

# BOARD BOOK

State Bar of California  
Board of Trustees Policy Manual  
Adopted September 2004  
*Revised July 30, 2018*

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## ***PREFACE***

The State Bar of California's Board of Trustees Policy Manual (commonly known and referred to as the "Board Book") was adopted in September 2004 as a compilation of statutes, Rules of the State Bar, and other policies and procedures adopted by Board resolutions that govern the operations of the Board and its oversight of the State Bar. The Board Book is intended to be a source book for the Board and State Bar staff to readily find these various provisions. Although frequently cited, the Board Book does not supersede or replace the original sources and authorities.

In 2015, the Board requested a full review and reorganization of the Board Book in preparation for making it available to the public to increase transparency and knowledge regarding the State Bar. A new 5-section organizational structure was adopted as follows:

### **Section 1: The State Bar of California.**

This section includes basic information regarding Bar's mission, goals, strategic plan, and authorities related to staffing, human resources, performance evaluations performed by the Board, and lines of authority.

### **Section 2: The Board of Trustees.**

This section includes all relevant authorities relating to the Board of Trustees, including structure, terms, election and appointment information, officer election procedures, responsibilities, meeting procedures, and Board Committee structure and charters.

### **Section 3: Legal and Legislative Policies and Procedures.**

This section includes all relevant authorities regarding legal restrictions and policies, including conflicts, claims procedures, amicus curiae participation procedures, public comment, public communications, and procedures regarding legislative positions of the Board and Sections.

### **Section 4: Finance.**

This section includes all authorities related to financial management and fiscal policies, including budgets, travel and expense policies, contracts, and investment policy.

### **Section 5: State Bar Committees, Commissions and Sections.**

This section includes general information about committees, commissions and sections, including charges for committees and commissions, appointments policies and procedures.

## **INTRODUCTION AND ACKNOWLEDGEMENTS**

In 2004, under the leadership of the President of The State Bar of California ("State Bar"), Anthony P. Capozzi, members of the State Bar Board of Governors and State Bar Senior Executive Staff participated in a comprehensive review of the State Bar's Board of Governors Policy Manual. The results of that review include the adoption of this Board Book by the Board on September 11, 2004.

The President wishes to acknowledge the participation of the following members of the Board of Governors, Senior Executive Staff and the Board Book Working Group who participated in this process.

### **Current State Bar Board of Governors 2003-2004**

#### **Anthony P. Capozzi, President**

Raymond G. Aragon	David M. Marcus
Matthew E. Cavanaugh	Roderick A. McLeod
Richard L. Crabtree	Joel S. Miliband
Anthony P. Diaz	Russell Roeca
Janet M. Green	Winnie O. Scott
Thomas T. Haider	Demetrius D. Shelton
James O. Heiting	Sheldon H. Sloan
Paul S. Hokokian	John G. Snetsinger
Steven J. Ipsen	Dorothy M. Tucker
Vivian L. Kral	John K. Van De Kamp
Melvin D. Lee	Chantel Walker

### **State Bar Senior Executive Staff**

Judy Johnson	Peggy Hetzler
Starr Babcock	Marie M. Moffat
Jerome Braun	Mike Nisperos, Jr.
Scott Drexel	Sam Quan
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### **Board Book Working Group**

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**SECTION 1**  
**THE STATE BAR OF CALIFORNIA**

*Adopted May 13, 2016*

- TAB 1.1      The State Bar of California – A Judicial Branch Agency**
- TAB 1.2      Strategic Planning**
- TAB 1.3      Staffing**

**TAB 1.1**

*THE STATE BAR OF CALIFORNIA – A JUDICIAL BRANCH AGENCY*

**Article 1 THE STATE BAR OF CALIFORNIA**

*Section 1 Statutes*

*Section 2 Mission*

*Section 3 Offices of the State Bar of California*

**Article 1**  
**THE STATE BAR OF CALIFORNIA**

**Section 1 Statutes**

The State Bar of California was created as a public corporation by the State Bar Act of 1927. In 1966, the electorate adopted a constitutional provision placing the State Bar in the judicial article of the California Constitution. It was created as the “administrative assistant” to or “adjunct” of the Supreme Court for the purpose of assisting the Court in matters pertaining to the admission and discipline of attorneys. It is sui generis, not an administrative board in the ordinary sense.

**(Source: Bus. & Prof. Code, § 6001; Cal. Const. art. VI, § 9; In re Attorney Discipline System (1998) 19 Cal.4th 582, 598-600.; Board of Trustees Resolution, November 2017.)**

All property of the State Bar is held for essential public and governmental purposes in the judicial branch of the government and such property is exempt from all taxes of the State or any city, city and county, district, public corporation or other political subdivision, public body or public agency.

**(Source: Bus. & Prof. Code, § 6008.; Board of Trustees Resolution, November 2017.)**

Although the State Bar was originally a purely legislative creation, its unique nature has been recognized by the Legislature throughout the existence of the State Bar. The State Bar’s special character further was emphasized when it became a constitutional body, placed within the judicial article of the California Constitution and thus expressly acknowledged to be an integral part of the judicial function.

**(Source: In re Attorney Discipline System (1998) 19 Cal.4th 582, 599.)**

State laws restricting or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof, are not applicable to the State Bar, unless the Legislature expressly so declares.

**(Source: Bus. & Prof. Code, § 6001.)**

The members of the State Bar are all persons admitted and licensed to practice law in this State, except justices and judges of courts of record during their continuance in office.

**(Source: Bus. & Prof. Code, § 6002.)**

Public protection is the highest priority for the State Bar in exercising its licensing, regulatory, and disciplinary functions. Whenever public protection is inconsistent with other interests sought to be promoted, public protection is paramount.

**(Source: Bus. & Prof. Code, § 6001.1.)**

## **Section 2 Mission**

The State Bar of California's mission is to protect the public and includes the primary functions of licensing, regulation and discipline of attorneys; the advancement of the ethical and competent practice of law; and the promotion of efforts for greater access to, and inclusion in, the legal system.

**(Source: Board of Governors Resolution, August 1991; May 20, 1997, Planning Meeting; Board of Governors Resolution, July 11, 2008; Board of Trustees Resolution, adopting recommendations of the 2017 Governance in the Public Interest Task Force, July 2017, November 2017.)**

## **Section 3 Offices of The State Bar of California**

Unless otherwise ordered by the Board, the main office of the State Bar must be maintained in San Francisco and a branch office in Los Angeles.

A petition, notice, or other document required by these rules to be filed with the State Bar or served on the Board must be filed at the main office.

**(Source: State Bar Rule 6.91 adopted effective May 2008; Board of Trustees Resolution, November 2017.)**

**TAB 1.2**

**Strategic Planning**

*Section 1 The State Bar of California Five-Year Strategic Plan 2012-2017*

**Section 1 The State Bar of California Five-Year Strategic Plan 2012-2017**

SEE: TAB 1.3 Staffing, Article 4 Lines of Authority

Business and Professions Code section 6001.1, added by Statutes 2011, chapter 417 (Sen. Bill No. 163), provides that protection of the public shall be the highest priority for the State Bar and requires that the Board of Trustees of the State Bar complete and implement a Five-Year Strategic Plan. In compliance with SB 163 and relevant statutory authorities, the Board adopted a Five-Year Strategic Plan in 2012 that set forth goals and measures for the State Bar consistent with its mandated priority of public protection for the current five year period (2012-2017).

At its January 2015 Planning Meeting, the Board of Trustees reviewed preliminary goals and objectives for its next 2017-2022 Five-Year Plan. These were adopted in July, 2015 with the understanding that further review and the addition of metrics would be required before they become operational. At the January Planning Meeting, the Board decided to delay implementation of the new 2017-2022 Five-Year Plan in order to take advantage of the final year of the current 2012-2017 Plan and the arrival of a new executive leadership team charged with a comprehensive review of the State Bar's operational systems and the need to implement the June 2015 State Audit recommendations. Accordingly, the Board considered a new set of goals and objectives for the remainder of the 2012-2017 Plan period. On May 13, 2016, the Board affirmed the new goals and objectives established at the January 31 – February 2, 2016 Planning Meeting.

The State Bar submits its proposed final budget by February 15 annually, so that the budget can be reviewed and approved in conjunction with any bill that would authorize the imposition of membership dues. In conjunction with submission of the proposed final budget, the Bar President will report to the Supreme Court, the Governor, and the Senate and Assembly Judiciary Committees on the measures the Board has taken to implement the strategic plan and would indicate the measures the Board will need to take in the remaining years of the strategic plan to address projected needs contained in the strategic plan.

All activities of the State Bar, including its strategic planning responsibilities, are subject to Business and Professions Code section 6001.1, added by Statutes 2011, chapter 417 (Sen. Bill No. 163), which provide that protection of the public shall be the highest priority for the State Bar. SB 163 also required that the Board of Trustees of the State Bar complete and implement a Five-Year Strategic Plan. (Bus. & Prof. Code, § 6140.12, added SB 163, § 42.) In compliance with SB 163 and relevant statutory authorities, the Board adopted a Five-Year Strategic Plan in 2012 that set forth goals and measures for the State Bar consistent with its mandated priority of public protection for the current five year period (2012-2017).

### **2012-2017 Five-Year Strategic Plan: Original Goals**

On February 10, 2012 the Board adopted a Five-Year Strategic Plan that identified three large-scale initiatives which the State Bar would undertake to re-engineer the organization for sustainable, lasting improvement consistent with its public protection mission. These initiatives included: (1) Modernizing State Bar Information Technology; (2) Preserving and Improving State Bar Facilities; and (3) Streamlining the Bar's Programs and Processes.

### **2012-2017 Five-Year Strategic Plan: Additional 2014 Goals**

In 2014, the Board of Trustees reviewed its 2012 Strategic Plan and added three new policy initiatives: (1) Developing External Relations in Support of more Proactive Approaches to Public Protection; (2) Actively Monitoring Trends in the Legal Marketplace to Identify Regulatory Changes Needed to Adequately Protect the Public; and (3) Operations Re-engineering to Improve Organizational Performance Management.

### **2012-2017 Five-Year Strategic Plan: 2016 Final Year Update**

At its January 2015 Planning Meeting, the Board of Trustees reviewed preliminary goals and objectives for its next 2017-2022 Five-Year Plan. These were adopted in July, 2015 with the understanding that further review and the addition of metrics would be required before they become operational. The January 2016 review delayed implementation of the new 2017-2022 Five-Year Plan in order to take advantage of the final year of the current 2012-2017 Plan and the arrival of a new executive leadership team charged with a comprehensive review of the State Bar's operational systems and the need to implement the June 2015 State Audit recommendations. With these tasks completed, it will be possible for the Board to move forward with implementing the 2017-2022 Five-Year Plan.

As a result, at its January, 31 – February 2, 2016 Planning Meeting the Board established an updated set of goals and objectives for the final year of its current 2012-2017 Five-Year Plan. Although these one year goals for 2016 anticipate the proposed goals for the next five year plan, they also reflect input from the Bar's staff leadership that a large number of significant non-discretionary initiatives currently underway must first be completed before beginning a new five year plan.

**(Source: Board of Governors' Resolutions August 2002, July 2008; Board of Trustees Resolutions February 2012, July 2015, May 2016.)**

### **Historical Note**

In December 2001, the State Bar of California's Interim Strategic Plan was adopted by the then Board of Governors on January 25, 2002. In May 2002, the Board Planning, Program Development, and Budget Committee ("PPDB") authorized staff to circulate the Interim Strategic Plan for a further public comment period, pursuant to the provisions of section 3 of the Procedures for Adoption Amendment, or Repeal of State Bar Regulations. On August 24, 2002, the Board adopted the *State Bar of California's Long-Range Strategic Plan and related Planning Policies* to institutionalize and guide future planning activities of the State Bar of California.

In 2007, pursuant to one of the State Auditor's recommendations, State Bar finance staff developed and implemented a new State Bar budget development process that linked departmental budgets to departmental plans. The 2008 budget aligned the Bar's departmental and functional structures and presented basic workload and performance information in the Bar's major program areas. With the 2009 budget, staff continued to develop and report performance measures and activity measures for the Bar's major programs. The proposed Long Range Strategy set out the principal goals by functional areas, and linked them to the Bar's internal organizational and programmatic structure, and to the budget process.

In 2008, the *Long Range Strategy* document was created by revisiting existing strategic planning documents in order to simplify and clarify the structure, as well as reflect the noteworthy and important values articulated in the existing plan. The intended goals for revising the Strategic Plan were to:

- Provide for both a Long Range Strategy and a year-to-year Special Focus Areas (i.e., Board Annual Planning Session);
- Articulate both a vision and operational strategies that can be implemented;
- Separate big-picture Board-level strategy (Vision/Policy) from administrative detail;
- Continue to integrate the planning and budget processes.

Business and Professions Code section 6140.12 (added Stats. 2011, ch. 417, § 47) requires that the State Bar of California's Board of Trustees complete and implement a five-year strategic plan to be updated every two years and that each year by February 15, the State Bar president's report to the Supreme Court, the Governor, and the Senate and Assembly Committees on Judiciary on the measures the board has taken to implement the strategic plan and those measures the board will need to take in the remaining years of the strategic plan. Business and Professions Code section 6001.2 (added Stats. 2011, ch. 417, § 2.5) also requires that the State Bar, commencing in 2014 and every three years thereafter, submit by May 15 a report on its measures and recommendations for enhancing the protection of the public and ensuring that protection of the public is its highest priority. To comply with both these provisions, the State Bar's Board of Trustees annually holds a planning session to review the State Bar's progress in implementing its strategic plan and to consider and propose other measures to enhance its mission of public protection, including proposals to ensure access to justice and diversity in the justice system consistent with that mission. As a result, the full Board, instead of only 7 its members as provided in Business and Professions Code section 6001.2, participates in the development of the measures and recommendations under both statutes.

## **TAB 1.3**

### **STAFFING**

#### **Article 1 EXECUTIVE DIRECTOR**

- Section 1 Selection*
- Section 2 Duties*
- Section 3 Administration of Personnel*
- Section 4 Executive Director's Financial Limitations Policy*
- Section 5 Relationship with the Board of Trustees*
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#### **Article 3 CHIEF TRIAL COUNSEL**

- Section 1 Relationship with the Executive Director*
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#### **Article 5 HUMAN RESOURCES**

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## **Article 1 EXECUTIVE DIRECTOR**

### ***Section 1 Selection***

The Board as a whole has the authority to hire, supervise, and fire the Executive Director, and may do so through its designated leadership of Board President or other designate.

**(Source: Board of Governors' Resolutions, May 20, 1997, May 2004.)**

### ***Section 2 Duties***

The Executive Director works with the Board Executive Committee to develop and update a description of the executive director's job duties which is adopted by the Board. This description of duties is updated regularly and includes the following:

Support for the Board, including playing an active role in supporting the Board's standing committees and assisting the Board in developing its leadership capability.

External Relations, including speaking on behalf of the State Bar in public forums and maintaining key external relationships.

Strategic Planning and Program Development, including making sure that the State Bar advances its strategic planning process.

Internal Operations and Systems Development, including making sure the State Bar's administrative structure and processes are well developed enough to support high quality operations, making sure there is adequate administrative support, and making sure appropriate direction is provided to staff and consultants employed by the State Bar.

Individual Professional Development, including making sure that the Executive Director's professional standing and developmental needs are given serious consideration.

Authorizes issuance of certificates of recognition and/or proclamations bearing the President's signature or, if appropriate, that of the requesting Board member, to appropriate persons, groups or staff as long as such requests are made in writing at least three weeks prior to their presentation.

The Executive Director or his or her designee is authorized by the Board of Trustees to execute conflict of interest waivers.

(Source: Board of Governors; Resolution Adopting in Principle The Strategic Leadership Action Report, October 21, 2001; Board of Governors' Resolutions October 24, 1987, June 2006, November 2007.)

### ***Section 3 Administration of Personnel***

Personnel administration shall reside exclusively in the Executive Director, except that the Executive Director will advise the Board Executive Committee of any material change to the terms and conditions of employment or performance of any senior executive. The Executive Director shall be advised and assisted by the Office of Human Resources in the administration of personnel.

The Executive Director shall be guided by The Rules & Regulations for the Administration of Employer-Employee Relations, the Memoranda of Understanding, The Rules & Regulations Pertaining to the Employment of Executive Staff, and The Rules & Regulations Pertaining to the Employment of Confidential Employees in the administration of personnel.

(Source: Board of Governors' Resolutions May 20, 1997, September 2004, January 9, 2010.)

### ***Section 4 Executive Director's Financial Limitations Policy***

The Executive Director shall manage the financial affairs of the State Bar of California in an ethical and prudent fashion:

The Executive Director shall avoid financial conditions that would result in fiscal jeopardy to, or disruption of, the programmatic integrity of the State Bar's services and activities.

The Executive Director shall establish a financially prudent fund reserve in the State Bar's budget.

The Executive Director shall establish a financially prudent technology improvement fund in the State Bar's budget.

The Executive Director shall base salaries, contracts, and other expenditures on appropriate business considerations of the fair market value or cost of such transactions.

The Executive Director shall establish an annual budget within the limitation that expenditure shall not exceed revenue and available funds and present this budget and its rationale to the Board of Trustees.

The Executive Director shall annually establish a three year financial plan and present this plan and its rationale to the Board of Trustees.

(Source: Board of Governors' Resolution November 2000.)

### **Section 5 Relationship with the Board of Trustees**

- (a) The Executive Director is appointed by and is directly accountable to the Board of Trustees as a whole. The Executive Director under no circumstances reports to either an individual volunteer president/board chair or any other individual officer of the Board or to a particular board committee.
- (b) The Board's domain is proactive, strategic leadership and governance at the highest level rather than programmatic or operational details. The Executive Director takes individual responsibility for helping the Board realize its leadership potential and, with the Board focused on high level leadership, need not encounter Board activity in exercising appropriate executive prerogatives in connection with the operation of the institution.
- (c) The Board Executive Committee is the committee which administers the development and administration of the Executive Director/Board relationship. The Board Executive Committee's functions in this regard include:
  - (1) Designing and overseeing the process of recruiting the Executive Director in the event of a vacancy.
  - (2) Assuring that the Executive Director's job duties are regularly updated to ensure completeness, accuracy and the appropriate "fit" with the organization and its needs.
  - (3) Developing, with the Executive Director, specific leadership targets and goals and evaluating the Executive Director's performance against those goals.

(Source: Board of Governors' Resolution Adopting in Principle The Strategic Leadership Action Report, October 21, 2001.)

### **Section 6 Government Affairs Representative**

The State Bar's Government Affairs representative(s) and the Office of Government Affairs shall be subject to the executive and administrative authority of the Executive Director in like manner as other Executive Staff.

(Source: Board of Governors' Resolution, September 2004.)

## **Section 7 Secretary and General Counsel**

- (a) The Secretary and General Counsel, and the respective offices of each, shall be subject to the executive and administrative authority of the Executive Director in like manner as other Executive Staff, regarding operational issues including, personnel administration, budget and facilities.

(Source: Board of Governors' Resolution, May 20, 1997; Board of Trustees Resolution, January 16, 2015.)

- (b) The Executive Director advises the Board on the selection and performance of the Secretary and General Counsel, but the Board hires and terminates those employees.

(Source: Board of Governors' Resolution, May 20, 1997; Board of Trustees Resolution, January 16, 2015.)

## **Section 8 The Executive Director's Annual Performance Evaluation**

The Executive Director of the State Bar is subject to an annual performance evaluation. The review shall be conducted by a Board Committee designated by the Board, currently the Board Executive Committee. The State Bar's Office of Human Resources and the State Bar's Chief Operations Officer shall assist the designated Board Committee in this process.

- (a) Evaluation Criteria  
The Executive Director's evaluation is conducted based on performance criteria and competencies and on goals and objectives set by the designated Board Committee. The designated Board Committee sets the Executive Director performance targets and evaluates progress in achieving these targets. The performance criteria and competencies for evaluation are: Champions the State Bar's Mission, Achieves Strategic Plan Priorities and Positions the State Bar Effectively with Constituents; Manages Effectively and Strengthens the Executive Management of the State Bar; Sustains and Enhances Board and Constituency Relations; Provides Strong Fiscal Management; and Leadership and Preparation of the Organization for the Future.
- (b) Confidentiality  
The meetings of the designated Board Committee and all information obtained in the course of the evaluation shall be confidential and shall not be disclosed except as otherwise provided in this article. Sufficient disclosure shall be made to the Executive Director to assure a full opportunity to respond to evaluation material. The identity of the persons providing evaluation material shall not be disclosed.

(c) Timetable and Procedures

Each year, the Board sets the timetable and procedures for conducting the Executive Director's annual performance evaluation. The committee shall meet with the Executive Director as soon as practical in the board year to discuss the performance standards, goals, procedures and timetable. The Board Committee shall set the procedures and meetings during the board year to assure a full and fair evaluation, and shall present its report to the Board in executive session.

**(Source: Board of Governors' Resolutions, March 2002, March 2003, March 2004; July 2011.)**

## **Article 2 GENERAL COUNSEL**

### ***Section 1 Authority of the General Counsel***

The Board of Trustees hereby reaffirms that the Office of General Counsel is and continues to be the designated legal counsel to the State Bar as an entity, including the State Bar's subentities, subject to the direction of the Board of Trustees and its Board Executive Committee or the committee designated by the Board to review legal matters. As legal counsel for the State Bar itself, the General Counsel under the rules of professional conduct, represents the State Bar as an entity, acting through the Board of Trustees, its highest authorized body except as otherwise required by Rule of Professional Conduct 3-600. Legal advice to the State Bar as an institution, including its subentities and programs, shall in all instances be rendered only by the Office of General Counsel, except where outside counsel is retained for specific purposes in compliance with existing protocols for the retention of outside counsel.

**(Source: Board of Governors' Resolutions, June 2000, January 9, 2010. Board of Trustees Resolution January 16, 2015.)**

### ***Section 2 The General Counsel's Annual Performance Evaluation***

The General Counsel is subject to an annual performance review by both the Executive Director and the Board. The Board Executive Committee has been designated in conjunction with the Executive Director to conduct the General Counsel's annual performance evaluation and report to the Board. The State Bar's Office of Human Resources will assist the Board Executive Committee in this process

**(Source: Board of Governors' Resolutions July 2004, July 11, 2008, January 9, 2010; Board of Trustees Resolutions February 2012; January 16, 2015; July 2015.)**

### ***Section 3 Authorization to File Unlawful Detainer Actions***

The General Counsel, or his or her designee, is authorized to initiate unlawful detainer actions against State Bar tenants and sub-tenants upon determination that such actions are appropriate and necessary to protect the State Bar's real property interests and where the action at issue will not result in serious political or operational consequences for the Bar. The General Counsel shall inform the Board Executive Committee, or the committee designated by the Board to review legal matters, in confidential reports at its regularly scheduled meetings of any unlawful detainer actions filed and the status of these actions.

**(Source: Board of Governors' Resolution, June 2003.)**

#### ***Section 4 Authorization to Arbitrate Under ICANN Domain Name Dispute Resolution Policy***

The General Counsel is authorized to initiate Internet Corporation for Assigned Names and Numbers (ICANN) administrative and arbitration proceedings under the Uniform Domain Name Dispute Resolution Policy (UDRP) upon a determination that such actions are appropriate and necessary to protect the State Bar's trademarks, service marks, and certification marks and where the action at issue will not result in serious political or operational consequences for the Bar. The General Counsel or her designee shall report to the Board Executive Committee on any ICANN-UDRP administrative and arbitration proceedings.

(Source: Board of Governors' Resolution, Oct 2004.)

#### ***Section 5 Authorization to Seek Restraining Orders***

The General Counsel is authorized to seek restraining orders upon a determination that such actions are appropriate and necessary to protect the State Bar's employees and where the action at issue will not result in serious political or operational consequences for the Bar. The General Counsel or her designee shall report to the Board Executive Committee on any petitions filed seeking restraining orders and the status of such actions.

(Source: Board of Governors' Resolution, May 2005.)

#### ***Section 6 Pending Rules of Court: Technical Changes***

General Counsel is authorized to confer and negotiate with the staff of the Supreme Court with respect to any necessary technical changes to pending Rules of Court previously submitted for approval and adoption by the Supreme Court.

(Source: Board of Governors' Resolutions, December 1992.)

#### ***Section 7 Who May Assert Claim of Privilege or Confidentiality***

Any officer of the State Bar is authorized to assert in the name of the State Bar any claim of privilege or confidentiality that might be asserted by the State Bar, including the privilege against disclosing official information contained in Evidence Code section 1040.

(Source: Board of Governors' Resolution, September 1977.)

#### ***Section 8 Claim of Confidentiality - Generally***

The General Counsel, or his or her designee, is authorized to appear on behalf of the State Bar, its officers, employees and agents and take such steps as in his or her judgment he or she deems appropriate for the purpose of preserving the confidentiality

of privileged State Bar matters, except that General Counsel is authorized to disclose and permit others to disclose confidential matters, but only to the extent necessary and relevant in his or her judgment to the presentation of such matters.

**(Source: Board of Governors' Resolution, September 1977.)**

***Section 9 Claim of Confidentiality in a Civil Cause Against The State Bar***

In a civil cause against the State Bar or its officers, employees or agents brought by a person for alleged grievances arising out of an admission, discipline or reinstatement matter, that counsel for the State Bar or for its officers, employees or agents is authorized to disclose otherwise confidential documents or information if relevant to said civil cause in the opinion of counsel for the State Bar and put into issue or otherwise referred to in said cause by the person.

**(Source: Board of Governors' Resolution, September 1977.)**

## **Article 3 CHIEF TRIAL COUNSEL**

### ***Section 1 Relationship with the Executive Director***

The Executive Director shall bring his or her choice for Chief Trial Counsel (subject to Senate confirmation) to the board for approval. The Chief Trial Counsel shall report to the Board of Trustees discipline system oversight committee consistent with Business & Professions Code Section 6079.5 on substantive issues pertaining to the discipline enforcement system. The Chief Trial Counsel and the Office of the Chief Trial Counsel shall otherwise be subject to the executive and administrative authority of the Executive Director in like manner as other executive staff.

(Source: Board of Governors' Resolution, May 20, 1997, March 2002, March 2003, March 2004, Business and Professions Code § 6079.5.)

### ***Section 2 Appointment, Term, Qualifications***

The rules governing the appointment, the term, and the qualifications of the chief trial counsel are described in Business & Professions Code section 6079.5 (a), (b).

(Source: Bus. & Prof. Code, § 6079.5 (a) and (b).)

### ***Section 3 The Chief Trial Counsel's Annual Performance Evaluation***

Under Board policy, the Executive Director is responsible for evaluating the performance of all State Bar staff. The Chief Trial Counsel position is unique. Under Business & Professions Code Section 6079.5, the Board appoints the Chief Trial Counsel who serves for a term of four years. The Board has delegated to the Executive Director the selection of the Chief Trial Counsel which is then acted upon by the Board. The appointment is subject to the confirmation of the State Senate. The Chief Trial Counsel, by statute, reports to the discipline system oversight committee of the Board and, in connection with the exercise of prosecutorial discretion, does not report to the Executive Director<sup>1</sup>.

At the recommendation of the Executive Director, because of the uniqueness of the Chief Trial Counsel position, the Board, through its Regulation and Discipline and Board Executive Committees, has undertaken the responsibility for conducting the Chief Trial Counsel's evaluation. Recognizing the Executive Director's institutional role in selecting the Chief Trial Counsel, the Chief Trial Counsel's role as a senior member of the Executive Director's management team, and the responsibility of the Executive Director for institutional oversight and administration of personnel, budget, and facilities support

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<sup>1</sup> Consistent with statutory authority, the Chief Trial Counsel reports to the discipline system oversight committee and is independent of the Executive Director with respect to the exercise of the Chief Trial Counsel's prosecutorial discretion. The Chief Trial Counsel is subject to the Executive Director's administration of personnel, budget, and facilities support functions which the Executive Director executes in conformity with Board policy.

functions of the State Bar as a whole, including the Office of the Chief Trial Counsel, the Executive Director sits as a non-voting member of the Board Executive Committee in connection with the Chief Trial Counsel's review. The Chair of the Board Committee on Regulation and Discipline chairs the review committee.

(a) Evaluation Criteria

The Chief Trial Counsel's evaluation is conducted based on performance criteria and competencies and on goals and objectives set by the designated Board Committee. The designated Board Committee annually sets the Chief Trial Counsel's performance targets and annually evaluates progress in achieving these targets. The performance criteria and competencies for evaluation include: job skills, technological proficiency, quality performance, quantity of work, leadership, teamwork and collaboration, public protection commitment, communication, fiscal accountability, compliance with policies and procedures, strategic perspective/planning, managing change, managing and developing period, interpersonal/conflict resolution skills, valuing diversity.

**I. Performance Criteria I: OCTC Backlog Management**

- A. Progress reducing Notice Open inventory (2011 Goal TBD).
- B. Progress reducing investigative backlog (2011 Goal TBD).
- C. Progress sustaining or improving OCTC productivity in
  - 1. Resolution of matters in Intake.
  - 2. Resolution of Investigations.
  - 3. Resolution of Notice Open matters.
- D. Progress in reducing average time from date of NDC filing to resolution.

**II. Performance Criteria II: Overall Indicators of OCTC Efficiency and Effectiveness**

- A. Success in meeting annual budget targets (2011 Goal TBD).
- B. Achievement of cost savings (2011 Goal TBD).
- C. Litigation results and effectiveness, as shown by
  - 1. Effective use of settlement as a tool of resolution
    - a. Number of settlements<sup>2</sup>
    - b. Number of settlements in which discipline sought was substantially obtained.
  - 2. Success rate at trial
    - a. Number of trials<sup>3</sup>

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<sup>2</sup> To be used as a baseline, not a standalone positive indicator

<sup>3</sup> To be used as a baseline, not a standalone positive indicator

- b. Number of trials in which none of the charges in the NDC were sustained
    - c. Number of trials in which the charges in the NDC were substantially sustained
  - 3. Positive year-to-year “dashboard” trends in overall case-processing statistics and case cycle times, taking into account on an annual basis at least the following
    - a. Number of Complaints received<sup>4</sup>
    - b. Year-end number of open Investigations
    - c. Number of cases resolved upon completion of Investigation, with no NDC filed
    - d. Year-end number of Notice Open matters
    - e. Number of NDCs filed
    - f. Number of cases resolved following filing of NDC
    - g. Within cases resolved following filing of NDC,
      - (i) Number of cases withdrawn or dismissed
      - (ii) Number of cases resolved by settlement
      - (iii) Number of cases resolved by pretrial adjudication
      - (iv) Number of cases tried
    - h. Total number of cases resolved at any point following filing of Complaint
    - i. Speed of resolution
      - (i) Average investigation time (time from filing of Complaint to completion of Investigation)
      - (ii) Average Notice Open time (time from completion of Investigation to filing of NDC)
      - (iii) Average prosecution time (time from filing of NDC to resolution)
      - (iv) Average total case cycle time (time from filing of Complaint to resolution)
    - j. Year-end inventory of unresolved cases (i.e. open matters)
    - k. Average costs per case
      - (i) Average costs per case from date of filing of Complaint to Notice Open date
      - (ii) Average costs per case from Notice Open date to resolution.
      - (iii) Total average costs per case
  - 4. Case administration: Affected Party Notification Practices
    - a. Complainants appropriately advised of the status of their matters.
    - b. Respondent attorneys timely notified of the status of the charges against them.

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<sup>4</sup> To be used as a baseline, not a standalone positive indicator

5. Number and nature of orders from the Supreme Court directing that OCTC's resolution of a case be re-opened, re-examined or reconsidered
6. Number and nature of cases in which the State Bar Court declined to accept a resignation with charges pending that was recommended by OCTC
7. Number and nature of complaints received against the discipline system from dissatisfied participants in the system.

### **III. Performance Criteria III: Leadership and Management Skills**

- A. Quality of judgment shown in exercise of prosecutorial discretion.
- B. Success in establishing reputation for integrity, highest standards of ethics, and strong commitment to public protection.
- C. Timeliness, clarity and effectiveness of reporting to RAD and BOT.
- D. Quality of reputation with and ability to inspire confidence in key external stakeholders (i.e. the Legislature, the Supreme Court, the State Bar Court).
- E. Development, maintenance and administration of written policies designed to ensure just and uniform handling and resolution of all cases (e.g. charging guidelines, guidelines for settlement).
- F. Quality of relationship with ADDC (Association of Disciplinary Defense Counsel).
- G. Timeliness and thoroughness of response to issues raised in audits of OCTC.
- H. Clarity and utility of OCTC written communications (e.g. Discipline Report).
- I. Willingness and ability to adopt innovative approaches to management of OCTC (e.g. new approaches to cutting case backlog and expediting preparation NDCs).
- J. Outreach and education efforts directed to the legal community.
- K. Effectiveness as a manager
  1. Establishing and communicating office priorities and core values.
  2. Efficiency and effectiveness in balancing time spent in Los Angeles office vs. San Francisco office.
  3. Delegation to others.
  4. Supervising, evaluating and motivating assigned subordinates.
  5. Obtaining maximum productivity and cooperation from and among staff.
  6. Team-building and promoting good office morale.
  7. Planning and effectuating change within the office.
  8. Teamwork and collaboration in relations with Senior Staff peers.

9. Commitment to appropriate level of transparency in decision-making.
10. Training and mentoring.
11. Personal organization and temperament.

#### **IV. Performance Criteria IV: Public Communications**

- A. OCTC Messaging effectiveness (i.e. publicly communicating OCTC successes).
- B. Level of skill as chief spokesman for the Bar on disciplinary matters.
- C. Willingness and ability to use different types of media outlets (including traditional as well as new media) in OCTC messaging.

### **EVALUATION PROCEDURE**

The Regulation and Discipline Committee is chaired by the RAD Chair in conducting the Chief Trial Counsel's Evaluation. The Executive Director sits as a full member of the evaluation committee during the CTC evaluation process. The Office of Human Resources, has staffed and provided administrative assistance in conducting the Chief Trial Counsel's reviews in the past, subject to strict confidentiality requirements. The Office of Human Resources is available to the RAD Committees for this purpose in connection with this review process as well.

(b) Confidentiality

The meetings of the designated Board Committee and all information obtained in the course of the evaluation shall be confidential and shall not be disclosed except as otherwise provided in this article. Sufficient disclosure shall be made to the Chief Trial Counsel to assure a full opportunity to respond to evaluation material. The identity of the persons providing evaluation material shall not be disclosed.

(c) Timetable and Procedures

Each year, the Board sets the timetable and procedures for conducting the Chief Trial Counsel's annual performance evaluation. The committee shall meet with the Executive Director as soon as practical in the board year to discuss the performance standards, goals, procedures and timetable. The Board Committee shall set the procedures and meetings during the board year to assure a full and fair evaluation, and shall present its report to the Board in executive session at the July meeting.

(Source: Board of Governors' Resolution, March 2002, March 2003, March 2004, May 2011.)

**Article 4**  
**LINES OF AUTHORITY**  
**State Bar of California**  
**Lines of Authority Policy Statement**  
**Governance Responsibility and Delegation of Management Functions**

The Board of Trustees has the fundamental fiduciary responsibility for the health and success of the State Bar of California, with a focused attention on the governing responsibilities for this organization. The governing functions are those that provide the essential direction, resources and structure needed to meet specific needs of our core constituencies: the public, the judiciary, and our lawyer-members. The governing functions are:

**Strategic Direction** – setting a direction for the State Bar of California that reflects needs of our constituencies and the mandate provided by the State of California.

**Resource Development** – developing adequate financial resources that support program activities defined within the organization’s strategic plan.

**Financial Accountability** – ensuring that the financial resources of the organization are managed prudently and cost-effectively.

**Leadership Development** – developing the human resources that lead the organization today and in the future, the volunteer leadership structures and hiring of the organization’s Executive Director.

The Board recognizes the value and need to hire professional staff to support this organization, and looks at staff members as critical partners in the organization’s success. The Board recognizes the need to delegate to staff the management functions that ensure effective follow-through and implementation of the governance leadership of the Board. The management functions are:

**Program Planning and Implementation** – developing comprehensive plans for implementing the direction established by the Board, with a focus on both output and outcome delivery.

**Administration** – establishing the systems and procedures necessary to support the governance and management of the organization.

To support this delineation of responsibility and authority, the Board agrees to accept responsibility for organizational governance, and to delegate to the staff through its Executive Director the responsibility for organizational management. All planning and implementation strategies will strive to reinforce the appropriate roles of Board and staff, and will work to reinforce the effective integration of the governing and management functions.

### ***Oversight Role***

The Board will provide oversight to the management functions it has delegated, and will conduct regular reviews, audits and evaluations necessary to ensure fulfillment of the responsibility delegated to staff. This oversight role will be done in cooperation with the Executive Director and incorporated into the ongoing operations of the organization.

In addition, the Board will review and evaluate its own performance related to its governing responsibility on a regular basis to ensure the effectiveness of the Board. The Board Executive Committee will oversee these activities.

### ***Relationship to Executive Director***

To support the effective delegation of management authority to the staff, the Board will maintain its primary relationship with the staff through the Executive Director. The Board will provide such guidance and feedback to the Executive Director as may be needed to support her/his effective management leadership.

The Executive Director will make recommendations for hiring of the Chief Trial Counsel and General Counsel but the Board hires and terminates these employees. The Executive Director will be responsible for further staff development issues, including hiring, supervision and firing of staff, and the delegation of responsibility for specific aspects of organizational management. The Board may provide advice to the Executive Director to support her/his management, but will not assume the role of managing other staff members unless there is a compelling reason to do so. Such a step would be considered a temporary and emergency action.

In consultation with the Board president, the Executive Director will assign staff members to provide support to the Board and its various functions. Every effort will be made to make these assignments to reflect the priorities of the strategic and operational plans. The board or committee leadership will provide direction to assigned staff to ensure fulfillment of these board and committee functions.

### ***Effective Communication***

The organization will make a distinction between various types of communication between Board and staff members. Communication between Board and staff with the purpose of providing direction or formalized feedback should funnel through the Board President, who has the primary responsibility for communicating direction and concerns to the Executive Director. Communication between Board and senior staff with the purpose of clarification and general understanding should have no limits or restrictions except as otherwise appropriate to respect time limitations and other professional relationship boundaries. Board member contact to staff other than senior staff should come through a prior referral from a senior staff member.

## ***Procedural Elements Defined or Identified for Development***

*Below are current procedures and several that could be developed to support the policy statement.*

### **I. *Board Oversight Role:***

- a. ***Board Self Evaluation*** - Although no Board self-evaluation process exists, it is recommended that a process be developed and conducted annually led by the Board Executive Committee. This review would include both an evaluation of the overall effectiveness of the Board as a body (using assessments and discussions) and individual evaluations of board member performance (using self-evaluations, job descriptions and board contracts). The purpose of these evaluations are to strengthen the effectiveness of the entire Board of Trustees, and to give personalized feedback to the individual board members on their performance and how they may be able to best fulfill their responsibilities. The Board President will hold personal discussions with board members unable or unwilling to complete the evaluation process.
  
- b. ***Audit by the California State Auditor***<sup>5</sup> is a financial compliance and performance audit that is conducted every two years by state statute. The audit focuses on the finances, discipline system, and other issues (varying from year-to-year) determined by the auditor. In addition, the audit follows up on concerns and problems highlighted from previous audits, and does a general management review of key functions and investigates those issues

There are no management practices that are outside of the State Auditor's purview. The State Auditor may audit any function including the confidential and non-public files, including the Office of the Chief Trial Counsel and the Office of General Counsel.

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<sup>5</sup> Cal Bus & Prof Code § 6145 (2007). (b) The board shall contract with the Bureau of State Audits to conduct a performance audit of the State Bar's operations from July 1, 2000, to December 31, 2000, inclusive. A copy of the performance audit shall be submitted by May 1, 2001, to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

Every two years thereafter, the board shall contract with the Bureau of State Audits to conduct a performance audit of the State Bar's operations for the respective fiscal year, commencing with January 1, 2002, through December 31, 2002, inclusive. A copy of the performance audit shall be submitted within 120 days of the close of the fiscal year for which the audit was performed to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

For the purposes of this subdivision, the Bureau of State Audits may contract with a third party to conduct the performance audit. This subdivision is not intended to reduce the number of audits the Bureau of State Audits may otherwise be able to conduct.

The Board of the State Bar of California cannot provide direction to the State Auditor<sup>6</sup> to seek their review of key issues that the Board would like reviewed. The State Auditor function is designed “...to be free from influence of existing state control agencies that could be the subject of audits.”

- c. A **financial audit** conducted by independent auditors annually, currently the firm of Moss Adams, reviewing management and governance practices to ensure their compliance with GASB, FASB and other accounting standards. The financial audit is also required by statute.<sup>7</sup>
  
- d. **Internal program review**, conducted on an annual basis and extensively every three years as part of the strategic planning process. The board “oversight” committee(s) using the performance measures developed and put in place by board and staff conducts the program review. Completion of this helps guide some key elements of the strategic planning process.

At its January 2004 Planning Session the State Bar Board of Governors focused on the next steps for putting in place the Board’s Strategic Management Process, a two-track effort to establish performance measures related to (1) the Board’s Long Range Strategic Plan, and (2) internal departmental operations overseen by the Executive Director.

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<sup>6</sup> To achieve this mandate, the bureau was organized to fulfill the independence requirements of the Government Auditing Standards issued by the U.S. Comptroller General. Specifically, the second general standard for government auditing states, in part:

"In all matters relating to the audit work, the audit organization and the individual auditors, whether government or public, should be free from personal and external impairments to independence, should be organizationally independent, and should maintain an independent attitude and appearance." (Chapter 3, page 4)

<sup>7</sup> Cal Bus & Prof Code § 6145 (2007) provides that the board shall contract with an independent national or regional public accounting firm for an audit of its financial statement for each fiscal year beginning after December 31, 1998. The financial statement shall be promptly certified under oath by the Treasurer of the State Bar, and a copy of the audit and financial statement shall be submitted within 120 days of the close of the fiscal year to the board, the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

The audit shall examine the receipts and expenditures of the State Bar and the State Bar sections, to assure that the receipts of the sections are being applied, and their expenditures are being made, in compliance with subdivision (a) of Section 6031.5, and that the receipts of the sections are applied only to the work of the sections.

The audit also shall examine the receipts and expenditures of the State Bar to ensure that the funds collected on behalf of the Conference of Delegates of California Bar Associations as the independent successor entity to the former Conference of Delegates of the State Bar are conveyed to that entity, that the State Bar has been paid or reimbursed for the full cost of any administrative and support services provided to the successor entity, including the collection of fees or donations on its behalf, and that no mandatory dues are being used to fund the activities of the successor entity.

A Staff Working Group on Performance Measures was established to guide the Performance Measures Project. To support the Track I effort, a series of issue meetings were scheduled to invite participation of Board members, advisory committee members, and staff in developing the Strategic Plan performance measures for the plan's six goal areas: (1) Attorney Admission, Regulation and Discipline; (2) Member Services; (3) Access to Justice; (4) Stakeholder Relations; (5) Leadership and Accountability; and (6) Technology.

**e. Five Year Strategic Plan (2012-2017)**

**SEE: TAB 1.2 Strategic Planning**

Business and Professions Code section 6140.12 (added Stats. 2011, ch. 417, § 47) requires that the State Bar of California's Board of Trustees complete and implement a five-year strategic plan to be updated every two years and that each year by February 15, the State Bar president's report to the Supreme Court, the Governor, and the Senate and Assembly Committees on Judiciary on the measures the board has taken to implement the strategic plan and those measures the board will need to take in the remaining years of the strategic plan.

Business and Professions Code section 6001.1, added by Statutes 2011, chapter 417 (Sen. Bill No. 163), provides that protection of the public shall be the highest priority for the State Bar and requires that the Board of Trustees of the State Bar complete and implement a Five-Year Strategic Plan.

Business and Professions Code section 6001.2 (added Stats. 2011, ch. 417, § 2.5) also requires that the State Bar, commencing in 2014 and every three years thereafter, submit by May 15 a report on its measures and recommendations for enhancing the protection of the public and ensuring that protection of the public is its highest priority. To comply with both these provisions, the State Bar's Board of Trustees annually holds a planning session to review the State Bar's progress in implementing its strategic plan and to consider and propose other measures to enhance its mission of public protection, including proposals to ensure access to justice and diversity in the justice system consistent with that mission. As a result, the full Board, instead of only 7 its members as provided in Business and Professions Code section 6001.2, participates in the development of the measures and recommendations under both statutes.

