

**BOARD OF GOVERNORS PLANNING MEETING  
SAN FRANCISCO  
OCTOBER 14, 2000**

The Board of Governors of the State Bar of California convened in the Malcolm Lucas Board Room, Judicial Council Conference Center, 455 Golden Gate Avenue, San Francisco, California, at 9:00 a.m., Saturday, October 14, 2000, Palmer Brown Madden presiding.

The following members of the Board of Governors were present: Patrick R. Dixon, James R. Greiner, James E. Herman, Scott H. McNutt, Peter D. Nitschke, Karen S. Nobumoto, James D. Otto, Robert K. Persons, David L. Roth, Maria D. Villa, Scott Wylie, Erica R. Yew and Nancy J. Hoffmeier-Zamora.

The following members of the staff also were present: Starr Babcock, Francis Bassios, Kathleen Beitiks; Jerry Braun, Bryan Brown, Randall Difuntorum, Larry Doyle, Scott Drexel, Eddie Hall, Cathy Hastings, Robert Hawley, Judy Johnson, Dean Kinley, David Long, Marie M. Moffat, Mark Shannon and Mary Viviano.

The President summarized the agenda for the day and, with the Board's approval, removed two items from the consent agenda and placed them on the regular agenda: item number 1, Chief Trial Counsel - recruitment process and item number 2, Executive Director - interim evaluation.

Marie M. Moffat, General Counsel, addressed the Board concerning legislative matters, and emphasized the need for the super majority vote on the resolution to place items on the Board's Legislative Program. The items currently on the Board's consent agenda are on the sections legislative program and not the Board's Legislative Program and therefore do not need a super majority vote on the resolution.

The roll-call vote was taken, present and voting were the following Board members: Patrick R. Dixon, James R. Greiner, James E. Herman, Scott H. McNutt, Peter D. Nitschke, Karen S. Nobumoto, James D. Otto, Robert K. Persons, David L. Roth, Maria D. Villa, Scott Wylie, Erica R. Yew and Nancy J. Hoffmeier-Zamora.

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.

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

**RESOLVED** that, in conformity with A.B. 2069 (Corbett) [Attorneys: Defense of Insured], Business and Professions Code Section 6068.11, the Board hereby refers to its Standing Committee on Professional Responsibility and Conduct ("COPRAC") the issue identified in A.B. 2069 for study; and it is

**FURTHER RESOLVED** that COPRAC shall identify a subcommittee of itself to conduct the study in consultation with no more than two representatives from each of the following groups: the insurance defense bar; plaintiffs bar; the insurance industry and the Judicial Council; and it is

**FURTHER RESOLVED** that, with the input of these "stakeholders," COPRAC shall develop a report with recommendations regarding potential revisions to the Rules of Professional Conduct

and other relevant authorities to address the conflict of interest issues arising from the decision of the California Court of Appeal in *State Farm Mutual Auto Insurance Company v. Federal Insurance Company* (1999) 72 Cal.App. 4th 1422; and it is

**FURTHER RESOLVED** that COPRAC shall develop its report and recommendations in time to be submitted to the Board, the Legislature and the California Supreme Court by the statutory deadline of July 1, 2001.

All members present and recorded on the roll-call slip voted yes on the above matter. 4 Upon motion made and seconded, the following was unanimously adopted:

**WHEREAS**, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

**WHEREAS**, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract, and

**WHEREAS**, the following is a statement of the proposed change:

To provide Section 21354 (2% @ 55 Full and Modified formula); Section 20965 (Credit for Unused Sick Leave); Section 20042 (One-Year Final Compensation); Section 20515 (Full Formula Plus Social Security); Section 21335 (4% Annual Cost-of-Living Allowance Increase, Base Year 1999); Section 21022 (Public Service Credit for Period of Layoff); and Section 21024 (Military Service Credit as Public Service) for local miscellaneous members.

**NOW, THEREFORE**, BE IT RESOLVED that the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, in the form this day before the Board.

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

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

**RESOLVED**, upon recommendation of the Board Committee on Legislative and Court Relations, that the Board hereby takes the following actions with respect to 2000 Affirmative Legislative Proposals of Sections and Committees:

A. Business Law Section Proposals

(1) Amendment to Section 902 of the California Corporations Code to permit change of corporate name by action of board of directors without shareholder approval.

Approves for section legislative program.

(2) Amendment to Business and Professions Code Section 16601 to permit owners of all

business entities to enter into enforceable non-competition agreements with person buying goodwill or ownership interest of entity.

Approves for section legislative program.

(3) Amends Section 25102(f) of the California Corporations Code to conform California law concerning meeting criteria for "excluded purchasers" to the concept used in SEC rules that permit criteria for exemptions from requirements pertaining to registration and prospectus delivery to be met based on issuer's reasonable belief criteria are met.

Approves for section legislative program.

(4) Proposed amendments to chapter 11.5 of the California Corporations Code to permit California corporations to convert to another business entity and another California business entity or foreign corporation or other business entity to convert to a California corporation.

