Board Committee on Stakeholder Relations, reported on the following:

Release of Seniors and the Law: several of the fourteen outreach events, which began in Los Angeles on Law Day, have taken place, and the remaining events will be held next week in Chico, the Sacramento area, Riverside, then Palm Springs, Santa Barbara and San Diego. She mentioned that the Coachella event was

conducted totally in Spanish. 600,000 copies of the publication were printed in English and 300,000 in Spanish; one of each was included with the *California Bar Journal* mailing and has generated many orders from lawyers. Orders for 5,000 - 10,000 are being filled daily, and requests have been received to schedule extra events. The Foundation of the State Bar provided a \$50,000 grant toward the \$150,000 project.

The bar's Office of Governmental Affairs hand-delivered *Seniors and the Law* to all 120 members of the Legislature, including customized invitations to all members in whose districts roll-out events were, and are, scheduled, and copies in Spanish to all members of the Latino caucus. The Office of Governmental Affairs also delivered over 52,000 copies of the State Bar's other consumer education brochures through an extremely successful special arrangement with the Rules Committees of the Senate and Assembly.

Judicial Budget Support: Issued report to local bars and legal services programs about the status of the judiciary in the proposed 2003-04 budget and work with the AOC to provide detailed fact sheets and other information the Board would need. She has participated in several meetings around the state to explain the current status and provide information needed by local bars and other groups about the cuts in the judicial budget.

Legislation: The Board Committee has reviewed numerous pieces around the state to explain the current status and provide information needed by local bars and other groups about the cuts in the judicial budget. The committee has also reviewed numerous pieces of legislation, and has recommended positions on several which were subsequently adopted by the Board of Governors. The committee has overseen the extremely effective "Resource to the Legislature" program operated by the Office of Governmental Affairs. Also, under the Board Committee's direction, the Office of Governmental Affairs has published the weekly *Sacramento Scene* newsletter, which has recently been picked up for distribution by the Judicial Council to its own list of email recipients.

Proposed Board Member's Role in Public and Member Outreach: The Board Committee has worked with the Public/Member Relations - Stakeholder Relations' Subcommittee, chaired by John Van De Kamp, to adopt a suggested list of activities for board members, that is before the Board today for final adoption. This list will help focus the attention of Board members on their outreach role, and will hopefully improve the involvement of all board members in their local districts. This will help increase the understanding of our members and of the public at large of the role of the Bar and the many services we provide.

Future Goals: Judicial Budget Support - The Board Committee will continue to work with the Judicial Council and the Bench-Bar Coalition and do outreach

activities throughout the budget process to ensure adequate funding for our courts. The committee will continue to oversee the bills on our legislative agenda, and respond to amendments as they arise. The committee will work with the Access to Justice Commission as they conduct outreach presentations on their new report, *Path to Equal Justice*. The Committee will: continue to distribute and participate in outreach efforts on *Seniors and the Law*; consider presentations at local bar associations to do a presentation on the publications and other services of the State Bar, as a follow up to release of *Seniors and the Law*; look at updating and reissuing *Kids and the Law* for Law Day 2004 and also updating *When you Become 18*; and consider expanding release of consumer education pamphlets, particularly in additional languages.

161 Mr. Doyle, Chief Legislative Counsel, distributed a written report of the activities of the Office of Governmental Affairs for the past two months, including a supplemental status report on pending legislation.

162 There were no immediate action items presented to the Board at this meeting.

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

RESOLVED, upon recommendation of the Board Committee on Stakeholders Relations, that the Board hereby supports AB 1095 (Corbett) [County Law Libraries].

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

163 AB 1165 (Dymally) [Appellate Opinions] was withdrawn from the Board's agenda.

702-703 These items concerning discussions of the State Auditor's Report and the Independent Auditors' Report respectively were withdrawn from the Board's agenda.

704 It was the intent of the Board that this item relating to the discussion on financial reporting be presented to the Board in July by the two oversight committees: Board Regulation, Admissions and Discipline Oversight Committee and the Board Committee on Member Oversight.

The Board went into closed session at 12:15 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 12:20 p.m.

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

6011 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board's Volunteer Involvement Committee, that the Board hereby reappoints Marc Seltzer, Los Angeles, attorney member, to the Board of Directors of the Legal Aid Foundation of Los Angeles to fulfill his responsibility as an officer, for an additional one-year term commencing July 1, 2003, and expiring June 30, 2004.

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

6012 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints Philip L. Goar, Whittier, and James E. Anderson, Jr., San Juan Capistrano, to the Board of Directors of the Legal Aid Society of Orange County, each to serve for a three-year term commencing July 1, 2003, and expiring June 30, 2006, 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.

6013 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby reappoints Steven M. Gevercer, Sacramento, to serve as an officer on the Board of Directors of the Legal Services of Northern California for a one-year term commencing April 20, 2003, and expiring April 19, 2004.

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

6014 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon the recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints the following to the State Bar Fee Arbitration Department, each to serve for a two-year term commencing May 19, 2003, or until further order of the Board, whichever occurs earlier:

Elizabeth Baron, Esq.	Monterey County
Frank Bless	Sacramento County
Cherie Brenner, Esq.	San Diego County
Robert Jones, Esq.	Contra Costa County
Jean R. Walker	Sacramento County

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

6015 Upon motion made, seconded and unanimously 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 section executive committees as set forth on the lists attached to these minutes and made a part hereof, all recommendations effective at the close of the 2003 State Bar Annual Meeting, i.e., September 7, 2003, or as indicated; each officer and member to serve for 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.

The Board adjourned at 12:22 p.m., Saturday, May 17, 2003, in memory of Board member John Van de Kamp's mother, Georgie E. Van de Kamp, who recently passed away. The Board may 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, 1149 South Hill Street, Los Angeles, California, on Saturday, July 26, 2003.