At its January 2015 Planning Meeting, the Board of Trustees reviewed preliminary goals and objectives for its next 2017-2022 Five-Year Plan. These were adopted in July, 2015 with the understanding that further review and the addition of metrics would be required before they become

operational. At the January Planning Meeting, the Board decided to delay implementation of the new 2017-2022 Five-Year Plan in order to take advantage of the final year of the current 2012-2017 Plan and the arrival of a new executive leadership team charged with a comprehensive review of the State Bar's operational systems and the need to implement the June 2015 State Audit recommendations. Accordingly, the Board considered a new set of goals and objectives for the remainder of the 2012-2017 Plan period. The Board affirmed the new goals and objectives established at the January 31 – February 2, 2016 Planning Meeting on May 13, 2016.

- f. ***An Executive Director Performance Evaluation***, conducted annually, provides an analysis of the performance of the Executive Director and her ability to effectively implement the direction established by the Board. Input to the process is both quantitative, based on specific outcomes and outputs developed in the strategic and annual plans, and in the annual work plan of the Executive Director; and qualitative, providing personal feedback through a 360 analysis of the Executive Director among board members, staff members, core volunteers and other key constituents. The process is done more intensively every other year and abbreviated in the off years.

## ***II. Relationship of Staff to the Executive Director***

- a. ***Executive Director*** – The Executive Director has management and administrative authority for Chief Trial Counsel, General Counsel and other executive managers, while independence is granted for certain functions within these positions. Current policy is quite clear.

“The Executive Director administers staff and facilities of the State Bar subject to the direction and control of the Board of Trustees. . . . [The Board] holds the State Bar's Executive Director accountable [for institutional] financial responsibility...The Secretary and General Counsel, and the respective offices of each, shall be subject to the executive and administrative authority of the Executive Director [Executive Director] in like manner as other senior executives.” (State Bar's Administrative Manual, Division 8, Chapter 1, Article 1, Sections 1, 2 & 8.) The Executive Director will advise Board Executive Committee of any material change to the terms and conditions of employment or performance of any senior executive.

All personnel are subject to the administration of the Executive Director. This administration is through the Rules and Regulations Pertaining to the Employment of Executive Staff Employees, the Rules and Regulations

Pertaining to the Employment of Confidential Employees, and the union negotiated memoranda of understanding. This administration is subject to certain very narrow variations:

- b. **State Bar Court** - It is a responsibility of the Board to assure the adjudicatory independence of the State Bar Court. State Bar Court Judges are not State Bar employees and are not subject to Executive Director or Board administration. They are appointed by the Supreme Court, Legislature, or Governor pursuant to statute for set terms. Their salary rates are established by statute. The Rules & Regulations Pertaining to the Service of State Bar Court Judges otherwise establish their terms and conditions of employment. The State Bar (through its Executive Director) must provide the State Bar Court with “adequate supporting staff and facilities” and conduct itself otherwise to assure the adjudicatory independence of the State Bar Court.

The State Bar Court Administrative Officer and Chief Court Counsel is the Senior Executive for the State Bar Court. This position is a Senior Executive of the State Bar serving in conformity with the Executive Staff Rules. The State Bar Court Administrative Officer has no independence from the Executive Director except where the adjudicatory independence of the State Bar Court is threatened, “as all executive personnel decisions reside exclusively in the Executive Director.” Depending upon the nature of such a transgression, the Administrative Officer is to report the transgression to the Board and/or the Supreme Court. (Admin. Man. Div. 8, Art. 1, §4.; See generally, Business & Professions Code §§ 6079.1, 6086.5, 6086.65)

- c. **Chief Trial Counsel** - The Executive Director shall bring his or her choice for Chief Trial Counsel (subject to Senate confirmation) to the board for approval. The Chief Trial Counsel shall report to the Board of Trustees discipline system oversight committee consistent with Business & Professions Code Section 6079.5 on substantive issues pertaining to the discipline enforcement system. The Chief Trial Counsel and the Office of the Chief Trial Counsel shall otherwise be subject to the executive and administrative authority of the Executive Director, with regard to personnel, budget, facilities and other institutional matters in conformity with the policy parameters established by the Board, in like manner as other executive staff.

The Chief Trial Counsel is the Senior Executive for the Office of the Chief Trial Counsel, the enforcement/prosecutorial arm of the disciplinary system. This position is a Senior Executive of the State Bar serving subject to a statutory term. The qualifications and term of the Chief Trial Counsel are set by statute.

The terms and conditions of employment for the Chief Trial Counsel are set by the Executive Staff Rules, subject only to the provision that the State Bar (through its Executive Director) must assure the prosecutorial integrity and independence of the Chief Trial Counsel. The Board's discipline oversight committee administers the Office of the Chief Trial Counsel through the Executive Director except where the prosecutorial independence of the office is threatened. Depending upon the nature of such a transgression, the Chief Trial Counsel is to report the transgression to the Board and/or the Supreme Court. (See generally, Business & Professions Code § 6079.5).

- d. **General Counsel** - The General Counsel is the Senior Executive serving as the State Bar's chief legal officer. As legal counsel for the State Bar itself, the General Counsel, under the Rules of Professional Conduct, represents the State Bar as an entity, acting through the Board of Trustees, its highest authorized body except as otherwise required by Rule of Professional Conduct 3-600. This position is a Senior Executive of the State Bar serving in conformity with the Executive Staff Rules, subject to the duties and responsibilities incumbent upon the attorney-client relationship in the institutional setting. The General Counsel has the duty to provide accurate and complete legal advice and counsel to the Board and to other constituent elements of the institution regardless of the consequences to him or herself personally. (See generally, Rule of Professional Conduct 3-600.)
- e. **Secretary** - The Secretary [an office currently combined with the position of Executive Director] is the Senior Executive serving as the Board's administrative officer. This position is a Senior Executive of the State Bar serving in conformity with the Executive Staff Rules, subject only to the statutory provisions creating the office. (See generally, California Business and Professions Code Sections 6020, 6022, 6024).
- f. **Admissions** - The Senior Executive for Admissions is the Senior Executive overseeing the attorney admissions function. This position is a Senior Executive of the State Bar serving in conformity with the Executive Staff Rules, subject only to the limitation that the State Bar (through its Executive Director) must maintain the integrity of the bar examination and admissions process. The Senior Executive for Admissions has no independence from the Executive Director on any issue except where the integrity of the bar examination and admission process is threatened. Depending upon the nature of such a transgression, the Senior Executive for Admissions is to report the transgression to the Committee of Bar Examiners, the Board and/or the Supreme Court. (See generally, California Business & Professions Code §§ 6076 et seq.; §§ 6060 et seq.).

- g. **Other Staff** - All other staff serve in conformity with the governing terms of the Union negotiated Memoranda of Understanding and/or governing rules and regulations administered by the Executive Director.

**III. Board and Board Committee Staff Liaisons (Board Committee Coordinators)**

- a. The Executive Director assigns staff members (Board Committee Coordinators), having expertise related to specific board and board committee functions, to support the board and its various functions.

The Executive Director “provides effective liaison and staff support to Board Committees and State Bar Sub-committees to allow them to perform their functions.” (Executive Director Performance Criteria and Competencies, May 2002.)

- b. Any concerns regarding Board support staff should be directed to the Board President and Executive Director. The Executive Director will address the issue directly with the board or committee member raising the concern and provide feedback to the board member or committee.

**IV. Effective Communication**

- a. Board members are provided with a list of all senior staff within the State Bar and the functions for which they are responsible in their Board Orientation materials. Additionally, Board members are provided with a document entitled “State Bar Overview” that contains a summary description of each State Bar program and the key staff.
- b. If the above-identified resources do not answer the contact questions, Board members should contact the Executive Director directly and ask for her help in locating the information source needed.

## **V. Board Orientation**

- a. The Board of Trustees is responsible for enhanced Trustee orientation and training with the support of the Executive Director. The orientation will reflect a heightened focus on Trustee oversight of the discipline system, Trustee fiduciary responsibility, and the importance of the Bar's public protection, versus associational, activities.
- b. A "Board Book," a compilation of Board Governance Policy was adopted by the Board at its September 2004 meeting.
- c. A more complete orientation binder is given to new board members, offering additional materials on this subject, including more specific procedural information about lines of authority to augment the Board Governance Model. In addition, an orientation meeting shall be held at the annual meeting of the Bar. Participation in this meeting is mandatory. If a board member misses this orientation, the member will make a significant effort to set up a substitute meeting with those who are part of the orientation process.

**(Source: Board of Governors' Resolutions, May 20, 1997, March 2002, March 2003, March 2004, July 2004, July 11, 2008, January 9, 2010; Board of Trustees' Resolution February 2012; January 16, 2015; July 2015; May 2016; Business and Professions Code § 6079.1; September 12, 2016.)**

## **Article 5 HUMAN RESOURCES**

### ***Section 1 Authority***

Personnel administration shall reside exclusively in the Executive Director. The Executive Director shall be advised and assisted by the Office of Human Resources in the administration of personnel.

The Executive Director shall be guided by The Rules & Regulations for the Administration of Employer-Employee Relations, the Memoranda of Understanding, The Rules & Regulations Pertaining to the Employment of Executive Staff, The Rules & Regulations Pertaining to the Employment of Confidential Employees in the administration of personnel.

**(Source: Board of Governors' Resolution, July 1981 September 2004.)**

### ***Section 2 Personnel Actions***

No personnel action, including but not limited to recruiting, interviewing, selection, hiring, salary placement, promotion, transfer, layoff, discipline, or termination shall be undertaken without the approval of the Executive Director, or designee, through the Office of Human Resources.

**(Source: Board of Governors' Resolution, July 1981 September 2004.)**

### ***Section 3 Involuntary Termination of Employment***

An involuntary termination of employment requires the approval of the Executive Director and the review of the Office of General Counsel.

**(Source: Board of Governors' Resolution, July 1981 September 2004.)**

### ***Section 4 Fiscal Review***

No employment of any person shall be entered into by or on behalf of the State Bar unless the Executive Director, or designee, verifies that any funds obligated by such employment have been budgeted.

**(Source: Board of Governors' Resolution, July 1981.)**

## **Section 5    *Personnel Impact Analysis***

An analysis of personnel impact is to be included in all Board of Trustees agenda items and staff proposals if the adoption of such items will create a personnel impact. The analysis should indicate whether the item/proposal can be accomplished by existing personnel or will require new personnel (and, if so, the number(s) and type(s) of new personnel required). The personnel impact analysis will be prepared by the office responsible for the item/proposal. Assistance may be obtained from the Office of Human Resources. All Board of Trustees agenda items having personnel impact shall be reviewed by the Board Committee on Planning, Program Development and Budget.

**(Source: Board of Governors' Resolution, July 1981, September 2004.)**

**SECTION 2**  
**THE BOARD OF TRUSTEES**

*Adopted May 13, 2016*

- TAB 2.1      General Authority of the Board of Trustees**
- TAB 2.2      Election and Appointment of the Board of Trustees**
- TAB 2.3      Officers**
- TAB 2.4      Board of Trustees Member Responsibilities**
- TAB 2.5      Meetings of the Board of Trustees**
- TAB 2.6      Board Committees and Task Forces**

**TAB 2.1**

**GENERAL AUTHORITY OF THE BOARD OF TRUSTEES**

**Article 1 STATE BAR BOARD OF TRUSTEES – GENERAL AUTHORITY**

- Section 1 Introduction*
- Section 2 Appointment of Committees, Officers and Employees; Salaries and Expenses*
- Section 3 Delegations, Supervision, and Control*
- Section 4 Functions in Aid of Jurisprudence, Justice*
- Section 5 Executive Functions; Enforcement of Chapter; Injunction; Unauthorized Practice of Law and Unlawful Solicitation*
- Section 6 Public Communications by Officers and Agents*
- Section 7 Public Communications by Individual Board Members*
- Section 8 Proposed Federal Judicial Appointees*
- Section 9 Prohibition Against Evaluation of Specific Supreme Court or Court of Appeal Justices*
- Section 10 Governance Principles*

**Article 2 BOARD COMPENSATION – STATUTORY PROVISIONS**

- Section 1 No Right to Compensation Generally*
- Section 2 Public Member Compensation by Statute*
- Section 3 Public Member Compensation*
- Section 4 Waiver of Public Member Fees at Annual Meeting*
- Section 5 Reimbursement of President's Actual and Necessary Business Expenses*

**Article 1**  
**STATE BAR BOARD OF TRUSTEES – GENERAL AUTHORITY**

**Section 1 Introduction**

The State Bar is governed by a board known as the Board of Trustees of the State Bar. The board is charged with the executive function of the State Bar. All powers granted to the State Bar may be exercised and carried out by action of its Board of Trustees.

All powers granted to the State Bar by sections 6001 and 6008.3 of the Business and Professions Code may be exercised and carried out by action of its Board of Trustees.

Public protection is the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever public protect is inconsistent with other interests, public protection must be paramount.

**(Source: Bus. & Prof. Code, §§ 6001.1, 6008.4, 6010, 6030.)**

**Historical Note**

Statutes 2011, Chapter 417 (Senate Bill 163), § 9 amended Business and Professions Code § 6010 to change the name of the board from Board of Governors to Board of Trustees. Historical actions of the board under the name "Board of Governors" are deemed to mean "Board of Trustees".

**Section 2 Appointment of Committees, Officers and Employees; Salaries and Expenses**

The board may appoint such committees, officers and employees as it deems necessary or proper, and fix and pay salaries and necessary expenses. (Origin: State Bar Act, §22.)

**(Source: Bus. & Prof. Code, §6029.)**

**Section 3 Delegations, Supervision, and Control**

All State Bar officers, agents, committees, commissions, and other entities have only the powers, duties, and authority delegated by the board and are subject to its supervision and control. Notwithstanding any delegation, the board reserves authority over all matters pertaining to the State Bar,<sup>1</sup> including whether actions or positions taken by a State Bar officer, agent, committee, commission, or other entity are consistent with State Bar policies.

**(Source: State Bar Rule 6.20 adopted effective May 16, 2008.)**

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<sup>1</sup> Bus. & Prof. Code, §§ 6010, 6025 and 6030.

### **Historical Note**

This rule supersedes Article XIV, §1 of the Rules and Regulations of the State Bar of California (Supervision and Control), amended July 1995, September 2004, repealed May 16, 2008.

#### **Section 4    *Functions in Aid of Jurisprudence, Justice***

- (a) The board may aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, including, but not by way of limitation, all matters that may advance the professional interests of the members of the State Bar and such matters as concern the relations of the bar with the public.

(Source: Bus. & Prof. Code, § 6031(a).)

#### **Section 5    *Executive Functions; Enforcement of Chapter; Injunction; Unauthorized Practice of Law and Unlawful Solicitation***

The board shall be charged with the executive function of the State Bar and the enforcement of the provisions of this chapter. The violation or threatened violation of any provision of Articles 7 (commencing with section 6125) and 9 (commencing with section 6150) of this chapter 4 of the Business and Professions Code regarding the unauthorized practice of law and unlawful solicitation may be enjoined in a civil action brought in the superior court by the State Bar and no undertaking shall be required of the State Bar. (Origin: State Bar Act, §21. Amended by Stats. 1961, ch. 2033 .)

(Source: Bus. & Prof. Code, § 6030.)

#### **Section 6    *Public Communications by Officers and Agents***

Unless expressly authorized by the board or the Rules of the State Bar, a State Bar officer, agent, committee, commission, or other entity must not

- (a) act, or purport to act, speak or purport to speak for the State Bar;
- (b) make any public communication on behalf of the State Bar; or

- (c) circularize, poll, or put to the vote of all or a substantial number of members of the State Bar any matter on which the State Bar has acted or is empowered to act.

(Source: State Bar Rule 6.21 adopted effective May 16, 2008.)

#### **Historical Note**

This rule supersedes Article XIV, § 2 of the Rules and Regulations of the State Bar of California (Public Communications), amended December 1974, repealed May 16, 2008.

### **Section 7    *Public Communications by Individual Board Members***

The provisions of State Bar Rule 6.21 (formerly Article XIV of the Rules and Regulations of the State Bar) apply to members of the Board of Trustees regardless of whether they are officers of the State Bar, provided that nothing in said article shall be construed to prohibit a member of the board from communicating with any one or more members of the State Bar or the public so long as said communication is clearly designated as that board member's individual act, opinion or position and not that of the State Bar; and further provided that no confidential matter or document shall be commented upon and no confidential paper, record, file or other document shall be published or released without prior approval of the board, all such communications to be at the expense of the board member and not the State Bar unless prior board approval has been obtained.

(Source: Board of Governors' Resolution, July 1976.)

### **Section 8    *Proposed Federal Judicial Appointees***

It is the policy of the Board of Trustees that the State Bar not involve itself in investigating and evaluating federal judicial appointees.

(Source: Board of Governors' Resolution, September 2004.)

### **Section 9    *Prohibition Against Evaluation of Specific Supreme Court or Court of Appeal Justices***

The Board of Trustees of the State Bar shall not conduct or participate in, or authorize any committee, agency, employee, or commission of the State Bar to conduct or participate in, any evaluation, review, or report on the qualifications, integrity, diligence, or judicial ability of any specific justice of a court provided for in section 2 or 3 of article VI of the California Constitution without prior review and statutory authorization by the Legislature, except an evaluation, review or report on potential judicial appointees or nominees as authorized by section 12011.5 of the Government Code.

The provisions of this subdivision shall not be construed to prohibit a member of the State Bar from conducting or participating in such an evaluation, review, or report in his or her individual capacity.

This also does not prohibit an evaluation of potential judicial appointees or nominees as authorized by Section 12011.5 of the Government Code. (Origin: State Bar Act, §23. Amended by Stats. 1945, ch. 177; Stats. 1984, ch. 16.)

(Source: Gov. Code, § 12011.5(m); also see Bus. & Prof. Code, § 6031(b).)

### ***Section 10 Governance Principles***

Governance Principles of the Board of Governors of the State Bar of California were adopted by the board on August 26, 2000. Governance Principles 1.1, 1.2, 1.3, 1.4 and 1.5 have been superseded by all subsequent governance and planning efforts.

**Article 2**  
**BOARD COMPENSATION – STATUTORY PROVISIONS**

**Section 1    *No Right to Compensation Generally***

Except as provided in subdivision (c), section 6028 of the Business and Professions Code, no member of the board shall receive any other compensation than his or her necessary expenses connected with the performance of his or her duties as a member of the board.

**(Source: Bus. & Prof. Code, §6028(b).)**

**Section 2    *Public Member Compensation by Statute***

Public members of the board appointed pursuant to the provisions of section 6013.5 of the Business and Professions Code, public members of the examining committee appointed pursuant to section 6046.5 of the Business and Professions Code, and public members of the State Bar Court appointed pursuant to section 6086.6 of the Business and Professions Code shall receive, out of funds appropriated by the board for this purpose, fifty dollars (\$50) per day for each day actually spent in the discharge of official duties, but in no event shall such payment exceed five hundred dollars (\$500) per month. In addition, these public members shall receive, out of funds appropriated by the board, necessary expenses connected with the performance of their duties.

**(Source: Bus. & Prof. Code, §6028(c).)**

**Section 3    *Public Member Compensation***

The board authorizes the payments specified in subdivision (c) of section 6028 of the Business and Professions Code from funds of the State Bar, provided that:

- (a)    Payments shall be made only for days actually spent in the discharge of official duties on and after July 7, 1977;
- (b)    No payment shall be made unless a request is made using the form "Public Member's Request for Statutory Compensation;" and
- (c)    Written records of all such requests, payments and reimbursements shall be created and maintained and readily severable from all other financial records of the State Bar.

**(Source: Board of Governors' Resolutions, September 1977.)**

**Section 4 Waiver of Public Member Fees at Annual Meeting**

Public members of the Board of Trustees do not pay an annual meeting registration fee.

(Source: Board of Governors' Resolution, June 1981.)

**Section 5 Reimbursement of President's Actual and Necessary Business Expenses**

(a) The President shall be reimbursed for his or her actual or necessary business expenses on the same terms that the business expenses of State Bar staff are reimbursed pursuant to adopted policies regarding Travel and Business-Related Expenses by such staff, provided that the President may be reimbursed for the actual costs associated with attending any event as a representative of the State Bar.

(b) Such reimbursements shall be funded from non-mandatory dues revenue in recognition of the restrictions of the Keller and Brosterhous decisions and other law.

(c) Such reimbursements shall be consistent with the requirement of Business & Professions Code section 6028, subdivision (c) that no attorney Trustee be compensated for service.

(Source: Board of Governors' Resolutions September 1971, August 1985; Board Committee on Administration and Finance, June 1988; Board of Trustees resolutions March 13, 2015, March 11, 2016.)

**TAB 2.2**

*APPOINTMENT OF THE BOARD OF TRUSTEES*

**Article 1 BOARD COMPOSITION**

*Section 1 Board of Trustees in General*

*Section 2 Number of Members*

**Article 2 THE APPOINTING AUTHORITIES – NUMBER AND TERMS OF APPOINTMENTS**

*Section 1 Attorney Member Appointments by the Supreme Court*

*Section 2 Attorney Member Appointments by the Legislature*

*Section 3 Public Member Appointments by the Legislature and Governor*

**Article 3 EMPLOYMENT BY PUBLIC AGENCIES**

## **Article 1 Board Composition**

### **Section 1 Board of Trustees in General**

(a) The State Bar is governed by a Board known as the Board of Trustees of the State Bar. The Board has the powers and duties conferred by the State Bar Act, Business and Professions Code section 6000 et seq.

(b) References to “board of governors” shall be deemed to refer to the Board of Trustees.

(c) Attorney Members: No person is eligible for attorney membership on the Board unless (1) he or she is an active member of the State Bar; and either (1) prior to October 31, 2020, if elected, he or she maintains his or her principal office for the practice of law within the State Bar district from which he or she is elected; or (2) if appointed by the Supreme Court or the Legislature, he or she maintains his or her principal office for the practice of law within the State of California.

**(Source: Bus. & Prof. Code, § 6010 (State Bar Act, §20, added by Stats. 1939, ch. 34; amended by Stats. 2011, ch. 417, § 9); Bus. & Prof. Code, § 6015 (added by Stats. 1939, ch. 34; amended by Stats. 1975, ch. 874; Stats. 1985, ch. 465; Stats. 1989, ch. 1223; Stats. 2011, ch. 417; Stats. 2018, ch. 422 [SB 36]); Board of Trustees Resolution, January 2018.)**

### **Section 2 Number of Members**

(a) The Board shall consist of no more than 19 members and no fewer than 13 members.

(b) The Board shall consist of no more than 19 members and no fewer than 13 members during the period of transition from a 19-member board to a 13-member board, as described in Section 6011. The Board will decrease its size without shortening, lengthening, or abolishing terms commencing prior to December 31, 2017, with the ultimate goal of instituting a 13-member board no later than October 31, 2020.

**(Source: Bus. & Prof. Code, § 6011 (added by Stats. 1938, ch. 34; amended by Stats. 1975, ch. 874; Stats 1978, ch. 995; Stats. 1985, ch. 465; Stats. 2011, ch. 417, Stats. 2018, ch. 422 [SB 36]); Board of Trustees Resolution, January 2018.)**

**Article 2**  
**THE APPOINTING AUTHORITIES – NUMBER AND TERMS OF APPOINTMENTS**

**Section 1    *Attorney Member Appointments by the Supreme Court***

- (a) The Supreme Court shall appoint five attorney members of the Board pursuant to a process prescribed by California Rules of Court, rule 9.90. Under rule 9.90, the Supreme Court established the State Bar Trustees Nominating Committee to receive applications and screen and evaluate prospective appointees.
- (b) Attorney members appointed by the Supreme Court shall serve for a term of four years and may be reappointed by the Supreme Court for one additional term only.
- (c) An attorney member elected to the Board may be appointed by the Supreme Court to a term as an appointed attorney member.
- (d) The Supreme Court shall fill any vacancy in the term of, and make any reappointment of, any appointed attorney member.
- (e) When making appointments to the Board, the Supreme Court should consider appointing attorneys that represent the following categories: legal services; small firm or solo practitioners; historically underrepresented groups, including consideration of race, ethnicity, gender, and sexual orientation; and legal academics. In making appointments to the Board, the Supreme Court should also consider geographic distribution, years or practice, particularly attorneys who are within the first five years of practice or 36 years of age and under, and participation in voluntary local or State Bar activities.
- (f) The State Bar shall be responsible for carrying out the administrative responsibilities related to the appointment process prescribed by the Supreme Court described in subdivision (a).

(Source: Bus. & Prof. Code, § 6013.1 (former § 6013.1 added by Stats. 1989, ch. 1223, repealed by Stats. 2011, ch. 417, § 13; new § 6013.1 added by Stats. 2011, ch. 417, §14; Stats 2018, ch. 422 [SB 36]); Board of Trustees Resolution, January 2018; Cal. Rules of Court, rule 9.90.)

**Section 2    *Attorney Member Appointments by the Legislature***

- (a) One attorney member of the Board shall be appointed by the Senate Committee on Rules and one attorney member shall be appointed by the Speaker of the Assembly.
- (b) An attorney member appointed by the Senate Committee on Rules or the Speaker of the Assembly shall serve for a term of four years. When an

attorney member appointed by the Senate Committee on Rules or the Speaker of the Assembly leaves office before the expiration of his or her term, the vacancy shall be filled for the remainder of the term. An attorney member appointed by the Senate Committee on Rules or the Speaker of the Assembly may be reappointed.

(Source: Bus. & Prof. Code, § 6013.3 (added by Stats. 2011, ch. 417, § 15.5; amended by Stats. 2018, ch. 422 [SB 36]); Board of Trustees Resolution, January 2018.)

### **Section 3    *Public Member Appointments by the Legislature and Governor***

(a) A maximum of six members of the Board shall be members of the public who have never been California licensed attorneys or admitted to practice before any court in the United States.

(b) Each public member shall serve for a term of four years.

(c) One public member shall be appointed by the Senate Committee on Rules, one public member shall be appointed by the Speaker of the Assembly, and four public members shall be appointed by the Governor subject to the confirmation of the Senate. Each appointing authority shall fill any vacancy in and make any reappointment to each respective office.

(Source: Bus. & Prof. Code, § 6013.5 (added by Stats. 1975, ch. 874; amended by Stats. 1979, ch. 1041; Stats. 1984, ch. 16; Stats. 2018, ch. 422 [SB 36]); Board of Trustees Resolution, January 2018.)

**Article 3**  
**EMPLOYMENT BY PUBLIC AGENCIES**

- (a) Except as provided in subdivision (b), any full-time employee of any public agency who serves as a member of the Board of Trustees of the State Bar shall not suffer any loss of rights, promotions, salary increases, retirement benefits, tenure, or other job-related benefits, which he or she would otherwise have been entitled to receive.
- (b) Notwithstanding the provisions of subdivision (a), any public agency which employs a person who serves as a member of the Board of Trustees of the State Bar may reduce the employee's salary, but no other right or job-related benefit, pro rata to the extent that the employee does not work the number of hours required by statute or written regulation to be worked by other employees of the same grade in any particular pay period and the employee does not claim available leave time. The employee shall be afforded the opportunity to perform job duties during other than regular working hours if such a work arrangement is practical and would not be a burden to the public agency.

**(Source: Bus. & Prof. Code, § 6013.5 (added by Stats. 1990, ch. 473, effective August 8, 1990; amended by Stats. 2011, ch. 417.)**

**TAB 2.3**

**OFFICERS**

**Article 1 OFFICERS, RESIGNATIONS, VACANCIES**

- Section 1 Officers*
- Section 2 Selection and Terms of Officers*
- Section 3 Continuance in Office*
- Section 4 Resignations*

**Article 2 RESPONSIBILITIES OF OFFICERS**

- Section 1 General*
- Section 2 Chair*
- Section 3 Vice Chair*
- Section 4 Secretary*

**Article 1**  
**OFFICERS, RESIGNATIONS, VACANCIES**

***Section 1 Officers***

The officers of the State Bar are a Chair, Vice Chair, and a Secretary.

**(Source: Bus & Prof. Code, § 6020 (State Bar Act, §10, amended by Stats. 1957, ch. 551; Stats. 2011, ch. 417, § 25); Stats. 2018, ch. 422 (SB 36 eliminated selection of treasurer); Board of Trustees Resolution, January 2018.)**

## **Section 2    Selection and Terms of Officers**

### **(a) Chair and Vice Chair**

(1) The selection of the Chair and the Vice Chair shall be made by appointment of the Supreme Court.

(2) For 2018, the Supreme Court shall appoint a Chair and a Vice Chair to serve a term that commences upon appointment and ends at the conclusion of the annual meeting in 2018.

(3) After 2018, the term of the Chair and the Vice Chair shall be one year, and the Chair and the Vice Chair shall assume the duties of their respective offices at the conclusion of the annual meeting following their appointment.

(4) The Chair and Vice Chair shall not serve more than two terms, except that a Chair or Vice Chair who is appointed to fill a vacancy for the balance of a term is eligible to serve two full terms in addition to the remainder of the term for which he or she was appointed.

(5) Members of the Board of Trustees interested in serving as the Chair or the Vice Chair must submit letters of interest to the Supreme Court no later than December 18 in the year preceding commencement of the term of office, and provide an electronic copy of the submission to the Principal Attorney for the Chief Justice.

**(Source: Bus. & Prof. Code, § 6021, subd. (a) (Stats. 2018, ch. 422 [SB 36]); Board of Trustees Resolution, January 2018.)**

### **(b) Secretary**

(1) The Secretary of the State Bar shall be selected annually by the Board and need not be a member of the State Bar.

(2) The Secretary of the State Bar shall serve within parameters set by the Board, the State Bar Act, the Supreme Court and other appropriate provisions of law.

**(Source: Bus. & Prof. Code, § 6022 (State Bar Act, § 18, amended by Stats. 1970, ch. 510); Board of Governors Resolution, August 2000: Governance Principle 1.9; Board of Trustees Resolution, January 2018.)**

### **Section 3    *Continuance in Office***

The officers of the State Bar shall continue in office until their successors are appointed and qualify.

**(Source: Bus. & Prof. Code, § 6023 (State Bar Act, § 19); Stats. 2018, ch. 422 (SB 36 eliminated officer elections); Board of Trustees Resolution, January 2018.)**

### **Section 4    *Resignations***

Any officer may resign at any time by giving written notice to the State Bar. Any resignation shall take effect upon receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective.

**(Source: Board of Governors Resolution, September 2004.)**

**Article 2**  
**RESPONSIBILITIES OF OFFICERS**

***Section 1 General***

Except as provided by statute, the officers of the State Bar have only such other duties as the Board may prescribe and are subject to its supervision and control. Notwithstanding any delegation, the Board reserves authority over all matters pertaining to the State Bar.

(Source: Bus. & Prof. Code, §§ 6010, 6024; State Bar Rule 6.20.)

***Section 2 Chair***

(a) The primary roles and duties of the Chair:

- (1) The Chair shall take responsibility for leading the Board and holding individual Board members accountable to the Board as a whole for their contributions to the Board's leadership of the Bar.
- (2) The Chair shall be the Board's primary spokesperson to the Executive Director to facilitate communications between the Board and staff and to ensure the Executive Director and staff are accountable to the Board.
- (3) The Chair shall be the primary spokesperson for the Board and the State Bar in discussions with the Supreme Court, the Legislature, other stakeholders, wider audiences, and the general public.

(b) Additional Roles of the Chair:

- (1) Provides leadership that facilitates cohesiveness among Board members, and at the same time encourages the expression of different, and at times opposite, perspectives or points of view.
- (2) Facilitates decision-making by the Board.
- (3) Assures that the Board focuses on the State Bar Strategic Plan Goals and Objectives.
- (4) Keeps the Board informed and aware of broad policy issues that may affect the functioning of the State Bar.
- (5) Presents to the Board Executive Committee for approval the material terms of any contract to employ an Executive Director

prior to presenting any such terms to the Executive Director candidate.

- (6) Consults with the Board Executive Committee about material changes to the terms and conditions of employment or performance of any senior executive.
- (7) Is accountable for what is officially communicated by the Board and State Bar to California licensed attorneys, to the public, and to the government (executive, legislative, and judicial branches). May function as a spokesperson or appoint or empower others to function in that capacity.
- (8) Sets meeting agendas, calls meetings and presides over meetings of the Board and Board Executive Committee.
- (9) Resolves disputes and manages conflict among Board members.
- (10) Assures the Board complies with its by-laws.
- (11) Appoints Board committees and their chairs, and liaisons to State Bar sub-entities as needed in consultation with Board Committee chairs. s (See Tab 2.4, Section 5 – Board of Trustees Liaison Policy for State Bar Sub-Entities.)
- (12) Manages the performance of the Executive Director by:
  - (A) Communicating Board decisions and policies to the Executive Director.
  - (B) Facilitating the Board role in the hiring, assessment, review and firing of the Executive Director.
  - (C) Providing input to the Executive Director with respect to the assessment of the General Counsel and Secretary.
  - (D) Facilitating the Executive Director succession planning process.
- (13) Facilitates Board discussion and action on State Bar policy.
- (14) Makes public statements as appropriate regarding State Bar policy, position and work, with related reports to the Board as required by law.

- (15) Authorizes issuance of certificates of recognition and/or proclamations bearing the Chair's signature or, if appropriate, that of the requesting Board member, to appropriate persons, groups or staff as long as such requests are made in writing at least three weeks prior to their presentation; and
- (16) Presides over the Governance in the Public Interest Task Force.
- (17) Other duties of the Chair are as the Board prescribes and as provided by law.

**(Source: Board of Governors Resolutions, October 24, 1987, May 20, 1997, June 2006, May 2010, January 2011; Bus. & Prof. Code, § 6001.2; Board of Trustees Resolution, March 2013, July 2014, September 2014; State Bar Rule 6.40 adopted effective May 16, 2008; Board of Trustees Resolution, September 2017 (elimination of the Presidential Recognition Award program), January 2018.)**

### ***Section 3 Vice Chair***

The Vice Chair, when acting in the absence or disability of the Chair, has all the duties and powers of the Chair. The Vice Chair, when designated by the Chair, may preside at a specific meeting of the Board or a portion of the meeting. Other duties of the Vice Chair are as the Board prescribes.

The Vice Chair serves as: 1) Vice Chair of the Board Executive Committee; and 2) Chair of the Regulation and Discipline Committee..

**(Source: State Bar 6.41 adopted effective May 16, 2008. Bus. & Prof. Code, § 6021, amended effective January 1, 2012; Board of Trustees Resolution, May 2013 (role of Vice President defined) September 12, 2016, January 2018.)**

#### **Section 4 Secretary**

- (a) The Secretary must keep at the main office of the State Bar a record of minutes of all meetings and actions of the Board and Board committees.
- (b) The Secretary must give notice of all Board meetings, Board Executive Committee meetings and multi-committee meetings of the Board as required under these rules.
- (c) For all Board meetings, Board Executive Committee meetings and multi-committee meetings of the Board, the Secretary, in consultation with the Chair, shall:
  - (1) Prepare the agenda.
  - (2) Publish the agenda and post agenda item memoranda/reports.
  - (3) Set deadlines for the posting of agenda item memoranda/reports.
- (d) The Secretary must keep the State Bar seal, having the words and figures “The State Bar of California – July 29, 1927,” in safe custody at the main office of the State Bar, unless otherwise ordered by the Board.
- (f) The Executive Director of the State Bar should bring his or her choice for Secretary to the Board for approval.
- (g) The Secretary shall perform other duties as the Board may prescribe.

**(Source: State Bar Rule 6.42 adopted effective May 16, 2008; Board of Governors Resolution, May 1988, September 2004 (gifts); Board of Governors Resolution, May 20, 1997 (Executive Director choice of Secretary); Board of Trustees Resolution, January 2018.)**

**TAB 2.4**

**TRUSTEES RESPONSIBILITIES**

**Article 1 BOARD OF TRUSTEES MEMBER RESPONSIBILITIES, SKILLS,  
STANDARDS OF CONDUCT AND TIME COMMITMENT**

*Section 1 Introduction*

*Section 2 Board Member Responsibilities*

*Section 3 Board Member Skills*

*Section 4 Minimum Standards of Conduct*

*Section 5 Board of Trustees Liaison Policy for State Bar Sub-Entities*

*Section 6 Time Commitment*

**Article 1**  
**BOARD OF TRUSTEES MEMBER RESPONSIBILITIES, SKILLS, STANDARDS OF CONDUCT AND TIME COMMITMENT**

***Section 1 Introduction***

The Board of Trustees governance model, consistent with the governing practices of other governmental regulatory boards, requires that the Board ensure that prospective Trustees understand, embrace, and are ready, able, and willing to carry out, the governing mission of the State Bar of California. To assist both potential candidates who are considering joining the Board and the various appointing authorities, the following sections are designed to outline the general responsibilities, skills, standards of conduct and time commitment necessary to succeed as a Board Member.

***Section 2 Board Member Responsibilities***

1. Be familiar with the mission and purpose of the State Bar of California.
2. Members of the Board of Trustees must attend and participate in all Board meetings and meetings of Board committees to which they have been assigned.
3. In order to fulfill each Board member's fiduciary duty, members shall participate in the annual budgeting process; the State Bar is large and its finances complex, requiring that members be extraordinarily diligent in carrying out their responsibilities; orientation and training will be provided so that members understand the complex budget documents.
4. Members must allocate adequate time to prepare for meetings in order to make sound decisions on behalf of the State Bar and its stakeholders, including the public; members must anticipate that such preparation requires review of substantial, written material.
5. The Board has the primary responsibility of governing the State Bar through collective policy-making; staff are delegated the authority and responsibility of management; members must understand the distinctions between these two functions and how they can as Board members work most effectively in partnership with staff.
6. The Board's primary relationship with staff is through the Executive Director and the Executive Director's Leadership Team; members must ensure that the Executive Director and the Leadership Team have the support necessary to implement the policy goals established by the Board of Trustees.

7. In order to govern effectively, members must be familiar with the existing governance structure of the Board of Trustees so that each member can establish good working relationships with each other and staff.
8. Members must be knowledgeable about conflict of interest standards and ensure that reportable conflicts are specifically identified and acknowledged in formal filings and at Board meetings. It is incumbent on members to place the statutory directives of the State Bar above any personal, geographic, or special interest group interests.
9. Members of the Board of Trustees are the primary ambassadors for the State Bar; each member must be prepared to represent the State Bar in any setting or forum and be able to explain the State Bar's responsibilities, initiatives, accomplishments and capabilities.
10. Members are encouraged to share their diverse experience, skills and expertise when determining policy.
11. Members should attend swearing-in ceremonies.
12. The Chair will designate two member teams to serve as liaisons in the area of communications and governmental affairs, and in other areas as the Chair determines will assist the Board in fulfilling its oversight responsibilities.

(Source: Board of Trustees Resolutions, September 2014, September 2016, November 2017.)

### **Section 3 Board Member Skills**

1. The Board of Trustees needs a variety of talent to perform its oversight and policy-making functions successfully. The Board's composition should include the right mix of talent — education, expertise and experience — necessary to address recurrent issues in the State Bar's yearly cycle of activities as well as the less routine issues that arise from time to time. Demographic and geographic diversity is critical to ensuring that a variety of viewpoints and perspectives will guide the Board's decision-making process.
2. To ensure both the talent and diversity needed for optimal functioning of the Board of Trustees, appointing authorities should be provided a Trustee Skills Matrix to help identify gaps in trustee experience and ability. In offering appointing authorities information about the composition of the Board of Trustees for their consideration in recruiting and appointing trustees, the Board intends to aid appointing authorities in identifying and meeting any unmet need on the Board while respecting appointing authorities' authority and discretion.
3. In addition to diversity, the following skills exemplify those to be included on a Trustee Skills Matrix:
  - Governance and Board Leadership
  - Financial and Audit

- Operations and Management
- Public Administration
- Legal Practice
- Access to Justice (Legal Aid, etc.)
- Ethics
- Talent and Human Resources

**(Source: Board of Trustees Resolution, adopting recommendations of the 2017 Governance in the Public Interest Task Force, July 2017, November 2017.)**

#### ***Section 4 Minimum Standards of Conduct***

1. Meeting Attendance: Absent emergency circumstances, members must attend all Board and Board committee meetings on time.
2. Meeting Protocol: Members should be courteous to one another, guests and staff, avoiding personally directed comments; Board members should avoid interrupting speakers and yield to the Chair regarding the order to comment.
3. Meeting Procedures: Members recognize that meetings are conducted according to Board rules, supplemented by Roberts Rules of Order and relevant open/closed meeting rules and regulations.
4. Confidentiality: Members recognize that matters discussed in closed session must be kept confidential subject only to open meeting reporting requirements; members must not disclose such confidential information to the media, or others, including on a 'non attribution' or other basis.
5. Member Education: Members are expected to learn about the State Bar and its operations and functions, which can be accomplished by attending scheduled trainings and individual briefings by the Chair, Executive Director or other members of the Executive Director's leadership team.
6. Staff Relations: Members recognize that staff are a resource and agree to treat staff with courtesy, recognizing the many demands on staff time; Members may not give direction to staff and must direct any requests for information from staff through the Executive Director or the Executive Director's leadership team.
7. Expense Discipline: Members recognize that the expenses of the Board of Trustees are reimbursed from the General Fund; as fiduciaries, members must employ expense discipline to minimize travel and other costs and comply with the State Bar's adopted policies regarding expense reimbursement, which are updated annually to reflect applicable legal requirements.

8. **Ethics and Prudence:** Members must act ethically and prudently in exercising their duties, recognizing that their role is that of a fiduciary.
9. **Public Relations:** While members are free to make public statements about Board matters in their individual capacities, they recognize that personal statements, on the one hand, and statements made on behalf of the State Bar, on the other, can be difficult to distinguish; accordingly, members acknowledge that only the Chair and the Executive Director or their authorized designees are entitled to speak for, or on behalf of, the State Bar.
10. **Education and Outreach:** Members recognize the importance of education and outreach in the successful functioning of the State Bar, and should maintain current, relevant materials for outreach and education purposes; members are encouraged to engage with California licensed attorneys, appointing authorities, constituents, stakeholders, media, voluntary bars, members of the public and others as necessary and appropriate in these outreach and education activities; such outreach and education activities may include:
  - a. Making presentations in public fora on issues of current concern;
  - b. Providing information about the State Bar, its statutory directives and mission, and its initiatives, accomplishments and capabilities; and receiving comment and feedback; and
  - c. Seeking opportunities to do outreach to the broader legal community who may or may not be involved with organized bar activities.

**(Source: Board of Governors Resolution, September 2002 (State Bar of California Board of Governors Member Responsibilities); Board of Governors Resolution, May 2003, September 2004; Board of Trustees Resolution, November 2017.)**

## ***Section 5 Board of Trustees Liaison Policy for State Bar Sub-Entities***

- (a) **Assignment of Board Members to Specific State Bar Sub-Entities**
  - (1) The Chair may, as needed, at his or her discretion and in consultation with the chair of the relevant Board committee, appoint members of the Board of Trustees to serve as liaisons to State Bar standing committees, special boards, committees and commissions, taking into consideration each member's preferences as much as possible, with an eye toward getting as much actual contact between the Board member and the assigned State Bar sub-entity; and the chair of a Board Committee may recommend to the Chair of the Board of Trustees that a liaison appointment be made to a State Bar sub-entity under that committee's oversight authority.
  - (2) The Chair may adjust the liaison assignments to accommodate incoming Board members and changes in members' preferences or changes in the need for liaison appointments.

- (3) If appointed as a liaison, the Board member liaison will attend at least one meeting of one of his or her assigned State Bar sub-entity during each committee year.
  - (4) Board members' travel expenses to attend the meetings will be reimbursed in accordance with established Board and State Bar policies.
- (b) Liaison Coordinator Responsibilities at the Meetings
- (1) Demonstrate to State Bar sub-entity volunteers that their work is known by the Board and appreciated.
  - (2) Ascertain areas of need.
  - (3) Ask about and listen to goals and projects of the State Bar sub-entity. Do they overlap in any way with other projects?
  - (4) Report on and answer questions about Board activities and goals.
- (c) Process regarding Notice and Attendance
- (1) Staff will e-mail notices of upcoming State Bar sub-entity meetings to liaisons and, to the extent practical, the notice will be at least one month in advance of the meeting. The e-mail distribution will be scheduled approximately every two weeks to include any last minute scheduling changes.
  - (2) For State Bar sub-entities that have full advance calendars, staff will provide the meeting calendars to the liaisons as soon as the annual calendars are available.
  - (3) The liaisons must notify appropriate staff of the meetings they plan to attend so that staff may coordinate catering, distribution of agenda materials, etc.