Approves for section legislative program.

#### B. Estate Planning, Trust and Probate Law Section Proposals

(1) Addition of Section 5600 et seq. to the California Probate Code to apply presumption of revocation by divorce or annulment of disposition to former spouse in a will to nonprobate transfers (Project 99-07).

Approves for section legislative program.

(2) Proposed Revisions to Probate Code Sections 11444(b) and 19324(b) to eliminate ambiguity and confusion concerning judicial allocation of debts between decedent's estate or trust and the surviving spouse and to conform allocation at death to allocation in a divorce proceeding (Project 99-13).

Approves for section legislative program.

(3) Addition of Part 18 of Division 2 to Probate Code Section 850 to provide for a single procedure for the trial of all property questions within the probate court's jurisdiction notwithstanding the type of estate or whether an estate is involved (Project 00-01).

Approves for section legislative program.

(4) Amendment to section 340.6 of the Code of Civil Procedure relating to malpractice claims against attorneys to limit tolling of statute of limitations until damage has occurred to four years from time attorney provides client with proposed statutory notice (Project 00-05).

Deferred pending consideration by the California Law Revision Commission.

**RESOLVED** that the Board of Governors concurs with the recommendation of the Board Committee on Legislative and Court Relations to defer further consideration of the proposal made by the Estate Planning, Trust and Probate Law Section, to amend section 340.6 of the Code of Civil Procedure relating to malpractice claims against attorneys, pending consideration by the California Law Revision Commission; and it is

**FURTHER RESOLVED** that the Board believes that issues relating to the potentially very long statute of limitations now applicable to estate planning matters are worthy of further study and recommends that the California Law Revision Commission study these issues in connection with the Commission's study of the statute of limitations for legal malpractice actions.

The Board passed several resolutions at this meeting, creating presidential select committees to perform certain discrete tasks. Additionally, the Board voted to prioritize the public policy issues it wishes to address this board year. The President asked Judy Johnson, Executive Director, to quickly provide a summary of the Board's actions so that Board members could identify those committee on which they would like to participate. Third-year Board members are also asked to identify the public policy issues on which they would like to take a leadership role in developing these issues for Board consideration. It is the President's intention to take Board members' preferences into account as he makes his appointments and assignments.

The Chief Trial Counsel position has been vacant since Judy Johnson was selected as Executive Director. Since May 1, 2000, the position has been filled on an interim basis by Deputy Chief Trial Counsel, Fran Bassios. The Board agreed on the following procedure to recruit a new Chief Trial Counsel to fill this statutory position.

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

**RESOLVED** that the Board hereby authorizes the President, in consultation with the Executive Director, to appoint a search committee consisting of five Board members, the President and the Executive Director, to advise and assist the Executive Director in selecting a new Chief Trial Counsel; and it is

**FURTHER RESOLVED** that all Board members will be required to sign a confidentiality agreement regarding applicant data.

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

The President proposed that the Board authorize an interim six-month evaluation of the Executive Director, appoint an Evaluation Committee, adopt a timetable, and adopt evaluation criteria for such review.

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

**RESOLVED** that the Board hereby appoints a Presidential Select Committee composed of the third-year members of the Board, the President and the immediate Past President to conduct a six-month evaluation of Executive Director, Judy Johnson; and it is

**FURTHER RESOLVED** that this resolution regarding the composition of the Executive Director Evaluation Committee suspends and automatically supersedes existing Board policy concerning the composition of the Executive Director Evaluation Committee, as articulated in Division 4, chapter 6, article 5 of the Administrative Manual (rev. 1997), which authorizes an annual Executive Director evaluation by a committee consisting of "the three Board Members, one from each Board Member class, and the President serving as an ex officio member," and it is

**FURTHER RESOLVED** that the committee appointed to conduct the interim six-month evaluation of the Executive Director shall determine what, if any, interim review may be conducted and begin preparation for the annual review to be completed by July 2001.

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

Following a day-long discussion of public policy issues challenging the State Bar, the legal profession and the citizens of California, the Board voted the following ranking of identified public policy issues in order of priority for Board Year 2000 - 2001 by the following recorded votes in order of priority:

1. Governance/Strategic Planning	12 votes
2. Access to Justice	12 votes
3. Diversity in the Legal Profession	9 votes
4. Member Benefits	7 votes
5. Multi-Jurisdictional Practice	6 votes
6. Setting of New Goal for the Discipline System	3 votes
7. Multi-Disciplinary Practice	1 vote
8. MCLE	0 votes

All members of the Board are encouraged to advise the President of their preferred committee assignments, and third-year Board members are asked notify him regarding their requested leadership assignments no later than Friday, October 20, 2000.

The Board adjourned at 3:40 p.m., Saturday, October 14, 2000, 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, on November 3 - 4, 2000, to be held in the Malcolm Lucas Board Room, 455 Golden Gate Avenue, San Francisco, CA 94102.