**(Source: Board of Trustees Resolution, November 2017.)**

## **Section 6    *Time Commitment***

Serving as a member of the Board of Trustees is a very time consuming obligation. Meetings, required research and reading, and outreach efforts can occupy as many as

ten to twenty hours per week. The Board of Trustees meets formally six to eight times per year, with the average meeting taking the entire day on a Thursday and most of the day on Friday. Board committee meetings may occur in conjunction with the Board meetings or on a more ad hoc basis, and can occupy one or more days per month. A member can expect to devote no less than two to three weeks of typical work days per year to Board efforts. Further information on meeting schedules and other activities of the State Bar of California can be found at its website, [www.calbar.ca.gov](http://www.calbar.ca.gov).

**(Source: Board Resolution, September 2002; Board of Trustees Resolution, November 2017.)**

**TAB 2.5**

**MEETINGS OF THE BOARD OF TRUSTEES**

**Article 1 MEETINGS OF THE BOARD**

- Section 1 Statutory Authority*
- Section 2 Implementing Procedures For Board of Trustee Compliance With the Bagley-Keene Open Meeting Act*
- Section 3 Annual Board of Trustees Strategic Work Session*
- Section 4 Attendance of Newly Elected and Appointed Members at Last Board Meeting*
- Section 5 Attendance and Voting*
- Section 6 Roll-Call Voting*
- Section 7 Multi-Year Schedule of Meetings*
- Section 8 State Bar Annual Meeting*

**Article 2 AGENDA AND MINUTES**

- Section 1 Consent Agenda*
- Section 2 Special Orders of Business and Appearances*
- Section 3 Minutes of Meetings*
- Section 4 Private Deliberations*

**Article 3 RULE OF DISCUSSION, DEBATE AND PROCEDURE**

- Section 1 Matters that May be Considered*
- Section 2 Prioritizing Discussion*
- Section 3 Conduct of Meetings*
- Section 4 Rule of Discussion, Debate and Procedure for the Board of Trustees*
- Section 5 Staff and Public Comment*
- Section 6 Claimed Breach of Confidentiality*

## **Article 1 MEETINGS OF THE BOARD**

### **Historical Note**

The rules governing Board meetings, agendas, minutes were previously set forth in the *Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California*. Additional meeting rules were contained in Article IV of the Rules and Regulations of the State Bar of California. On May 16, 2008, the Board of Governors repealed the *Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California* and Article IV of the Rules and Regulations of the State Bar of California and replaced both sets of rules in their entirety with one set of rules in Title 6, Division 2, Chapter 1 (Meetings of the Board of Governors) (Rules 6.50-6.56) of the new Rules of the State Bar of California.

### **Section 1   Statutory Authority**

The statutes governing the meetings of the Board of Trustees and exceptions are set forth under §§6026.5 and 6026.7 of the Business and Professions Code. Section 6026.7 states that the State Bar and all its meetings are subject to the Bagley-Keene Open Meeting Act. Section 6026.5 provides that subject to 6026.7, every meeting of the board shall be open to the public except those meetings, or portions thereof, relating to: consultation with counsel on pending or prospective litigation; involuntary enrollment of active members as inactive members due to mental infirmity or illness or addiction to intoxicants or drugs; qualifications of judicial appointees, nominees, or candidates; appointment, employment or dismissal of an employee, consultant, or officer of the State Bar, or to hear complaints or charges brought against such employee, consultant, or officer unless such person requests a public hearing; disciplinary investigations and proceedings, including resignation with a disciplinary investigation or proceeding pending, and reinstatement proceedings; appeals to the board from decisions of the Board of Legal Specialization refusing to certify or recertify an applicant or suspending or revoking a specialist's certificate; appointments to or removals from committees, boards, or other entities; or joint meetings with agencies provided in Article VI of the California Constitution.

(Source: Bus. and Prof. Code, §§6026.5 and 6026.7.)

### **Section 2   Implementing Procedures For Board of Trustee Compliance With the Bagley-Keene Open Meeting Act**

In 2015, Senate Bill No. 387, approved by the Governor and chaptered by the Secretary of State on October 6, 2015, at Chapter 537, Statutes of 2015, ("SB 387") was passed and makes the State Bar subject to all requirements of Bagley-Keene commencing April 1, 2016. SB 387 retains the grounds for closed sessions permitted by Business and Professions Code section 6026.5 and these provisions, pursuant to Bagley-Keene, are

applicable to all committees of the Board and the State Bar. On November 20, 2015, the Board of Trustees adopted rule 6.57 which repeals rules 6.50-6.56 (which previously contained the Bar's open meeting requirements) effective April 1, 2016:

**Rule 6.57. Repeal.**

This chapter shall remain in effect only until April 1, 2016, and as of that date is repealed. Beginning April 1, 2016, meetings of the Board of Trustees and its committees will be subject to the Bagley-Keene Open Meeting Act, as required by Business and Professions Code section 6026.7, and Business and Professions Code section 6026.5.

**(Source: Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California: August 17, 1985, October 1, 1985, July 26, 2003; November 2007; repealed May 16, 2008; Rules of the State Bar of California, Title 6, Division 2, Chapter 1 (Meetings of the Board of Trustees) (Rules 6.50-6.57): May 16, 2008; repealed April 1, 2016; Board of Trustees Resolution November 20, 2015.)**

**Historical Note**

**Repealed Rule 6.50** (adopted effective May 16, 2008; amended effective July 22, 2011; amended effective January 1, 2012; amended effective April 25, 2013.) supersedes

- a) Article IV, § 2 of the Rules and Regulations of the State Bar of California (Time and Place of Meetings); repealed May 16, 2008;
- b) Article IV, § 4 of the Rules and Regulations of the State Bar of California (Annual Organization Meeting), formerly Section 5; renumber Section 4, effective July 26, 2003; repealed May 16, 2008;
- c) Article IV, § 5 of the Rules and Regulations of the State Bar of California (Authority to call Special Meetings), formerly Section 6; renumbered Section 5 and amended effective July 26, 2003; repealed May 16, 2008;
- d) Article IV, § 7 of the Rules and Regulations of the State Bar of California (Quorum); repealed May 16, 2008; and
- e) Article 1, § 4(b)(6) of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Meeting, Definition), Board of Governors' Resolution, August 17, 1985; October 1, 1985; July 26, 2003; November 2008; repealed May 16, 2008.

**Repealed rule 6.51** (adopted effective May 16, 2008; amended effective July 22, 2011; amended effective April 25, 2013.) supersedes

- a) Article IV, § 3 of the Rules and Regulations of the State Bar of California (Emergency Meetings), amended effective June 10, 2000; repealed May 16, 2008;
- b) Article 2, § 1(c) of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Meetings to be Open and Public);

Attendance); Board of Governors Resolutions August 17, 1985; July 26, 2003; March 2007; repealed May 16, 2008;

- c) Article 2, § 2(a) of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Notice of Meetings; Inclusion of Agenda; Time; Request for Notice and Renewal; Annual Charge for Sending); Board of Governors Resolutions August 17, 1985; August 2000: Governance Principle 4.3; July 26, 2003; March 2007; repealed May 16, 2008;
- d) Article 4, § 1 of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Policy); repealed May 16, 2008; and
- e) Article 4, § 2 of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Late Added Items; Unnoticed Meetings), amended June 10, 2000; March 2007; repealed May 16, 2008.

**Repealed rule 6.52** (adopted effective July 22, 2011; amended effective October 13, 2012)

**Repealed rule 6.53** (adopted effective July 22, 2011)

**Repealed rule 6.54** (adopted as Rule 6.52 effective May 16, 2008; renumbered as Rule 6.54 and amended effective July 22, 2011; amended effective January 1, 2012; amended effective January 1, 2014) supersedes

- a) Article IV, § 1 of the Rules and Regulations of the State Bar of California (Open Meetings; Public Attendance); repealed May 16, 2008;
- b) Article 2, § 1 of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Meetings to be Open and Public; Attendance); Board of Governors' Resolutions August 17, 1985; July 26, 2003; March 2007; repealed May 16, 2008; and
- c) Article 2, § 4 of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Disorderly Conduct During Meeting; Clearing of Room); repealed May 16, 2008.

**Repealed rule 6.55** (adopted as Rule 6.53 effective May 16, 2008; renumbered as Rule 6.55 and amended effective July 22, 2011; amended effective January 1, 2012; amended effective April 25, 2013) rule supersedes

- a) Article 2, § 2(b) of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Notice of Meetings; Inclusion of Agenda; Time; Request for Notice and Renewal; Annual Charge for Sending); repealed May 16, 2008; and
- b) Article 3 of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Closed or Executive Sessions of the Board), repealed May 16, 2008.

**Repealed rule 6.56** (adopted as Rule 6.54 effective May 16, 2008; renumbered as Rule 6.56 and amended effective July 22, 2011) supersedes Article 5 of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Board Records), repealed May 16, 2008.

To facilitate compliance with the Bagley-Keene Open Meeting Act (“Bagley-Keene”), as required by Business and Professions Code section 6026.7, the Board of Trustees adopts the following implementation procedures.

(A) Schedule for Board of Trustee Meetings

- (1) Regular meetings of the Board of Trustees and board committees are calendared by board resolution.
- (2) Between regular meetings, special meetings may be called by the President, a Committee Chair, or by a majority of the board or a board committee. Unless the meeting meets the criteria under Bagley-Keene at Government Code section 11125.4(a) for shortened notice, meetings must be called with 10 days’ notice.
- (3) Meetings of the board and board committees must be held at the State Bar offices in San Francisco or Los Angeles, unless a majority of the board votes to meet elsewhere in California.

(B) Notice of Board of Trustee Meetings

- (1) Notice of meetings of the board and board committees must be posted on the State Bar’s website no fewer than 10 days before the meeting, unless the meeting meets the criteria under Bagley-Keene at Government Code section 11125.4(a) for shortened notice as a special meeting or Government Code section 11125.5(a) for shortened notice as an emergency meeting.
- (2) Interested persons may subscribe to receive notice of board and board committee meetings by e-mail or first class mail.
- (3) The notice of meeting will include the name, address and phone number of any person who can provide further information prior to a noticed meeting, and the address of the website where notices regarding board and board committee meetings are posted.
- (4) Notice of meetings will include a specific agenda for the meeting, including a brief description of the items of business to be discussed or transacted in either open or closed session.

- (5) Items may not be added to an agenda after the ten-day notice period except as provided under Government Code section 11125.3, a) upon a determination by a majority vote of the board or board committee that an emergency situation exists, as defined in Government Code section 11125.5; or b) upon a determination by the board or board committee by a two-thirds vote, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there exists a need to take immediate action and that the need for action came to the attention of the board or board committee after notice of the agenda was posted in accordance with the 10 day notice requirement. In this situation, notice of the late items must be posted at least 48 hours before the meeting.
- (6) Agendas and other writings distributed to all or a majority of the board or a board committee shall be made available upon request, except as provided under Government Code section 11125.1(a). Writings distributed to members of the board or a board committee prior to or at a meeting will be available at the meeting. If these writings are prepared by someone other than the State Bar, they will be available as soon as feasible after the meeting.

(C) Committee Meetings

- (1) A majority of board members may attend an open and noticed board committee meeting of which they are not a member only as observers. Board members who are not members of the board committee may not participate in the committee discussion and may not sit at the table with the committee members.
- (2) If during the course of a regularly scheduled and noticed board meeting, the board desires to have a committee discuss an item of business on the agenda, the committee may do so provided that:
  - (a) the specific time and place of the committee meeting is announced during the public board meeting, and
  - (b) the committee meeting is conducted within a reasonable time of, and nearby, the meeting of the board.

(D) Teleconference Meetings

- (1) Board and board committee meetings may be held by teleconference in compliance with the requirements of Bagley-Keene. Each teleconference meeting location, including those from where a member of the board will be calling in, must be identified in the notice and agenda and to be open to the public.

- (2) For teleconference meetings, a number shall be provided to allow members of the public to call in to the meeting. Witnesses, guest speakers, and staff may participate in a teleconference meeting by calling the number available to the public.
- (3) Access to teleconference meetings shall also be provided by providing space at the San Francisco and Los Angeles offices of the State Bar for the public to listen to the teleconference. These locations will be formally noticed as teleconference sites.
- (4) Votes taken during a teleconference must be by roll call.

(E) Minutes and Records of Voting

- (1) The Secretary or his or her designee shall maintain minutes of topics discussed and decisions made at board meetings. These minutes must include a record of the vote or abstention of each member present for each action item. Closed session minutes are confidential.
- (2) Final minutes of open meetings approved by the Board of Trustees will be posted on the State Bar's website in an easily accessible area.

(F) Closed Sessions

- (1) Closed sessions of the board and board committees may be held to discuss applicable topics allowed under Bagley-Keene at Government Code section 11126 and Business and Professions Code section 6026.5.
- (2) The agenda for a closed meeting must include a citation to the specific provisions of Bagley-Keene or Business and Professions Code section 6026.5 which allow the closed session.
- (3) Prior to going into closed session, the President, Committee Chair or other presiding Trustee must disclose the general nature of the items to be discussed and the citation to the specific provisions of Bagley-Keene or Business and Professions Code section 6026.5 which allow the closed session.
- (4) The board or a board committee is required to designate a staff person to attend the closed session and to record in a minute book a record of topics discussed and decisions made. The minutes of a closed session is available only to the State Bar, or if a violation of the open meeting requirements is alleged, to a court of general jurisdiction. However, the board must convene in open session after a closed session and publicly report at a subsequent public meeting any action taken, and any rollcall

vote thereon, to appoint, employ, or dismiss a public employee made in the closed session of the board.

(G) Public Comment

- (1) Members of the public must be provided with an opportunity to directly address the board or board committee on each agenda item, either prior to or during the discussion of that item.
- (2) Any person attending a board or board committee meeting has the right to record the proceedings unless the board or board committee reasonably finds that the recording cannot be made without a persistent disruption of the proceedings.
- (3) No person attending a meeting shall be required, as a condition of attendance, to register his or her name, complete a questionnaire, or otherwise perform any condition precedent to his or her attendance.

(Source: Board of Trustees Resolutions November 20, 2015; November 2016.)

**Section 3 Annual Board of Trustees Strategic Work Session**

The Board of Trustees will participate in an annual Strategic Work Session at which one or more of the strategic, operational, or annual work plans will be considered and/or developed. The Vice President and Treasurer shall be responsible for the annual Strategic Work session. Each annual Strategic Work Session agenda will be designed to be responsive to current State Bar issues and concerns and to maintain the integrity of the ongoing planning process by including the following agenda items:

- (a) Review of Accomplishments/Performance In Prior Year
- (b) Environmental Scan
  - (1) Customer and Stakeholder Input
  - (2) Environmental Trends:
    - (A) Sociological
    - (B) Economic
    - (C) Political
    - (D) Technological
- (c) Consideration of Proposed Advisory Committee Work Plans for Upcoming Budget Year
- (d) Need to Undertake Any New Strategic Initiatives/Programs
- (e) Identification of Revisions to the Strategic Plan (if any)

- (f) Setting of Operational Priorities to guide budget development and work plan implementation for the budget development year.

At the completion of each Strategic Planning Session, the Board will provide direction to Board and Advisory Committees and staff regarding new strategic initiatives, operational priorities, budget development and resource allocation, and performance measures, as appropriate.

This meeting is conducted every January.

(Source: Board of Governors' Resolution August 2000: Governance Principle 5.3, Board of Governors Planning Policies adopted September 8, 2004; September 12, 2016.)

#### ***Section 4 Attendance of Newly Elected and Appointed Members at Last Board Meeting***

The newly elected and appointed members of the Board of Trustees are invited to attend the last meeting of the presently constituted board and they are granted the usual travel allowance.

(Source: Board of Governors' Resolutions January 20, 1971; January 26, 1985.)

#### ***Section 5 Attendance and Voting***

Board members shall, to the extent practicable, attend general and special meetings of the full board. To participate or vote at a regularly scheduled meeting of the Board of Trustees, a board member must be physically present at the meeting.

(Source: Board of Governors' Resolution, January 1997, August 2000, Governance Principle 6.1.)

#### ***Section 6 Roll-call voting***

The legislative model of roll-call voting shall be used for meetings of the Board of Trustees.

(Source: Board of Governors' Resolution, December 1999.)

#### ***Section 7 Multi-Year Schedule of Meetings***

The Board's meeting schedule shall be established three years in advance.

(Source: Board of Governors' Resolution August 2000.)

## **Section 8    *State Bar Annual Meeting***

Subject to the laws of this State, the board may formulate and declare rules and regulations necessary or expedient for the carrying out of this chapter.

The board shall by rule fix the time and place of the annual meeting of the State Bar, the manner of calling special meetings thereof and determine what number shall constitute a quorum of the State Bar. (Origin: State Bar Act, §27.)

At the annual meeting, reports of the proceedings by the board since the last annual meeting, reports of other officers and committees and recommendations of the board shall be received.

Matters of interest pertaining to the State Bar and the administration of justice may be considered and acted upon. (Origin: State Bar Act, §40.)

**(Source: Bus. & Prof. Code, 6025, 6026.)**

## **Article 2 AGENDA AND MINUTES**

### ***Section 1   Consent Agenda***

The secretary, when appropriate, shall prepare for each meeting of the board a "Consent Agenda" upon which shall be placed matters of a kind on which action of the board usually is uniform and of a routine nature and he or she shall distribute with said agenda as to each matter thereon a brief explanation and recommendation.

The following also shall be placed on the Consent Agenda:

- All claims for money against the State Bar, including refund and waiver of membership fees and penalties.
- Monthly financial statement.
- Annual "delinquent list."
- Annual reports of committees not requiring board action.

(Source: Board of Governors' Resolutions April 1972; August 17, 1985; July 26, 2003.)

### ***Section 2   Special Orders of Business and Appearances***

The setting of special orders of business at meetings of the Board of Trustees and inviting persons to attend the meeting to speak to these, or other matters, shall have the prior approval of the president or any three (3) members of the board; the foregoing, however, to be subject to the authority of the entire board to control the agenda.

(Source: Board of Governors' Resolution August 26, 1976.)

### ***Section 3   Minutes of Meetings***

The minutes of the meetings of the Board of Trustees shall be prepared, transcribed and transmitted to board members within twenty-one (21) days of each meeting.

The "tentative draft" of the minutes that is prepared and furnished to the board following each board meeting consists of two documents containing the board's action taken in (a) open, and (b) closed session.

Following approval of the minutes by the board they are entered and maintained in the Permanent Books of Minutes, as follows:

- One set for the regular and normal actions of the board.

- One set for those matters which are considered confidential, as defined in § 6026.5 of the Business and Professions Code and §§ 11126 and 11126.2 of the Government Code, and other provisions of law.

(Source: Board of Governors' Resolutions April 13, 1972; July 26, 2003; Bus. & Prof. Code §§ 6026.5, 6026.7.)

#### **Section 4    *Private Deliberations***

All deliberations and discussions by the board during closed board meetings, are confidential.

(Source: Board of Governors' Resolution August 1961.)

**Article 3**  
**RULE OF DISCUSSION, DEBATE AND PROCEDURE**

**Section 1    *Matters that May be Considered***

The Board may consider any matter properly before it concerning the governance or executive functions of the State Bar.

(Source: Board of Governors' Resolution August 2000: Governance Principle 4.6.)

**Section 2    *Prioritizing Discussion***

Board meeting time should prioritize the discussion of relevant information and policy considerations surrounding issues and activities of major impact upon the legal profession, the effective administration of the profession, and access to the legal system by the public.

(Source: Board of Governors' Resolution August 2000: Governance Principle 4.7.)

**Section 3    *Conduct of Meetings***

The conduct of Board meetings shall be directed by the President and guided by the principal of encouraging critical thinking, due diligence and full and informed debate in its decision making process

(Source: Board of Governors' Resolution August 2000: Governance Principle 4.2.)

**Section 4    *Rule of Discussion, Debate and Procedure for the Board of Trustees***

The rules of discussion, debate and procedure of the Board of Trustees of the State Bar of California are *Robert's Rules of Order--Newly Revised*, published by Scott, Foresman and Company.

(Source: Board of Governors' Resolutions January 1985, August 2000: Governance Principle 4.1, September 2004.)

**Section 5    *Staff and Public Comment***

In appropriate circumstances and in accordance with the State Bar's Public Comment Rules, the Board shall seek staff and public comment on issues being considered by the State Bar.

(Source: Board of Governors' Resolutions August 2000: Governance Principle 4.4; December 7, 2002 [Public Comment Rules].)

## **Section 6    *Claimed Breach of Confidentiality***

A claimed breach of confidentiality of actions, deliberations and discussions by the Board occurring during closed Board meetings, including executive sessions, shall compel the Board to conduct a fair and prompt investigation into the facts and circumstances of the allegation. If it is determined that a breach of confidentiality has occurred, the individual shall be afforded the opportunity to respond to the claim. The findings and recommendations of the investigating body shall be submitted to the Board. Upon its conclusion that a breach of confidentiality occurred, the Board may privately or publicly reprimand or censure that individual for such violation. The Board shall take those steps necessary to preserve the position, resources and assets of the State Bar should any litigation or other source of liability against the State Bar arise from the breach of confidentiality.

**(Source: Bus. & Prof. Code §6044; Board of Governors Resolution August 2000: Governance Principle 7.3.)**

**TAB 2.6**

**BOARD COMMITTEES**

**Article 1 GENERAL**

- Section 1 Committee Role*
- Section 2 Standing Board Committees*
- Section 3 Appointment and Composition of Board Committees*
- Section 4 Compliance with Bagley-Keene Open Meeting Act*
- Section 5 Board Committee Chair Orientation*
- Section 6 Board Committee Work Plan*

**Article 2 CHARTER FOR BOARD EXECUTIVE COMMITTEE**

**Article 3 CHARTER FOR FINANCE AND PLANNING COMMITTEE**

**Article 4 CHARTER FOR REGULATION AND DISCIPLINE COMMITTEE**

**Article 5 CHARTER FOR PROGRAMS COMMITTEE**

**Article 6 CHARTER FOR AUDIT COMMITTEE**

## **Article 1 GENERAL**

### ***Section 1 Committee Role***

The Board, under the leadership of its Chair, shall establish a Board committee structure that focuses on core functions necessary for the operation of this public corporation. Standing and ad hoc committees shall be designated by the Chair as necessary to carry out the licensing, regulatory and disciplinary functions of the State Bar.

**(Source: Board of Governors Resolution, August 2000: Governing Principle 5.1; Board of Governors Resolution May 2010; Board of Trustees Resolution, August 2017, January 2018.)**

### ***Section 2 Standing Board Committees***

The Board of Trustees has established a Board committee structure composed of five standing committees. The standing committees include: (1) Board Executive Committee; (2) Finance and Planning Committee; (3) Regulation and Discipline Committee; (4) Programs Committee; and (5) Audit Committee. It is understood that the Board may continue to refine the Board Committee structure as experience and need dictate.

**(Source: Board of Governors Resolution, Annual Organization Meeting, October 19-20, 2001 approving October 10, 2001 Action Plan/Report; Board of Governors Resolutions, September 2004, July 2009, May 2010; Board of Trustees Resolution, August 2017, January 2018.)**

### ***Section 3 Appointment and Composition of Board Committees***

- (a) Each standing committee shall have no fewer than five (5) members. The incoming Chair presents and proposes committee chairs, liaisons (except liaisons to State Bar sub-entities, the selection of which is governed by the Board of Trustees Liaison Policy for State Bar Sub-Entities, see Tab 2.4, Section 5), and appointments to committees, after consulting with the outgoing Board Executive Committee, subject to the approval of the Board.

**(Source: Board of Governors Resolutions, September 1991, August 2000, November 2000, October 2001 Action Plan/Report; Board of Governors Resolution, May 2010; Board of Trustees Resolution 2017, 2018.)**

- (b) It shall be the policy of the Board that the Chair, with the approval of the Board, may appoint ad hoc or special committees to handle special assignments. Any such committees automatically are to cease to exist upon completion of its assignment.

- (1) Authorization for the creation of any ad hoc committee must be sought and obtained by the Chair either from the Board as a whole or from the Board Executive Committee.

(2) The authorization for any ad hoc committee must be based upon a written charge setting forth the task or tasks to be carried out, and must not include any task that is expressly delegated by the Board Book to any standing committee or to the Board as a whole unless it is determined that a special ad hoc committee of targeted focus and limited duration is best suited for completion of the task or tasks.

(3) The Chair will retain full discretion to assign and make reassignments of the Chair and the membership of ad hoc committees, provided that Trustees are consulted in advance, prior to their assignment.

(4) Written notice and an agenda of the meetings of any ad hoc committee must be sent to all Trustees.

(5) Any Trustee who is not a member of an ad hoc committee is permitted to attend ad hoc committee meetings in person or by telephone only as an observer.

(6) Each ad hoc committee shall be deemed dissolved as of the next State Bar annual meeting following its authorization, unless the Board re-authorizes it.

(7) Should an emergency or other unusual circumstances arise, the Board may at any time suspend these guidelines upon the recommendation of the Chair.

- (c) Chairs of Board committees are authorized to appoint subcommittees from among the members of the Board of Trustees to further the work of the committee.

**(Source: Board of Governors Resolutions, September-October 1981, May 2010; Board of Trustees Resolution, November 2016; Board of Trustees Resolution, August 2017, January 2018.)**

#### ***Section 4 Compliance with Bagley-Keene Open Meeting Act***

Meetings of the Board of Trustees and its committees are subject to the Bagley-Keene Open Meeting Act, as required by Business and Professions Code section 6026.7.

SEE: TAB 2.5, Article 1, Section 2.

**(Source: State Bar Rule 6.57, adopted effective November 20, 2015; Bus. & Prof. Code, §§ 6026.5, 6026.7; Board of Trustees Resolution, November 2016, January 2018.)**

### **Section 5    *Board Committee Chair Orientation***

Staff, designated by the Executive Director, shall meet with committee chairs and vice chairs at the start of the Board year for an orientation on the work plan of the committees and continue to monitor that work plan throughout the Board year by regularly scheduled communications.

**(Source: Board of Governors Resolution, August 2000; Board of Trustees Resolution, August 2017, January 2018.)**

### **Section 6    *Board Committee Work Plan***

Board committees shall submit to the Board Executive Committee for approval annual work plans. The work plans shall be submitted on a standard template.

**(Source: Board of Governors Resolution, August 2000: Governing Principle; Board of Trustees Resolution, January 2018.)**

## **Article 2 CHARTER FOR BOARD EXECUTIVE COMMITTEE**

The Chair of the Board of Trustees shall serve as the Chair of the Board Executive Committee and the Vice Chair of the Board of Trustees shall serve as its Vice Chair. The Board Executive Committee shall include at least one Board member appointed by each of the following appointing authorities: (1) The Supreme Court; (2) The Governor; (3) The Speaker of the Assembly; and (4) The Senate Committee on Rules. In addition, the Board Executive Committee shall include the chairs of each standing committee. An individual Trustee may fill more than one position on the Board Executive Committee, e.g., positions assigned to standing committee chair and Supreme Court appointee may be filled by the same Trustee. The Executive Director shall be a member of the Board Executive Committee, but shall have no vote and shall not be counted towards a quorum of the Board Executive Committee. The Board Executive Committee shall be responsible for the effective functioning of the Board of Trustees, the maintenance and development of Board of Trustees–Executive Director working relationship, and the oversight of certain high–level internal operational matters.

The Board Executive Committee shall:

- Board of Trustees Functioning: Oversee the functioning of the Board of Trustees by coordinating the work of the other Board committees and approving Board Committee work plans; keep the State Bar Mission Statement updated; set Board Member performance standards; monitor Board Member performance; perform the annual Board Assessment; and maintain and update the Trustee Skills Matrix to assist the Board and appointing authorities in Trustee and officer selection and development.
- Board Book: Approve amendments to the Board of Trustees Policy Manual, also referred to as the Board Book, subject to Board ratification.
- Volunteer Management/Coordination: Nominate volunteer applicants to serve on State Bar sub-entities and external entities; provide adequate public notice of appointment opportunities to ensure a well-qualified and diverse field of applicants; and ensure that all volunteers appointed to serve on State Bar sub-entities are provided uniform orientation on the State Bar mission, program areas, structure and fiscal/administrative policies as well as specific training on the role and responsibilities of the sub-entity on which the volunteer has been appointed to serve.
- Board of Trustees Recruitment: Inform the legal community about the work of the Board and fashion and execute strategies that encourage qualified and diverse candidates to join the Board.
- Trustee Orientation and Development: Develop and oversee execution of a formal Board member capacity building program to ensure that each incoming

group of Trustees receives timely training on all significant aspects of the State Bar, the elements of which may include:

- On-boarding orientation about the State Bar, its governance structure and Trustee roles and responsibilities.
  - Training on Admissions and the Discipline System.
  - Ongoing continuing education and training pursuant to a cyclical training calendar.
  - A mentoring program pairing new Board members with senior Board members.
- Secretary Oversight: Oversee the Board Secretary function.
  - Executive Director Evaluation: Ensure that the Executive Director/Chief Executive Officer position description is updated as necessary to reflect changing State Bar needs, priorities, and circumstances; annually negotiate Executive Director performance targets and annually or semi-annually evaluate progress in achieving these targets in coordination with the Chair's performance management duties set forth in Tab 2.3, Article 2, Section 2.
  - Litigation Oversight: Address legal issues and recommend Board action as appropriate; and provide oversight of litigation involving the State Bar.
  - Operational Responsibilities: Address internal operational issues not falling within the purview of other Board committees and non-delegable to staff (e.g. ratifying union/management Memoranda of Understanding, recommending changes to internal rules and regulations such as conflict in interest policies, responding to governmental inquiries and other matters such as fee bill negotiations), recommending Board action as appropriate.
  - Delegation of Authority: Take action on behalf of the Board when obtaining a quorum of the full Board would not be feasible before it is necessary to take action.
    - Decisions of the Board Executive Committee under this delegation of authority shall be consistent with the goals, values and direction of the Board.
    - The Executive Director, or an authorized staff member, shall report on any action taken under this delegation of authority promptly and in no event later than the next regularly scheduled Board meeting.
  - Perform such other functions relevant to the Board Executive Committee's subject area as the Board of Trustees may from time to time assign.

**(Source: Board of Governors Resolution approving Committee on Operations Charter, May 2002; Board of Governors Resolutions, July 2009, May 2010, September 2010; Board of Trustees Resolution approving Board Executive Committee Charter, July 2014; Board of Trustees Resolutions, March 13, 2015; November 2016; Board of Trustees Resolution approving the Board Executive Committee Charter, August 2017, January 2018; Bus. & Prof. Code, § 6029, sub. (b) (SB 36 [Stats. 2018, ch. 422]).)**

### **Article 3**

## **CHARTER FOR FINANCE AND PLANNING COMMITTEE**

The Finance and Planning Committee shall develop and lead the Board's participation in all State Bar planning, budget preparation, and program implementation, including examination of financials, strategic planning and governance review.

The Finance and Planning Committee shall:

- Budget and Planning: Consult with the Chair, Vice Chair and Executive Director on the detailed design of the State Bar's planning and budget development cycle -- with special attention to the Board's role in planning -- and on the annual planning calendar; ensure that the Board participates fully and proactively in the planning process on an ongoing basis; and work with the Executive Director and Chief Financial Officer to vet the proposed budget, as well as any mid-year updates or proposed changes to the budget, before presentation and recommendation to the Board of Trustees.
- Financial Review: Ensure that the financials are thoroughly examined on a quarterly basis; develop a functional and detailed understanding of the State Bar's revenue streams, expenditures, and overall fiscal conditions and issues in order to be engaged proactively in the budget preparation, development and planning process on an ongoing basis; monitor the State Bar's performance relative to the budget; and ensure that appropriate actions are taken to address any material variances to the budget.
- Strategic Planning Session: Coordinate with the Chair and Vice Chair the overseeing, preparing for, and hosting the annual strategic planning session.
- Governance Review: Review Board and Board committee functioning; make recommendations to the Board for changes in governance structure to ensure appropriate alignment with State Bar program operations, administrative policy and mission; and ensure incorporation of approved governance recommendations into the State Bar Strategic Plan.
- Oversight: Ensure as part of the annual operational planning/budget preparation process that a department-by-department fiscal review is performed to evaluate budget projections.
- Work Plan: Develop and adopt a Finance and Planning Committee Work Plan for approval by the Board Executive Committee; for each Finance and Planning Committee project, the Work Plan shall include a description of the project, the Strategic Plan Goal(s) and Objective(s) that are furthered by the project, and an estimated timeline for completion and presentation to the Finance and Planning Committee and/or the Board.

- Perform such other functions relevant to the Finance and Planning Committee's subject area as the Board of Trustees may from time to time assign.

**(Source: Board of Governors Resolution approving Planning, Program Development and Budget Committee Charter, January 2002; Board of Governors Resolutions, July 11, 2008, July 2009, September 2010; Board of Trustees Resolution approving Planning and Budget Committee Charter, July 2014; Board of Trustees Resolution approving the Finance and Planning Committee Charter, August 2017, January 2018.)**

**Article 4**  
**CHARTER FOR REGULATION AND DISCIPLINE COMMITTEE**

All members of the Board of Trustees are appointed to the Regulation and Discipline Committee, except for any Board members appointed and serving on the Supreme Court's Applicant Evaluation and Nomination Committee.

**(Source: California Rules of Court, rule 9.11(a)(2); Board of Trustees Resolution, July 2016; California Rule of Court 9.11; Board of Trustees Resolution, October 2016, August 2017.)**

The Regulation and Discipline Committee is a performance-monitoring and oversight committee. It is accountable for monitoring the operational performance of the State Bar Program Areas identified on the Board Committee Structure Matrix appended to Tab 2.6.

The Regulation and Discipline Committee shall:

- Establish the key elements of a programmatic reporting process, including the content, format, and frequency of performance reports to the Board, and oversee implementation of the process.
- Oversee (as directed by Bus. & Prof. Code, § 6079.5), the work of the Chief Trial Counsel, who reports to and serves under the Regulation and Discipline Committee.
- Approve changes to high-level quality-control policies that apply to the functioning of the State Bar Program Areas under the Regulation and Discipline Committee's performance-monitoring and oversight authority.
- Review performance reports in Regulation and Discipline Committee meetings and report program performance to the full Board.
- Identify and oversee the implementation of needed corrective actions.
- Oversee the preparation of in-depth assessments of program/function effectiveness for presentation at the annual strategic planning session.
- Review internal and external audit reports as they relate to the functions of the State Bar under the Regulation and Discipline Committee's performance-monitoring and oversight authority and oversee implementation of recommendations identified therein.
- Oversee the Annual Discipline Report process and underlying discipline statistics.
- Develop and adopt a Regulation and Discipline Committee Work Plan for approval by the Board Executive Committee; for each Regulation and Discipline

Committee project listed on the Work Plan, the Work Plan shall include a description of the project, the Strategic Plan Goal(s) and Objective(s) that are furthered by the project, and an estimated timeline for completion and presentation to the Regulation and Discipline Committee and/or the Board.

- Perform such other functions relevant to the Regulation and Discipline Committee's subject area as the Board of Trustees may from time to time assign.

**(Source: Board of Governors Resolution approving the Regulation, Admissions and Discipline Oversight Committee Charter, May 2002; Board of Governors Resolutions July 2009, September 2010; Board of Trustees Resolution approving Regulation and Discipline Committee Charter, July 2014; Board of Trustees Resolutions November 2015, February 1, 2016, October 2, 2016; Board of Trustees Resolution approving the Regulation and Discipline Committee Charter, August 2017, January 2018.)**

## **Article 5 CHARTER FOR PROGRAMS COMMITTEE**

The Programs Committee is a performance-monitoring and oversight committee. It is accountable for monitoring the operational performance of the State Bar Program Areas identified on the Board Committee Structure Matrix appended to Tab 2.6.

The Programs Committee shall:

- Establish the key elements of a programmatic reporting process, including the content, format, and frequency of performance reports to the Board, and oversee implementation of the process.
- Approve changes to high-level quality-control policies that apply to the functioning of the State Bar Program Areas under the Programs Committee's performance-monitoring and oversight authority.
- Review performance reports in Programs Committee meetings and report program performance to the full Board.
- Identify and oversee the implementation of needed corrective actions.
- Oversee the preparation of in depth assessments of program/function effectiveness for presentation at the annual strategic planning session.
- Review internal and external audit reports as they relate to the functions of the State Bar under the Programs Committee's performance-monitoring and oversight authority and oversee implementation of recommendations identified therein.
- Develop and adopt a Programs Committee Work Plan for approval by the Board Executive Committee; for each Programs Committee project listed on the Work Plan, the Work Plan shall include a description of the project, the Strategic Plan Goal(s) and Objective(s) that are furthered by the project and an estimated timeline for completion and presentation to the Programs Committee and/or the Board.
- Perform such other functions relevant to the Programs Committee's subject area as the Board of Trustees may from time to time assign.

**(Source: Board of Governors Resolution approving Member Oversight Committee Charter, May 2002; Board of Governors Resolution approving Volunteer Involvement Committee Charter, May 2002; Board of Governors Resolutions, September 2005, July 2009, September 2010; Board of Trustees Resolution approving the Admissions and Education Committee Charter, July 2014, September 12, 2016; Board of Trustees Resolution approving the Programs Committee Charter, August 2017, January 2018.)**

## **Article 6**

### **CHARTER FOR AUDIT COMMITTEE**

The Audit Committee is charged with assisting the Board of Trustees in fulfilling its oversight responsibility as related to the integrity of accounting and financial reporting processes, the system of internal controls, and audit processes. In addition, the Audit Committee is charged with overseeing risk management and compliance efforts. The Audit Committee has a goal of including at least one public member of the Board of Trustees.

The Audit Committee shall:

- Undertake the following responsibilities relating to the annual financial statement audit:
  - Recommend appointment of the external auditors, taking into account the recommendation of the Executive Director and Chief Financial Officer, for approval by the full Board of Trustees.
  - Evaluate the independence of the external auditors, including their recent or planned future engagement by the State Bar for non-audit services.
  - Review and approve the annual audit scope and the fees of the external auditors.
  - Monitor the progress of the financial statement audit.
  - Evaluate the results, findings and recommendations of the financial statement audit.
  - Ensure that the State Bar's responses to control weaknesses and compliance issues identified in the course of the financial statement audit are appropriate and timely.
  - Serve as a direct communications link between the Board of Trustees and the independent auditor.
  - Monitor the State Bar's implementation of the financial statement audit recommendations, working with staff to identify other compliance initiatives that should be undertaken.
  - Review with the Chief Financial Officer or his or her designee and the independent auditor the financial statement audit's results, findings and recommendations, including any difficulties encountered; review with the Chief Financial Officer or his or her designee and the independent auditor all matters required to be communicated to the Audit Committee under generally accepted auditing standards.
  
- Undertake the following responsibilities relating to financial statements:
  - Review significant accounting and reporting issues, including complex or unusual transactions, and recent professional and regulatory pronouncements, and understand their impact on the financial statements.
  - Review the annual financial statements, and consider whether they are complete, consistent with information known to the Audit Committee members, employ appropriate accounting principles, and appropriately reflect the financial condition of the State Bar.

- Review other sections of the annual report and related regulatory filings before release and consider the accuracy and completeness of the information.
- Understand how staff develops interim financial information, and the nature and extent of external auditor involvement.
- Undertake the following responsibilities relating to cybersecurity:
  - Recommend commission of a biennial cybersecurity report, taking into account the recommendation of the Executive Director and the Director of Information Technology, to the full Board of Trustees for approval.
  - Review and approve the biennial cybersecurity report scope and fees.
  - Evaluate the results, findings and recommendations of the biennial cybersecurity report.
  - Ensure that the State Bar's responses to control weaknesses and compliance issues identified in the course of the biennial cybersecurity report process are appropriate and timely.
  - Serve as a direct communications link between the Board of Trustees and cybersecurity experts.
  - Monitor the State Bar's implementation of the cybersecurity report recommendations, working with staff to identify other cybersecurity initiatives that should be undertaken.
  - Review with the Executive Director or his or her designee and cybersecurity experts the results, findings and recommendations in the cybersecurity report, including any difficulties encountered, to ensure the State Bar's vigilance in identifying, analyzing and addressing any and all cybersecurity vulnerabilities on an ongoing and continuous basis.
  - In the interim year between the biennial reports, review with the Director of Information Technology the status of cybersecurity including progress in implementation of corrective measures and identification of any new risks or concerns; ensure that the Director of Information Technology's responses to any new risks or concerns are appropriate and timely.
- Review the results of the biennial performance audit conducted by the State Bureau of Audits; and monitor the State Bar's implementation of the financial-related recommendations of the biennial performance audit, working with staff to identify other fiscal and operational initiatives and best practices that should be undertaken.
- Monitor, review and evaluate the effectiveness and adequacy of the State Bar's internal control structure on an ongoing basis:
  - Ensure that the State Bar performs its duties pursuant to Tab 4.1, Section 10 of the Board Book, which requires that a review of the State Bar's budget and fiscal control policies and procedures be undertaken every five years by an independent consultant.
  - Review and approve the independent consultant review scope and fees.
  - Evaluate the results, findings and recommendations of the independent consultant.

- Ensure that the State Bar’s responses to control weaknesses and compliance issues identified in the course of the independent consultant review, the annual financial statement audit, the State Auditor’s biennial review or any other audit or review are appropriate and timely.
  - Serve as a direct communications link between the Board of Trustees and the independent consultant.
  - Monitor the implementation of the recommendations, working with staff to identify other internal control initiatives that should be undertaken.
  - Meet with the Chief Financial Officer and other members of Bar leadership staff, or their designees, on a biennial basis to:
    - Review and discuss the State Bar’s internal control structure, including progress on implementation of the recommendations of the independent consultant and other initiatives undertaken to improve the State Bar’s internal control structure.
    - Ensure the State Bar’s vigilance in identifying, analyzing and addressing significant internal control structure vulnerabilities on an ongoing and continuous basis.
    - Seek assurances from Bar leadership staff on the effectiveness of risk management practices and controls.
    - Reassess whether the policies and procedures provide for the effective identification, assessment, reporting, monitoring and control of the State Bar’s principal risks; if they do not, require that the policies and procedures be updated to address any deficiencies.
- Perform such specific oversight functions as expressly requested by the Board of Trustees.
  - Review, on a quarterly basis, reports prepared by the Office of Finance regarding Executives’ and Board Members’ travel and expense reimbursements.
  - Develop and adopt an Audit Committee Work Plan for approval by the Board Executive Committee; for each Audit Committee project listed on the Work Plan, the Work Plan shall include a description of the project, the Strategic Plan Goal(s) and Objective(s) that are furthered by the project and an estimated timeline for completion and presentation to the Audit Committee and/or the Board.

Access to the Chief Financial Officer: The Chief Financial Officer shall have direct access to the Board of Trustees on all financial matters, and is authorized to meet with the Committee, or if more expedient with the Audit Committee Chair, on the Chief Financial Officer’s own initiative or at the request of the Audit Committee Chair, outside the presence of other State Bar leadership staff at Audit Committee meetings; in addition, the Audit Committee shall meet independently with the Chief Financial Officer on a quarterly basis.

Access to Information: The State Bar Audit Committee may request any independent auditor, expert, officer; trustee, agent or employee of the State Bar to appear before it to report on the financial condition of the State Bar and answer any questions the Audit Committee might have, relating to the accomplishment of its responsibilities enumerated in this charter.

Limitations on the Role and Responsibility of the Audit Committee:

*Oversight Scope Defined:* The role and responsibility of the Audit Committee is oversight, not preparation of reports or statements or operation.

- The Executive Director and Chief Financial Officer and their designees are responsible for preparing the financial statements; responding to governmental and other reports relating to the State Bar; operating the State Bar, including its financial and accounting systems; and assuring compliance with applicable laws and with policies and procedures established by the Board.
- The external auditors are responsible for auditing the financial statements and such other functions as they are specifically engaged to perform.

*Reliance on Advisory Information Provided by State Bar Leadership staff, Auditors and Others:* In carrying out its oversight function, the Audit Committee is not expected to provide expert or special assurance as to the State Bar's financial statements or professional certification as to the work of the State Bar's staff or of the external auditors. In discharging their duties, the members of the Audit Committee may rely on information, opinions, reports or statements, including financial statements or other financial data, prepared or presented by officers, employees, internal or external counsel, public accountants, committees of the Board duly designated with authority in particular areas, or other persons whom the member believes are reliable and competent in the matters presented, provided that in so relying the member is acting in good faith and with that degree of diligence, care and skill which ordinarily prudent the State Bar Audit Committee members would exercise under similar circumstances.

**(Source: Board of Governors Resolutions, October 2004, July 2005; Board of Trustees Resolution, July 2014; Audit Committee Resolution January 16, 2015, ratified by the Board of Trustees May 13, 2016; Board of Trustees Resolution approving the Audit Committee Charter, August 2017, January 2018.)**

## Board Committee Structure

Board Oversight	Programs Committee				Regulation and Discipline Committee			
Program Area	Admissions/Licensing	Access to Justice	Legal Specialization	Attorney Regulation and Consumer Resources		Discipline	Prevention and Remediation	Ethics
<b>Principal Functions</b>	Pre-Admissions • First Year Law Student Examination • Bar Examination • Moral Character	Grants to Legal Services Providers	Certification of Legal Specialists	Maintenance of Attorney Roll • Administrative Suspensions	Mandatory Fee Arbitration	<ul style="list-style-type: none"> <li>Discipline-Related Attorney Investigation and Prosecution</li> <li>Unauthorized Practice of Law Investigation and Referral for Prosecution</li> <li>Involuntary Inactive Enrollment, Special and Regulatory Proceedings</li> </ul>	Client Security Fund	Formulation of Rules of Professional Conduct
	Certifying Applicants for Admission	Access to Justice Policy and Initiatives	Approval of Other Entities to Certify Legal Specialists	MCLE Provider Certification and Attorney Compliance/Tracking				
	Special Admissions	Diversity and Elimination of Bias		Certification of Law Corporations and Limited Liability Partnerships	Probation Monitoring		Ethics Opinions	
	Law School Regulation	Evaluation of Judicial Candidates		Call Center		State Bar Court* Hearing and Appellate Review	Lawyer Assistance Program	Ethics Symposium
<b>Sub-Entities</b>	Committee of Bar Examiners	Commission on Access to Justice/Committee on Delivery of Legal Services  Legal Services Trust Fund Commission  Council on Access and Fairness  Commission on Judicial Nominees Evaluation and Review Committee	Board of Legal Specialization		Committee on Mandatory Fee Arbitration		Client Security Fund Commission  Lawyer Assistance Program Oversight Committee	Commission for Revision of the Rules of Professional Conduct  Committee on Professional Responsibility and Conduct
<b>Infrastructure</b>	<b>Executive Director, Finance, General Counsel, General Services, Governmental Affairs, Human Resources, Information Technology, Research, Staff Training and Development</b>							

\*The State Bar Court is not subject to direct oversight by the Board of Trustees with respect to its quasi-judicial functions.

**SECTION 3**  
**LEGAL AND LEGISLATIVE POLICIES AND PROCEDURES**

*Adopted May 13, 2016*

- TAB 3.1      Conflicts of Interest**
- TAB 3.2      Claims Against the State Bar**
- TAB 3.3      Collection Policy for Court-Ordered Discipline Costs and CSF Obligations**
- TAB 3.4      Amicus Curiae Participation**
- TAB 3.5      Legislative Policies and Procedures**
- TAB 3.6      Public Comment**
- TAB 3.7      Public Communications**

**TAB 3.1**

**CONFLICTS OF INTEREST**

**Article 1 FINANCIAL AND OTHER CONFLICTS, EFFECT**

**Article 2 CONFLICTS OF INTEREST**

*Section 1 Article 2.5: Conflicts of Interest*

**Article 3 DEFINITIONS**

*Section 1 Statutory Definitions*

**Article 4 CONFLICT OF INTEREST CODE FOR THE BOARD OF TRUSTEES OF THE STATE BAR OF CALIFORNIA**

*Section 1 Definitions*

*Section 2 Enumeration of Positions Subject to This Code*

*Section 3 Reportable Financial Interests*

*Section 4 Disclosure Statements: Contents, Time for Filing, and Reporting Periods*

*Section 5 Place of Filing Statements*

*Section 6 Assistance to Members*

*Section 7 Privileged Information Withheld From a Statement of Economic Interests*

**Article 1**  
**FINANCIAL AND OTHER CONFLICTS, EFFECT**

The rules regarding financial and personal conflicts for members of the Board of Trustees, and the effect and applicability of such rules, are governed by the Conflict of Interest Code for the Board of Trustees of the State Bar of California as adopted by the Supreme Court of California pursuant to Government Code §§ 82011(e) and 87303, the Political Reform Act of 1974 (Government Code §§ 81000 et seq.), and Business and Professions Code Article 2.5, sections 6035, 6036, 6037 and 6038.

**Article 2**  
**CONFLICTS OF INTEREST**

**Section 1 Article 2.5: Conflicts of Interest**

**§6035. Definitions**

Unless the contrary is stated or clearly appears from the context, the definitions set forth in Chapter 2 (commencing with section 82000) of Title 9 of the Government Code shall govern the interpretation of this article. (Added by Stats. 1978, ch. 752, effective September 14, 1978.)

**§6036. Disqualification of Member for Financial or Personal Conflict; Exceptions; Disclosure**

- (a) Any member of the board of trustees must disqualify himself or herself from making, participating in the making of, or attempting to influence any decisions of the board or a committee of the board in which he or she has a financial interest, as that term is defined in Section 87103 of the Government Code, that it is reasonably foreseeable may be affected materially by the decision.
- (b) Any member of the board of trustees must likewise disqualify himself or herself when there exists a personal nonfinancial interest which will prevent the member from applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions.
- (c) Notwithstanding subdivisions (a) and (b), no member shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the action or decision to be made. The fact that a member's vote is needed to break a tie does not make his or her participation legally required for the purposes of this section.
- (d) A member required to disqualify himself or herself because of a conflict of interest shall (1) immediately disclose the interest, (2) withdraw from any participation in the matter, (3) refrain from attempting to influence another member, and (4) refrain from voting. It is sufficient for the purpose of this section that the member indicate only that he or she has a disqualifying financial or personal interest.
- (e) For purposes of this article and unless otherwise specified, "member" means any appointed or elected member of the board of trustees. (Added by Stats. 1978, ch. 752, effective September 14, 1978; Stats. 2005, ch. 341 (A.B. 1529), §1, effective September 22, 2005; Stats. 2011, Ch. 417, § 30 effective January 1, 2012).

**§6037.           Violations by Members; Validity of Action or Decision of Board; Termination of Member; Misdemeanor; Civil and Criminal Penalties**

No action or decision of the board or committee of the board shall be invalid because of the participation therein by a member or members in violation of section 6036. However, any member who intentionally violates the provisions of subdivision (a) of section 6036 is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding five days, or by a fine not exceeding one thousand dollars (\$1,000), or by both, and, if the member is an attorney member of the board, a certified copy of the record of conviction shall be transmitted to the Supreme Court for disposition as provided in sections 6101 and 6102. Upon entry of final judgment of conviction, the member's term of office on the board of trustees, and duties and authority incidental thereto, shall automatically terminate. Any member who intentionally violates the provisions of subdivision (b) of section 6036 shall be liable for a civil penalty not to exceed five hundred dollars (\$500) for each violation, which shall be assessed and recovered in a civil action in a court of competent jurisdiction brought in the name of the state only by a district attorney of a county in which the member resides or maintains offices and the penalty collected shall be paid to the treasurer of that county. (Added by Stats. 1978, ch. 752, effective September 14, 1978. Amended by Stats. 1981, ch. 714; Stats. 1983, ch. 1092; Stats. 2011, Ch. 417, § 31 effective January 1, 2012.)

**§6038.           Governmental Decisions of Specified State Agencies; Applicability of Conflict of Interest Provisions to Members Thereof**

Attorney members of the Judicial Council, members of the Commission on Judicial Performance who are not judges, and employees designated in the Conflict of Interest Code of the State Bar of California are subject to provisions of this article with respect to making, participating in the making, or attempting to influence, governmental decisions of their respective state agencies other than decisions of a judicial or quasi-judicial nature. (Added by Stats. 1984, ch. 727, effective July 1, 1985.)

## **Article 3 DEFINITIONS**

### ***Section 1 Statutory Definitions***

In substance the provisions of section 6036(a), (c) and (d) of the Business and Professions Code pertaining to financial interests are similar to the provisions of Government Code sections 87100, 87101 and 87103. Title 2, Division 6, Chapter 7, section 18700 et seq., of the California Code of Regulations (CCR) contains definitions of and controlling standards for interpreting the key language in the Government Code sections. These definitions and standards are useful in interpreting the key language in section 6036(a), (c) and (d) of the Business and Professions Code.

**Article 4**  
**CONFLICT OF INTEREST CODE FOR THE BOARD OF TRUSTEES OF THE STATE**  
**BAR OF CALIFORNIA**

**Section 1 Definitions**

The definitions set forth in Government Code section 82000 et seq. are incorporated by reference in this code.

(Source: Board of Governors' Resolution April 1986, adopted by the Supreme Court, effective June 30, 1986.)

**Section 2 Enumeration of Positions Subject to This Code**

All members of the Board of Trustees are subject to this code.

(Source: Board of Governors' Resolution April 1986, adopted by the Supreme Court, effective June 30, 1986; Bus. and Prof. Code § 6010, amended January 1, 2012.)

**Section 3 Reportable Financial Interests**

A member shall disclose an investment, interest in real property, and income as required by Government Code sections 87206 and 87207 if during a reporting period the Board of Trustees has made a decision that materially affects the investment, interest in real property, or income. Disclosures required by this code are in addition to disclosures required by Business and Professions Code section 6036.

(Source: Board of Governors' Resolution April 1986, adopted by the Supreme Court, effective June 30, 1986; Bus. and Prof. Code § 6010, amended January 1, 2012.)

**Section 4 Disclosure Statements: Contents, Time for Filing, and Reporting Periods**

Disclosures shall be made on forms prescribed by the Fair Political Practices Commission. Contents, time for filing, and reporting periods shall be as follows:

- (a) Initial Statements: Each member who is incumbent on the date this code first becomes effective shall, within thirty (30) days after that date, file a statement identifying the member.
- (b) Assuming Office Statements: Each person who becomes a member of the board after this code becomes effective shall, within thirty (30) days after taking the oath of office, file a statement identifying the member.
- (c) Annual Statements: Each member shall by March 1 file an annual statement disclosing information required by section 3 of this code. The period covered by the annual statement shall be the prior calendar year or that portion of the prior calendar year during which the person making the disclosure was a member of the Board of Trustees.
- (d) Leaving Office Statements: After leaving office, each former board member shall, within thirty (30) days after the date of leaving office, file a

statement disclosing information required by section 3 of this code for the period beginning the day after the closing date of the last statement filed and the date of leaving office.

(Source: Board of Governors' Resolution April 1986, adopted by the Supreme Court, effective June 30, 1986; Bus. and Prof. Code § 6010, amended January 1, 2012.)

### ***Section 5 Place of Filing Statements***

Disclosure statements shall be filed with the Secretary of the State Bar. The secretary shall make and retain a copy of each statement and forward the originals to the Clerk of the Supreme Court within five days after the filing deadline or within five days after receipt in the case of statements filed late.

(Source: Board of Governors' Resolution April 1986, adopted by the Supreme Court, effective June 30, 1986.)

### ***Section 6 Assistance to Members***

As provided by Government Code section 83114, members may request advice and assistance from the Fair Political Practices Commission with respect to their duties under this code.

(Source: Board of Governors' Resolution April 1986, adopted by the Supreme Court, effective June 30, 1986.)

### ***Section 7 Privileged Information Withheld From a Statement of Economic Interests***

If a member of the Judicial Council, Commission on Judicial Performance, or the Board of Trustees of the State Bar of California believes that disclosure under Government Code section 87207(b)(2) of the name of a person who paid fees or made payments to a business entity would violate a legally recognized privilege under California law, the member may assert the privilege as follows:

- (a) The member shall not report in the disclosure statement the information asserted to be privileged.
- (b) The member shall file with the disclosure statement a separate statement under penalty of perjury that (a) advises the filing officer that a reportable source of income has not been reported, (b) asserts the applicable privilege, (c) states the legal basis for the assertion, and (d) states as specifically as possible without defeating the privilege facts that demonstrate why the privilege is applicable.
- (c) The Supreme Court shall designate one or more persons who are not members of the court to act as the code-reviewing body solely to determine if the privilege is applicable. The designated code-reviewing body may request additional information from the member and consider additional evidence in camera. If the designated code-reviewing body determines that disclosure is required, the member shall disclose the

unreported information within fifteen (15) days after the Clerk of the Supreme Court mails notice of the determination.

**(Source: The Supreme Court as code-reviewing body under Government Code section 82011(e) adopted the above procedure effective June 30, 1986; Bus. and Prof. Code § 6010, amended January 1, 2012.)**

**TAB 3.2**

**CLAIMS AGAINST THE STATE BAR**

*Section 1 Claims Against the State Bar*

## **Section 1    *Claims Against the State Bar***

- (a) For the purpose of facilitating the timely handling and disposition of claims against the State Bar of California submitted pursuant to the California Tort Claims Act (Government Code, §§ 900 et seq.) that the board delegates authority to review and deny claims against the State Bar that are clearly without legal merit to a claims officer appointed by the executive director. The claims officer will promptly report all claims rejected to the board. Claims involving issues of significant political or operational importance to the State Bar must be submitted to the Board for disposition. The board also authorizes the executive director or his or her designee, in consultation with general counsel, to:
  - (1) Give written notice of insufficiency of a claim pursuant to Government Code § 910.8; or
  - (2) Return a claim as untimely filed.
- (b) General Counsel may authorize settlement of claims or cases that do not implicate a material policy issue up to and including the amount of \$25,000. General Counsel shall keep the Chair of the Board Executive Committee or the committee designated by the Board to review legal matters, informed on a regular basis of settlement activity. At each regularly scheduled meeting of the Board Executive Committee or the committee designated by the Board to review legal matters, in confidential reports, General Counsel shall inform the Board Executive Committee or the committee designated by the Board to review legal matters, of any settlements reached within this authority level and the reason(s) therefore.
- (c) The Board Executive Committee or the committee designated by the Board to review legal matters may authorize settlement of claims or cases that do not implicate a material policy issue from the amount of \$25,001 to and including \$50,000. In confidential quarterly reports, the Chair of the Board Executive Committee or the committee designated by the Board to review legal matters, shall inform the Board of Trustees of the settlements reached within this authority level and the reason(s) therefore.
- (d) The Board of Trustees may authorize settlement in amounts exceeding \$50,000 or in any matter which implicates a material policy issue for the Bar, upon recommendation of the Board Executive Committee or the committee designated by the Board to review legal matters.
- (e) For purposes of this policy, a “material policy issue” is one with important political or operational consequences in the future for the Bar.

**(Source: Board of Governors' Resolution, November 1978, October 1979, December 1995, November 2010.)**

**TAB 3.3**

*COLLECTION POLICY FOR  
COURT-ORDERED DISCIPLINE COSTS  
AND  
CSF OBLIGATIONS*

*COLLECTION POLICY FOR  
COURT-ORDERED DISCIPLINE COSTS  
AND  
CSF OBLIGATIONS*

(a) Purpose

This is an internal policy intended to provide a standard to State Bar staff in the collection from disciplined lawyers of court ordered discipline costs and restitution to the Client Security Fund. Nothing in this policy may be construed as relieving a disciplined lawyer from those obligations or extending the time to make payments as part of the membership fees or as a condition of reinstatement or the return to the active practice of law except as may be ordered by the Supreme Court or State Bar Court.

(b) Definitions

- (1) “Discipline costs” are the amounts that a member must pay to the State Bar under Business and Professions Code section 6086.10.
- (2) “CSF restitution” refers to amounts that a member must pay to the State Bar under Business and Professions Code section 6140.5, subdivision (d).
- (3) “Debtor” means
  - (A) a member who has been disbarred or who resigned with disciplinary charges pending and owes court ordered discipline costs or CSF restitution;
  - (B) a member publicly reprimanded or suspended who is delinquent in paying court ordered discipline costs or CSF restitution that has been added to his or her membership fee billing or in making payment under a court approved payment agreement.
- (4) “Debt” refers to discipline costs, CSF restitution, or both owed by a debtor.
- (5) “Collection agency” means a vendor providing collection services under a participating agreement with the State Bar under the Statewide Master Vendor Agreements for Collection Services as part of the Enhanced Collections program of the Judicial Council of California, Administrative Office of the Courts.

(c) No Action (“Hold”) Status)

The State Bar may designate a matter as on “hold” status and take no further action against a debtor to enforce a debt under any one of the following reasons:

- (1) The debtor is making timely payments and is not in default under a payment plan approved by the State Bar Court or Supreme Court
- (2) The debtor discharged the obligation in bankruptcy between May 10, 2001 and January 1, 2004, in reliance on *In Re Taggart*, 249 F.3d 987 (9th Cir. 2000)
- (3) The debtor is deceased and the estate has no assets
- (4) The expense to enforce the debt is likely to exceed the amount expected to be collected; or,
- (5) Other good cause as determined by the General Counsel.

(d) Debt Collections

- (1) Debts not designated as on “hold” will be referred for collection by one or more collection agencies.
- (2) The State Bar may accept installment payments by a debtor to the collection agency after notice to the debtor that
  - (A) installment payments to the collection agency do not constitute an extension of time (i) to pay delinquent discipline costs or CSF restitution as part of the membership fees before a suspension for nonpayment or (ii) for payment as a condition of reinstatement or the return to the active practice of law;
  - (B) installment payments to the collection agency do not constitute (i) relief from the court order imposing discipline costs or CSF restitution or (ii) the compromise of any judgment; and
  - (C) an extension of time or relief under Business and Professions Code sections 6086.10 and 6140.7 may be granted only by motion filed in the State Bar Court.

(e) Uncollectible Debts

- (1) When a debt account has been returned uncollected by a collection agency, the State Bar should assure that an applicable judgment under Business and Professions Code section 6086.10 or 6140.5 has been entered and recorded for debts less than 10 years old and \$500 or more. The State Bar may then designate the debt as “uncollectible” and take no further action to enforce the debt except for the renewal of any judgment

and the payment as a condition of any reinstatement or return to membership.

- (2) A debt may be removed from “uncollectible” status and referred back to a collection agency if a debtor or assets has been located or if there is other reason to believe that there has been a change in the economic condition of the debtor.

**(Source: Board of Governors' Resolution, July 2007, November 2010.)**

**TAB 3.4**

**AMICUS CURIAE PARTICIPATION**

**Article 1 STATE BAR**

- Section 1 Application of Amicus Curiae Policy*
- Section 2 Authorization*
- Section 3 Appropriate Cases*
- Section 4 Application Procedures*
- Section 5 Appearance and Approval by Office of General Counsel*

**Article 2 STATE BAR SECTIONS**

- Section 1 Amicus Curiae Participation by Sections*
- Section 2 Avoiding Inconsistent Positions; Request by Executive Committees; Conflict of Interest*
- Section 3 Disclaimer*
- Section 4 Side Letter for Sections Amicus Participation*

## **Article 1 STATE BAR**

### ***Section 1 Application of Amicus Curiae Policy***

This chapter applies to all requests for State Bar participation in litigation as an amicus curiae, except the requests by general counsel to support State Bar positions in pending or prospective litigation or to protect activities or proceedings conducted by the State Bar or requests made directly by a court for participation by the State Bar. A request for State Bar participation in litigation as an amicus curiae includes any request which would require that the State Bar file or submit any pleading, in letter or other form, with a court in a pending matter, whether in support of a party or otherwise, and whether on the merits, jurisdiction or otherwise.

(Source: Board of Governors' Resolution, May 1981, December 1997.)

### ***Section 2 Authorization***

State Bar participation in litigation as an amicus curiae is subject to authorization by the Board of Trustees following an affirmative recommendation by the appropriate board committee.

(Source: Board of Governors' Resolution, May 1981.)

### ***Section 3 Appropriate Cases***

The State Bar is a judicial branch agency and should not ordinarily take a partisan position in another's lawsuit. State Bar amicus curiae participation is thus extremely limited and necessarily involves issues basic to the State Bar as, for example, validity and interpretation of the State Bar Act or State Bar rules; validity and interpretation of State Bar sponsored legislation; or the validity and interpretation of legislation or acts of court that can seriously affect the administration of justice and attorney-client relationships. It is also recognized that the State Bar amicus curiae participation will have greater impact on the courts if used sparingly.

Additionally, amicus curiae participation is authorized only as follows:

- (a) At the appellate level, and generally only in the highest court where an issue is likely to be determined.
- (b) When one or more significant legal questions are involved and a State Bar amicus curiae pleading would constitute a significant contribution to the determination of those questions.
- (c) Where the position sought to be advanced is consistent with previous policy of the State Bar or is a matter of compelling public interest which the Board of Trustees then adopts as policy of the State Bar consistent with its due charge. Where the pleading amicus curiae would not support a previous policy of the State Bar, the Board of Trustees shall first determine whether the position sought to be advanced ought to be the policy of the State Bar; and the board

will make a determination of whether the policy position of the State Bar should be advanced in that particular case through a pleading amicus curiae.

- (d) The court may consider the opinion of the State Bar on the matter in question to be enlightening and persuasive.
- (e) The resolution of the issue before the particular court involved will have an impact upon the development of the law.
- (f) The filing of the pleading is feasible, including timing, availability of counsel and expenses.
- (g) The filing of any pleading on behalf of the State Bar will be in compliance with the governing rules of court.

(Source: Board of Governors' Resolution, May 1981.)

#### **Section 4    *Application Procedures***

- (a) Any person or entity, including any component part of the State Bar, requesting State Bar participation as an amicus curiae in litigation shall file an application and three (3) copies thereof with the secretary in the San Francisco office of the State Bar. The secretary shall furnish the general counsel one (1) copy of the application and all accompanying documents for review, and shall furnish copies of the application to, and invite comment from State Bar entities which the secretary shall deem to have an appropriate interest, and which have not been previously furnished the application by the requestor.

When the application is calendared for board committee and, in turn, board consideration, it shall be an open agenda item unless general counsel certifies that the matters to be discussed will:

- (1) Fall within the categories of matters specified in the lettered subdivisions of § 6026.5 of the Business and Professions Code;
  - (2) Fall within the attorney-client privilege, or are otherwise privileged from disclosure; or
  - (3) Involve information received or held by the State Bar that is protected by the California constitutional guarantee of privacy.
- (b) In order to make a well-reasoned decision as to whether amicus curiae participation should be undertaken by the State Bar, the board committee having jurisdiction and, in turn, the Board of Trustees, should be fully informed by the requestor as to the following application:

- (1) The name of the case, including the name and location of the court in which the pleading would be filed.
- (2) The names of the parties and their counsel and the names of all the known or anticipated amicus curiae and their counsel.
- (3) The name, address and phone number of the person making the request, along with those of the person(s) or entity(ies) on whose behalf the request is being made, should be set forth.
- (4) A designation of whether the requestor is a party in the litigation should be made. If not a party, the nature of the relationship between the requestor applying and the parties of the litigation, as well as the requestor's substantive concern with the issues being litigated, should be stated. If not a party, the requestor must indicate whether the party on whose behalf the State Bar is to intervene knows and consents to the State Bar's being asked to participate as amicus curiae.
- (5) If the court in which the litigation is pending is not designated as either the United States or California Supreme Court, the requestor must state compelling reasons why the State Bar should join in at another stage of litigation in spite of its general policy to refrain from so doing.
- (6) A statement of the principle of law or legal points to be supported, with a full explanation of the requestor's reasons for believing that the case is an appropriate one for State Bar involvement and why there is a necessity for additional argument on the law or legal points specified.
- (7) A statement of the undisputed and disputed facts in the case, including present status of the litigation.
- (8) Statement or full disclosure of any professional or personal interest in the matter of any proponent of the application.
- (9) The briefing schedule, including the date by which the pleading must be filed and a copy of the applicable rule of court or procedure regarding the timing of the filings.
- (10) A statement relating significant contributions it is believed the State Bar might make by filing a pleading in the particular case.

Appropriate and relevant pleadings, court decisions and orders entered in the case should also be submitted along with the application. The requestor must supply the State Bar with the record of the case, including past opinions and pleadings, to the extent possible at the time the request is made. The

requestor will be charged with supplying the State Bar with additions to the record until a decision on whether to file the amicus curiae pleading is made.

- (c) Only requests that are timely submitted to the State Bar will be considered. The requestor must approach the State Bar for its support as soon as possible after the record or pleadings are filed in the court in which the litigation is then pending. If the application submitted is complete, the matter will be placed on the next available board committee and Board of Trustees agenda, provided that independent evaluation and analysis of the record has been completed by the State Bar and agenda deadlines can be met. If the time to respond to the request is insufficient to allow the State Bar to make an independent evaluation of the record and the strengths and weaknesses of the position which it is being encouraged to take, the State Bar may refuse to consider the request in the first instance.
- (d) The requestor should understand that the State Bar may invite comment from appropriate State Bar committees and sections and interested parties, including opposing parties in the litigation, prior to final board action; that the State Bar is not precluded from taking any position on the issues presented by the litigation, even one or more which might be contrary to the one of the requestor; and that approval by the State Bar Board of Trustees is required for amicus curiae filings and would be conditioned on the board's decision to become, or even remain, involved.

**(Source: Board of Governors' Resolution, May 1981, December 1997.)**

***Section 5 Appearance and Approval by Office of General Counsel***

Normally, if amicus curiae is authorized, the appearance shall be made by general counsel or under general counsel's direction. In other instances, the pleading will only be filed following the approval of general counsel as to form and consistency with State Bar positions, policies, practices, rules and regulations.

**(Source: Board of Governors' Resolution, May 1981.)**

**Article 2**  
**STATE BAR SECTIONS**

**Section 1   *Amicus Curiae Participation by Sections***

Subject to the requirements in article 1 of this chapter, a State Bar Section may submit a brief and participate as amicus curiae in the Section's own name upon approval by the Board of Trustees if:

- (a) The Court has requested participation by the Section or the State Bar, which has then referred the matter to the Section; or
- (b) The special knowledge, training, experience or technical expertise of the Section would assist the court in deciding the matter and the Section's amicus curiae brief would bring to the attention of the Court relevant matter not already raised or adequately addressed. Sections should avoid advancing matters that burden the Court.

As a sub-entity of the State Bar, a judicial branch agency, the matter presented by a Section should be neutral in its content and tone. Partisan advocacy is disfavored and should be avoided.

**Section 2   *Avoiding Inconsistent Positions; Request by Executive Committees; Conflict of Interest***

A request under this chapter should avoid the presentation of matters that are inconsistent with policies of the State Bar or with positions of other Sections or State Bar committees. The Executive Committee of a Section authorizing the request should seek consensus among its members.

- (a) A Section's request under this chapter must be authorized by the Section's Executive Committee. Only requests submitted to the Board by the Section's Executive Committee are eligible for consideration.
- (b) A member of an Executive Committee who or whose law firm is a party or is representing a party in the underlying litigation is disqualified from voting in the Executive Committee's decision to request amicus curiae participation.

**Section 3   *Disclaimer***

Unless otherwise directed, the application and amicus curiae briefs of any Section authorized by the Board must include language explaining that (1) the position is only that of the Section and has not been adopted by either the Board of Trustees or the overall membership of the State Bar of California; (2) membership in State Bar Sections is voluntary; and (3) funding of Section activities, including amicus curiae participation, is obtained entirely from voluntary sources pursuant to California Business and

Professions Code section 6031.5 and do not involve the expenditure of mandatory bar dues.

(Source: Board of Governors' Resolution, July 2003.)

#### **Section 4 Side Letter for Sections Amicus Participation**

- (a) A Proponent would identify an issue for a possible Amicus brief ("Project") and prepare an Abstract of the position to be taken. The Proponent would also prepare a complete Application describing how the Project would meet the Amicus Policy. The Application should follow where applicable the provisions of section 4b of article 1 of the State Bar's general amicus policy; however, the Application need include only a copy of the final decision or order that is the subject of appeal and such other documents as may be necessary to support the Application
- (b) The Executive Committee of the Proponent's Section will review the Abstract in light of the Amicus Policy and make a determination about whether the Project should be forwarded for further action.
- (c) If the Executive Committee so recommends, the Application would be forwarded simultaneously to the Board Executive Committee (Board ExCom), to the relevant State Bar Committees and to the Executive Committee Chairs of the other Sections. Any Executive Committee of any Section or any State Bar Committee may comment on the Application to the Board Excom.
- (d) Board ExCom will review the Application and any comments of Sections and Committees. The Proponent and any commenting Section or Committee may informally work together to resolve the comments.
- (e) Board ExCom is authorized by the Board of Trustees to act on its behalf on litigation matters in between regular meetings of the Board. If Board ExCom approves the Application (which may occur despite unresolved comments), the Proponent will then draft the Brief.
- (f) The Chair of Board ExCom and the General Counsel or her designee will review the final draft, work with the Proponent if necessary, and permit the Proponent to file the Amicus Brief in the name of the Section of the State Bar of California.

(Source: Board of Governors Resolution July 26, 2003, adopted in principle; Task Force on Sections Resolution adopted March 25, 2004, reported to the Board March 27, 2004.)

## **TAB 3.5**

### *LEGISLATIVE POLICIES AND PROCEDURES*

NOTE: Tab 3.5 has been eliminated pending revision.

(Source: Board of Trustees Resolution, January 2018.)

**TAB 3.6**

*PUBLIC COMMENT*

TITLE 1. GLOBAL PROVISIONS

DIVISION 2. PUBLIC COMMENT

*Rule 1.10 Public Comment*

*Rule 1.11 Availability of Public Comments*

*Staff and Public Comment*

TITLE 1. GLOBAL PROVISIONS  
DIVISION 2. PUBLIC COMMENT

***Rule 1.10 Public Comment***

- (A) Proposals for the Rules of the State Bar of California are circulated for public comment before adoption, amendment, or repeal by the Board of Trustees. The State Bar also makes available for public comment its proposals for the California Rules of Court. Proposals are circulated for a forty-five day period, which can be shortened to a minimum of 30 days or extended to a maximum of 90 days, as designated by the board.
- (B) Public comment is not required
  - (1) to correct clerical errors; clarify grammar; improve organization; conform to specific changes in a law; update references or citations; or make similar editorial changes;
  - (2) to modify a proposal that has been circulated for public comment when the board deems the modification non-substantive or reasonably implicit in the proposal; or
  - (3) to add or modify an appendix to these rules.
- (C) The board may determine that an emergency requires it to adopt, amend, or suspend a rule on an interim basis without first circulating it for public comment. No interim measure may remain in effect for more than 120 days.
- (D) The adoption, amendment, or repeal of a rule becomes effective as of the date specified by the board. If it specifies no date, the date of its action is the effective date.

**(Source: State Bar Rule 1.10 adopted effective July 20, 2007; amended effective March 7, 2008; amended effective January 1, 2012.)**

***Rule 1.11 Availability of Public Comments***

Public comment provided to the board regarding a rule proposal is available upon request, subject to a reasonable charge for copies.

**(Source: Board of Governors' Resolutions January 1990, September 1996, December 2002, State Bar Rule 1.11 adopted effective July 20, 2007; Board of Trustees Resolution, November 2016.)**

### ***Staff and Public Comment***

In appropriate circumstances and in accordance with the State Bar's Public Comment Rules, the Board shall seek staff and public comment on issues being considered by the State Bar.

**(Source: Board of Governors' Resolutions August 2000: Governance Principle 4.4; December 7, 2002 [Public Comment Rules].)**

**TAB 3.7**

*PUBLIC COMMUNICATIONS*

**Article 1 PUBLICATIONS**

*Section 1 Web Site Advertising Policy*

*Section 2 Delegation of Authority to Execute Copyright Releases*

## **Article 1 PUBLICATIONS**

### **Section 1    *Web Site Advertising Policy***

It is the policy of the State Bar of California to use its Web site to meet and promote the goals of the State Bar's Long Range Strategic Plan by:

- (a) providing a wide array of services and benefits to members that meet their professional development, business, and personal needs;
- (b) using technology effectively and efficiently to support all aspects of State Bar operations;
- (c) facilitating communication among members of the bar;
- (d) promoting greater member and public access to the State Bar's services;
- (e) enhancing the administration of justice in California; and
- (f) generating funding sources authorized by Business and Professions Code section 6001.

Advertising will be permitted on pages of the State Bar Web site related to member services and benefits, the California Bar Journal pages, and the Sections' members' pages.

An "advertisement" for purposes of this policy means any display ad, banner, logo, icon, photo, link, or text (including any hypertext link associated with any of the foregoing) representing an entity other than the State Bar, or any of its sub-entities (such as Sections, boards, commissions, committees, etc.), or representing a product or service of such an entity. Advertisements may be placed or permitted only on the Web site pages enumerated in this policy.

The Executive Director is authorized to develop all necessary policies and procedures necessary to implement this policy.

**(Source: Board of Governors' Resolution, September 1996, March 2004, July 2008.)**

### **Section 2    *Delegation of Authority to Execute Copyright Releases***

For the purpose of facilitating the granting of requests for permission to reprint and distribute printed materials in which the State Bar of California owns copyrights for educational purposes, the board authorizes the executive director or his or her designee to execute appropriate releases on behalf of the State Bar in form approved by general counsel.

**(Source: Board of Governors' Resolution, February 1982.)**

**SECTION 4**  
**FINANCE**

*Adopted May 13, 2016*

- TAB 4.1      Fiscal**
- TAB 4.2      Travel and Business Expense Policy**
- TAB 4.3      Contracts**
- TAB 4.4      Investment Policy**
- TAB 4.5      Use of State Bar Meeting Rooms and Facilities Policy**

**TAB 4.1**

**FISCAL**

<b>Article 1</b>	<b>FISCAL</b>	
	<i>Section 1</i>	<i>Adoption and Amendment of Budget</i>
	<i>Section 2</i>	<i>Semi-Annual Forecast</i>
	<i>Section 3</i>	<i>Reserve Policy</i>
	<i>Section 4</i>	<i>Quarterly Financial Statements</i>
	<i>Section 5</i>	<i>Interfund Transfers and Loans Policy</i>
	<i>Section 6</i>	<i>Fiscal Impact Analysis</i>
	<i>Section 7</i>	<i>Capital Assets</i>
	<i>Section 8</i>	<i>Receipt of Cash</i>
	<i>Section 9</i>	<i>Bank Accounts</i>
	<i>Section 10</i>	<i>Independent Review of Fiscal Controls</i>
	<i>Section 11</i>	<i>Prohibition on Pledging Income or Revenue from Membership Fees</i>

**Article 1**  
**FISCAL**

**Section 1   *Adoption and Amendment of Budget***

(a)   Budget Adoption

The Board of Trustees shall adopt, by resolution, an annual expenditure budget for each budgetary fund of the State Bar. The State Bar's expenditures are formally governed at the cost center level through the annual budget resolution adopted by the Board. The budget allocates spending authority within each fund across the departments of the State Bar. The Office of Finance shall ensure that the annual budget that it presents to the Board for adoption (a) is at the cost-center level, in compliance with the requirements of Business and Professions Code section 6140.1 and (b) reports variances by cost center between actual revenues and expenditures for the previous fiscal year and budgeted figures. Cost center refers to the departments of the State Bar and those units or other subdivisions within a department, whose managers are responsible for all its associated direct and indirect costs and for which budget authority is conferred by an adopted budget. For purposes of the budget, cost center units may include a combination of subunit data provided that a meaningful level of detail is provided to the Board.

Budgets lapse at the end of each fiscal year, except as provided below for project budgets. When the Board of Trustees adopts a multi-year budget, it shall adopt distinct budgets for each fiscal year within the budget period for each budgetary cost center. The Board of Trustees may adopt non-lapsing budgets for multi-year projects. Non-lapsing project budgets shall be identified as such in the adopting resolution.

The budgetary funds of the State Bar shall correspond to the accounting funds of the State Bar, as identified in Section 3, below, or to a combination of such funds. The relationship between budgetary funds and accounting funds shall be identified in the annual budget resolution.

(b) Budget Monitoring

The Office of Finance shall monitor expenditures and report to the Executive Director/CEO on expenditures incurred which are likely to cause the total expenditures of any fund to exceed its adopted budget. Departmental operations are expected to be managed within budgets and, when projected variances arise, these are brought to the immediate attention of the Executive Director/CEO and the Office of Finance. Each manager who has budget monitoring duties is responsible for ensuring that receipts and spending are within the approved budgetary authority and for the prudent use and safeguarding of State Bar funds. Corrective action is necessarily taken on a case-by-case basis, depending on the extent to which projected departmental variances impact overall expenditure authority at the department level.

The Office of Finance shall adopt, maintain, and adhere to its written Budget Policies and Procedures Manual, not inconsistent with the policies of the Board and to be included in the independent control review provided in Section 10. The Budget Policies and Procedures Manual shall include monthly reports to departments and Senior Executives and Managers that identify significant variances and potential impact upon cumulative year-end outcomes.

Variances are important in determining potential budget shortfalls and the need for corrective actions, including but not limited to, any intradepartmental transfer. Significant year-to-date variances need to be explained to the Office of Finance as soon as possible after the month end close. The definition of “significant” varies depending on the departmental budget size and nearness to year-end; generally, all deficits or any variances that may result in the over expenditure of a departmental budget as a whole for a calendar fiscal year shall be investigated, explained, and reported to the Board Audit Committee.

(c) Budget Amendment

The Board of Trustees may, by resolution, amend any adopted budget, upon the recommendation of the Finance and Planning Committee. All budget transfers of \$250,000 or more, all transfers between funds, and all increases of budgeted expenditures must be approved by the Board of Trustees except in the case of an emergency approved by the Chief Executive Officer after consultation with the Chair and Vice Chair.

In the event of a new program, an increase in service demands, or unforeseen and unanticipated expenditures in a department, those expenditures should be absorbed within the approved budget of the department.

The Executive Director/CEO may approve a request for budget transfer of less than \$250,000 within the fund of a department, provided that the transfer will not result in the over expenditure of a fund as a whole.

The Office of Finance may approve a request for budget transfer of less than \$250,000 between cost centers within the same fund and same department, provided that the transfer will not result in the over expenditure of a departmental budget as a whole.

The manager of a cost center may transfer budgeted revenues and expenditures of less than \$250,000 within the same cost center without further approval provided that the transfer will not result in the over expenditure of the cost center as a whole.

(Source: Board of Governors' Resolution, July 1981, December 1993, March 1997, June 2000, September 2004, December 21, 2011; Board of Trustees Resolution, March 13, 2015; Board of Trustees Resolution, March 9, 2018.)

## **Section 2    *Semi-Annual Forecast***

The Office of Finance shall prepare a semi-annual forecast of receipts and expenditures of the operation of the Bar by funds and by responsible department managers, comparing forecast with budget. The report shall be a joint effort of department managers and the Office of Finance. An explanation of budgeted line item variance greater than one hundred thousand dollars (\$100,000) of the budgeted line item shall be included in the report. The report shall show all intradepartmental cost-center budget transfers and include an explanation of those transfers greater than one hundred thousand dollars. The semi-annual forecast report shall be reported to the Board of Trustees at the last Board Meeting before the State Bar Annual Meeting.

(Source: Board of Governors' Resolution, July 1981, March 1997, June 2000, September 2004; Board of Trustees Resolution, March 13, 2015.)

## **Section 3    *Reserve Policy***

### **A. DEFINITION AND CLASSIFICATION OF RESERVES**

1. **Working Capital.** In accordance with best practices, State Bar reserves are defined as working capital (current assets less current liabilities). Since the State Bar uses Enterprise Fund accounting for its financial operations in accordance with Generally Accepted Accounting Principles (GAAP), working capital is the financial measure that most closely matches the concept of "fund balance" in the Governmental Funds and what is typically meant by the concept of "reserves" in a budgetary policy context. This is also the financial measure recommended by the Government Finance Officers' Association of the United States and Canada (GFOA) as a "best practice" in setting reserve policies for Enterprise Funds (web

site link): <http://www.gfoa.org/determining-appropriate-levels-working-capital-enterprise-funds>

2. **Classification of Reserves.** The Governmental Accounting Standards Board (GASB) is responsible for establishing "GAAP" for state and local governments in the United States. For Governmental Funds, GASB Statement No. 54 adopted in 2009 requires that Fund Balance be classified into five components: non-spendable, restricted, committed, assigned and unassigned. While these classifications are only used for Governmental Funds and are not applicable to Enterprise Funds (in fact, there is no discussion under GAAP of the concept of "fund balance" or reserves for Enterprise Funds), they nonetheless provide a useful framework for assessing the State Bar's reserves. Accordingly, reserves will be classified within each fund (where applicable) as follows:
  - a. **Non-Spendable.** Amounts that are not in spendable form, such as prepaid items or inventories. (The State Bar does not currently have any reserves that would be classified as non-spendable.)
  - b. **Restricted.** Revenues where the use is subject to externally enforceable restrictions imposed by outside third parties.
  - c. **Committed.** These are outstanding obligations for contractual or policy commitment for programs or projects approved in prior fiscal years that are carried forward into the new year. They are typically composed of two types:
    - Encumbrances: unfilled purchase orders and outstanding contractual obligations at year-end. Since these commitments were made during the fiscal year, adequate resources should be available at year-end to cover them and carryover balances into the new fiscal year.
    - Policy Commitments: Balances formally set aside by the Board in order to fund future projects based on adopted plans.
  - d. **Assigned.** Minimum reserve targets established based on assessing risks in accordance with the structured assessment methodology developed by the GFOA (see Section C), after addressing non-spendable, restricted and committed reserves.
  - e. **Unassigned.** Residual classification of spendable amounts available for other purposes. Under GASB Statement No. 54, unassigned fund balance should not be shown as a negative number. However, as noted above, GASB Statement No. 54 is only being used as a policy framework in assessing the State Bar's reserves. Accordingly, in the interest of policy clarity, where the State Bar's ending reserves are not sufficient to meet its non-spendable, restricted, committed and assigned amounts, the unassigned balance will be shown as a negative number in clearly disclosing how short reserves are in meeting policy goals.

## **B. ESTABLISHMENT AND CLASSIFICATION OF FUNDS**

While usually created with the goal of improving accountability, the proliferation of funds often makes an agency's financial position and fiscal operations more confusing and less transparent. As such, in accordance with GAAP, the State Bar will limit the proliferation of funds and only establish separate funds where there are compelling policy reasons to do so. This approach will not only simplify accounting and financial reporting, but by focusing on meaningful resource restrictions and earmarking, it will improve accountability, transparency and understandability.

## Program Funds

State Bar funds are organized into three Program Fund categories:

1. **Restricted Funds.** Using GAAP as the framework, "restricted" funds are those whose use is externally restricted via legislation, bond covenants or similar external restrictions. In short, to be classified as a "restricted" fund, the restriction must be externally imposed as set forth under GAAP. This this means that all special purpose assessments approved by the State Legislature, including voluntary ones, will be accounted for in a separate restricted fund. In the case of limited-term assessments that will expire at some point, the fund will be closed-out when the last assessment is received or all proceeds are used for designated purposes, whichever occurs last. Closed-out fund balances will typically be transferred to the General Fund; however, the Board will determine the disposition of any residual balances on a case-by-case basis. The following are Restricted Funds:
  - a. Client Security Fund
  - b. Elimination of Bias and Bar Relations Fund
  - c. Equal Access Fund
  - d. Justice Gap Fund
  - e. Lawyer's Assistance Fund
  - f. Legislative Activities Fund
  - g. Legal Services Trust Fund
  - h. Legal Specialization Fund
  - i. Bank Settlement Fund<sup>1</sup>
  
2. **Special Revenue Funds.** While these could be accounted for within the General Fund, there may be compelling policy reasons to account for the use of resources separately. In this case, separate "Special Revenue Funds" will be created, recognizing that in accordance with GAAP, these could have been accounted for within the General Fund. Board approval should be required to establish a Special Revenue Fund, with findings as to the fund purpose and why earmarking these resources is appropriate. The following are Special Revenue Funds:
  - a. Admissions Fund
  - b. Annual Meeting Fund
  - c. Grants Fund
  - d. Sections Fund
  
3. **General Fund.** All other revenues, expenditures and other uses will be accounted for in the General Fund.

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<sup>1</sup> A new Fund to be established pursuant to the State Bar's receipt of \$44 million in bank settlement monies to be used to support legal services in the areas of economic development and foreclosure prevention.

### **C. MINIMUM RESERVE TARGET**

The State Bar will maintain unrestricted, uncommitted reserves in its General Fund, and each fund within its Restricted and Special Revenue Program Funds, other than Excluded Minimum Target Reserve Funds, net of reserves that are non-spendable, restricted and committed, that equate to 2 months of operating expenses for the respective funds; this translates to a target minimum reserve level of 17 percent.

Excluded Minimum Target Reserve Funds include all grant-related Funds, specifically the Grant, Legal Services Trust, Equal Access, Justice Gap, and Bank Settlement Funds.

For purposes of the Minimum Reserve Target, operating expenses of the Client Security Fund shall exclude application payouts.

### **D. APPROPRIATE RESERVE USES**

Circumstances where taking reserves below target minimum levels would be appropriate include responding to the risks that reserves are intended to mitigate, such as:

1. One-time uses in meeting cash flow needs; closing a projected short term revenue- expenditure gap; responding to unexpected expenditure requirements or revenue shortfalls; and making investments in human resources, technology, liability reductions, revenue base improvements, productivity improvements and other strategies that will strengthen State Bar revenues or reduce future costs.
2. Where a multi-year forecast shows an ongoing structural gap, in providing a strategic bridge to the future.

Any expenditure that would cause the balance of the General Fund, or any fund within the Restricted or Special Revenue Program Funds, to fall to a level totaling 10 percent or less of recurring annual operating expenses, must be approved by the Board of Trustees.

### **E. FUND BALANCE SPEND DOWN WHEN RESERVES ABOVE POLICY LEVELS**

Whenever reserve levels in the General Fund, or any fund within the Restricted or Special Revenue Program Funds, other than Excluded Excess Reserve Funds, surpass 30 percent, for a consecutive six month period, spend-down funding shall occur in accordance with the following principles:

1. Fund balance spend-down should be utilized to offset member dues and other assessments and use charges, where possible.

2. Fund balance spend-down should be used to advance strategic efficiency investments that will result in short- or long-term reductions in operating costs.
3. Fund balance spend-down should be used to bolster the Client Security Fund, where possible.
4. Fund balance spend-down should be used to increase legal services funding, where possible.

All spend-down in excess of \$250,000 must be approved by the Board of Trustees.

Excluded Excess Reserve Funds include all grant-related Funds, specifically the Grant, Legal Services Trust, Equal Access, Justice Gap, and Bank Settlement Funds, and the Sections Fund.

## **F. RESTORING RESERVES TO POLICY LEVELS**

Whenever reserve levels in the General Fund, or any fund within the Restricted or Special Revenue Program Funds, other than Excluded Minimum Target Reserve Funds, fall below the target minimum reserve level of 17 percent, the State Bar will strive to restore reserves to this level within five years. As revenues versus expenditures improve, the State Bar will allocate at least half to reserve restoration, with the balance available to fund outstanding liabilities, asset replacements, service levels restoration, new operating programs or capital improvement projects.

Excluded Minimum Target Reserve Funds include all grant-related Funds, specifically the Grant, Legal Services Trust, Equal Access, Justice Gap, and Bank Settlement Funds.

(Source: Board of Trustees Resolution March 11, 2016.)

### **Section 4 Quarterly Financial Statements**

Quarterly financial statements shall be received by the Board at the next meeting following their availability. The financial statements shall be prepared following accounting principles generally accepted in the United States in conformance with pronouncements of the Governmental Accounting Standards Board (“GASB”) and where not in conflict with GASB pronouncements, the Financial Accounting Standards Board (“FASB”) pronouncements issued on or before November 30, 1989.

## Historical Note

As part of its planning and oversight function, and in response to concerns raised in the June 2015 State Audit, the Planning and Budget Committee initiated an assessment of the State Bar's existing fund structure, reserve policy and use of fund accounting in appropriately segregating earmarked resources. The proposed restructuring of the Bar's funds, based on that assessment and a subsequent detailed analysis conducted by staff and an independent consultant, was adopted by the board on October 11, 2015. The new structure divided the Bar's Program Funds into three categories - externally restricted funds, special revenue funds, and a consolidated general fund - in accordance with Generally Accepted Accounting Principles (GAAP). In addition, the Bar will maintain one Fiduciary Fund for the State Bar Access and Education Foundation.

## PROGRAM FUNDS

### Restricted Funds

- ***Client Security Fund.*** Maintains funds from which members' clients can be reimbursed for pecuniary losses resulting from dishonest conduct on the part of their attorneys. Such reimbursement is discretionary and, currently, is not to exceed \$100,000 per application for reimbursement on any one transaction, as prescribed by the Board of Trustees. This fund is replenished through annual assessments of \$40 per active member and \$10 per inactive member.
- ***Elimination of Bias and Bar Relations Fund.*** Supports activities with voluntary bar associations and programs that address concerns of access and bias in the legal profession. This fund is supported by a fee of \$5 and is part of the annual membership fees; however, members who do not wish to fund these activities have the option to not remit this fee.
- ***Equal Access Fund.*** Since 1999, the California Budget Act has included funds to provide free legal services in civil matters for indigent Californians. The funds are in the budget of the State Judicial Council for grants to be administered by the State Bar's Legal Services Trust Fund Commission through the Equal Access fund. The Judicial Council contracts with the State Bar for the administration of these funds, which currently consist of grants to approximately 100 nonprofit legal aid organizations, and reimburses the State Bar for its administrative expenses. In 2005, the Uniform Civil Fees and Standard Fee Schedule Act (AB 145) was approved by the Legislature and the Governor. The Act established a new distribution of \$4.80 per filing to the Equal Access Fund. These revenues were collected by the trial courts starting in January 2006 to fund grants to nonprofit legal aid organizations for the grant year.

## Historical Note

- **Information Technology Special Assessment Fund.** The Information Technology Special Assessment Fund is used to upgrade the State Bar's information technology systems, including purchasing and maintenance costs of both computer hardware and software. This fund was supported by a special assessment fee of \$10 from all active members, which sunsetted after December 31, 2013.
- **Justice Gap Fund.** Used to help close the justice gap for needy Californians by voluntary donations to legal aid, pursuant to AB 2301. Members may contribute more or less than the recommended donation or elect to make no donation.
- **Lawyer's Assistance Program Fund.** Established for the protection of the public, the courts and the legal profession by providing education, remedial and rehabilitative programs to those members of the State Bar who are in need of assistance as a result of disability related to substance abuse or mental illness. This fund is replenished through annual assessments of \$10 per active member and \$5 per inactive member.
- **Legislative Activities Fund.** Accounts for the consideration of measures that are deemed outside of the parameters established in Keller vs. the State Bar, the purview determination and any litigation in support or defense of that lobbying. In addition, can be used for Client Security Fund payments. Such activities are funded by members electing to support these activities. This fee of \$5 is part of the membership fees; however, members have the option to not remit this fee.
- **Legal Services Trust Fund.** Used to expand the availability and improve the quality of existing free legal services in civil matters to indigent persons and to initiate new programs that would provide such services. Under this program, interest earned on certain client trust accounts held by California attorneys is legally required to be forwarded to the State Bar and, after deduction of the State Bar's administrative costs, the remainder is to be distributed as grants. In addition, the Trust Fund is supplemented by an increase in the annual fee mandated by Section 6140.03 of the Business and Professions Code. In 2015, section 6140.3 allocated \$40 of the membership fee to the Trust Fund. Under the legislation, members may elect to reduce their fees by this amount if they choose not to support the activities authorized under this bill. The funding associated with the \$40 optional fee will be directed to the State Bar's Legal Services Trust Fund Program for distribution to nonprofit organizations that provide free civil legal services to low-income Californians.

- **Legal Specialization Fund.** Accounts for the certification of legal specialists in areas of family law; criminal law; taxation law; immigration and nationality law; workers' compensation law; personal and small business bankruptcy law; estate planning, trust and probate law; and appellate law. Resources are provided by application fees, certification fees, recertification fees and annual membership fees.

## Special Revenue Funds

- **Admissions Fund.** Accounts for fees and expenses related to administering the bar examination and other requirements for the admission to the practice of law in the State of California.
- **Annual Meeting Fund.** Accounts for Annual Meeting registration fees and expenses. The Annual Meeting Fund allocates its revenues and expenses among itself, the Conference of Delegates of California Bar Associations, which operates as an independent entity, and the Sections Fund.
- **Grants Fund.** Used to account for the various grants received and special projects undertaken by the State Bar.
- **Sections Fund.** Accounts for the activities of sixteen sections, which consist of specific practice areas or areas of professional interest and provides members with a vehicle for communicating with each other, educating themselves, and commenting on relevant legislation. Resources are provided through assessments of the sections' membership and revenue from seminars and workshops.

## General Fund

All other revenues, expenditures and other uses will be accounted for in the General Fund. These funds will be generally available for State Bar purposes, subject to budget priorities set by the Board. Consolidation of these funds will supersede previous Board policy regarding use of these funds. However, previous policy adopted by the Board, requiring adoption of the budget at the cost center level in addition to the fund level, and requiring reporting and approval of interdepartmental cost-center transfers, remains in place and unchanged.

## Historical Note

Pursuant to board adoption on October 11, 2015, existing funds were consolidated into the General Fund:

- General Fund
- Howard Building Fund
- Legal and Education Development Fund
- Los Angeles Facility Fund
- Public Protection Fund
- Support and Administration Fund
- Technology Improvement Fund
- Fixed Assets Fund
- Benefits Reserve Fund

(Source: Government Accounting Standards, Board of Governors' Resolutions March 1977, March 1987, March 1997, June 2000, September 2004, December 2005, July 2007, January 2008, March 2009; Board of Trustees Resolutions October 11, 2015, March 11, 2016.)

### **Section 5    *Interfund Transfers and Loans Policy***

To achieve important financial management objectives, the State Bar has established various funds to account for resources the use of which should be restricted to certain activities as listed in Section 3. Accordingly, each fund exists as a separate financing entity from all other funds, with its own funding sources, expenditures and net financial position (assets less liabilities).

This policy covers two types of interfund transactions: transfers and loans.

1. **Transfers** move financial resources from one fund to another. While there is no change in the State Bar's overall financial position, interfund transfers result in reduced net assets in one fund and increased net assets in another.
2. **Interfund loans**, which are usually made for temporary cash flow reasons, do not result in a change in net assets for either the lending or the borrowing fund: each is net asset neutral. From a financial condition perspective, the lending fund has simply traded cash for an interfund receivable from the borrowing fund; and the borrowing fund has offset the cash it received from the lending fund with an interfund payable.

In summary, interfund transfers result in a change in net assets in the affected funds; interfund borrowings do not, as the intent is to repay in the loan in the near term.

## **Interfund Transfers**

Any transfers between funds must be clearly set forth in an adopted budget or budget amendment formally approved by the Board. Staff is then authorized to make transfers in an amount not to exceed the authorized limit. All interfund transfers must be supported by findings that demonstrate a clear nexus between the purpose of the transferring fund and the reason for the transfer of its funds to another. These findings may be set forth in the budget document, agenda reports, resolutions or other formal reports that are presented to the Board upon its review and approval of interfund transfers.

## **Interfund Loans**

From time to time, interfund borrowings may be appropriate; however, these should be limited and subject to the following criteria to ensure that the fiduciary purposes of the lending and borrowing funds are met:

1. The Chief Financial Officer is authorized to approve temporary interfund borrowings for cash flow purposes whenever the cash shortfall is expected to be resolved within 60 days. While there may be others, the most typical use of interfund borrowing under this circumstance is for grant programs, where costs are typically incurred before grant funds are received. However, in this case, the funds are typically received shortly after they are requested.
2. All other interfund borrowings for cash flow or other purposes require case-by-case approval by the Board. The reason for the interfund loan and repayment terms shall be clearly set forth in findings via the budget document, agenda reports, resolutions or other formal reports that are presented to the Board upon its approval of the interfund loan. After approval, staff is authorized to make the interfund loan in an amount not to exceed the authorized limit.
3. Any loans between funds not expected to be fully repaid within one fiscal year will not be recorded as interfund borrowings: they will be recorded as interfund transfers that affect net assets of the affected funds. However, underlying documentation is still required in such cases noting that the intent is for repayment of the transfer, including the repayment terms and conditions. The purpose of this “change in net assets” approach is to ensure fiscal transparency and accountability; and to guard against the perception that interfund loans are used to mask underlying fund deficits.

**(Source: Board of Trustees Resolution July 2015.)**

## **Section 6    *Fiscal Impact Analysis***

An analysis of fiscal impact shall be included in all board committee and Board of Trustees agenda items and staff proposals if the adoption of such items will create a fiscal impact. The analysis shall indicate if additional funds will be required, and if so, how such funding will be provided. The fiscal impact analysis shall be prepared jointly by the office responsible for the item and by the Office of Finance. Agenda items will not be processed unless a fiscal impact analysis has been included. For board items requiring additional funds, the Board Committee on Planning, Program Development and Budget must first review board agenda items with fiscal impact before the item may be presented to the board. The board committee shall report its findings, fiscal impact, and/or recommendations of the agenda item to the Board.

**(Source: Board of Governors' Resolution, July 1981, August 1981, March 1997, June 2000, September 2004.)**

## **Section 7    *Capital Assets***

In order to accommodate cash flow requirements, any request to purchase capital assets, even if already budgeted, must be reviewed by the Office of Finance prior to purchase.

"Capital Asset" is defined as fixed asset with life expectancy greater than a year, costing individually \$5,000 or more. Sales tax, freight and/or installation cost, if any, are to be included as a part of the total cost of the asset in determining whether it is a capital asset or not. Each capital asset is to be capitalized and depreciated over its assigned life. The depreciation method is the straight line method. No residual or salvage value is to remain for fully depreciated assets at the end of its assigned life. Assets purchased in a quarter are to be depreciated beginning in the following quarter.

The Office of Finance shall determine the assigned lives of asset categories in a manner consistent with Generally Accepted Accounting Principles and industry standards. The Office of Finance shall review the assigned lives of asset categories on an annual basis.

**(Source: Board of Governors' Resolution, July 1981, March 1997, June 2000, September 2004, October 2005.)**

### **Section 8    *Receipt of Cash***

All receipts shall be properly controlled and accounted for by recording the cash receipts on a daily basis and restrictively endorsing the checks as soon as they are received and retained in a secure place.

(Source: Board of Governors' Resolution, July 1981, August 1981, June 2000, September 2004.)

### **Section 9    *Bank Accounts***

The State Bar shall by an annual Board of Trustees resolution, identify designated staff who are authorized to sign withdrawal orders, sign transfer orders and checks, and transfer funds from one State Bar account to another. The resolution shall set the number of signatures required on such instruments based on dollar limits. The resolution shall specify a dollar limit for each signatory. The resolution shall also identify all financial institutions in which the State Bar maintains an account. Following the adoption of the resolution, the State Bar shall inform these financial institutions of those staff with signature authority and their corresponding limits.

(Source: Board of Governors' Resolutions, September 1982, December 1982, September 1983, June 2000, September 2004.)

### **Section 10    *Independent Review of Fiscal Controls***

Beginning in 2015 and every five years thereafter, a review of the State Bar's budget and fiscal control policies and procedures shall be conducted by an independent consultant under the oversight of the Board Audit Committee.

(Source: Board of Trustees Resolution, March 13, 2015.)

### **Section 11    *Prohibition on Pledging Income or Revenue from Membership Fees***

Notwithstanding Business and Professions Code section 6001, 6008.5, or any other provision of law, the State Bar shall not pledge, place a charge upon, or otherwise make available all or any portion of the income or revenue from membership fees for the payment of security of an obligation of the State bar or any interest thereon.

(Source: Board of Trustees Resolution, November, 2016.)

**TAB 4.2**

*TRAVEL AND BUSINESS EXPENSE POLICY*

**Article 1    Travel and Business Expense Policy**

**Article 1**  
**TRAVEL AND BUSINESS EXPENSE POLICY**

The Travel Expense Policy authorizes reimbursement for certain expenses, which may be incurred by persons traveling on State Bar business. Only when a traveler is considered to be on travel status is he or she eligible for reimbursement and/or travel advance as stated in the travel expense policy. The Business Expense Policy authorizes reimbursement for certain expenses, which may be incurred when a person is not on, travel status. Pursuant to the Executive Director's Financial Limitations policy, the Executive Director may modify the Travel Expense and Business Expense Policies and the authorized rates on behalf of the Board of Trustees.

**(Source: Board of Governors' Resolution, January 2001, September 2004.)**

**TAB 4.3**

**CONTRACTS**

**Article 1      **CONTRACTS****

*Section 1      Contractual Obligations of the State Bar*

*Section 2      Authority*

*Section 3      Fiscal Review*

*Section 4      Legal Review*

*Section 5      Execution*

*Section 6      Policy Restricting Former Members of the Board of Trustees  
and the Senior Managers Designated by the Executive  
Director from Doing Business with the State Bar*

*Section 7      Agreements with the State Bar Foundation Regarding  
Corporate Sponsors*

## **Article 1 CONTRACTS**

### **Section 1   *Contractual Obligations of the State Bar***

No contractual obligation of the State Bar shall

- (a) Create a debt or other liability of the state nor of any entity other than the State Bar (or any successor public corporation).
- (b) Create any personal liability on the part of the members of the State Bar or the members of the Board of Trustees or any person executing the same, by reason of the issuance or execution thereof.
- (c) Be required to be approved or authorized under the provisions of any other law or regulation of this state.

**(Business & Professions Code § 6008.1)**

### **Section 2   *Authority***

Any project for consulting services, capital equipment, or technology purchases with anticipated expenditures exceeding \$75,000 must be specifically identified in the annual budget process and approved by the Board of Trustees.

Exempted are expenditures associated with the normal operations of the Bar including but not limited to site agreements, Admissions consultants, IOLTA and Equal Access grant distributions, and other routine services exceeding \$75,000.

Also exempted are cases of emergency where a purchase is necessary for the immediate preservation of the public health, welfare or safety, or protection of State Bar employees and property, provided the details justifying the emergency contract and other supporting documentation be reported to the Board at its next scheduled meeting.

For all contracts, projects, and expenditures reasonably expected to exceed 2,000,000, those amounts must be budgeted, or approved by a budget amendment. In addition, State Bar staff will develop and present a written cost-benefit analysis to the Board of Trustees before committing to, or making a binding agreement for the contract, project, or expenditure. The Board of Trustees, or the relevant Board committee, must then affirmatively approve the contract, project, or expenditure. All such cost-benefit analyses must discuss a recommended course of action and alternatives. This policy is intended to supplement rather than supplant the Request for Proposal (RFP) process conducted

by staff. In cases of contracts, projects, or expenditures reasonably expected to exceed \$2,000,000 that necessarily involve an RFP, staff may determine whether the cost-benefit analysis is most usefully provided to the Board before or after the RFP issues.

**(Source: Board of Governors' Resolution, July 1981, June 2000, March 2010, March 2, 2012; Board of Trustees Resolution July 2015.)**

### ***Section 3 Fiscal Review***

Except in emergencies, no contracts exceeding five thousand dollars (\$5,000) shall be entered into by or on behalf of the State Bar unless the Office of Finance has verified that funds obligated by the contract may be entered into by or on behalf of the State Bar. As a part of budget verification, leases of office space, equipment leases, and building and equipment loan agreements are normally multi-year contracts and as such the Office of Finance shall coordinate with related offices to include these multi-year contract costs in future year budgets.

**(Source: Board of Governors' Resolution, June 2000.)**

### ***Section 4 Legal Review***

Contracts that utilize standard State Bar forms, such as purchase orders, without material modification or supplementation, need not be reviewed by General Counsel.

All contracts which do not utilize standard State Bar forms or which utilize such forms, but with material modification or supplementation, shall be reviewed by General Counsel; provided that General Counsel may decline to review any such contract which is for a sum less than twenty thousand dollars (\$20,000) and may designate from time to time additional categories of contracts not requiring legal review including, but not limited to, contracts for the lease of space in which to administer examinations or to hold meetings other than the Annual Meeting of the State Bar.

All contracts for services of an individual working on State Bar premises, if that individual is not an employee of another corporation or performs services for multi-employers shall require the approval of the Office of General Counsel and the Office of Human Resources.

**(Source: Board of Governors' Resolution, June 2000.)**

### ***Section 5 Execution***

All contracts shall be signed by the Executive Director or his or her written designee. Contracts submitted for signature shall be accompanied by indications that any required fiscal and legal reviews have occurred.

**(Source: Board of Governors' Resolution, June 2000.)**

**Section 6    *Policy Restricting Former Members of the Board of Trustees and the Senior Managers Designated by the Executive Director from Doing Business with the State Bar***

Members of the Board of Trustees and Senior Managers designated by the Executive Director, for a period of twelve months following expiration of their term of office or termination of employment, shall not:

- (a)    Seek to do, or do, business with the State Bar for monetary gain, or
- (b)    Act as agent or attorney for, or otherwise represent any person, for compensation by making any formal or informal appearance, or any oral or written communication before the State Bar, or any officer or employee or agent thereof, if the appearance or communication is for the purpose of influencing official State Bar action, including the awarding or revocation of services, contracts, or the sale or purchase of goods or property.

The board, or its designee, may waive the requirements of this policy for good cause.

(Source: Board of Governors' Resolution, July 1997, May 1998.)

**Section 7    *Agreements with the State Bar Foundation Regarding Corporate Sponsors***

The board authorizes the Executive Director, or his or her designee, to enter into an agreement with the Foundation of the State Bar regarding corporate sponsor arrangements, in a form approved by General Counsel.

(Source: Board of Governors' Resolution, July 1997.)

**TAB 4.4**

**INVESTMENT POLICY**

**Article 1 INVESTMENT POLICY**

*Section 1 Policy Statement*

*Section 2 Objectives*

*Section 3 Investment Instruments Authorized by the State of California*

*Section 4 Reports of Investment Activities*

*Section 5 Ethics and Conflicts of Interest*

*Section 6 Required Review of State Bar Investment Policy*

## **Article 1 INVESTMENT POLICY**

### **Section 1 Policy Statement**

It is the policy of the State Bar of California to invest public funds in a manner which will provide the maximum security with best investment return, while meeting the daily cash flow demands of the Bar and conforming to all State statutes governing the investment of public funds and all Resolutions of the Board of Trustees.

### **Section 2 Objectives**

(a) Safety Of Invested Funds

- (1) Minimum Standards: Investment instruments must conform to the standards established by the State of California as set forth in Section 3. As these standards are modified by the State from time to time, this investment policy will automatically adopt the revised standards.
- (2) Diversification: To minimize risk of loss, the State Bar shall diversify its investment portfolio utilizing any combination of investment instruments specified in Section 3. The maximum amount the State Bar invests in each type of investment instrument is limited to the “maximum specified % of portfolio” shown in Section 3.
- (3) Scope: This investment policy applies to all financial assets under direct control of the State Bar, including all of the funds accounted for in the State Bar quarterly report to the Board and include the General Fund, Restricted Funds, and other funds that may be created from time to time. The State Bar holds no pension trust funds for which it is accountable.

This policy does not apply to investment activities of moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or certificates of participation. Such funds are invested in accordance with the statutory provisions governing the issuance, or in the absence of specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the State Bar of California providing for the issuance. These funds are identified as the State Bar of California Section 457 Deferred Compensation Plan and the Post Employment Benefit Fund.

- (4) Safety of Principal: Safety of principal is the foremost objective of the investment policy. Investments of the State Bar of California shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio.

- (5) Custodianship of Instruments: The State Bar will utilize an independent third party custodian to provide custodial services on all of the State Bar's investments.
- (6) Prudence: Investments shall be made with judgment and care – under circumstances then prevailing – which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived. This standard of prudence shall be applied in the context of managing an overall portfolio. Investment officials acting in accordance with the investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that deviations from expectation are reported in a timely fashion, and appropriate action is taken to mitigate adverse developments<sup>1</sup>.
- (b) Liquidity Of Invested Funds: The State Bar's investment portfolio will remain sufficiently liquid to enable the State Bar to meet all operating requirements that might be reasonably anticipated.
- (c) Return on Investment: The State Bar's investment policy shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, commensurate with the State Bar's investment risk constraints and the cash flow characteristics of the portfolio. Investments shall be made with the intent to hold to maturity unless the liquidity needs of the portfolio require that the security be sold or a capital gain be realized in a manner that better positions the overall portfolio in achieving investment policy goals.
- (d) Responsible Official: The Chief Financial Officer is designated as the official with responsibility for authorizing the following:
- Opening and closing accounts
  - Selection of investment managers and custodians
  - Purchase of investments
  - Sale or liquidation of investments prior to their scheduled maturity dates.

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<sup>1</sup> Pursuant to Government Code sections 825 and 995, the State Bar is required to indemnify the Board of Trustees, its officers and other employees.

- (e) Authorized Financial Dealers and Financial Institutions: The Chief Financial Officer of the State Bar will maintain a list of financial institutions authorized to provide investment services. In addition, a list will also be maintained of approved security broker/dealers, selected by credit worthiness, who are authorized to provide investment services in the State of California.
- (f) Distribute Investment Policy: The State Bar shall send a copy of the current investment policy to all parties approved to do business with the State Bar. Confirmation of receipt of this policy shall be considered evidence that the dealer understands the State Bar's investment policies, and intends to show the State Bar of California only appropriate investments.
- (g) Service Provider Controls: The State Bar shall annually obtain and review the System and Organization Controls (SOC1) reports of custodians and investment managers each year to ensure reliability of data and reports received.

**Section 3 Investment Instruments Authorized By The State Of California**

The following table identifies the investment instruments, maturities, portfolio percentage restrictions and other minimum quality requirements established under California Law.

<b>The State Bar of California Investment Policy Investment Instruments Authorized by the State of California</b>			
<b>INVESTMENT TYPE</b>	<b>MAXIMUM MATURITY</b>	<b>MAXIMUM SPECIFIED % OF PORTFOLIO</b>	<b>MINIMUM QUALITY REQUIREMENTS</b>
Local Agency Bonds	5 years	None	None
U.S. Treasury Obligations	5 years	None	None
State Obligations— CA And Others	5 years	None	None
CA Local Agency Obligations	5 years	None	None
U.S Agency Obligations	5 years	None	None
Bankers' Acceptances	180 days	40%	None
Commercial Paper— Pooled Funds	270 days	40% of the agency's money	Highest letter and number rating by an NRSRO
Commercial Paper— Non-Pooled Funds	270 days	25% of the agency's money	Highest letter and number rating by an NRSRO
Negotiable Certificates of Deposit	5 years	30%	None
Non-negotiable Certificates of Deposit	5 years	None	None

Placement Service Deposits	5 years	30%	None
Placement Service Certificates of Deposit	5 years	30%	None
Repurchase Agreements	1 year	None	None
Reverse Repurchase Agreements and Securities Lending Agreements	92 days	20% of the base value of the portfolio	None
Medium-Term Notes	5 years	30%	"A" rating category or its equivalent or better
Mutual Funds And Money Market Mutual Funds	N/A	20%	Multiple
Collateralized Bank Deposits	5 years	None	None
Mortgage Pass-Through Securities	5 years	20%	"AA" rating category or its equivalent or better
County Pooled Investment Funds	N/A	None	None
Joint Powers Authority Pool	N/A	None	Multiple
Local Agency Investment Fund (LAIF)	N/A	None	None
Voluntary Investment Program Fund	N/A	None	None
Supranational Obligations	5 years	30%	"AA" rating category or its equivalent or better

#### **Section 4    *Reports Of Investment Activities***

The Chief Financial Officer will make quarterly reports to the Board of Trustees on the status of the State Bar's Investment portfolio. These reports shall include information as to the type of investment, the amount of money invested with various institutions, market value for securities with a maturity of more than 12 months, purchase and maturity dates, rate of interest, and statement of portfolio liquidity, as required by California state law.

#### **Section 5    *Ethics And Conflicts Of Interest***

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Investment officials and employees shall disclose any financial interests as required by the Conflict of Interest Code for Designated Employees of The State Bar of California and the Conflict of Interest Code for the State Bar Board of Trustees. All persons authorized to place or approve investments shall report annually on Form 700 of the California Fair Political Practices Commission all required economic interests for that year.

#### **Section 6    *Required Review Of State Bar Investment Policy***

This investment policy shall be reviewed at least annually for the purpose of recommending needed changes and modifications. The Chief Financial Officer will be responsible for initiating the review.

**(Source: Board of Governors' Resolutions, September 1996, June 2000, September 2000, May 2005; Planning and Budget Committee Resolution, November 19, 2015; Finance and Planning Committee Resolution, November 17, 2016; Board of Trustees Resolution, May 18, 2018.)**

**TAB 4.5**

*USE OF STATE BAR MEETING ROOMS AND FACILITIES POLICY*

**Article 1    Use of State Bar Meeting Rooms and Facilities Policy**

**Article 1**  
**USE OF STATE BAR MEETING ROOMS AND FACILITIES POLICY**

The Executive Director, upon consultation with General Counsel, may authorize use of State Bar facilities at no cost, actual cost, or at market cost.

**(Source: Board of Governors' Resolution, November 2000.)**

**SECTION 5**  
**STATE BAR COMMITTEES, COMMISSIONS AND SECTIONS**

*Adopted July 22, 2016*

- TAB 5.1      Standing and Special Committees**
- TAB 5.2      Meetings of State Bar Committees**
- TAB 5.3      Appointment Policies and Procedures**
- TAB 5.4      State Bar Sections**
- TAB 5.5      Other Organizations**

## **TAB 5.1**

### **STANDING AND SPECIAL COMMITTEES**

#### **Article 1 GENERAL**

- Section 1 Authority and Duties of Committees: Statement of General Policy*
- Section 2 Appointment of Advisors, Ex Officio Members and Consultants*
- Section 3 Number of Committees*
- Section 4 The Committee Year*
- Section 5 Term of Membership*
- Section 6 Missed Meetings*
- Section 7 Size of Committees*
- Section 8 Reports to the Board*
- Section 9 Annual Reports*
- Section 10 Duties of Chairpersons*
- Section 11 Board Referral to Committees*

#### **Article 2 THE STANDING COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT**

- Section 1 Establishment*
- Section 2 Members and Advisors*
- Section 3 Officers*
- Section 4 Meetings*
- Section 5 Voting*
- Section 6 Responding to Opinion Requests*
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**Article 5 ANNUAL BOARD EVALUATION OF STANDING COMMITTEES**

- Section 1 *Advisory Committee Workplan Criteria*

## **Article 1 GENERAL**

### **Section 1 Authority and Duties of Committees: Statement of General Policy**

Committees of the State Bar are subject to the Rules of the State Bar of California, including Rules 6.20 and 6.21.

(Source: Board of Governors' Resolution, September 1972, State Bar Rules 6.20 and 6.21 adopted effective May 16, 2008.)

#### **Historical Note**

State Bar Rules 6.20 and 6.21 supersede Article XIV of the Rules and Regulations of the State Bar, repealed effective May 16, 2008.

### **Section 2 Appointment of Advisors, Ex Officio Members and Consultants**

Unless expressly authorized by the Board of Trustees, advisors, ex officio members and consultants shall not be appointed to State Bar committees.

(Source: Board of Governors' Resolution, September 1981.)

### **Section 3 Number of Committees**

The number of committees shall be determined by the work to be done immediately or within the foreseeable future. The determination of the number of committees shall be controlled by the following statement of policy: A committee shall not be created nor continued, or if created or continued, no persons shall be appointed to membership on it, unless at the time of creation, continuance, or appointment there is reasonable certainty that without delay important work will be assigned to it.

(Source: Board of Governors' Resolution, September 1972.)

### **Section 4 The Committee Year**

The normal committee year commences with the close of the annual meeting and continues until the close of the annual meeting of the following year.

(Source: Board of Governors' Resolutions, September 1972, July 1986, August 1992.)

### **Section 5 Term of Membership**

The terms of office for all members of section executive committees and standing and special committees shall be three (3) years, with terms to be staggered.

Exceptions:

*Committee on Professional Liability Insurance (COPLI)*. Members serve four-year terms and may serve two consecutive four-year terms.

*California Commission on Access to Justice.* Pursuant to board policy adopted September 1996, terms are two years and members may serve two consecutive terms. Officer terms run from January 1, to December 31.

*California Board of Legal Specialization and its Advisory Commissions.* Pursuant to board policy adopted in November 2013, terms are four years.

*Committee of Bar Examiners.* Pursuant to B & P code §6046, the term of office is four years.

*Continuing Education of the Bar (CEB) Governing Committee.* Pursuant to the Agreement between the State Bar and the University of California Continuing Education of the Bar, terms are two years and are renewable.

*Lawyer Assistance Program (LAP) Oversight Committee.* Pursuant to B & P code §6230, terms are four years and are renewable.

*Maximum Term for Chairs, Chairs -Elect and Vice Chairs.* Pursuant to State Bar Rule 3.54 and board policy adopted in July 1989, in order to maximize diversity and participation on section executive committees, it is the policy of the Board of Trustees that executive committee members serve no more than three years, except to permit service as an officer in a fourth year; or Chair, Vice Chair or Chair-elect in a fifth year, or Chair in a sixth year.

*Reappointment of Members Filling Unexpired Vacancies.* Pursuant to board policy adopted April 1993, members appointed to fill unexpired terms of one year or less may be reappointed for a full three-year term. Members appointed to fill unexpired vacancies of more than one year are not eligible for reappointment, except to serve as an officer. This reappointment limitation does not apply to members of the Committee of Bar Examiners, LAP Oversight Committee, California Commission on Access to Justice, California Board of Legal Specialization and its Advisory Commissions, or the CEB Governing Committee.

**(Board of Governors' Resolutions, September 1972, August 1982, July 1986, July 1989, December 1991, April 1993, September 1996; December 2001, July 2004, July 2010, November 2013; Agreement between the State Bar of California and the University of California Continuing Education of the Bar, September 2001; State Bar Rule 3.54 adopted effective May 16, 2008; B & P Code §§6046; 6230 et seq.)**

#### **Historical Note**

State Bar Rule 3.54(A) supersedes Article XIII, § 4B of the Rules and Regulations of the State Bar of California (Sections of the State Bar of California), repealed May 16, 2008.

### **Section 6 Missed Meetings**

Any standing committee member who misses more than one-third (1/3) of the regularly scheduled meetings during a committee year, without good cause may be deemed to have resigned. Policies adopted by section executive committees shall prevail.

(Source: Board of Governors' Resolution, July 1986, September 2004.)

### **Section 7 Size of Committees**

The membership of each committee shall be limited to the number that will enable it to perform its work promptly and thoroughly. The board, in determining the size of a committee, shall take into consideration (a) the scope, nature, and quantity of work which it must perform; (b) the time within which the work must be performed; and (c) the expense incident to the performance of the work.

(Source: Board of Governors' Resolution, September 1972.)

### **Section 8 Reports to the Board**

No committee of the State Bar is authorized to transmit any report by it except to the board.

(Source: Board of Governors' Resolution, September 1972.)

### **Section 9 Annual Reports**

- (a) Filing Dates Annual reports are due by January 31, of each year. Any section or committee that has not filed its annual report on or before January 31 shall be prohibited from conducting any business requiring reimbursement from State Bar general or special funds until the annual report has been filed.

(Source: Board of Governors' Resolutions, August 1971, February 1984, July 1986.)

- (b) **Committee and Staff Reports:** Staff will develop plans for State Bar operations as determined and directed by the Executive Director. The Board Planning Program Development and Budget Committee and planning staff are responsible for developing work plan templates and instructions, training materials and other information and tools needed to guide the development of plans.

(Source: Board of Governors' Resolutions, Adoption of Board Planning Policies, August 2002, July 2008.)

### **Section 10 Duties of Chairpersons**

The chairperson of each committee (commission and section executive committee) of the State Bar:

- (a) Shall preside at each meeting of the committee or a subcommittee thereof at which he or she is present unless under the rules of parliamentary procedure it is necessary for him or her to leave the chair temporarily.
- (b) To enable the board to coordinate State Bar policy and the valuable work of all nondisciplinary committees, the chairperson of each said committee shall cause to be furnished to Board Executive Committee of the Board of Trustees and to the San Francisco office of the State Bar a brief statement concerning the subject of any resolution adopted by the committee which, in the opinion of the chairman, provides for action which involves State Bar policy or which is within the scope of State Bar Rules 6.20 and 6.21. When the chairperson rules that a matter shall be referred as per the foregoing, the committee shall take no further action thereon pending instructions from the board.
- (c) Shall administer the general policy of the State Bar with respect to Open/Closed Sessions of the committee as set forth in section 7a of this article.
- (d) Shall administer the general policy of the State Bar that no committee shall transmit any report by it except to the Board of Trustees or as authorized by the board.
- (e) Shall keep the Board and the Director of Sections and Meeting Services and Chief Operating Officer advised of all nondisciplinary matters within its area of expertise undertaken by the committee without prior reference by the board, the Secretary of the State Bar or the legislative representative.
- (f) Shall provide the State Bar office with a copy of all records disclosed in section 7b of this article.

**(Source: Board of Governors' Resolution August 1971, September 1972, January 1989, January 2003, State Bar Rules 6.20 and 6.21 adopted effective May 16, 2008.)**

#### **Historical Note**

State Bar Rules 6.20 and 6.21 supersede Article XIV of the Rules and Regulations of the State Bar of California, repealed May 16, 2008.

### **Section 11 Board Referral to Committees**

Each committee to which the board refers a proposal which may ultimately be part of the State Bar's legislative program shall be advised generally in respect of said matters as follows:

- (a) The mere referral does not indicate that the board (1) approves of the underlying policy of the proposal or (2) believes there is a need for the change proposed; and
- (b) The board requests the committee's views concerning:
  - (1) The policy underlying the proposal, the need for the proposed change and, if appropriate, the form or wording of the proposed legislation.
  - (2) The relative importance of the proposal and its priority among other measures, if any, the committee may recommend for inclusion in the legislative program.
  - (3) Whether the proposal should be made a part of a larger study or combined with related proposals as part of a general overhaul of the relevant statutes.
  - (4) Whether there are other organizations, agencies or groups interested in the same subject matter as that proposed; and, if so, whether it would be advisable to refer the proposal to such an organization, agency or group.
  - (5) Whether the proposal pertains to the advancement of the science of jurisprudence or to the improvement of the administration of justice.

If the referred proposal is a resolution of the Conference of Delegates of California Bar Associations (CDCBA) or a report of a committee of the conference, the board requests that the standing committee's report include a statement of specific reasons for any recommendation at variance with the position of the CDCBA.

**(Source: Board of Governors' Resolution, November 1971.)**

**Article 2**  
**THE STANDING COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT**

***Section 1 Establishment***

The Standing Committee on Professional Responsibility and Conduct (hereinafter "the committee") is the successor to the Committee on Professional Ethics established by resolution of the Board of Trustees of the State Bar of California adopted September 29, 1964. The charge of the Committee on Professional Responsibility and Conduct may be found at section 15 of article 4 of this chapter.

(Source: Board of Governors' Resolutions, September 1964, July 1979, October 1994, December 2004.)

***Section 2 Members and Advisors***

- (a) The membership of the committee shall consist of fifteen (15) members (including a chair and vice-chair) and an advisor. Members shall be appointed by the board for a three (3) year term of office. The chair, vice-chair and advisor shall be appointed or reappointed by the Board of Trustees for a one (1) year term of office. The advisor shall be selected from former officers of the committee.
- (b) Each Committee year, the Committee shall select a Nominations Subcommittee. The Subcommittee shall consist of the Chair and Vice-Chair and three other members of the Committee selected by Chair.
  - (1) Any materials submitted by applicants shall be made available for review by Committee members at the offices of the State Bar in Los Angeles and San Francisco at the same time the materials are distributed to the Nominations Subcommittee. Staff shall advise the entire Committee when such materials are available for review. In addition, one set of applicant materials shall be presented to the Committee's membership for review at the first Committee meeting each year which follows the materials' distribution to the Nominations Subcommittee and also at any meeting where nominations are to be discussed.
  - (2) Following any interviews the Subcommittee may conduct, the Subcommittee will rank the applicants in order of preference and shall submit those applicant rankings to the Committee for its consideration at a meeting. After considering the Subcommittee's recommendations, the Committee shall rank the applicants in order of preference and submit those rankings to the Board Committee. In evaluating potential members, the Committee uses the following criteria, though no one factor is dispositive: (1) prior experience in the legal ethics field; (2)

time and energy to undertake the significant responsibilities of Committee membership; (3) written and oral communication skills; (4) factors lending diversity to the Committee, including diversity based on race, sex, color, national origin and sexual orientation, as well as location and field of practice, years in practice (including status as a California Young Lawyer), and size of firm (if applicable); and (5) prior volunteer experience, particularly involvement in legal and other professional groups. For public members, the Committee values the ability to contribute a client perspective to the committee's deliberations.

- (c) Any member who fails to attend more than one-third of the regularly scheduled meetings during a committee year, without good cause, will be deemed to have resigned. A member is considered to have attended a meeting when the member is physically present for at least two thirds of the actual duration of the meeting, unless excused for good cause. When a member fails timely to complete an assignment for a meeting, without good cause, the member will be deemed to have missed the meeting, given the importance of pre-meeting preparation to the Committee's business. The Chair and Vice-Chair, in consultation with staff and in accordance with State Bar procedures, shall decide jointly whether and when to deem a member to have resigned.

(Source: Board of Governors' Resolutions, July 1979, July 1988, March 1992, October 1994, September 1999, December 2004; Board of Trustees Resolution, November 2016.)

### **Section 3   Officers**

The officers of the committee shall be the chair and vice-chair appointed or reappointed by the Board of Trustees from the committee.

(Source: Board of Governors' Resolutions, July 1979, March 1992, December 2004.)

### **Section 4   Meetings**

Committee meetings shall be held in northern and southern California on the call of the chair. Subject to budget constraints, no fewer than four (4) meetings shall be held annually. At the discretion of the chair, meetings may be held by video-conference or other real-time electronic means of communication. A quorum shall consist of eight (8) members of the committee. A majority vote of those members voting shall control, except for formal ethics opinions, which require the affirmative vote of a majority of the entire Committee (see section 6(i)).

(Source: Board of Governors' Resolution, July 1979, September 1999, December 2004.)

## **Section 5    Voting**

Each member has one vote. The advisor may not vote but may participate in all of the committee's deliberations. Proxy voting shall not be allowed. Members shall be allowed to vote at a meeting by telephone, if telephone communication is reasonably available.

(Source: Board of Governors' Resolution, December 2004; Board of Trustees Resolution, November 2016.)

## **Section 6    Responding to opinion requests**

- (a) Committee's options for responding to opinion requests. When presented with a request that the committee issue a formal opinion, the committee may elect (a) not to opine; (b) to issue a private letter opinion to the requestor; or (c) to issue a formal, published opinion. The committee may accept requests for an opinion from anyone, including the public, members of the Bar, the committee's own members and persons affiliated with the Bar, such as members of Board of Trustees and State Bar staff. Requests shall be presented to the committee for resolution along with a recommendation from the chair, if the chair so elects.
  
- (b) Criteria for issuing formal opinions. The committee may determine to proceed with the development of a formal opinion when a majority of the voting members of the Committee (not just a majority of those present at a meeting) determines that a request setting forth hypothetical facts presents issues of general interest to the Bar and/or the public and that the committee has satisfactorily resolved the issues presented by the hypothetical facts. However, the committee shall not issue a formal opinion when any of the following circumstances exist:
  - (1) The requesting attorney is a member of a local bar association which has an ethics committee, provided that the committee may respond to the inquiry if forwarded by a local bar association ethics committee or if the request concerns an ethics problem on which there is a division of views among local bar association ethics opinions.
  - (2) There is a pending State Bar complaint, investigation, proceeding or litigation concerning the subject of the request.
  - (3) The request constitutes a complaint against member(s) of the State Bar.
  - (4) The request involves procedures employed by the bar in processing complaints against members of the State Bar.

- (5) The request involves questions or issues, the resolution of which turns principally on law unrelated to the law governing lawyers.
- (6) Where it is known that the request involves a situation in litigation or concerns threatened litigation or involves the propriety of sanctions within the purview of the courts, such as contempt.
- (7) The chair and vice-chair have jointly determined that it would be inadvisable to respond to the request.

**(Source: Board of Governors' Resolution, July 1979, December 2004.)**

- (c) Letter Opinions. If the committee elects not to issue a formal opinion in response to a request, then the committee may issue a private letter opinion or decline to opine. In either event, the requestor shall be notified by letter. The committee typically issues letter opinions when there is no policy reason for the committee to decline comment on the request and the request is simple, routine or otherwise not of general interest to the Bar's members. The letter shall be drafted by the chair or by a member assigned by the chair. The committee may approve the opinion by affirmative vote as provided in these rules.

**(Source: Board of Governors' Resolution, July 1979, December 2004; Board of Trustees Resolution, November 2016.)**

- (d) Changed circumstances. If, at any time after an opinion request has been assigned for drafting as a formal opinion, but before final publication, the committee shall decline to act further on the request and no opinion shall be published if any of the circumstances listed in section (b), subdivisions (1) through (6) above, come to light.
- (e) Format of Formal Opinions. Drafts of formal opinions shall be prepared by the member or members assigned by the chair or staff. The drafter shall ordinarily circulate their draft to the committee in a pre-meeting agenda packet distributed by the staff. Each opinion shall set forth:
  - (1) A statement of issue or issues addressed;
  - (2) A concise digest summarizing the committee's conclusions and reasoning;
  - (3) Hypothetical facts of the ethical question presented in a general manner without identification of the requesting attorney or any details of the request which would permit such identification;
  - (4) The Rules of Professional Conduct or other authorities relied upon;

- (5) An analytical discussion of the applicable rules applied to the hypothetical facts; and
- (6) A conclusion.

**(Source: Board of Governors' Resolution, July 1979, December 2004; Board of Trustees Resolution, November 2016.)**

- (f) Dissenting Opinions. While the Committee typically issues opinions on the basis of consensus, or at least substantial majority vote, a member may elect to have notice of his or her dissent included with the opinion. In this event, the number of dissenters, but not their names, will be noted in the final opinion. In the rarest of cases, a dissenting opinion or opinions explaining the reasons for any dissent may be added to the opinion, in the discretion of the chair. As with the opinion of the Committee, the dissenting opinion will not be attributed to particular authors but will note on how many members' behalf the dissent is filed.
- (g) Publication of Proposed Formal Opinions for Public Comment. The committee shall publish proposed formal opinions, and provide an opportunity for public comment of no less than 60 days, before approving a formal opinion for final publication. Upon a vote of the committee, the formal opinion shall be distributed to members of appropriate committee or committees of the Board of Trustees, key individuals on the State Bar staff who participate in regulatory activities, the chairpersons of local bar association ethics committees and, in the discretion of the chair, other interested persons or entities, advising them that the hypothetical is under consideration by the committee for a formal opinion and requesting their comments. Proposed opinions published for public comment shall be made available to the public through means reasonably available to the committee, such as through the committee staff and the State Bar website.
- (h) Issuance of Formal Opinions Following Public Comment. After considering any public comment received on a draft formal opinion, the committee may vote to issue the opinion as drafted, to modify the opinion and approve the modified opinion for publication, to decline to opine or to issue a private letter opinion. In the event a proposed formal opinion is modified after publication for public comment in such a manner as to reflect the committee's view that additional ethical duties or obligations apply to the hypothetical facts, then the proposed formal opinion shall be published again for public comment as provided in section (g).
- (i) Majority Vote Required. Proposed opinions may be approved pursuant to sections (g) and (h) only by a majority of all voting members of the committee, at a meeting.

- (j) Transmission to Requestor and Board Committee. Once the committee has approved a formal opinion for publication pursuant to section (i), the formal opinion shall be issued to the requesting party and the issue of whether the formal opinion shall be published shall be placed on the agenda of the next succeeding meeting of the Board Committee on Regulation and Discipline for decision.
  
- (k) Publication and Maintenance of Opinions. Once approved pursuant to section (j), formal opinions shall be published in State Bar publications, including the State Bar web site, as space is available, and the committee may cause its formal opinion or a summarization thereof to be published in other appropriate publications. All approved letter and formal advisory opinions shall be maintained on file at all State Bar offices and shall be available to any member of the bench, bar or public upon request. A reasonable charge to defray the costs of reproduction of such opinions and postage may be required.

**(Source: Board of Governors' Resolution, December 2004; Board of Trustees Resolution, November 2016.)**

## **Section 7    *Effect of Opinions***

All opinions issued by the committee express only the judgment of the committee and are advisory only. Each letter and formal opinion shall conclude with the following statement:

This opinion is issued by the Standing Committee on Professional Responsibility and Conduct of the State Bar of California. It is advisory only. It is not binding upon the courts, the State Bar of California, its Board of Trustees, any persons or tribunals charged with regulatory responsibilities, or any member of the State Bar.

(Source: Board of Governors' Resolution, July 1979, December 2004.)

## **Section 8    *Revision of Rules of Professional Conduct or Other Laws Governing the Conduct of Attorneys***

The committee shall, upon reference of the Board of Trustees or its secretary, or on its own initiative with the concurrence of the Board Committee, study and submit recommendations to the Board of Trustees regarding proposed additions or amendments to or repeal of Rules of Professional Conduct of the State Bar or other laws governing the conduct of attorneys. In formulating its recommendations to the board, the committee shall cause its proposals to be published and solicit written comments thereon and, as directed by the Board of Trustees, conduct public hearings thereon.

(Source: Board of Governors' Resolution, July 1979, December 2004.)

## **Section 9    *State Bar Staff***

- (a) The chair shall:
  - (1) Advise the staff of any failure to act pursuant to section 6(a) of this article so that staff can advise the requesting attorney.
  - (2) Cause to be provided to staff a copy of all correspondence by, or to, any committee member or advisor concerning committee work.
  - (3) Provide the staff with copies of draft and final letter opinions.
  - (4) Forward approved formal opinions to the staff for issuance and publication, as appropriate.
  
- (b) The staff shall:
  - (1) Receive requests for opinions from requesting attorneys and references from the Board of Trustees or its secretary and transmit them to the chair, vice-chair and the committee.

- (2) Advise requesting attorneys of the existence, functions and procedures of the committee.
- (3) Provide copies of requests for opinions to the members of the committee.
- (4) Following receipt of approved formal opinions and draft letter opinions, advise the chair:
  - (A) Of any circumstances arising during the period in which the request was being processed requiring or warranting committee inaction pursuant to section 6(b) of this article; and
  - (B) Of any other reasons militating against issuance of the opinion.
- (5) Issue approved formal opinions to the requesting attorney unless the chair withdraws the opinion for committee reconsideration.
- (6) Cause opinions issued by the committee to be published as appropriate.
- (7) Maintain all official files and records of the committee and make such files available to interested members of the bench and bar as appropriate.
- (8) Assist the committee in performing its functions.

**(Source: Board of Governors' Resolution, July 1979, December 2004; Board of Trustees Resolution, November 2016.)**

**(Source: Board of Governors' Resolution, December 2004.)**

### ***Section 10 Conflicts***

- (a) Members must disclose to the Committee any relationship with an inquirer.
- (b) Members are encouraged to disclose any other relationship or interest that might have, or appear to have, a significant effect on the Committee's deliberations or decisions.
- (c) A member may disqualify himself or herself from voting and/or deliberations. However, members are not required to do so. In fact, members are encouraged to participate once any relationship or interest is disclosed to the Committee so that the Committee will have the benefit of all members' participation, input and expertise.

(Source: Board of Governors' Resolution, December 2004.)

**Article 3**  
**LAWYER ASSISTANCE PROGRAM OVERSIGHT COMMITTEE**

The Lawyer Assistance Program (LAP) is a statutory program that provides confidential and comprehensive help to members or former members of the State Bar whose personal or professional life is affected by substance abuse or mental health issues. The mission of the LAP is to support recovering attorneys in their rehabilitation and competent practice of law, enhance public protection, and maintain the integrity of the legal profession.

Senate Bill 479 (Burton), which created the Program, established a twelve-member Oversight Committee to oversee the operation of the Program and establish practices and procedures for the acceptance, denial, completion, or termination of attorneys from the Program. Six members of the Committee are appointed by the Board, four by the Governor, one by the President pro tem of the Senate, and one by the Speaker of the Assembly.

The Program is staffed through the Office of the Executive Director. The LAP is not part of the discipline system, but LAP staff work in close cooperation with OCTC staff and with the State Bar Court's Pilot Program to provide attorneys with an opportunity to rehabilitate themselves while resolving their disciplinary charges.

Senate Bill 479 mandates that the Program maintain absolute confidentiality. No information concerning participation in the program will be released to anyone without the attorney's prior written consent.

The LAP offers counseling, consultation, arrangements for treatment, and support groups. Attorneys may self-refer into the Program or may be referred by friends, family, the judiciary, or State Bar discipline. Financial assistance is available so that no one is prevented from participating in the program due to financial limitations.

**ATTORNEY DIVERSION AND ASSISTANCE ACT**  
**Business And Professions Code**  
**§§6140.9, 6230-6238**

(Added by SB 479 (Burton), Chapter 129, Statutes of 2001;  
Amended by AB 1708 (Assm. Judiciary Committee,  
Chapter 334, Statutes of 2003)

***SECTION 1. Section 6140.9 of the Business and Professions Code is amended to read:***

6140.9. Moneys for the support of the program established pursuant to Article 15 (commencing with Section 6230) and related programs approved by the committee established pursuant to Section 6231 shall be paid in whole or part by a fee of ten dollars (\$10) per active member per year.

The board may seek alternative sources for funding the program. To the extent that funds from alternative sources are obtained and used for the support of the program, and provided that at least ten dollars (\$10) per active member is available for support of the program each year, funds provided by the fee established by this section may be applied to the costs of State Bar general fund programs.

***SECTION 2. Article 15 (commencing with Section 6230) is added to Chapter 4 of Division 3 of the Business and Professions Code, to read:***

Article 15. Attorney Diversion and Assistance Act

6230. It is the intent of the Legislature that the State Bar of California seek ways and means to identify and rehabilitate attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness, affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety.

6231. (a) The board shall establish and administer an Attorney Diversion and Assistance Program, and shall establish a committee to oversee the operation of the program. The committee shall be comprised of 12 members who shall be appointed as follows:

- (1) Six members appointed by the Board of Trustees, including the following:
  - (A) Two members who are licensed mental health professionals with knowledge and expertise in the identification and treatment of substance abuse and mental illness.
  - (B) One member who is a physician with knowledge and expertise in the identification and treatment of alcoholism and substance abuse.
  - (C) One member of the board of directors of a statewide nonprofit organization established for the purpose of assisting lawyers with alcohol or substance abuse problems, which has been in continuous operation for a minimum of five years.

- (D) Two members who are attorneys, at least one of which is in recovery and has at least five years of continuous sobriety.
- (2) Four members appointed by the Governor, including the following:
  - (A) Two members who are attorneys.
  - (B) Two members of the public.
- (3) One member of the public appointed by the Speaker of the Assembly.
- (4) One member of the public appointed by the Senate Rules Committee.
  - (A) Committee members shall serve terms of four years, and may be reappointed as many times as desired. The board shall stagger the terms of the initial members appointed.
  - (B) Subject to the approval of the board, the committee may adopt reasonable rules and regulations as may be necessary or advisable for the purpose of implementing and operating the program.

6232. (a) The committee shall establish practices and procedures for the acceptance, denial, completion, or termination of attorneys in the Attorney Diversion and Assistance Program, and may recommend rehabilitative criteria for adoption by the board for acceptance, denial, completion of, or termination from, the program.

(b) An attorney currently under investigation by the State Bar may enter the program in the following ways:

(1) By referral of the Office of the Chief Trial Counsel.

(2) By referral of the State Bar Court following the initiation of a disciplinary proceeding.

(3) Voluntarily, and in accordance with terms and conditions agreed upon by the attorney participant with the Office of the Chief Trial Counsel or upon approval by the State Bar Court, as long as the investigation is based primarily on the self-administration of drugs or alcohol or the illegal possession, prescription, or nonviolent procurement of drugs for self-administration, or on mental illness, and does not involve actual harm to the public or his or her clients. An attorney seeking entry under this paragraph may be required to execute an agreement that violations of this chapter, or other statutes that would otherwise be the basis for discipline, may nevertheless be prosecuted if the attorney is terminated from the program for failure to comply with program requirements.

(c) Neither acceptance into nor participation in the Attorney Diversion and Assistance Program shall relieve the attorney of any lawful duties and obligations otherwise required by any agreements or stipulations with the Office of the Chief Trial Counsel, court orders, or applicable statutes relating to attorney discipline.

(d) An attorney who is not the subject of a current investigation may voluntarily enter, whether by self-referral or referral by a third party, the diversion and assistance program on a confidential basis. Confidentiality pursuant to this subdivision shall be absolute unless waived by the attorney.

6233. An attorney entering the diversion and assistance program pursuant to subdivision (b) of Section 6232 may be enrolled as an inactive member of the State Bar

and not be entitled to practice law, or may be required to agree to various practice restrictions, including, where appropriate, restrictions on scope of practice and monetary accounting procedures. Upon the successful completion of the program, those attorney participants on inactive status who complied with any and all conditions of probation shall be eligible for reinstatement to active status and a dismissal of the underlying allegations or a reduction in the recommended discipline. Those attorneys who participated in the program with practice restrictions shall be eligible to have those restrictions removed and to a dismissal of the underlying allegations or a reduction in the recommended discipline.

6234. Any information provided to or obtained by the Attorney Diversion and Assistance Program, or any subcommittee or agent thereof, shall be as follows:

- (a) Confidential and this confidentiality shall be absolute unless waived by the attorney.
- (b) Exempt from the provisions of Section 6086.1.
- (c) Not discoverable or admissible in any civil proceeding without the written consent of the attorney to whom the information pertains.
- (d) Not discoverable or admissible in any disciplinary proceeding without the written consent of the attorney to whom the information pertains.
- (e) Except with respect to the provisions of subdivision (d) of Section 6232, the limitations on the disclosure and admissibility of information in this section shall not apply to information relating to an attorney's noncooperation with, or unsuccessful completion of, the Attorney Diversion and Assistance Program, or any subcommittee or agent thereof, or to information otherwise obtained by the Office of the Chief Trial Counsel, by independent means, or from any other lawful source.

6235. (a) Participants in the Attorney Diversion and Assistance Program shall be responsible for all expenses relating to treatment and recovery. In addition, the State Bar may charge a reasonable administrative fee to participants for the purpose of offsetting the costs of maintaining the program.

- (b) Notwithstanding subdivision (a), the State Bar shall establish a financial assistance program to ensure that no member is denied acceptance into the program solely due to the lack of ability to pay.

6236. The State Bar shall actively engage in outreach activities to make members, the legal community, and the general public aware of the existence and availability of the Attorney Diversion and Assistance Program. Outreach shall include, but not be limited to, the development and certification of minimum continuing legal education courses relating to the prevention, detection, and treatment of substance abuse, including no-cost and low-cost programs and materials pursuant to subdivision (d) of Section 6070, informing all members of the State Bar of the program's existence and benefits through both direct communication and targeted advertising, working in coordination with the judicial branch to inform the state's judges of the program's existence and availability as a disciplinary option, and working in cooperation with

organizations that provide services and support to attorneys with issues related to substance abuse.

6237. It is the intent of the Legislature that the authorization of an Attorney Diversion and Assistance Program not be construed as limiting or altering the powers of the Supreme Court of this state to disbar or discipline members of the State Bar.

6238. The committee shall report to the Board of Trustees and to the Legislature not later than March 1, 2003, and annually thereafter, on the implementation and operation of the program. The report shall include, but is not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance, and annual expenditures related to the program.

**(Source: Board of Governors' Resolutions, October 1987, July 1990, September 2004, Business & Professions Code Sections §6140.9, §6230 – 6238.)**

**Article 4**  
**CHARGES FOR CERTAIN STATE BAR COMMITTEES AND COMMISSIONS**

**Section 1    *Committee on Administration of Justice***

Established in 1933, the Committee on Administration of Justice is composed of thirty-six (36) members appointed by the Board of Trustees. It is a diverse group of attorneys concerned with aspects of civil procedure, court rules and administration, rules of evidence, and other matters having an impact on the administration of justice in the civil courts. The charge of the committee is as follows:

- (a) Analyze, report to the Board of Trustees and comment as authorized by the Board of Trustees on proposed court rules, legislation and other proposals affecting the committee's subject area.
- (b) Draft proposals relating to its area of concern for consideration by the Board of Trustees.
- (c) Perform such other functions relevant to the committee's subject area as the Board of Trustees may from time to time assign.

**(Source: Board of Governors' Resolutions, July 1992, August 2000.)**

**Section 2    *Committee on Alternative Dispute Resolution***

Established in May 1997, the Committee on Alternative Dispute Resolution (ADR) is composed of twenty-one (21) persons appointed by the Board of Trustees. Its membership consists of a diverse group of attorneys and public members with expertise or an interest in ADR, including ADR neutrals, consumers of ADR services and those who reflect the experience and expertise of State Bar sections. The charge of the committee is as follows:

- (a) Analyze, report to the Board of Trustees and comment as authorized by the Board of Trustees on proposed court rules, legislation and other proposals affecting the committee's subject area.
- (b) Draft proposals relating to alternative dispute resolution for consideration by the Board of Trustees.
- (c) Identify issues concerning the relationship of ADR to the practice of law, the administration of justice and improving access to justice.
- (d) Plan and administer educational programs relating to alternative dispute resolution.
- (e) Encourage attorneys involved in alternative dispute resolution to become active participants in the State Bar.

- (f) Perform such other functions relevant to the committee's subject area as the Board of Trustees may from time to time assign

(Source: Board of Governors' Resolutions, May 1997, July 1997, August 2000.)

### **Section 3 Committee on Appellate Courts**

Established in 1970 and made a standing committee in 1973, the Committee on Appellate Courts is composed of sixteen (16) attorneys appointed by the Board of Trustees. Its members are drawn from such diverse sources as law firms, solo practitioners, defense and prosecution offices handling criminal appeals, appellate court research staff, and law school faculty. The subject area of the committee concerns appellate court operation and appellate practice. In furtherance of the administration of justice, the charge of the committee is as follows:

- (a) Analyze, report to the Board of Trustees and comment as authorized by the Board of Trustees on proposed court rules, legislation and other proposals affecting the committee's subject area.
- (b) Draft proposals relating to its area of concern for consideration by the Board of Trustees.
- (c) Plan and administer educational programs designed to foster improvement in appellate practice and awareness of issues affecting the committee's subject area.
- (d) Perform such other functions relevant to the committee's subject area as the Board of Trustees may from time to time assign.

(Source: Board of Governors' Resolutions, July 1992, August 2002.)

### **Section 4 Committee of Bar Examiners**

The Committee of Bar Examiners was established in 1927. Pursuant to B&P Code §6046, the committee is composed of nineteen (19) members. Ten (10) lawyer members are appointed by the Board of Trustees, one of whom must not have been admitted to practice for more than three years at the time of appointment, nine (9) public members appointed, three each, by the Governor, the Senate Rules Committee and the Speaker of the Assembly. The official duties of a public member of the Committee of Bar Examiners appointed pursuant to section 6046.5 of the Business and Professions Code are as follows:

- (1) Attending meetings of the Committee of Bar Examiners and subcommittees of the Committee of Bar Examiners;
- (2) Representing the Committee of Bar Examiners before the Board of Trustees, other governmental bodies and officials, law schools and law school associations within California and other law education related organizations;

- (3) Meeting with State Bar personnel; and
- (4) Such other duties as may be prescribed by the Board of Trustees from time to time.

**(Source: Board of Governors' Resolution, September 1977.)**

The committee is authorized by statute to:

- (a) Examine all applicants for admission to practice law.
- (b) Administer the requirements for admission to practice law.
- (c) Certify to the Supreme Court for admission those applicants who fulfill the requirements.

Inherent in the administration of the requirements of admission is the responsibility for determining the pre-legal and legal education eligibility of applicants and whether an applicant possesses the requisite good moral character to practice law. The committee also is empowered to accredit law schools and register unaccredited and correspondence law schools, in accordance with Rule 957 of the California Rules of Court, in California.

**(Source: Board of Governors' Resolutions, September 1977, July 1992; B&P Code §6046.)**

### ***Section 5 California Board of Legal Specialization and its Advisory Commissions***

The purpose of the California Board of Legal Specialization and its Advisory Commissions is to establish and administer a program for certifying specialists in specified areas of law, to identify to the public attorneys who have demonstrated proficiency in the specialty fields and to encourage attorney competence.

**(Source: Board of Governors' Resolution June 1997.)**

### **Section 6    *The California Commission on Access to Justice***

Upon recommendation of the Access to Justice Working Group, the Board of Trustees established the California Commission on Access to Justice. The commission is to develop and analyze and, in appropriate circumstances, pursue the findings, recommendations and funding options contained in *And Justice for All: Fulfilling the Promise of Equal Access to Justice in California*, to recommend initially to the Board and, if approved by the Board of Trustees, to other appropriate bodies and agencies, specific policies and procedures to implement its recommendations, with the goal of achieving fuller access to our legal system, and to report back to the State Bar, as well as to the other entities with appointment power on the commission, within eighteen months of the naming of the commission concerning the progress, the proposed priorities and specific goals and activities being pursued.

(Source: Board of Governors' Resolution, September 1996; See also Division 5, Chapter 3.)

### **Section 7    *Client Security Fund Commission***

Established in 1972, by bar-sponsored legislation, the Client Security Fund reimburses victims who have lost money or property due to an act of dishonest conduct committed by a lawyer acting in a professional capacity. The commission, created by the Board in 1986, is composed of seven volunteers of whom no more than four can be lawyers. The commission is charged with the administration of the Client Security Fund and implementation of the Rules of Procedure, Client Security Fund Matters.

It is the goal of the commission to assist the public by reimbursing client losses caused by attorney dishonesty in a fair, timely and consumer oriented manner, which promotes the positive image of the legal profession.

The commission is working towards this goal by:

- (a) Taking appropriate action to ensure that there is adequate funding for the program.
- (b) Supporting requests of the Director of the Client Security Fund for adequate and appropriate staffing.
- (c) Seeking changes or additions to the Rules of Procedure, Client Security Fund Matters, which will expedite processing of applications without jeopardizing the purpose of the program and the rights of applicants and respondent attorneys to fairness and consistency.

(Source: Board of Governors' Resolutions, July 1992.)

### **Section 8    *Continuing Education of the Bar (CEB) Governing Committee***

Established by the Agreement between the State Bar of California and the University of California, this joint committee of the University of California and the State Bar reviews and approves CEB's annual publishing and educational program, strategic objectives, annual budget, and recommendations from the Director on the overall operation of CEB.

The committee consists of nine voting members: four members appointed by the State Bar and five members appointed by the University of California Office of the President. The chair is the Provost or other appointed by the University, and the vice chair must be an attorney in active practice in California appointed by the State Bar Board of Trustees. The four State Bar members include the Executive Director of the State Bar, or the Executive Director's designee who must be an attorney, and two members who are attorneys actively practicing law in California and who represent the interests of the sections of the State Bar.

**(Source: Agreement between the State Bar of California and the University of California Continuing Education of the Bar, September 2001.)**

### ***Section 9 Standing Committee on Delivery of Legal Services***

The Committee on the Delivery of Legal Services is composed of twenty (20) persons appointed by the Board of Trustees. The committee's area of concern is the delivery of legal services to poor and middle-income individuals in California. The charge of the committee is as follows:

- (a) Identify, develop and support improvements in the delivery of legal services to poor and middle-income individuals.
- (b) Serve as a resource to the Board of Trustees in legal services issues of importance to the State Bar.
- (c) Develop and disseminate educational materials to improve the delivery of legal services to poor and middle-income individuals.
- (d) Develop liaison relationships with other State Bar entities concerning legal services issues of importance to the State Bar.
- (e) Analyze, report to the Board of Trustees, and comment where requested by the Board of Trustees or the Executive Director, on proposed court rules or legislation directly relating to or impacting the delivery of legal services to poor and middle-income individuals in California.

**(Source: Board of Governors' Resolutions, December 1999 and December 2001.)**

### ***Section 10 Council on Access and Fairness***

Established in November 2006, the Council on Access & Fairness is composed of twenty-five (25) attorney and public members appointed by the Board of Trustees. The charge of the committee is as follows:

- (a) Advise the Board on strategies to develop collaborative activities and efforts along the diversity pipeline to raise interest in the legal profession.
- (b) Serve as liaison between the State Bar and the diverse stakeholders and constituencies in the legal profession.

- (c) Identify and encourage individuals from diverse backgrounds to enter the legal profession.
- (d) Encourage full and equal opportunity for individuals from diverse backgrounds to remain and advance in the legal profession.
- (e) Identify and encourage attorneys from diverse backgrounds to become active participants in the administration and governance of the State Bar and make specific recommendations to the Board of Trustees for increasing that participation.
- (f) Promote and ensure collaborative efforts to generate and provide support and to increase the numbers of attorneys from diverse backgrounds entering and advancing in the legal profession.
- (g) Study and report on the status of attorneys from diverse backgrounds in the legal profession and in State Bar activities.
- (h) Produce on an ongoing basis programs and materials designed to maximize opportunities for individuals from diverse backgrounds in the legal profession and in the administration and governance of the State Bar's programs and activities.
- (i) Comment, when requested by the Board of Trustees or the Executive Director, on barriers directly related to access opportunities within the profession for attorneys from diverse backgrounds.
- (j) Screen applicants and make recommendations to the Board of Trustees for recipients of the Annual Diversity Awards.
- (k) Educate all attorneys of State Bar policy within the authority of this charge.

**(Source: Board of Governors' Resolution March 1982, July 1992, January 2002, November 2006 [Sources from sunsetted Access & Fairness Committees (November 2006) maintained for history: Board of Governors' Resolutions July 1992, June 1993, March 1995, November 2000, January 2002, July 2002.]**

### ***Section 11 Committee on Federal Courts***

Established in 1949, the Committee on Federal Courts is composed of fifteen (15) members appointed by the Board of Trustees. A representative of the Circuit Executive of the United States Court of Appeals for the Ninth Circuit participates ex officio. The charges of the committee are as follows:

- (a) Generally enhance the lines of communication between the Federal Bench in California and the State Bar, including the attorney discipline system.

- (b) Bring to the attention of the Federal Bench in California, State Bar issues that have an impact on Federal Court practice in California.
- (c) Make the State Bar Board aware of Federal Court issues that may have an impact on the State Bar.
- (d) Review and make recommendations on proposals that affect California Federal Court practice and the Federal Courts in California.
- (e) Make recommendations to improve legal services in California's Federal Courts.
- (f) Organize and sponsor educational programs on Federal Court practice.
- (g) Perform such other functions relevant to the committee's subject area as the Board of Trustees may from time to time to assign.

**(Source: Board of Governors' Resolutions, November 1984, July 1992, August 2000.)**

***Section 12 Committee on Group Insurance Programs***

The Committee on Group Insurance Programs is currently composed of fifteen (15) attorney members and one (1) consultant. The committee acts as a counselor and advisor to the Board Committee on Planning Program Development and Budget and the Board of Trustees. Currently, State Bar sponsored group insurance programs monitored by the committee include: Accidental Death and Dismemberment, Health Care, Life, Select Group Disability Income and Group Long Term Disability.

The charges of the committee are as follows:

- (a) Study and make recommendations on new member group insurance programs to be sponsored by the State Bar. Propose changes in existing programs, recommend actuarial and other consulting studies as needed.
- (b) Make recommendations, consider premium rates, benefits, limitations, exclusions and other contract provisions in relation to the needs of the members of the State Bar generally and provisions designed to achieve program stability.
- (c) Work with the administrator/broker, insurance carrier, General Counsel's office and designated State Bar staff to prepare contracts for new programs and revisions to existing contracts.
- (d) Monitor ongoing approved programs and review sales literature for all approved programs on an ongoing basis.

- (e) Provide legal advice to the Board Committee and the Board of Trustees concerning insurance law aspects of its recommendations.
- (f) The Board of Trustees designates the State Bar's Committee on Group Insurance Programs as a Safety Committee to administer group workers' compensation insurance programs for the State Bar of California, in accordance with California Insurance Code section 11656.6.

**(Source: Board of Governors' Resolutions, July 1992, January 1997, July 2005, July 2009, July 2010.)**

#### **Historical Note**

In 2005, the Volunteer Involvement Committee and the board concurred with the committee request to increase its membership from 12 to 14. Because of ongoing workload and outreach concerns, during the annual appointment review in July 2009, the Volunteer Involvement Committee and the board increased the committee membership from 14 to 15.

### ***Section 13 Legal Services Trust Fund Commission***

Established in September 1982, the Legal Services Trust Fund Commission is composed of twenty-one (21) voting members, of which 15 are to be attorneys and six (6) are public members, and three (3) nonvoting judges. The charges of the commission are as follows:

- (a) Administer the rules and all provisions of the law regarding interest on trust fund accounts and rules regulating the program.
- (b) Review all applicants' qualifications for funding, denial of funding, or termination of existing funding
- (c) Administer funds received from the Judicial Council as the Equal Access Fund pursuant to the California state budget.

**(Source: Rules Regulating Interest-Bearing Trust Fund Accounts for the Provision of legal Services to Indigent Persons, rule 4 and 6.1; Board of Governors resolution dated August, 1999.)**

### ***Section 14 Committee on Mandatory Fee Arbitration***

Established January 1, 1985, the Committee on Mandatory Fee Arbitration is composed of sixteen (16) members. Members consisting of attorneys, one Presiding Arbitrator, and 3-5 non-lawyer members are appointed by the Board of Trustees. The charge of the committee is as follows:

- (a) Make recommendations on policies affecting the State Bar mandatory fee arbitration program.
- (b) Review policies, procedures, guidelines and the law relating to mandatory fee arbitration, attorney's fees and fee agreements and recommending appropriate amendment, change or modification.

- (c) Provide advice and assistance to the forty-three (43) local bar fee arbitration programs, including formulating and presenting educational programs. The Committee also reviews and recommends to the Board amendments to the local bar rules of procedure, which must be approved by the Board in order for the local bars to offer approved mandatory fee arbitration programs. Approved local bar MFA programs are entitled to claim statutory immunity.
- (d) Review, evaluate and propose legislation affecting the statewide fee arbitration program.
- (e) Issue arbitration advisories on various topic of law to assist arbitrators with their cases and to develop a uniform approach to resolving fee disputes among the various MFA programs.

(Source: Board of Governors' Resolutions, November 1984, July 1992.)

### ***Section 15 Committee on Professional Responsibility and Conduct***

The committee shall assist members of the State Bar in their desire to appreciate and adhere to ethical and professional standards of conduct, which assistance shall include, but is not limited to:

- (a) Issuing to members of the bar advisory opinions on the ethical propriety of hypothetical attorney conduct at the request of members of the State Bar or on its own initiative;
- (b) Responding to such inquiries from members of the bar; and
- (c) Publishing its opinions and responses.

The committee shall assist the Board of Trustees by studying and recommending additions, amendments to, or repeal of Rules of Professional Conduct of the State Bar or other laws governing the conduct of attorneys, and perform such other functions as may be assigned to the committee by the board.

The committee shall encourage the establishment of and provide assistance to local bar association ethics committees.

The committee shall assist the public, including lawyers and judges, to understand the professional obligations of members of the State Bar, which assistance shall include, but is not limited to, sponsoring educational programs and conferences.

(Source: Board of Governors' Resolutions, September 1964, July 1979, July 1992, October 1994, December 2004.)

## **Section 16 *Committee on State Bar Approved Professional Liability Insurance (COPLI)***

The committee was established by Board resolution in July 1990. Its purpose is to:

Oversee a professional liability program that has congruent goals of providing attorneys with insurance coverage and clients with recourse for malpractice. COPLI should also explore and pursue programs and strategies consistent with the economic viability of the program, to make professional liability insurance available to as many California attorneys as possible. COPLI oversees and reports to the Board of Trustees and/or its designated board standing committee on all aspects of the State Bar approved Professional Liability Insurance Program including, but not limited to, the following:

- (a) Interact with the Program Administrator and the Underwriter. Make recommendations, consider premium rates, benefits, limitations, exclusions and other contract provisions in relation to needs of the members of the State Bar generally as well as those provisions necessary to maintain the economic viability and stability of the program;
- (b) Oversee and interact with the Program Administrator to ensure the broadest dissemination of information regarding the program, the ease of members in applying for the program and other such steps as may be necessary or appropriate to precipitate program growth consistent with economic stability of the program;
- (c) Interact with both the Program Administrator and the Underwriter to anticipate and implement program changes, coverages, specialty policies, and such matters as may respond to the needs of California's practicing attorneys and otherwise precipitate additional programs growth;
- (d) Undertake such activities as maybe necessary or appropriate to advocate with the underwriter on behalf of attorneys desiring to be included in the endorsed program and/or those who may be declined etc.;
- (e) Conduct such studies as may be necessary or appropriate to identify causes, frequency, and severity of legal malpractice claims; interact with the carrier to both precipitate and assess satisfaction levels of program members following initiation of legal malpractice claims;
- (f) Design, schedule, and conduct malpractice avoidance education programs available to attorneys throughout the state which qualify for MCLE credit for program members, develop and update materials on malpractice prevention.
- (g) Engage in audits and reviews necessary to ensure both the economic viability of the program and the availability thereof to the broadest range of

California attorneys propose such changes in the program structure, etc., as may be necessary or appropriate to accomplish such goals;

- (h) Take steps to identify those aspects of the Professional Liability Insurance Program that may generate additional non-dues revenue.
- (i) Assist the Office of General Counsel in providing legal advice to the Board of Trustees with respect to all of the foregoing items.
- (j) Conduct an annual orientation session for new members of the Committee, Board members, State Bar staff, and the Executive Director on all of the above listed aspects of Committee oversight of the State Bar sponsored professional liability program.
- (k) Comply with all reporting and planning requirements of the Board of Trustees approved Strategic and Operational plans. Comply with the annual work plan requirement for all Board of Trustees' committees.
- (l) Ensure that all the above listed advisory responsibilities, 1-11, are conducted in consultation with State Bar of California staff designated by the Executive Director.

(Source: Board of Governors' Resolution, July 1990, April 1991, July 1992, July 2004.)

#### **Historical Note**

Committee rule prohibits appointment of anyone carrying files by program carrier or whose law firm carries files program carrier. The existing Professional Liability Insurance Carrier is Arch Insurance Group.

### **Section 17 California Young Lawyers Association (CYLA)**

The California Young Lawyers Association (CYLA) shall be appointed by the Board of Trustees to advise the Board of the interests of California young lawyers, to develop strategies for increasing young lawyer involvement and participation in the State Bar, to facilitate the development of programs and services that would assist young lawyers in their professional and leadership advancement and programs that benefit the public.

A California young lawyer is defined as a member in good standing of the State Bar of California who is in his or her first five years of practice in California or who is age 36 or under.

CYLA members will serve as the ambassadors of the State Bar to the young lawyer organizations within the state. CYLA will also screen candidates for the annual Jack Berman Award of Achievement.

CYLA will be composed of 20 members appointed by the Board of Trustees. Nine of the appointed seats shall be designated for representatives of each of the nine State Bar

districts, one member per district. The remaining 11 seats shall be filled by appointments at large. CYLA membership consists of State Bar of California active members, who will be drawn from diverse constituencies, including but not limited to geographic location, racial and ethnic diversity, practice setting, practice type, district representation, and gender and sexual orientation. CYLA will report to the Board Committee on Member Oversight or other designated Board Oversight Committee as determined by the Board of Trustees.

CYLA is funded by mandatory dues.

The charge of CYLA is to:

- (a) Advise the Board on strategies to make the State Bar and CYLA continually relevant and beneficial to young lawyers in California.
- (b) Promote the interests of young lawyers in California.
- (c) Be responsible for programs, services, professional development and trend analysis, to assist young lawyers in becoming respected and successful members of the bar, keeping both CYLA and the State Bar ahead of the curve.
- (d) Develop communication strategies that engage young lawyers in California.
- (e) Create and continually strengthen outreach efforts to the barristers' organizations throughout the State and across the country.
- (f) Assist the State Bar in the administration and implementation of its programs and responsibilities.
- (g) Develop and implement regular public service projects that utilize the skills of the state's young lawyers and that would measurably benefit the public.
- (h) Encourage and promote pro bono work.
- (i) Identify and encourage young attorneys to become active participants in the administration and governance of the State Bar and make specific recommendations to the Board of Trustees for increasing that participation.
- (j) Comment and advise, when requested by the Board of Trustees or the Executive Director, on issues of relevance and importance to young lawyers in California.

- (k) Screen applicants and make recommendations to the Board of Trustees for recipients of the Annual Jack Berman Award of Achievement.
- (l) CYLA will provide regular reports to the Board of Trustees for recipients of the Annual Jack Berman Award of Achievement.
- (m) Function as State Bar MCLE Activity Auditors to conduct an audit of a particular MCLE program or class on behalf of the State Bar.

**(Source: Board of Governors' Resolution September 2008; Board of Trustees Resolutions July 2012; November 2014.)**

#### **Historical Note**

Statutes 2011, chapter 417, §§ 11-13, 16 changed the number of State Bar Districts from nine to six and repealed a statute that had provided for a representative of CYLA to be elected to the Board of Trustees. (former Bus. & Prof. Code § 6013.4 repealed effective January 1, 2012.)

**Article 5**  
**ANNUAL BOARD EVALUATION OF STANDING COMMITTEES**

**Section 1    *Advisory Committee Workplan Criteria***

1. *Scope of Board Oversight Committee Review of Annual Reports* - The Board committee(s) responsible for oversight of the advisory committee reviews the work plan and provides the advisory committee with an overall assessment of the past year's fiscal and advisory committee program performance at the annual Strategic Work Session.
2. *Reporting Requirement to Board Oversight Committee* - Each advisory committee must periodically report to the Board committee with oversight responsibility on its continuing work and must provide status reports on activities as requested by pertinent Board oversight committee.
3. *Periodic Review of Need for Advisory Committees* - Every five years each advisory committee must report in writing to the Planning and Budget Committee, and any Board committee with oversight responsibility about whether the advisory committee should continue to exist and whether it should maintain its current structure. The Planning and Budget committee may make a recommendation to the Board to continue, modify, or do away with the committee and/or its charge.

**Oversight Committee Assignments**

*Admissions and Education Committee (A&E)*

California Board of Legal Specialization  
Committee of Bar Examiners

*Regulation and Discipline Committee ("RAD")*

Committee on Mandatory Fee Arbitration  
Committee on Professional Responsibility and Conduct  
Commission for Revision of Rules of Professional Conduct  
Client Security Fund Commission  
Lawyer Assistance Program Oversight Committee

*Stakeholder Relations Committee ("SRC")*

California Commission on Access to Justice  
California Young Lawyers Association Board of Directors  
Committee on the Administration of Justice  
Committee on Alternative Dispute Resolution

Committee on Appellate Courts  
Committee on Federal Courts  
Committee on Group Insurance Programs  
Committee on Professional Liability Insurance

Council on Access and Fairness  
Legal Services Trust Fund Commission  
Standing Committee on the Delivery of Legal Services

**(Source: Board of Governors' Resolution July, 2004, July 2008; Board of Trustees Resolution July 2014.)**

**TAB 5.2**

**MEETINGS OF STATE BAR COMMITTEES**

- Section 1 Meetings of State Bar Committees*
- Section 2 Compliance with Bagley-Keene Open Meeting Act*
- Section 3 Use of Facilities Subject to Labor Dispute*

## **Section 1 Meetings of State Bar Committees**

### **Historical Note**

The *Rules Governing Open Meetings, Closed Sessions and Records of Regulatory and Special Committees* were adopted by the Board of Governors January 20, 1990, effective April 1, 1990. On May 15, 2009, the Board of Governors repealed *The Rules Governing Open Meetings, Closed Sessions and Records of Regulatory and Special Committees* and replaced them with Rules 6.60-6.63 in Title 6, Division 2, Chapter 2 (Meetings of State Bar Committees) of the new Rules of the State Bar of California. On March 4, 2011, the Board of Governors added new Rule 6.62 *Location of Meetings. Existing Rules 6.62 and 6.63 were renumbered to 6.63 and 6.64, respectively*; on July 22, 2011, the Board of Governors added new Rule 6.63 *Notice, late items, and emergency meetings. Existing Rules 6.63 and 6.64 were renumbered to 6.64 and 6.65, respectively*.

*Effective April 1, 2016, the Board repealed Rules 6.60-6.65:*

#### **Rule 6.66. Repeal.**

This chapter shall remain in effect only until April 1, 2016, and as of that date is repealed. Beginning April 1, 2016, meetings of entities appointed by the Board of Trustees will be subject to the Bagley-Keene Open Meeting Act, as required by Business and Professions Code section 6026.7, and Business and Professions Code section 6026.5.

*Rule 6.66 adopted effective November 20, 2015.*

**Repealed Rule 6.60** (adopted effective May 15, 2009; amended effective July 22, 2011; amended effective January 1, 2012.)

**Repealed Rule 6.61** (adopted effective May 15, 2009.)

**Repealed Rule 6.62** (adopted effective March 4, 2011.)

**Repealed Rule 6.63** (adopted effective July 22, 2011.)

**Repealed Rule 6.64** (adopted as Rule 6.62 effective May 15, 2009; renumbered as Rule 6.63 effective March 4, 2011; renumbered as Rule 6.64 effective July 22, 2011; amended effective January 1, 2012.)

**Repealed Rule 6.65** (adopted as Rule 6.63 effective May 15, 2009; renumbered as Rule 6.64 effective March 4, 2011; renumbered as Rule 6.65 effective July 22, 2011.)

**(Source: Board of Governors' Resolution January 20, 1990, effective April 1, 1990; Amended July 26, 2003, effective July 26, 2003; [Rules Governing Open Meetings, Closed Sessions and Records of Regulatory and Special Committees repealed May 15, 2009, replaced with Rules 6.60-6.63 in Title 6, Division 2, Chapter 2 (Meetings of State Bar Committees) of the new Rules of the State Bar of California], repealed April 1, 2016; Board of Governors' Resolutions March 4, 2011; July 22, 2011, Board of Trustees Resolution November 2015.)**

**Section 2    *Compliance with Bagley-Keene Open Meeting Act***

The State Bar is subject to the Bagley-Keene Open Meeting Act and all meetings of the State Bar are subject to the Bagley-Keene Open Meeting Act, as required by Business and Professions Code section 6026.7, and Business and Professions Code section 6026.5.

Notwithstanding any other law, the Bagley-Keene Open Meeting Act shall not apply to the Judicial Nominees Evaluation Commission or the Committee of Bar Examiners.

**(Source: State Bar Rule 6.66, adopted effective November 20, 2015; Business and Professions Code §§ 6026.5, 6026.7; Board of Trustees Resolution, November 2016.)**

**Section 3    *Use of Facilities Subject to Labor Dispute***

Members of the staff responsible for scheduling meetings of State Bar committees and sections are to avoid setting the same at any institution or location which is known in advance to be the subject of labor picketing or a labor dispute.

**(Source: Board of Governors' Resolution, July 1977, September 2004, November 2006.)**

**TAB 5.3**

**APPOINTMENT POLICIES AND PROCEDURES**

**Article 1 A PROGRAM ENCOURAGING THE OPPORTUNITY OF ALL MEMBERS OF THE STATE BAR OF CALIFORNIA TO PARTICIPATE IN ACTIVITIES OF THE STATE BAR**

- Section 1 General*
- Section 2 Recruitment*
- Section 3 Achieving a Diversified Membership*
- Section 4 Statement of Diversity Principles*
- Section 5 Encouragement of Participation*
- Section 6 Applications*
- Section 7 Confidentiality*
- Section 8 Appointment*
- Section 9 Appointment Screening*
- Section 10 Principles of Structure and Staffing of Sections, Commissions and Committees*

**Article 2 CRITERIA**

- Section 1 General*
- Section 2 Criteria*
- Section 3 Limitations and Restrictions*

**Article 3 PROCEDURE FOR SECTION EXECUTIVE COMMITTEES**

- Section 1 Board Committee Consent Agenda*

**Article 4 TERMS OF OFFICE AND OATH**

- Section 1 Committee Year*
- Section 2 Term, Maximum*
- Section 3 Term, Reappointment of Members Filling Unexpired Vacancies*
- Section 4 Terms of Office, Committee on Professional Liability Insurance*
- Section 5 Oath of Office*

**Article 5 GUIDELINES FOR APPOINTMENT TO THE COMMISSION ON JUDICIAL NOMINEES EVALUATION**

- Section 1 Statutory Requirements*
- Section 2 Appointment of Chair and Vice Chair*
- Section 3 Procedures for Appointment*

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## Historical Note

Prior to 1999, the board committee charged with the board's appointment screening was called the Board Committee on Communications and Bar Relations. In 2001, the name of the board committee charged with the board's appointment screening was the Appointments Committee.

In 2001, the Board of Governors established a Board committee structure comprised of five standing committees and a Board Operations Committee (BOPS). The Board further directed that the standing committees could include the following, with the understanding that the Board may continue to refine the structure as experience and need requires: (1) Planning, Program Development, and Budget (PPDB) Committee, (2) Member Oversight Committee (MOC), (3) Regulation, Admission and Discipline Oversight Committee (RAD), (4) Stakeholder Relations Committee (SRC) / Legal Services Committee, (5) Volunteer Involvement Committee (VIC).

- 2004 - 2005, SRC and VIC were combined to create the Communications and Bar Relations Committee (COMBAR).
- During 2005 – 2006, the Board went back to the six-committee governance structure adopted in 2001 with separate SRC and VIC committees
- 2009 – 2010, VIC and MOC were combined to form a Member Involvement Relations & Services committee (MIRS).
- 2010 – 2011, the Board returned to the six-committee structure adopted in 2001, with separate VIC and MOC committees.
- 2011-2012, the Board changed the name of the Volunteer Involvement Committee (VIC) to Nominations and Appointments Committee (NAC) to clarify the jurisdictional boundaries between various working groups during the 2011-12 Board year and because in recent years, the central mission of the VIC -- and the bulk of its work -- has been nominations and appointments.
- In September 2016, the Nominations and Appointments committee was (NAC) combined with the Stakeholders and Access to Justice committee to form the Stakeholders, Access to Justice and Appointments committee.

## Article 1

### **A PROGRAM ENCOURAGING THE OPPORTUNITY OF ALL MEMBERS OF THE STATE BAR OF CALIFORNIA TO PARTICIPATE IN ACTIVITIES OF THE STATE BAR**

#### ***Section 1 General***

It is the policy of the Board of Trustees to encourage the opportunity of all members of the State Bar to participate in activities of committees and to achieve a diversified membership on committees (including, but not limited to, standing and special committees and executive bodies to which the Board of Trustees has the authority to make appointments) and in order to further encourage all members in such participation, the board adopts the following procedures, applicable generally whenever there are vacant positions to be filled by board appointments to such bodies.

(Source: Board of Governors' Resolutions, June 1977, August 1987, Long Range Strategic Plan August 2002, Long Range Strategy, July 2008.)

### **Section 2 Recruitment**

At a time calculated to give reasonable notice to applicants that the Board will make appointments and to give applicants opportunity to apply for such appointments, the Executive Director of the State Bar, or the Executive Director's designee, shall cause the following information to be publicized in State Bar publications and on the State Bar website and cause notice to be circulated to all legal newspapers in California and to all local, specialty and minority bars:

- (a) The name of the committee, section, commission, board, or other body to which an appointment is to be made; the terms of office; the function and work of each; the number of appointments to be made to each; the major duties and responsibilities required of an appointee; an estimate of the total time commitment necessary to carry out such duties and responsibilities (including but not limited to traveling and attending meetings or other sessions of the particular body) and, if any, minimum qualifications required by law or reasonably related to serving as an appointee. For the purpose of these procedures, positions as chairpersons or vice-chairpersons and those positions which may be filled by reappointment of incumbents, shall be considered as vacant positions.
- (b) The manner by which applicants may file application for appointment or reappointment with the State Bar; and
- (c) An application for appointment or information about requesting an application shall be publicized in State Bar publications, and may be publicized elsewhere, as feasible.

(Source: Board of Governors' Resolutions, June 1977, August 1987, September 1992; Board of Trustees Resolution July 2015.)

### **Section 3 Achieving a Diversified Membership**

Diversity includes a multitude of factors identified under Criteria, article 2, section 2, sub-paragraph b.(3). These factors include geography, type of practice, size of practice, gender, ethnicity, sexual orientation, disability, length of time in practice, etc.

(Source: Board of Governors' Resolution, March 1997.)

### **Section 4 Statement of Diversity Principles**

The Board has established a policy affirming the commitment of the State Bar of California and all its signatories to fostering diversity in the legal profession. Refer to Tab 1.1, Article 2 "Diversity Principles", Section 5 "General Statement of Diversity Principles".

(Source: Board of Governors' Resolution, July 2005.)

## **Section 5    *Encouragement of Participation***

- (a) Participation of Diverse Members: The State Bar of California values diversity and broad-based representation in its appointments. The recruitment and selection of applicants with diverse backgrounds, experiences, outlooks, and ideas and geographical diversity brings qualities essential to the governance of the legal profession and to the services the State Bar provides to its diverse members and to the public.

The State Bar's Board of Trustees is committed to the active solicitation and encouragement of members with a broad array of backgrounds and life experiences including members with skills or attributes that are underrepresented in the legal profession to submit applications for appointments to all bar sponsored entities.

The State Bar provides equal access to all applicants and complies with all applicable anti-discrimination laws in its appointment process.

- (b) Outreach Program: In order to implement the above policy objective, the Board of Trustees hereby encourages:
  - (1) Each member of the Board and the chair of each entity to recruit and obtain applicants with a breadth and depth of perspective including, but not limited to the following: geographic location, practice area, size and type of law practice, length of time practicing, volunteer work, specific accomplishments, educational background, age, sexual orientation, and disability for each of the entities to which the Board makes appointments.

**(Source: Board of Governors' Resolutions July 1982, August 1987, February 1994, March 1997, November 2006; California's Department of Fair Employment and Housing revised EEO policy statement, February 1993; Board of Trustees Resolution July 2015.)**

- (c) Encouragement of Bar Associations' Participation: In consultation with the designated board committee [Stakeholders, Access to Justice, and Appointments Committee], and to the extent practicable, the Executive Director or designee shall:
  - (1) Contact local minority and specialty bar associations and appropriate law related organizations for the purpose of publicizing and announcing these procedures and enlisting their aid in encouraging members of the State Bar to apply for appointment to bodies to which the Board has the authority to make appointments;
  - (2) Formulate, arrange, or cooperate in programs, speeches or appearances before such associations or organizations by individual

members of the board or State Bar staff, chairpersons and others serving on such bodies, to publicize the work and function of such bodies and to encourage members to apply for appointment; and

- (3) Provide appropriate assistance to any section executive committee and any standing or special committee created by the Board to encourage applications of members with skills or attributes underrepresented in the legal profession.

**(Source: Board of Governors' Resolutions, June 1977, August 1987, Action Plan October 2001; Board of Trustees Resolution July 2015.)**

- (d) Recruitment Plan: Each State Bar section executive committee and each State Bar committee and commission shall submit an individual plan for improving the diversity of its applicant pool and report on the implementation of that plan when submitting its annual appointment recommendations.

**(Source: Board of Governors' Resolution, July 1990, June 1994; Board of Trustees Resolution July 2015.)**

### ***Section 6 Applications***

Applications for appointment shall be in writing. The Executive Director or designee shall prepare a form of application to be furnished to applicants upon request and placed at locations or with organizations convenient for the applicants to obtain them.

The application shall seek the following information:

- (a) The name of the applicant.
- (b) Appointment for which the applicant is applying.
- (c) The mailing address of the applicant and daytime telephone number.
- (d) The geographic location of the applicant's principal place of business and State Bar District.
- (e) The applicant's profession or vocation, the length of time in such profession or vocation and if a lawyer, the member's State Bar number, and date of admission to the practice of law in California.
- (f) The applicant's:
  - (1) Employment experience;
  - (2) Legal and general educational background;
  - (3) Dates of admission to the practice of law in other jurisdictions;

- (4) Other business, occupational or professional licenses presently held;
- (5) Areas or fields of law practice in which presently engaged;
- (6) Articles or other publications authored by the applicant;
- (7) Teaching activity; and
- (8) Academic and/or professional honors.

(g) In addition:

(1) How the applicant became aware of the vacant position(s) to be filled:

- Board of Trustees (name)
- Committee chair
- Colleague
- Local bar association
- State Bar publication or State Bar website
- Other (specify)

(2) Which one of the following best describes the applicant's occupation?

- Private practice
- Publicly employed lawyer
- Corporate law department
- Law teaching
- Quasi-judicial officer
- Non-governmental legal services organization
- Non-profit organization
- Retired justice or judge
- Retired lawyer
- Other (specify)

(3) What is the size of the applicant's law office?

- Sole practitioner
- 2-10 lawyer office
- 11-35 lawyer office
- 36-100 lawyer office
- 101+ lawyer office
- Not applicable

(h) Questions

- (1) Statement of Interest: Please state why you wish to serve on the committee and what you can contribute that makes you a candidate for appointment.
- (2) Experience: Describe any previous work or experience you may have had with the committee.
- (3) Additional Background: Describe any additional background you would like to share relevant to your appointment to the committee, including but not limited to how you can contribute to the diversity and broad composition of the State Bar's committees and commissions.

**OPTIONAL SECTION**

- (i) A portion of the application form shall be voluntary, and may solicit information concerning gender, sexual orientation, ethnicity, age, and disability [pursuant to the Americans with Disability Act] contributing to diversity and broad representation; and other characteristics the applicant believes will contribute to diversity of representation on the particular entity.

(Source: Board of Governors' Resolutions, June 1977, August 1987, October 2001; Board of Trustees Resolution July 2015.)

**Section 7 Confidentiality**

- (a) For one (1) year following appointment, the executive director or designee shall keep the applications concerning the appointment, except that the executive director or designee may keep applications of appointees during their terms of service.

Applications shall be maintained in confidence and be available only to those persons involved in the appointment process.

- (b) The executive director or designee shall compile, consistent with law, statistical data concerning the participation in activities of committees, sections, commissions, or other bodies to which the board has authority to make appointments, and shall report thereon annually, in July of each year, (or at a time calculated to give the best information prior to making appointments) to the Stakeholders, Access to Justice, and Appointments Committee. Any and all data, worksheets, and other information used to compile the statistical data shall be confidential and shall be available only to members of the board and designated staff involved in the appointment process.

- (c) In addition, the chairs of each committee, section executive committee or entity to which the Board makes appointments shall furnish the Appointments Administrator through visual survey, with statistical data concerning the current representation of ethnic minorities, racial minorities and women on the particular entity.
- (d) Statistical analyses of State Bar appointments shall also include sexual orientation as a diversity factor and shall be available to all persons and entities authorized under the State Bar's appointments process to review, evaluate, and make further recommendations for appropriate Board action.

**(Source: Board of Governors' Resolutions, June 1977, July 1981, August 1987, June 1994, Governance Action Plan October 2001.)**

### ***Section 8 Appointment***

- (a) In consultation with the appropriate board liaison and the chair of the entity to which appointment is sought, the appropriate board committee as designated in section 8, below, shall review, report on and make recommendations to the board concerning appointments to bodies created by the board (including but not limited to standing and special committees, executive committees of sections, boards and commissions).
- (b) The board has the ultimate authority and responsibility to make appointments from among applicants.

**(Source: Board of Governors' Resolutions, June 1977, August 1987, February 1994, November 2006.)**

### ***Section 9 Appointment Screening***

Appointments to all State Bar entities shall be screened by the designated board committee [Stakeholders, Access to Justice, and Appointments Committee]. The exceptions to this policy are those appointments explicitly assigned, by board committee charter or the President, to other board committees.

**(Source: Board of Governors' Resolution August 1987, Annual Board of Governors' Resolution, Governance Action Plan October 2001; Volunteer Involvement Committee Charter; Stakeholders, Access to Justice and Appointments Committee Charter.)**

## **Section 10 Principles of Structure and Staffing of Sections, Commissions and Committees**

### **(a) Staffing:**

(1) The Board of Trustees should commit sufficient resources to provide staff and an adequate operating budget to accomplish the charge of any committee/commission that the board establishes and/or maintains.

(2) The State Bar shall continue to provide to the sections staff, facilities and resource support but completely at the expense of Section Funds.

### **(b) Charge for Committees/Commissions**

All State Bar committees/commissions appointed by the Board of Trustees should be given a specific and clearly articulated charge by the board.

### **(c) Standing Committees/Commissions**

A Standing Committee/Commission appointed by the Board of Trustees should be created or maintained only if its principle purpose is to advise and serve the Board with regard to an enduring concern that relates to the Administration of Justice or that affects the profession at large, and whose charge does not duplicate the charge of an already existing State Bar entity.

### **(d) Special Committees/Commissions**

All other committees/commissions created by the Board of Trustees should be special committees/commissions. Their principle purpose should be to advise and serve the board with regard to an immediate concern relating to the Administration of Justice or the practice of law. In each case, they should be given a specific and clearly articulated charge, a specific deadline for the completion of their task(s), and a sunset date at which time the committee/commission will cease to operate.

### **(e) Sections**

The State Bar should utilize existing and newly created sections to address the concerns and interests of specific segments of the profession.

### **(f) Board Committee Oversight**

Each committee/commission maintained by the State Bar shall be assigned to a board committee for oversight of its work. In addition to the required written annual report, each committee/commission shall make an annual presentation to its oversight board committee.

(g) Maximum Terms of Appointment for Section Executive Committee Members, Chairs, Vice-Chairs and Chairs-Elect

In order to maximize diversity and participation on section executive committees, it is the policy of the Board of Trustees that executive committee members serve no more than three (3) years, except to permit service as an officer in a fourth year, or as Chair, Vice-Chair or Chair-elect in a fifth year, or as Chair, in a sixth year.

(h) Reappointment of Members Filling Unexpired Vacancies

(1) Members who are appointed to fill unexpired terms of one year or less, are eligible for reappointment to a full committee term (i.e., three years).

(2) Members who are appointed to fill unexpired term of more than one year are not eligible for reappointment, except to serve as an officer.

(3) Said reappointment limitation shall not apply to members of the Committee of Bar Examiners or the CEB Governing Committee, whose members serve four-year terms.

**(Source: Board of Governors' Resolutions, November 1971, July 1989, April 1993, September 2004, July 2005.)**

## **Article 2 CRITERIA**

### ***Section 1 General***

Consistent with the application of a variety of factors, and to the maximum extent practicable, the Board intends that all appointments that it makes, subject to appropriate criteria, be open to all members of the bar and, the criteria for appointment shall be applied so as to achieve diversification and broad representation on each committee, commission, executive committee of sections or other entities so as to encourage the participation of attorneys with skills or attributes that are underrepresented in the legal profession.

**(Source: Board of Governors' Resolutions, September 1981, August 1987; Board of Trustees Resolution July 2015.)**

### ***Section 2 Criteria***

The Board adopts the following criteria to guide the board committee which reviews, reports on and makes recommendations to the Board concerning such appointments:

- (a) In considering recommendations of applicants to the Board for appointment, the board committee shall:
  - (1) Define the general and specific purposes of the entity to which the appointments are to be made and other relevant factors relating to its duties and functions, including, but not limited to, the number of meetings budgeted or anticipated, the estimated volunteer time, the difficulty of tasks, and projected work product deadlines.
  - (2) Identify particular, legal, organizational or cultural expertise that may be appropriate for meaningful contribution to the entity's purposes, duties and functions.
  - (3) To the extent available, and permitted by law, identify factors which encourage breadth and depth of perspectives including, but not limited to, the following: length of time in the practice of law or, if appointment is of a nonlawyer, the length of time in a given profession or vocation; specific accomplishments of note and/or respect achieved; proven commitment to volunteer work or strong indication of capacity and desire for making the expected time commitment; personal recommendations for the appointment; educational background; geographic location of residence and work; size of law firm or of practice; types of employment and types of specific interests represented by law practice or employment (e.g., whether public, house counsel, private, etc.; whether personal injury, litigation, plaintiff or defense, etc.); gender, age, race ethnicity and other factors of minority status including religious creed, physical or mental handicaps or sexual orientation contributing to diversity and broad representation;

prior experience in national, state or local bar association work, or similar experience of a nonlawyer appointment; and prior experience in the subject area of the entity.

- (4) Identify factors which could militate against appointment, but which should be weighed among other factors:
  - (a) if a lawyer appointment, any public information known to the State Bar about the applicant or a record of public discipline imposed;
  - (b) whether any other member of applicant's firm is on the entity; and
  - (c) prior participation of the applicant on the entity.

In no case shall the Board of Trustees appoint a person who is subject to State Bar disciplinary probation.

- (b) In order to ensure that the appointments process shall remain open to all members of the bar, the board, where practicable, shall make appointments from applications received pursuant to the recruitment policy adopted in June 1977, as amended, and the Stakeholders, Access to Justice, and Appointments Committee shall monitor the implementation of the recruitment policy and from time to time modify it to ensure that all segments of the bar receive adequate and timely notice of upcoming appointments.

**(Source: Board of Governors' Resolutions, September 1981, August 1987, February 1994; Governance Action Plan October 2001; Board of Trustees Resolution July 2015.)**

### **Section 3 Limitations and Restrictions**

- (a) *Ex Officio Members, Advisers, and Consultants.* Unless expressly authorized by the Board, advisers, ex officio members, and consultants shall not be appointed to State Bar standing or special committees.

**(Source: Board of Governors' Resolution, September 1981.)**

- (b) The executive committee may appoint non-voting advisors who serve at the pleasure of the committee.

**(Rule 3.54 adopted effective May 16, 2008; amended effective January 1, 2012.)**

#### **Historical Note**

State Bar Rule 3.54(E) supersedes Article XIII § 4F of the Rules and Regulations of the State Bar of California (Sections of the State Bar of California), repealed May 16, 2008.

- (c) *Appointment to More than One Entity.* Only in exceptional cases shall the Board of Trustees appoint one person to more than one standing committee or commission of the State Bar.

**(Source: Board of Governors' Resolution, May 1982.)**

- (d) *Appointment of State Bar Staff Members to State Bar Volunteer Entities.* In order to minimize the potential for actual or perceived conflict and favoritism and to encourage maximum participation from the membership of the bar, that, as a general rule, the board is not inclined to appoint members of the staff of the State Bar to section executive committees, standing committees, special committees, boards and commissions of the bar, said policy to be disregarded only in the most exceptional circumstances.

**(Source: Board of Governors' Resolution, October 1990.)**

- (e) *Section Executive Committees.* Only members of the section are eligible for appointment to the section's executive committee. To the extent practical, the executive committee shall be representative of the various fields covered by the section.

**(Source: Board of Governors' Resolutions, May 1976; March 1977.)**

- (f) *Guidelines for Appointment and Participation of Out-of-State Members in State Bar Sub-Entities.* A out-of-state member of the State Bar may be appointed to serve on a State Bar sub-entity subject to these Guidelines:

- (1) The potential appointee, considered in light of the relevant applicant pool, shall fulfill the requirements and standards for appointment and be subject to the same appointment process and standards as resident members, except that;
- (2) Due consideration shall be given in the appointment process to the budget impact of any additional costs that may be incurred by the State Bar due to the service of the out-of-state member.

**(Source: Board of Governors' Resolution, May 2005.)**

- (g) *Inactive Members.* An inactive member may be appointed by the Board of Trustees upon any committee other than a committee whose membership is restricted by statute or other Board policy.

**(Board of Governors' Resolution, December 2004)**

#### **Historical Note**

Article 2, Section 2 (g) *Inactive Members* was formerly titled Article I, §4 Privileges of Inactive Members of the Rules and Regulations of the State Bar of California (repealed May 16, 2008).

**Article 3**  
**PROCEDURE FOR SECTION EXECUTIVE COMMITTEES**

**Section 1    *Board Committee Consent Agenda***

- (a) Section appointment recommendations will be placed on the consent agenda for the appropriate Board committee, with any committee member retaining the right to remove any section's recommendation from consent in order to allow for fuller discussion. If any section's recommended slate of appointments is to be removed from the board committee's consent agenda, it should be removed in its entirety;
- (b) Any recommendation removed from consent will be deferred until a subsequent meeting of the committee. In the interim, the section having offered the recommendation will be notified and invited to participate in the committee's discussion of its recommendation. All section appointment recommendations that are passed by the committee will be placed on the consent agenda of a subsequent meeting of the board;
- (c) As soon as is practicable following the board committee meeting, the list of all those section appointment recommendations passed by the appropriate board committee will be compiled and distributed to all members of the Board, who will be given two weeks to notify the Secretary of the State Bar of any appointment recommendation that should be removed from the Board consent agenda.
- (d) Any section offering an appointment recommendation that has been removed from the board's consent agenda will be notified and invited to participate in the board's discussion of that appointment.

**(Source: Board of Governors' Resolution, January 1999.)**

## **Article 4 TERMS OF OFFICE AND OATH**

### ***Section 1 Committee Year***

Unless otherwise specified by the Board of Trustees, appointment terms for standing, special and section executive committees follow the committee year. The normal committee year shall commence with the close of the Annual Meeting and continue until the close of the Annual Meeting of the following year.

(Source: Board of Governors' Resolutions, September 1972, July 1986, August 1992.)

### ***Section 2 Term, Maximum.***

The term of office for all members of standing, special and section executive committees shall be three years; said terms to be staggered. Members serve no more than three years, except to permit service as Chair, Vice-Chair or Chair-Elect in a fourth year, or Chair in a fifth year.

The exceptions to this policy are section executive and Mandatory Fee Arbitration committee members who serve as an officer in a fourth year, or as Chair, Vice-Chair or Chair-elect in a fifth year, or as Chair, in a sixth year; the Committee of Bar Examiners, the California Board of Legal Specialization and its Advisory Commissions, the LAP Oversight Committee and the Committee on State Bar Approved Professional Liability Insurance, whose members serve four-year terms, and the Continuing Education of the Bar (CEB) Governing Committee, whose members serve two-year terms, and the California Commission on Access to Justice and the Legal Services Trust Fund Commission, whose members may serve two consecutive three-year terms and whose officers may serve one or two additional one-year terms. Officers are appointed by the Board of Trustees and serve one-year terms.

(Source: Board of Governors' Resolutions, August 1982, July 1986, July 1989, December 2001, July 2005, July 2010; State Bar Rule 3.54 adopted effective May 16, 2008; State Bar Rule 3.662 adopted effective March 6, 2009; Agreement between the State Bar of California and University of California Continuing Education of the Bar, §VIII.A.6; Board of Trustees Resolution November 2013; Board of Trustees Resolution July 2014; November 2015.)

### **Historical Note**

State Bar Rule 3.54 supersedes Article XIII, § 4 of the Rules and Regulations of the State Bar of California (The Executive Committee), repealed May 16, 2008.

### ***Section 3 Term, Reappointment of Members Filling Unexpired Vacancies***

Members appointed to fill unexpired terms of one year or less may be reappointed for a full three-year term. Members appointed to fill unexpired vacancies of more than one year are not eligible for reappointment, except to serve as an officer. This reappointment limitation does not apply to members of the Committee of Bar Examiners, the LAP Oversight Committee, the California Commission on Access to

Justice, the California Board of Legal Specialization and its Advisory Commissions, or the CEB Governing Committee.

(Source: Board of Governors' Resolution, April 1993, December 2001, July 2010; Board of Trustees Resolution, November 2013.)

#### **Section 4 Terms of Office, Committee on Professional Liability Insurance**

- a) The term of office for members of the Committee on Professional Liability Insurance (Committee) shall be up to four (4) years prospectively; to the extent practicable, said terms shall be staggered.
- b) Upon recommendation by the Committee and appointment by the Board, a Committee member may serve a consecutive four-year term.
- c) The term of office for the chair and vice-chair may be up to two (2) years.
- d) At its discretion, the Board of Trustees (Board) may appoint a past chair for a term up to two (2) years.
- e) Committee members who serve the maximum of two consecutive four-year terms and do not serve as a chair or vice-chair will rotate off the Committee assuming that qualified applicants are available for appointment. Members serving two terms as chair and vice chair may serve an additional term of two years or less as past chair upon recommendation of the Committee and appointment by the Board.
- f) To the extent practicable, terms of the Committee's vice-chair, chair and Chair Emeritus shall be staggered to allow for succession every two years.
- g) To the extent practicable, succession into the vice-chair or chair position occur no later than the 6th year of total service on the Committee or earlier if the Committee recommends and the Board approves.
- h) Committee members serve no more than ten (10) consecutive years as a member, chair, and vice chair if qualified applicants are available for appointment.
- i) All current Committee members may complete their current terms (i.e., terms ending at the close of the State Bar meeting in 2005 and 2006). Current Committee members who have served ten (10) or more years will be ineligible for reappointment unless there are no qualified applicants and the Board approves the reappointment.

(Source: Board of Governors' Resolution, July 2004.)

**Section 5 Oath of Office**

Each person appointed to a State Bar committee is required to file the oath of office with the State Bar within 30 days of the effective date of the appointment.

**(Source: Government Code §§1360 et seq.; California Constitution, article XX, §3; State Bar Rule 3.54 adopted effective May 16, 2008.)**

**Historical Note**

State Bar Rule 3.54 supersedes Article XIII, § 4 of the Rules and Regulations of the State Bar of California (The Executive Committee), repealed May 16, 2008.

**Article 5**  
**GUIDELINES FOR APPOINTMENT TO THE COMMISSION ON**  
**JUDICIAL NOMINEES EVALUATION**

**Section 1    *Statutory Requirements***

The membership of the designated agency of the State Bar responsible for evaluation of judicial candidates shall consist of attorney members and public members with the ratio of public members to attorney members determined, to the extent practical, by the ratio established in §§ 6013, 6013.4, and 6013.5, inclusive, of the Business and Professions Code. It is the intent of subdivision (b) of § 12011.5 of the Government Code that the designated agency of the State Bar responsible for evaluation of judicial candidates shall be broadly representative of the ethnic, sexual and racial diversity of the population of California and composed in accordance with §§ 11140 and 11141 of the Government Code. The further intent of § 12011.5 (b) of the Government Code is to establish a selection process for membership on the designated agency of the State Bar responsible for evaluation of judicial candidates under which no member of that agency shall provide inappropriate, multiple representation for purposes of § 12011.5 (b) of the Government Code.

(Source: Gov. Code, §12011.5(b).)

**Section 2    *Appointment of Chair and Vice Chair***

The chair and vice-chair shall be appointed by the Board of Trustees of the State Bar of California.

(Source: Board of Governors' Resolution, January 1981.)

**Section 3    *Procedures for Appointment***

The mission of the Commission on Judicial Nominees Evaluation is to assist the Governor in the judicial selection process and thereby to promote a California judiciary of quality and integrity by providing independent, comprehensive, accurate, and fair evaluations of candidates for judicial appointment and nomination.

In order to assure that the Commission on Judicial Nominees Evaluation is "broadly representative of the ethnic, sexual and racial diversity of the population of California" as required by § 12011.5 of the Government Code and fulfills board policies on diversity and tenure, the board hereby establishes the following procedures to govern appointment of commissioners:

- (a) Commissioners shall be appointed by the board upon recommendation of the board committee designated to review appointments to State Bar committees.
- (b) All appropriate diversity considerations shall be taken into account in making recommendations and appointments, including, but not limited to, legally mandated criteria and board policies on diversity and criteria for membership on State Bar appointed entities from time to time in effect. Without limiting the generality of the foregoing, recommendations and appointments shall be

made having in mind the desirability of appropriate geographical diversity of membership on the commission.

- (c) Subject to the other provisions of this procedure statement, the pool of nominees to be considered by the board committee shall consist of all persons who have filed a written application form and requisite documents for appointment or reappointment by the predetermined deadline.

The designated board appointments committee, or its designee, shall interview selected applicants for appointment and shall interview persons wishing to serve as chair or vice chair. [At its September 1997 meeting, the Board waived this provision due to cost controls in effect.]

The board committee handling appointments, or its designee, shall solicit written feedback on the performance of commissioners seeking reappointment from the current chair, the commission staff, the JNE Review Committee, the members of the Board of Trustees, the Governor's Office, and other sources as may be deemed appropriate by the Board of Trustees. Commissioners seeking reappointment shall complete an application designated for that purpose.

- (d) The terms of office shall be determined by the Board of Trustees, upon consideration of appropriate deadlines and procedures affecting the commission's operation. Commissioners shall not serve for more than three consecutive one-year terms except they may serve a fourth year as chair. It shall not be assumed that a vice-chair will necessarily be appointed chair.
- (e) The application shall solicit information regarding the applicant, including but not limited to, his or her background, relevant qualifications to serve on the commission, legal, professional and/or volunteer experience, reasons for wishing to serve on the commission, ability to make the substantial time commitment required of commissioners, and availability and willingness to attend any scheduled interview and the Orientation-Training session.

At a time calculated to give reasonable notice to applicants that the board will make appointments and to give applicants the opportunity to apply for such appointments, the designated staff of the State Bar shall publish application information in State Bar publications and circulate notice to legal or other newspapers in California, to the Board of Trustees, to local, specialty and minority bars, and to law-related and other organizations. The board committee, or its designee, may solicit further applications from board members or other sources in order to attain the required diversity and/or quality in the pool of applicants.

- (f) Membership on the commission shall include the ratio of attorney members and public members, as required by § 12011.5(b) of the Government Code.

The attorney members serving on the commission shall be active members in good standing. Particular consideration will be given to attorney applicants who have substantial litigation, trial and/or appellate experience. To the extent practical, the public members shall be persons who have never been members of the State Bar or admitted to practice before any court in the United States.

- (g) The commission membership may include one or more former members of the judiciary, with a preference for those with appellate backgrounds.
- (h) The commission shall consist of up to 38 members. The exact number of commissioners shall be left to the discretion of the Board of Trustees.

**(Source: Board of Governors' Resolutions, October 1979, October 1985, June 1990, January 1993, July 1997, September 1997, December 2004, June 2005.)**

**Article 6**  
**GUIDELINES FOR APPOINTMENT OF STATE BAR REPRESENTATIVES TO**  
**BOARDS OF DIRECTORS OF PROGRAMS FUNDED BY THE LEGAL SERVICES**  
**CORPORATION**

***Section 1 Review of Candidates by Board Committees***

Appointments by the Board of Trustees of State Bar representatives to serve on boards of directors of programs funded by the Legal Services Corporation will be accomplished through a process that includes the recommendation of candidates by the Stakeholders, Access to Justice, and Appointments Committee, or its successor, to the Board of Trustees. Appointments are made by the full Board of Trustees.

**(Source: Board of Governors' Resolutions, March 1983, April 1985, June 1987, July 1995, Annual Board Resolution, Governance Action Plan October 2001; Volunteer Involvement Committee Charter; Board of Trustees Resolution, May 2013.)**

***Section 2 Program Request for Appointments***

- (a) Prior to the State Bar making any commitment to appoint representatives to the board of directors of a legal services program, the program's board of directors must submit a specific request to the Stakeholders, Access to Justice, and Appointments Committee, or its successor, which shall include the following information:
  - (1) Number of appointments;
  - (2) Minimum requirements it wishes the board committee to consider in making its recommendations; and
  - (3) A copy of its current bylaws and any updates.
- (b) Requests for appointments from programs shall include:
  - (1) The number of vacancies to be filled;
  - (2) A profile of the current board's diversity demographics;
  - (3) A description of the program board's methods for soliciting applications;
  - (4) A description reviewing the qualifications of applicants; and
  - (5) The dates of proposed term for the appointment.

**(Source: Board of Governors' Resolutions, March 1983, June 1987, October 2001, Volunteer Involvement Committee Charter; Board of Trustees Resolution, May 2013.)**

### **Section 3 Staggered Terms**

Where the total number of appointments to be made by the State Bar is greater than (4) four, the terms of such appointments must be staggered so that the regular terms of no more than half of the State Bar's appointees begin in any twelve-month period.

(Source: Board of Governors' Resolution, June 1987.)

### **Section 4 Legal Services Boards: Diversity Outreach**

Appointments to Legal Services Boards shall be made so as to ensure diversity among the State Bar's appointees and reasonably reflect the population of the areas served by the program, as provided by 45 C.F.R. section 1607.3(c).

(Source: Board of Governors' Resolution, June 1987, 45 C.F.R. section 1607.3(c); Board of Trustees Resolution, May 2013.)

### **Section 5 Reappointments**

It is the policy of the State Bar not to consider for reappointment any member who has served on a board for two (2) terms or six (6) years, whichever is greater, unless the reappointment is required to continue the term of any officer, in which case a member may be reappointed for a period of time sufficient to allow completion of the term of office, or for other good cause, such as lack of eligible candidates from the service area.

(Source: Board of Governors' Resolutions, March 1983, January 1984, June 1984, June 1987; Board of Trustees Resolution, May 2013.)

### **Section 6 Press Releases**

The State Bar's Office of Media Information Services shall issue a press release soliciting applications for all vacancies in positions appointed by the State Bar. The press release will include all requirements for membership identified by the program board and will inform potential applicants that applications will be reviewed by and recommendations will be solicited from the board of directors of the relevant program.

The press release shall allow for a one-month solicitation period and a one-month period for review by appropriate board committees and the Board of Trustees. The press release will indicate that applicants must submit a brief resume accompanied by a cover letter describing the reasons why they should be appointed to serve on the board of directors. The resume should include any past experience, interest or involvement in providing legal services to the poor. The press release will also be sent to the appropriate representatives of the programs so that they can inform potential applicants to send their letters and resumes by the specified date to the Office of Legal Services.

(Source: Board of Governors' Resolutions, March 1983, June 1984, March 1987; Board of Trustees Resolution, May 2013.)

**Section 7 Recommendations by Program's Board of Directors**

Within thirty (30) days following the end of the solicitation period, the program's board of directors (or committee thereof) shall give the Office of Legal Services its recommended appointments listed in order of preference. The recommendations shall include information describing how the applicants were evaluated, the reasons for the recommendations, and the dates for the term of the appointment.

(Source: Board of Governors' Resolution, June 1987; Board of Trustees Resolution, May 2013.)

**Section 8 Review of Requests for Appointment**

Prior to review by the board committee, the Office of Legal Services will review all requests for appointment to ensure that all the required information has been submitted in the proper form, and that the recommended appointments meet the requirements of the program board's bylaws, experience requirements, other specific requirements, and the provisions of section 4 herein.

In the event that all relevant requirements have not been met, the program board will be asked to provide revised recommendations. If revised recommendations are not made, the appointment process will, at the direction of the board committee either be extended or proceed without revised recommendations from the program board.

(Source: Board of Governors' Resolutions, March 1983, June 1987, October 2001; Volunteer Involvement Committee Charter; Board of Trustees Resolution, May 2013.)

**Section 9 Board Committee Recommendations**

The Stakeholders, Access to Justice, and Appointments Committee, or its successor, shall make the specified number of recommended appointments to the Board of Trustees. The board shall make the appointments in conformity with its procedures on appointments to external entities.

(Source: Board of Governors' Resolutions, March 1983, June 1987, July 1995, October 2001, Volunteer Involvement Committee Charter; Board of Trustees Resolution, May 2013.)

**Section 10 Appointee Expenses--No Reimbursement**

No State Bar funds shall be expended to reimburse any appointee for any expenses incurred through his and her service on a board of directors of a program funded by the Legal Services Corporation.

(Source: Board of Governors' Resolutions, March 1983, June 1987.)

**Article 7**  
**GUIDELINES FOR APPOINTMENT TO LEGAL SERVICES**  
**TRUST FUND COMMISSION**

**Section 1    *Composition of Commission***

The Legal Services Trust Fund Commission shall be comprised of no more than twenty-one (21) voting members and three (3) nonvoting judges. The voting component shall be fifteen (15) attorneys and at least six (6) shall be members of the public who have never been members of the State Bar or admitted to practice before any court in the United States. At least two members must be or have been within five years of appointment "indigent persons" as defined at section 6213(d) of the Business and Professions Code. No employee or independent contractor acting as a consultant to any agency which is a potential recipient of funds under the Legal Services Trust Fund Program shall be appointed to the commission. All members appointed shall be bound by the Board of Trustees' established rules governing conflicts of interest.

**(Source: Board of Governors' Resolutions, September 1982, January 1985, December 1986, February 1998, August 1999, March 2009.)**

**Section 2    *Appointment Process***

The Chair of the Judicial Council will appoint seven (7) voting members, of which five (5) will be attorney members and two (2) will be public members, and three (3) nonvoting judges, of which one (1) will be an appellate justice. The State Bar Board of Trustees will appoint fourteen (14) voting members, ten (10) of which shall be attorneys and four (4) shall be public members. The Board of Trustees appoints voting members as chair and vice chair. Each member serves at the pleasure of the appointing authority. The recruitment and appointment process for the commission for members appointed by the Board of Trustees shall be the same as that followed for other committees and entities appointed by the board.

**(Source: Board of Governors' Resolution, February 1998, August 1999; State Bar Rule 3.662 (A) (B) (C).)**

### **Section 3    *Terms and Duties***

Each member of the commission shall be appointed for a term of three years. Terms of the members appointed by the Board of Trustees begin and end at the State Bar Annual Meeting. The Board of Trustees may reappoint a member for a second three-year term. The Board may extend an initial or second term by one or two years to allow a member to serve as chair or vice chair of the commission. Judicial Council appointees will serve terms that begin and end at the time of the State Bar Annual Meeting. Under the Legal Services Trust Fund Program rules, the commission shall administer the legal requirements and program rules for revenue from IOLTA (Interest on Lawyers' Trust Accounts) funds and other funds remitted to the program. The staff of the Legal Services Trust Fund Program shall provide the personnel necessary to carry out its duties.

**(Source: Board of Governors' Resolutions, September 1982, January 1985, July 1989, February 1998, August 1999, March 2009; State Bar Rule 3.660, 3.662 (A); Board of Trustees Resolution 2014.)**

**Article 8**  
**GUIDELINES FOR APPOINTMENT TO THE COMMISSION**  
**ON ACCESS TO JUSTICE**

**Section 1    *Establishment and Purpose***

Upon recommendation of the Access to Justice Working Group, the Board of Trustees established the California Commission on Access to Justice. The commission is to develop and analyze and, in appropriate circumstances, pursue the findings, recommendations and funding options contained in And Justice for All: Fulfilling the Promise of Equal Access to Justice in California, to recommend initially to the Board and, if approved by the Board of Trustees, to other appropriate bodies and agencies, specific policies and procedures to implement its recommendations, with the goal of achieving fuller access to our legal system, and to report back to the State Bar, as well as to the other entities with appointment power on the commission, within eighteen months of the naming of the commission concerning the progress, the proposed priorities and specific goals and activities being pursued.

**(Source: Board of Governors' Resolution, September 1996.)**

**Section 2    *Composition of Commission***

The commission shall consist of twenty-six members. The appointing entities and number of appointments made by each entity are:

State Bar of California	Ten Members
Judicial Council	Two Members
California Judges Association	One Member
Office of the Governor	Two Members
President Pro Tem of the Senate	One Member
Speaker of the Assembly	One Member
Supreme Court of California	One Member
California Attorney General	One Member
California Chamber of Commerce	One Member
California League of Women Voters	One Member
California Labor Federation	One Member
California Council of Churches	One Member
Consumer Attorneys of California	One Member
Council of California County Law Librarians	One Member
Legal Aid Association of California	One Member
<b>Total:</b>	<b>Twenty-Six Members</b>

Appointing entities should keep in mind that the goal is to have a commission which includes both lawyers and nonlawyers; it is strongly urged that appointments made by the Office of the Governor, President Pro Tem of the Senate, Speaker of the Assembly, California Chamber of Commerce, California League of Women Voters, California Labor Federation, California Council of Churches, and the Council of California County Law Libraries be members of the public who are not active members of the State Bar of California or any other state. The commission shall also be broadly representative of

the ethnic, sexual and racial diversity of the population of California as required by board policies on diversity. All appointing entities should strive to achieve the needed diversity on the commission. All members appointed shall be bound by the Board of Trustees' established rules governing conflicts of interest.

**(Source: Board of Governors' Resolutions, September 1996, January 1997, December 1999, February 2003, May 2009, November 2011.)**

### ***Section 3 Terms***

Except as described below, terms for all State Bar appointments to the commission will be for a three year period, with terms running until the end of the State Bar Annual Meeting during the third year of the term. Members may serve a total of two consecutive terms on the commission, with the exception that officers may be extended for another one or two additional one-year terms to serve in that capacity.

Half of the initial State Bar appointees shall be named for terms of two years, and the other half of the initial State Bar appointees shall be named for terms of three years to ensure continuity on the commission. The terms of the initial appointments of all other entities shall be for terms of two years. For the initial appointment, the period from the date of appointment to the end of the annual meeting in that year will be treated as a full year.

**(Source: Board of Governors' Resolution, September 1996, July 2010.)**

### ***Section 4 Recruitment***

The State Bar shall widely distribute the notice of availability of positions on the commission to other State Bar entities, local bar associations, legal services programs, pro bono attorneys, dispute resolution programs, the law school community, and other interested groups. The State Bar shall also notify other appointing entities to the commission of their role as appointing entities, and it is anticipated that they will use their organization's normal recruitment procedures. Other appointing entities are encouraged to have potential nominees or candidates review the Report of the Access to Justice Working Group in advance of the appointment.

**(Source: Board of Governors' Resolution, September 1996.)**

### ***Section 5 Applications***

Applications for State Bar appointments to the commission shall be required to submit an application form and resume. Other appointing entities will be asked to have their appointments complete the application form and submit a resume at the time of their appointment.

**(Source: Board of Governors' Resolution, September 1996.)**

## **Section 6 Criteria**

Members of the commission shall have a stated commitment to improving access to justice for all Californians, and have some education or expertise as well as some prior involvement with the need or delivery of legal services to the poor, the near-poor, or the middle income. Members shall be willing to study the Report of the Access to Justice Working Group, entitled And Justice For All: Fulfilling the Promise of Access to Civil Justice in California, and members will also be willing to attend commission meetings and be involved in commission activities between meetings as appropriate. In no event shall the Board of Trustees appoint a person who is subject to State Bar disciplinary probation or disbarment.

**(Source: Board of Governors' Resolution, September 1996.)**

## **Section 7 Appointment Screening**

For the initial State Bar appointments, the Access to Justice Working Group shall make recommendations to the board committee with oversight responsibility for legal services, which will in turn make recommendations to the Board of Trustees. In subsequent years, the Access to Justice Commission shall make recommendations to the appropriate board committee.

In making its appointments, the State Bar shall attempt to seek nominations from a broad range of representatives of interested constituencies, including the private bar, the business community, the academic community, the legal services community, local and specialty bar associations, young lawyer, and nonlegal community organizations. In choosing legal services representatives to serve on the commission, the State Bar shall solicit the input of the legal services community.

**(Source: Board of Governors' Resolution, September 1996.)**

## **Section 8 Officers**

The State Bar Board of Trustees shall name the chair and vice-chair of the commission, and shall consider a recommendation from the members of the commission in making its appointments. For the first two years of the commission's existence, the chair and vice-chair will serve a two-year term, ending on the last day of the Annual Meeting during the second year of the term. For this initial appointment of officers, the Board of Trustees will receive a recommendations from the Access to Justice Working Group. Following the initial two-year term, officers will serve for one year terms (terms follow the calendar year, i.e., January 1-December 31). In addition to the chair and vice-chair, the commission will have the authority to choose other additional officers it deems appropriate.

**(Source: Board of Governors' Resolution, September 1996, December 1999.)**

## **Section 9 Vacancies**

For State Bar appointments on the commission, vacancies should be filled as soon as practicable, following the process outlined above, and the replacement commission member will serve for the duration of the unexpired term. The applicant pool for any

interim appointments consists of (1) any applicants remaining in the pool from the previous appointment cycle, and/or (2) any newly recruited applicants. The commission may do additional recruitment to meet specific qualifications or to improve diversity.

For appointments from other entities, the State Bar shall notify the appointing entity of the vacancy in their position on the commission and request a replacement as soon as is practicable. In the event that another appointing entity fails to make an appointment within six months, the State Bar may temporarily appoint someone to fill that vacancy, striving to appoint someone with background and experience similar to the person vacating the position. The goal shall be to maintain the balance of different professional and community groups anticipated for the commission.

**(Source: Board of Governors' Resolution, September 1996.)**

### ***Section 10 Attendance and Removal***

Commission members serve at the pleasure of the appointing entity. Commission members who miss three consecutive meetings without good cause may be asked to resign by the chair of the commission.

**(Source: Board of Governors' Resolution, September 1996.)**

### ***Section 11 Confidentiality***

Applications for appointment to the commission are treated as confidential. This includes any material submitted with an application, as well as the fact that someone has applied for an appointment. Information concerning applications for appointment is released only to those persons involved in the appointment process, e.g., board members, commission members, and all staff necessary to assist in the appointment process.

**(Source: Bus. & Prof. Code, §6026.5(g); Board of Governors' Resolution, September 1996.)**

**Article 9**  
**GUIDELINES CONCERNING APPOINTMENTS**  
**TO THE AMERICAN BAR ASSOCIATION (ABA) HOUSE OF DELEGATES**

***Section 1 Membership***

The State Bar will strive to appoint members from its applicant pool meeting the following guidelines:

- One (1) delegate who qualifies as the young lawyer representative;
- Up to two (2) delegates to include the most immediate past member of the ABA Board of Governors and any immediate past officer of the ABA from the California ABA Delegation;
- Two (2) members who have not had substantial volunteer experience but who possess the leadership and other skills to be successful delegation members; and,
- Six (6) delegates who have substantial bar experience, especially with the ABA, and are typical of other State Bar appointments.

**(Source: Board of Governors' Resolution, March 2002, VIC resolution August 2003.)**

***Section 2 Number of Terms***

Unless otherwise authorized by the Board of Trustees, each member of the State Bar's ABA delegation would be eligible for reappointment to no more than three (3) consecutive two-year appointments or a maximum of six (6) consecutive years of service with the delegation. Delegates who have completed such service may apply in the future after a period of not less than two years from the date of the expiration of the delegate's last term of service with the State Bar.

**(Source: Board of Governors' Resolution, March 2002, VIC resolution August 2003, November 2006.)**

**Article 10**  
**GUIDELINES CONCERNING**  
**JUDICIAL COUNCIL APPOINTMENTS**

***Section 1 Membership***

The State Bar's governing body appoints four members of the Judicial Council.

(Source: California Constitution, article VI, §6.)

***Section 2 Term of State Bar Appointees***

It is the policy of the Board of Trustees that appointees to the Judicial Council shall serve three-year terms.

(Source: Board of Governors' Resolution, December 1989, December 1995, June 1999, California Constitution, article VI, §6a.)

**Article 11**  
**GUIDELINES CONCERNING CALIFORNIA YOUNG**  
**LAWYERS ASSOCIATION (CYLA) APPOINTMENTS**

***Section 1 Membership***

CYLA will be composed of 20 members appointed by the Board of Trustees. Six of the appointed seats shall be designated for representatives of each of the six State Bar districts, one member per district. The remaining 14 seats shall be filled by appointments at large.

(Source: Board of Governors' Resolution, September 2008.)

**Historical Note**

Commencing on January 1, 2012 and pursuant to Section 6013.1 of the Business and Professions Code, State Bar Districts shall be based on the six court of appeal districts as constituted pursuant to Section 69100 of the Government Code, as they existed on December 31, 2011.

**Article 12**  
**GUIDELINES CONCERNING APPOINTMENTS TO SECTION EXECUTIVE COMMITTEES**

***Section 1 Membership of Executive Committees of Sections***

To the extent practicable, the executive committee of a section shall be representative of the various fields covered by the section. No more than one (1) attorney from any firm, corporation, entity or commission shall serve on an executive committee at the same time.

**(Source: Board of Governors' Resolutions, May 1976 and March 1977.)**

***Section 2 Board of Trustees Appointments to Section Executive Committees***

Section Executive Committee appointment recommendations made by the sections will be placed on the consent agenda for the appropriate Board Committee with any committee member retaining the right to remove any section's recommendation from the consent agenda in order to allow for further discussion. If any section's recommended slate of appointments is to be removed from the Board Committee's consent agenda, it will be removed in its entirety.

Any recommendation removed from the consent agenda will be deferred until a subsequent meeting of the Board Committee. In the interim, the section having offered the recommendation will be notified and invited to participate in the Board Committee's discussion of its recommendation. All section appointment recommendations that are passed by the Board Committee will be placed on the consent agenda of a subsequent meeting of the Board.

As soon as is practicable following the Board Committee's meeting, the list of all those section appointment recommendations passed by the appropriate Board Committee will be compiled and distributed to all members of the Board, who will be given two weeks to notify the Secretary of the State Bar of any appointment recommendations that should be removed from the Board's consent agenda.

Any section offering an appointment recommendation that has been removed from the Board's consent agenda will be notified and invited to participate in the Board's discussion of that appointment.

**(Source: Board of Governors' Resolution, January 30, 1999.)**

**Article 13**  
**INTERIM APPOINTMENTS**

**Section 1 Resignations**

The president or his or her designee is authorized, on behalf of the Board of Trustees, to:

- (a) Accept resignations of members of State Bar committees; and
- (b) Accept resignations from their offices of chairperson and vice-chairpersons of State Bar committees.

(Source: Board of Governors' Resolutions, August 1971, August 1987.)

**Section 2 Vacancies on Committees**

The Board of Trustees, upon the recommendation of the appropriate board committee shall fill vacancies on State Bar committees and section executive committees, occurring during the State Bar committee year. The following procedure shall be observed:

- (a) When a vacancy occurs on any committee or section executive committee, the staff person responsible shall immediately so advise the board member liaison to that committee/entity.

The applicant pool for the vacancy shall consist of any of the following:

- (1) Applicants for the current committee year on file with the appointments administrator; or
  - (2) Newly recruited applicants
- (b) The appropriate board committee shall review the recommendation(s), for each vacancy, and upon appropriate consultation with the chair of the entity and the board liaison, shall submit a recommendation to the Board of Trustees.
  - (c) The Board of Trustees shall fill the vacancy, giving due consideration to the recommendation(s), consistent with the guidelines and policies herein established.

(Source: Board of Governors' Resolutions, August 1971, June 1977, August 1987; State Bar Rule 3.54 adopted effective May 16, 2008.)

**Historical Note**

State Bar Rule 3.54 supersedes Article XIII, § 4 of the Rules and Regulations of the State Bar of California (The Executive Committee), repealed May 16, 2008.

## **Article 14 REMOVAL**

### ***Section 1 Removal of Committee Members***

Committee members serve at the pleasure of the board. A committee member should not be asked to resign, and the Board of Trustees should not remove a committee member from office, unless, without justification, the member refuses or persistently fails to perform his or her duties as a member of the committee. If a committee member, without justification, refuses or persistently fails to perform his or her duties, or if other good cause exists, the board may ask for the member's resignation or, if necessary, remove him or her from office. This policy should not be construed as limiting the inherent power of the board to remove any such appointee from office at any time.

Any standing committee member who misses more than one-third (1/3) of the regularly scheduled meetings during a committee year without good cause, may be deemed to have resigned from the standing committee. Policies adopted by the various section executive committees shall prevail.

**(Source: Board of Governors' Resolutions, September 1972, July 1986, September 2004.)**

### ***Section 2 Limitations on Removal of Appointees to the Judicial Council***

Appointees to the Judicial Council serve terms that are fixed by law. Thus, the board has no removal power. Appointees can however be disqualified by operation of law, that is, if during the term of appointment one ceases to be a member of the State Bar.

**(Source: Cal. Const., art. VI, §§6 and 8.)**

## **Article 15 CONFIDENTIALITY**

Applications for appointment to any entity to which the board appoints are treated as confidential. This includes any material submitted with an application. In addition, the fact that someone has applied for an appointment is treated as confidential. Information concerning applications for appointment is released to those persons involved in the appointment process, e.g., board members, section and committee officers, and all staff necessary to assist in the appointments process.

**(Source: Bus. & Prof. Code, §6026.5(g); Board of Governors' Resolution, August 1987.)**

**Article 16**  
**BOARD COMMITTEE**  
**APPOINTMENT REVIEW PROCEDURE**

**Section 1 Standing and Special Committees**

Pursuant to its charter, the Stakeholders, Access to Justice, and Appointments committee adopted the following procedures to review the appointment recommendations for the following State Bar committees:

- (a) Procedure for Reviewing New Applications, Officer Nominations and Reappointment Recommendations:
  - (1) Except for designated committees such as the Committee of Bar Examiners, the Lawyer Assistance Program Oversight Committee and the Commission on Judicial Nominees Evaluation or otherwise provided by the board committee procedure, each State Bar standing and special committees above shall review the applications for new members in accordance with each committee's established procedures and Board policies. Each entity will submit its appointment recommendations by the established deadline to the Appointments Office on the appointment worksheet. At the same time, each committee shall also provide information regarding selection criteria and statistics of the current committee membership, applicant pool, and proposed new committee to the board committee on an appointment report form, or other manner as prescribed by the board committee.
  - (2) Officer and reappointment candidates will be selected in accordance with each committee's established written procedures and pursuant to Board policy. Information regarding the selection criteria and procedure for officer consideration is to be made available to each committee member.
  - (3) Each committee chair may also submit written comments regarding the committee's ranking and the qualifications of the applications, reappointments or proposed officers. A committee chair may also request to attend the board committee meeting to participate in the discussion of his or her committee's appointment recommendations. Applications will be available to the board committee members and at the meetings in which the appointments are discussed.
- (b) Exceptions:
  - (1) Committee of Bar Examiners. For the applicants to the Committee of Bar Examiners, the board committee will rank the new applicants and those seeking reappointment (if any) in order of preference. The Committee of

Bar Examiners (CBE) will follow its normal process and provide the board committee with information as to specific qualifications or criteria that must be met. The CBE chair will submit the committee's recommendations to the Appointments Office by the established deadline and may also submit written comments for the board committee's consideration. The chair of the board committee, or his or her appointee, will serve as the primary board committee liaison to work with the committee during the review process. The CBE chair may also attend the board committee meeting to participate in the discussion of the CBE's appointments. At its discretion, the board committee may interview the candidates for chair and vice chair.

- (2) Commission on Judicial Nominees Evaluation (JNE). The board committee members and the JNE chair will review and rank new applicants. The number of reappointments will determine the number of available positions for new members. For the reappointments and officers, in accordance with established procedures, the JNE chair will submit a written evaluation of the reappointment and officer candidates and will receive copies of the reappointment applications. The JNE chair will discuss the appointment considerations for the coming year with the chair of the board committee. The board committee members will receive copies of the evaluations by the JNE chair and the reappointment applications. The board committee members will vote on the recommendations for reappointment and on the officer candidates. At its discretion, the board committee may interview the officer candidates.
- (3) Lawyer Assistance Program (LAP) Oversight Committee. The board committee will review the applications for new and/or reappointment in accordance with statutory provisions and board policies and procedures. Pursuant to board policy and the LAP rules, at its discretion, the board committee may interview the candidates for chair and vice chair.

**(Source: Board of Governors' Resolutions, August 2003, December 2005; Rule 1 Section 3 of the Rules and Regulations Governing the Lawyer Assistance Program.)**

## **Section 2    Section Executive Committees**

- (A) A section must have an executive committee of at least fifteen but no more than seventeen members. Each member is appointed by the Board of Trustees for a three-year term to govern the section and to assist the board as it directs. Executive Committee members are permitted to serve as an officer, in a fourth year, or as Chair, Vice Chair or Chair-elect in a fifth year, or as Chair, in a sixth year. Executive committee members must take an oath of office and are not entitled to compensation for their services.
- (B) Executive committee members assume office on the last day of the State Bar's annual meeting and serve until their successors assume office. A

vacant position is filled by the board for the unexpired term. If the section is new, the board appoints seven members for three years; five members for two years; and five members for one year.

- (C) Nominations for the executive committee may be made by the executive committee or by at least fifteen members of the section upon petition.
- (D) A majority of the section executive committee constitutes a quorum for transacting business at a committee meeting or by poll.
- (E) The executive committee may appoint non-voting advisors who serve at the pleasure of the committee.

**(Source: State Bar Rule 3.54 adopted effective May 16, 2008; amended effective January 1, 2012; amended effective July 19, 2013.)**

#### **Historical Note**

This rule supersedes Article XIII, § 4 of the Rules and Regulations of the State Bar of California (The Executive Committee), repealed May 16, 2008.

**Procedure for Reviewing New Applications, Officer Nominations and Reappointment Recommendations:**

- (a) The applications will be reviewed by each of the section executive committees in accordance with the section's established procedures and Board policies. Each executive committee shall also provide information regarding selection criteria and statistics of the current committee membership, applicant pool, and proposed new committee to the board committee on an appointment report form, or other manner as prescribed by the board committee .
- (b) Each section chair may also submit written comments regarding the committee's ranking and the qualifications of the applications, the reappointments, or the proposed officers. A section chair or representative may attend the board committee meeting to participate in the discussion of his or her committee's appointment nominations.
- (c) The officer and reappointment nominations will be submitted in writing by the section by the established deadline.

**(Source: Board of Governors' Resolution August 2003.)**

### **Section 3 External Entities**

- (a) General. Except for the Board's appointments to the ABA House of Delegates and the Judicial Council, for all external appointments including but

not limited to the Center for Civic Education Board of Directors, the Law School Council and the Legal Services Corporation (LSC) Boards of Directors, the board committee will consider the annual appointment recommendations in accordance with the established procedures and policies governing these entities. The board committee will forward its recommendations to the full Board for consideration.

**(Source: Board of Governors' Resolution, August 2003; Board of Trustees Resolution July 2014.)**

- (b) ABA House of Delegates. The board committee members will review and rank the applicants, keeping in mind the board's policies regarding diversity and the following selection criteria adopted by the Board for appointments to the ABA House of Delegates. At its discretion, the board committee may interview the applicants.

**(Source: Board of Governors' Resolutions, March 2002, August 2003.)**

- (c) Judicial Council. The board committee members will review and rank the applicants, keeping in mind the board's policies regarding diversity. At its discretion, the board committee may interview the applicants.

**(Source: Board of Governors' Resolution, August 2003.)**

## **TAB 5.4**

### **SECTIONS**

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## **Article 1 GENERAL**

### ***Section 1 Definition of Sections***

“Sections” are voluntary organizations of State Bar members and non-member affiliates that share an area of interest.

**(Source: State Bar Rule 3.50 adopted effective May 16, 2008; amended effective November 10, 2014; Board of Trustees Resolution September 2014.)**

#### **Historical Note**

This rule supersedes Article XIII, § 1 of the Rules and Regulations of the State Bar of California (Formation of Sections), repealed May 16, 2008.

### ***Section 2 Scope of Sections***

Sections serve the profession, the public, and the legal system by helping their members maintain expertise in various fields of law and expanding their professional contacts. Specific purposes and duties of sections are described in their bylaws.

**(Source: State Bar Rule 3.51 adopted effective May 16, 2008.)**

#### **Historical Note**

This rule supersedes Article XIII, § 2 of the Rules and Regulations of the State Bar of California (Purposes), Board of Governors' Resolutions, September 12 and September 23, 1998; repealed May 16, 2008.

### ***Section 3 Section membership***

- (A) Section membership is open to members of the State Bar or judges of courts of record.
  
- (B) A section's bylaws may authorize enrollment of non-members of the State Bar as affiliate members. No more than one-fourth of all section members may be affiliates. An affiliate member has all the privileges of section membership and may
  - (1) serve as an officer;
  - (2) serve as a member of a committee; or
  - (3) nominate, select, or serve as a member of its executive committee.

**(Source: State Bar Rule 3.52 adopted effective May 16, 2008; amended effective September 24, 2008; amended effective November 21, 2008; amended effective November 10, 2014; Board of Trustees Resolution September 2014.)**

#### **Historical Note**

This rule supersedes Article XIII, § 3 of the Rules and Regulations of the State Bar of California (Membership), Board of Governors' Resolution September 2004; repealed May 16, 2008.

#### **Section 4 Section membership fees**

Section membership requires payment to the State Bar of an annual fee. The fees are set by the Sections Executive Committee and approved by the Board of Trustees to defray the cost of administering the sections.

**(Source: State Bar Rule 3.53 adopted effective May 16, 2008; amended effective January 1, 2012.)**

#### **Historical Note**

This rule supersedes Article XIII, § 3 of the Rules and Regulations of the State Bar of California (Membership), Board of Governors' Resolution September 2004; repealed May 16, 2008.

#### **Section 5 Executive Committee**

- (A) A section must have an executive committee of at least fifteen members but no more than seventeen members. Each member is appointed by the Board of Trustees for a three-year term to govern the section and to assist the board as it directs. Executive Committee members are permitted to serve as an officer, in a fourth year, or as Chair, Vice Chair or Chair-elect in a fifth year, or as Chair, in a sixth year. Executive committee members must take an oath of office and are not entitled to compensation for their services.
- (B) Executive committee members assume office on the last day of the State Bar's annual meeting and serve until their successors assume office. A vacant position is filled by the board for the unexpired term. If the section is new, the board appoints seven members for three years; five members for two years; and five members for one year.
- (C) Nominations for the executive committee may be made by the executive committee or by at least fifteen members of the section upon petition.
- (D) A majority of the section executive committee constitutes a quorum for transacting business at a committee meeting or by poll.
- (E) The executive committee may appoint non-voting advisors who serve at the pleasure of the committee.

**(Source: State Bar Rule 3.54 adopted effective May 16, 2008; amended effective January 1, 2012; amended effective July 19, 2013.)**

#### **Historical Note**

This rule supersedes Article XIII, § 4 of the Rules and Regulations of the State Bar of California (The Executive Committee), Board of Governor's Resolution July 2005; repealed May 16, 2008.

#### **Section 6 *Officers of the section executive committee***

- (A) The Board of Trustees must appoint as chair and vice-chair of the executive committee members who have served on the committee at least a year at the time of assuming office. The committee must recommend candidates for these offices to the board.
- (B) The chair and vice-chair assume office on the last day of the State Bar's annual meeting and serve until their successors assume office. A vacant position is filled by the board for the unexpired term.

**(Source: State Bar Rule 3.55 adopted effective May 16, 2008; amended effective January 1, 2012.)**

#### **Historical Note**

This rule supersedes Article XIII, § 4 of the Rules and Regulations of the State Bar of California (The Executive Committee), Board of Governors' Resolution July 2004; repealed May 16, 2008.

#### **Section 7 *Section committees***

One or more standing or ad hoc committees composed of section members may be established as provided by the bylaws of the section.

**(Source: State Bar Rule 3.56 adopted effective May 16, 2008.)**

#### **Historical Note**

This rule supersedes Article XIII, § 5 of the Rules and Regulations of the State Bar of California (Committees), repealed May 16, 2008.

**Section 8 Bylaws**

- (A) Each Section's bylaws must be approved by the Board of Trustees. After the Board of Trustees has approved the bylaws of a new section, the bylaws may be amended by a two-thirds vote of the entire membership of the executive committee.
- (B) An amendment must be filed with the Secretary at the San Francisco office of the State Bar and will not take effect until approved by the Board of Trustees.

**(Source: State Bar Rule 3.57 adopted effective May 16, 2008; amended effective January 1, 2012.)**

**Historical Note**

This rule supersedes Article XIII, § 7 of the Rules and Regulations of the State Bar of California (Section Bylaws), Board of Governors' Resolution September 2008; repealed May 16, 2008.

**Article 2**  
**RULES CONCERNING THE OPERATION OF SECTIONS**

**Section 1    General**

So far as practicable, all rules and policies heretofore and hereafter adopted by the board for the operation of committees shall apply to sections (see chapter 8 of this division).

(Source: Board of Governors' Resolution, May 1976 and March 1977.)

**Section 2    Duties and Responsibilities**

Subject to the approval of the board, the duties and responsibilities of standing committees, which committees have in fact been subsumed under the section involved, shall be assumed by the executive committee of that section and the standing committees discontinued.

(Source: Board of Governors' Resolution, May 1976 and March 1977.)

**Section 3    Public Statements, Appearances and Positions**

The executive committee of a section shall not purport to speak publicly, before a legislative committee or otherwise, on behalf of the State Bar without prior approval of the Board of Trustees.

The executive committee of a section may, however, speak publicly before a legislative committee or otherwise, on behalf of the section on any matter peculiar to the section upon which the Board of Trustees has not and is not expected to take a position and which is not of general interest to the bar. Any questions as to whether a matter is one upon which the executive committee may speak publicly shall be determined by the member of the board liaison to the section.

If the executive committee desires to speak publicly on any matter upon which the Board of Trustees has taken a position, is expected to take a position or which is of general interest to the bar, it shall report to the board its recommendation and thereafter may be authorized to speak on behalf of the State Bar.

No member of the section shall purport to speak on behalf of the section without the prior approval of the executive committee.

No representative of the section or of the executive committee shall appear before any legislative committee without coordinating such appearance with the State Bar Legislative Representative at least twenty-four (24) hours before such appearance.

No statement or declaration of intent, position or policy shall be released to the media by a section, executive committee or section member unless the same is coordinated with the State Bar Director of the Office of Communications at least twenty-four (24) hours before such release, provided, however, that the board member liaison to the

section may for good cause waive this requirement as to any particular release. The executive committee shall, from time to time, keep the Director of the Office of Office of Communications advised of matters under study by the section which may be of general interest to the bar.

(Source: Board of Governors' Resolutions, May 1976 and March 1977.)

#### ***Section 4 Reports to the Board***

Matters referred by the board or the secretary to the executive committee for report to the board may be referred by the executive committee to one of its standing or special committees; however, the report to the board shall be by the executive committee.

(Source: Board of Governors' Resolutions, May 1976 and March 1977.)

#### ***Section 5 Membership Dues***

Upon creation of a section, the Board of Trustees may establish membership dues in the amount of ten dollars (\$10.00). The Board of Trustees may thereafter change the amount of membership dues based upon the advice of the executive committee of a section requesting such change.

(Source: Board of Governors' Resolution, March 1977.)

Each section is authorized to increase its section membership dues up to a maximum dues amount of \$95.00 per member.

(Source: Board of Governors' Resolution August 2002.)

#### ***Section 6 Membership Dues: Education Foundation***

The sections are authorized to require section members, through notice in the annual billing statement received by section members, to pay up to \$20.00 of each section members' dues payment directly to the State Bar Education Foundation to be held for the benefit of the Section in accordance with the authorities governing the Education Foundation and the instructions of the section. Such funds shall not be subject to the control of the State Bar but shall be subject, upon receipt, to the exclusive control of the Education Foundation.

(Source: Board of Governors' Resolutions, September 12 and September 23, 1998.)

**Section 7 Section Funds: Voluntary Funding**

State Bar sections, as established under and pursuant to Article 13 of the Rules and Regulations of the State Bar, and their activities shall not be funded after January 1, 2000, with mandatory fees collected pursuant to subdivision (a) of Business and Professions Code Section 6140.

The State Bar may provide an individual section, or two or more sections collectively, with administrative and support services, provided the State Bar shall be reimbursed for the full cost of those services out of funds collected pursuant to subdivision (b) of Business and Professions Code Section 6031.5, funds raised by or through the activities of the sections, or other funds collected from voluntary sources.

Notwithstanding the other provisions of Business & Professions Code Section 6031.5, the State Bar is expressly authorized to collect voluntary fees to fund the sections on behalf of those organizations in conjunction with the State Bar's collection of its annual membership dues.

**(Source: Business & Professions Code Section 6031.5).**

The Board of Trustees and the sections agree that it is appropriate for the sections to continue their service to the profession and the public as part of the State Bar, but on a financially independent basis.

**(Source: Board of Governors' Resolutions, September 12, September 23, 1998.)**

The State Bar General Fund shall be relieved of any responsibility for providing staff or other support to the sections. The Sections shall operate without expense to the State Bar's General Fund. All expenses of the Sections shall be satisfied out of Section Funds.

**(Source: Board of Governors' Resolutions, September 12 and September 23, 1998.)**

**Section 8 Section Funds: Financial Audit**

The Board shall contract with an independent national or regional public accounting firm for an audit of its financial statements for each fiscal year beginning after December 31, 1998. The audit shall examine the receipts and expenditures of the State Bar sections to assure that the receipts of the sections are being applied, and their expenditures are being made, in accordance with subdivisions (a) and (b) of Business & Professions Code Section 6031.5, and that the receipts of the sections are applied only to the work of the sections.

**(Source: Business & Professions Code § 6145.)**

The financial audit specified in Business & Professions Code Section 6145 shall confirm that the amount assessed by the State Bar for providing administrative and support services reimburses the costs of providing them, and shall verify that mandatory dues are not used to fund the sections.

(Source: Business & Professions Code § 6130.5.)

**Section 9 Section Funds: Lobbying Activities**

Voluntary funds collected by the sections or by the State Bar on behalf of the sections shall not be subject to the expenditure limitations of Business & Professions Code Section 6140.05 placed upon mandatory fees collected pursuant to Business & Professions Code Section 6140(a).

(Source: Business & Professions Code § 6031.5.)

**Section 10 Section Funds: Section Administration**

All funds generated by a section, whether by fees or otherwise, must, by law be paid into the State Bar treasury and shall be separated from the State Bar general fund and reserved for the exclusive use of the section generating them.

An executive committee shall not, without prior approval of the board, obligate the section or the State Bar for expenditures exceeding the amount of the funds generated by the section.

To the extent that funds generated by the section are available they shall be disbursed in the following order of priority:

- (a) Expenses: for State Bar administrative and support services provided in accordance with Business & Professions Code Section 6031.5 including:
  - (1) Finance: Services received include the expenses related to accounts payable of all invoices and travel expenses for volunteers and staff, accounts receivable, cash management and investments, general ledger and monthly operating statements, payroll, and financial analysis support and budget submission to the state legislature;
  - (2) Personnel: Direct staff support and additional personnel services received including recruiting, regular and temporary employment, Equal Employment Opportunity programs, bar-wide training programs, employee relations, labor relations, salary and wage administration, and benefits and pension administration;
  - (3) General Administration: Services include the sections' share of costs related to the appointments staff responsible for processing and screening the applications for the individual sections, support from the Governmental Affairs, Communications and Legal departments and the Executive Staff;
  - (4) Occupancy: Services include "rent" on a "full service building" basis; these costs include security guards and systems, parking lot leases,

building leases on a melded rate by location, building maintenance and repairs, front desk reception services, telephone switchboard, mailroom and bulk supply storeroom, law library and archives, telephone switches and travel and reservation services;

- (5) Membership Dues Billing: Includes the costs of bank processing of sections' revenue receipts, sections' share of billing, postage and printing costs, telephone costs and Public & Members Services staff unit salaries related to member questions and drops and adds;

Any expenses (including but not limited to, travel, meeting room rentals and coffee, newsletters, administrative, clerical and professional assistance) incurred in considering or acting in any manner with respect to any proposal which ultimately must be achieved by influencing action or inaction on the part of a public official or entity, and the general fund promptly shall be reimbursed from the funds generated by the section should any expenses be incurred by the general fund for these purposes.

- (b) Travel expenses of members of the executive committee in attending regular meetings of the committee;
- (c) Meeting room rental and coffee for regular meetings of the committee;
- (d) Expenses connected with the publication and distribution of the quarterly newsletter;
- (e) Expenses connected with the annual seminar;
- (f) Expenses connected with the publication and distribution of an annual roster of section members;
- (g) Expenses, as determined by the Director of Financial Services, incurred by the State Bar in furnishing administrative, clerical and professional assistance to the section.
- (h) Other expenses approved by the executive committee.

**(Source: Board of Governors' Resolutions, May 1976, June 1976, March 1977, August 1986, September 12 and September 23, 1998, September 2004.)**

### ***Section 11 Section Funds: Billing & Collection***

The State Bar shall bill for section member dues in conjunction with the State Bar's billings to State Bar members for mandatory State Bar membership fees in the manner consistent with the joint billing that has occurred for the years 1998, 1997, and 1996.

**(Source: Board of Governors' Resolutions September 12 and September 23, 1998.)**

Notwithstanding the other provisions of Business & Professions Code Section 6031.5, the State Bar is expressly authorized to collect voluntary fees to fund the sections on behalf of those organizations in conjunction with the State Bar's collection of its annual membership dues.

**(Source: Business & Professions Code § 6031.5.)**

### ***Section 12 Section Funds: Cost Allocation Methodology***

The State Bar's General Fund is relieved of any responsibility for providing staff, facilities or resource support to the sections. This support shall continue to be available to the Sections, but at the expense of the section funds. The sections shall operate without expense to the State Bar's General Fund.

Any section unable to meet its expenses shall receive no General Fund support. However, the Executive Committee of any section which has section funds, is authorized, in its discretion to contribute a portion of its sections funds to assist one or more other sections to meet section expenses.

**(Source: Board of Governors' Resolutions, September 12 and September 23, 1998; Business & Professions Code § 6031.5.)**

The Indirect Cost Allocation Accounting Methodology is used in allocating section costs. This methodology was originally developed by the federal government to allow state and local governments to recover the costs of administering federal grants without placing an undue burden on the grant recipient of tracking all administrative related costs. This same process is used by the State of California.

**(Source: Board of Governors' Resolutions, August 21, 1999, January 26, 2002.)**

In March 2016, the Cost Allocation Plan (CAP) was modified to remove Office of General Counsel (OGC) costs from the Sections' cost allocation.

**(Source: Board of Trustees Resolution March 2016)**

**ARTICLE 3**  
**COUNCIL OF STATE BAR SECTIONS: BYLAWS**

**Section 1    *Establishment***

There is a Council of State Bar Sections consisting of a representative of each Section of the State Bar.

(Source: Board of Governors' Resolution, June 10, 2000.)

**Section 2    *Council of State Bar Sections***

The Council shall be the leadership and coordination committee for the sections. The Council shall serve as advisor on, and have the authority and responsibility to implement, the Board's policies.

(Source: Board of Governors' Resolution, June 10, 2000.)

**Section 3    *Purposes and Responsibilities***

The purposes and responsibilities of the Council of State Bar Sections are:

- (a) Representing and acting on behalf of the sections in communicating with and advising the Board of the position of the Council without restricting any individual section's ability to represent its position on any matter.
- (b) Managing and controlling the financial affairs on behalf of the sections only as to the allocation of overhead, i.e., the cost of administrative services actually charged to all of the sections by the State Bar, including the oversight and administration of said overhead. *See Article 3, Section 6 [Overhead Allocation] suspending the Council's authority in this area.*
- (c) Advising the Board on matters pertaining to policies and procedures which affect the sections generally, such as the format and content of the sections' portion of the annual dues statement published by the State Bar, but not to include the amount to be charged by any individual section for membership in such section.
- (d) Fostering communication between the Board and the sections and among the sections.
- (e) Developing and implementing efficiencies in the delivery of section services to the members of the State Bar.
- (f) Working with State Bar staff to develop, promote and implement cost-effective procedures for supporting the activities of the sections.
- (g) Implement the policies of the Board relating to the sections.

In pursuing the purposes and responsibilities set forth above, the Council may adopt resolutions and may communicate and advocate those resolutions to the Board of Trustees, State Bar staff, members of the State Bar. The Council may take such other actions as are necessary to its effective operation consistent with its purposes and responsibilities. The actions of the Council do not restrict in any way the rights and responsibilities of any Section's Executive committee regarding the subject matter of such actions, except that Council decision on matters described in subsection Section 2, above, shall bind the Sections.

**(Source: Board of Governors' Resolutions, June 10, November 3, November 4, 2000, July 30, 2002.)**

#### ***Section 4 Section Representatives***

The Chair of each Section, during the term of his or her office, shall be the representative of the Section on the Council of State Bar Sections. Alternatively, the Chair of a Section may, during the term of his or her office, designate an individual to serve as the Section Representative on the Council of State Bar Sections for that Section in lieu of the Section's Chair. The individual must be a present or former member of that Section's Executive committee. The designation may be changed from time to time as necessary, and a temporary Section Representative may be designated to serve if the primary Section Representative cannot attend a particular Council meeting. Sections are expected to designate individuals who will consistently attend Council meetings to assure continuity in the Council's membership.

**(Source: Board of Governors' Resolution, November 2000.)**

#### ***Section 5 Quorum: Vote Required***

Each Section Representative shall have one vote on any matter presented to the Council except those matters for which a supermajority is required by this Section or other applicable rule. A quorum of the Council is the whole number of its Section Representatives next greater than the number derived by dividing the number of Section Representatives by two (2). Actions of the Council shall be taken based on the affirmative votes of a majority of the Section representatives present at the meeting (provided that such affirmative votes are no less than a majority of the required quorum), except that the following actions shall be taken only by a supermajority vote as defined in Section 5, below:

- (a) Any action described in Section 2.2 above;
- (b) Any vote taken at an emergency meeting;
- (c) Any waiver of agenda notice requirements;
- (d) Any amendment to the Bylaws that requires a supermajority vote pursuant to Section 13 below.

(Source: Board of Governors' Resolutions, July 1986, October 1986, November 2000.)

**Section 6 Supermajority Voting Defined: Census Date**

- (a) On matters requiring a supermajority vote by virtue of Sections 2.2 and 13 of these Bylaws, each Section Representative shall have a vote weighted in proportion to the number of members duly enrolled in the Section for which the representative is voting, as determined in the manner described in subsection 5.3 and the affirmative vote by the Section Representatives holding at least three quarters (3/4) of the weighted votes of all Section Representatives then in office shall be required; provided, however, that if the number of Section Representatives voting in the negative, abstaining or not present to vote is less than three, then the affirmative vote of the Section Representatives holding a majority of the weighted votes of all Section Representative shall be required to carry the resolution.
- (b) On matters requiring a supermajority vote by virtue of Section 8 of these Bylaws, each Section Representative shall have a vote weighted in proportion to the number of members duly enrolled in the Section for which the representative is voting, as determined in the manner described in subsection 5.3, and the affirmative vote by the Section Representatives holding at least three-quarters (3/4) of the weighted votes of all Section Representatives present at the meeting shall be required; provided however, that the affirmative votes must also represent at least a majority of the weighted votes of all Section Representatives then if office.
- (c) A census of the number of members of each Section shall be taken as close as practicable to July 31 of each year. The result of such census shall be used in the calculation of votes by Section Representatives in the meetings of the Council beginning at the next Annual Meeting of the State Bar up to the Annual Meeting in the following year. For purposes of the census, associate members shall not be counted.

(Source: Board of Governors' Resolutions, November 3, November 4, 2000.)

## **Section 7    *Overhead Allocation***

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 is suspended. The Board directs that the Per Capita Allocation, as sought through petition by the Antitrust UCL & Privacy Law, Criminal Law, Environmental Law, International Law, Law Practice Management and Technology, Public Law, Real Property Law, Solo and Small Firm, Taxation, Workers Compensation Sections, be applied to the State Bar Sections.

**(Source: Board of Governors' Resolution, August 24, 2002; Board of Trustees Resolution July 2015.)**

The Per Capita methodology of overhead allocation shall remain in effect and shall not be changed without Board of Trustees approval.

**(Source: Board of Governors' Resolution, April 16, 2003.)**

## **Section 8    *Officers***

The Council shall elect a chair (or two co-chairs) and a Chair-Elect (or two Co-Chairs-Elect), each of whom shall serve until the conclusion of the State Bar Annual Meeting next following his or her election. Absent unusual circumstances, the Chair-Elect (or Co-Chairs-Elect) shall automatically become the Chair (or Co-Chairs) for the year following his or her service as Chair-Elect (or Co-Chairs-Elect). The Chair (or Co-Chairs) and the Chair-Elect (or Co-Chairs-Elect) shall not have a vote on matters before the Council unless he or she is also attending the meeting as a Section Representative.

**(Source: Board of Governors' Resolutions, November 3, November 4, 2000.)**

## **Section 9    *Regular and Special Meetings***

The Council of State Bar Sections shall meet regularly at least four (4) times annually, including once at the State Bar Annual Meeting and approximately each three (3) months thereafter. The schedule of such regular meetings shall be determined as soon as possible after the election of officers for the year and distributed to all Section Representatives, Officers and Advisors. Additional special meetings may be called by the Chair (or Co-Chair) at such times and places as may be appropriate and deemed necessary by the Chair (or Co-Chair). The Chair (or Co-Chair) shall convene a special meeting within thirty (30) days of receiving a written request to do so from five (5) or more Section Representatives. Where possible, meetings shall be convened at a location that is easily accessible to Section Representatives traveling by air and other public transit.

Section Representatives may attend meetings in person or by telephone, and they may vote by written proxy mailed or transmitted by facsimile to the Council Chair or Co-Chair.

**(Source: Board of Governors' Resolutions, July 1986, November 3, November 4, 2000.)**

### **Section 10 Notice of Meetings; Agendas**

Notice of all Council meetings (whether regular or special) shall be given to the Section Representatives when possible at least thirty (30) days, but in no event later than fourteen (14) days, prior to the date of the meeting. The distribution of a schedule of regular meetings for the coming year to Section Representatives shall constitute notice of the regular meetings contained on such schedule.

No action may be taken at any meeting unless the matter was described in a manner that gives reasonable notice of the topic of discussion and any specific proposals then known on a written agenda transmitted by mail, facsimile or electronic mail no later than fourteen (14) days prior to the meeting; this agenda notice requirement may be waived by a supermajority vote as described in Section 5(b) of these Bylaws. In debating any motion, the Council shall consider, where appropriate, whether the course of discussion or proposed action has changed from that described in the agenda to such an extent that providing additional time for Section Representatives to consider the matter and seek direction from their Section Executive Committees is appropriate.

(Source: Board of Governors' Resolutions November 3, November 4, 2000.)

### **Section 11 Minutes**

The Chair-Elect (or a Co-Chair-Elect) or his or her delegate shall record the minutes of each Council Meeting and distribute those minutes to the Section Representatives.

(Source: Board of Governors' Resolutions, November 3, November 4, 2000.)

### **Section 12 Budget; Expenses**

The Council shall review and adopt a budget for each calendar year. Travel and related expenses incurred by a Section Representative shall be borne by the Section he or she represents, subject to the policies and procedures of the State Bar for expense reimbursement.

(Source: Board of Governors' Resolutions, November 3, November 4, 2000.)

### **Section 13 Advisors**

The Chair (or Co-Chairs) may request that the immediately preceding Chair (or Co-Chairs) serve as an Advisor to the Council during the year following their service as Chair (or Co-Chair). Any such Advisor shall receive all of the same notices of meetings, agendas and other materials that are sent to Section Representatives. Advisors shall not have any votes.

(Source: Board of Governors' Resolutions, November 3, November 4, 2000.)

### **Section 14 Amendment of the Bylaws**

Any amendment of these Bylaws shall not be effective unless (a) each Section representative is given proper notice of the wording of the proposed amendment and

the fact that it will be discussed at a duly noticed meeting pursuant to Section 8 hereof; (b) the agenda specifically states the required vote to approve the proposed amendment, as specified herein; and (c) the appropriate vote, as required herein, is obtained at such meeting. In this regard, any proposed amendment to Sections 2, 4, 5, 8, or 10 of these Bylaws or to this Section 12 shall not be effective unless the motion to amend passes by a supermajority vote calculated in the manner set forth in Section 5(a) hereof. Any other proposed amendment to the Bylaws shall only require a majority vote of Section Representatives, as described in Section 4. Notwithstanding the subsection (a) of this Section 12, the specific wording of the amendment to the Bylaws, as adopted at the meeting, may vary from the wording of the amendment as proposed in the notice.

**(Source: Board of Governors' Resolutions, November 3, November 4, 2000.)**

**TAB 5.5**

**OTHER ORGANIZATIONS**

**Article 1 California Supreme Court Historical Society; Funding; Fees**

**Article 2 Conference of Delegates**

*Section 1 Relationship Between The State Bar of California and The  
Conference of Delegates of California Bar Associations*

*Section 2 Restriction of Funding, Voluntary Fees*

*Section 3 Memorandum of Understanding Between The State Bar of  
California and Conference of Delegates of California Bar  
Associations*

**Article 3 California Lawyers Association**

*Section 1 Memorandum of Understanding Between The State Bar of  
California and California Lawyers Association*

**Article 1**  
**CALIFORNIA SUPREME COURT HISTORICAL SOCIETY; FUNDING; FEES**

Notwithstanding any other provision of law, the State Bar is expressly authorized to collect, in conjunction with the State Bar's collection of its annual membership dues, voluntary fees on behalf of and for the purpose of funding the California Supreme Court Historical Society, which advances the science of jurisprudence by preserving and disseminating to the general public the history of the Supreme Court and the Judicial Branch. (Added by Stats. 2002, ch.415, effective September 9, 2002.)

(Source: Bus. & Prof. Code, § 6032.)

**Article 2**  
**CONFERENCE OF DELEGATES**

***Section 1 Relationship Between The State Bar of California and The Conference of Delegates of California Bar Associations***

Upon recommendation of the Board Task Force on the Conference of Delegates, the Board approved a Memorandum of Understanding between the State Bar of California and the Conference of Delegates of California Bar Associations and authorized the Executive Director to execute the agreement on behalf of the State Bar of California.

(Board of Governors' Resolution September, 2002.)

***Section 2 Restriction of Funding, Voluntary Fees***

- (a) Notwithstanding any other provision of law, the State Bar is expressly authorized to collect, in conjunction with the State Bar's collection of its annual membership dues, voluntary fees or donations on behalf of the Conference of Delegates of California Bar Associations, the independent nonprofit successor entity to the former Conference of Delegates of the State Bar which has been incorporated for the purposes of aiding in matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, and to convey any unexpended voluntary fees or donations previously made to the Conference of Delegates of the State Bar pursuant to this section to the Conference of Delegates of California Bar Associations. The Conference of Delegates of California Bar Associations shall pay for the cost of the collection. The State Bar and the Conference of Delegates of California Bar Associations may also contract for other services. The financial audit specified in Section 6145 shall confirm that the amount of any contract shall fully cover the costs of providing the services, and shall verify that mandatory dues are not used to fund any successor entity.
- (b) The Conference of Delegates of California Bar Associations, which is the independent nonprofit successor entity to the former Conference of Delegates

of the State Bar as referenced in subdivision (c), is a voluntary association, is not a part of the State Bar of California, and shall not be funded in any way through mandatory dues collected by the State Bar of California. Any contribution or membership option included with a State Bar of California mandatory dues billing statement shall include a statement that the Conference of Delegates of California Bar Associations is not a part of the State Bar of California and that membership in that organization is voluntary. (Added by Stats. 1999, ch. 342. Amended by Stats. 2002, ch. 415, effective September 9, 2002; Stats. 2003, ch. 334.)

#### Historical Note

The Conference of California Bar Associations is the successor to the Conference of Delegates and Conference of Delegates of California Bar Associations)

### **Section 3 Memorandum of Understanding Between The State Bar of California and Conference of Delegates of California Bar Associations**

This Memorandum of Understanding (hereinafter "MOU") is made and entered into by and between the State Bar of California, a public corporation with its principal place of business at 180 Howard Street, San Francisco, California 94105 and the Conference of Delegates of California Bar Associations, a nonprofit Mutual Benefit Corporation with its principal place of business at the office of the Foundation of the State Bar of California, 180 Howard Street, San Francisco, California 94105. The parties agree as follows:

**WHEREAS**, the State Bar of California, a public corporation (hereinafter "State Bar") established the Conference of Delegates in 1934 as an agency of the State Bar to provide input and support from local bar associations and to coordinate the legislative programs of the respective organizations so as to effectively aid the State of California in advancing the science of jurisprudence and improving the administration of justice;

**WHEREAS**, the Conference of Delegates has provided a forum by which delegates of local, specialty and minority bar associations have developed resolutions, through detailed analyses with arguments pro and con, and high level debate among some of California's finest attorneys, that has generated numerous changes and improvements in the laws of the State over the years;

**WHEREAS**, following the United States Supreme Court's decision in *Keller v. State Bar of California*, 496 U.S. 1 (1990), which narrowed the scope of the resolutions that could be debated by the Conference of Delegates, and other events, legislative restrictions were enacted in 1999 prohibiting the funding of the Conference of Delegates by mandatory State Bar membership dues or by the State Bar's statutory legislative activity fund;

**WHEREAS**, the State Bar, in view of these restrictions and the Conference of Delegates' desire to be free to take independent positions on issues of concern to the legal profession and the people of California without the limitations that necessarily accompany the State Bar's role as a regulatory agency, approved the creation of the

Conference of Delegates of California Bar Associations (hereinafter “CDCBA”), a nonprofit mutual benefit organization incorporated pursuant to the provisions of California Non-Profit Mutual Benefit Corporation Law for the purposes of aiding in matters pertaining to the advancement of the science of jurisprudence or improvements in the administration of justice, as successor to the Conference of Delegates, and independent of the State Bar;

**WHEREAS**, the State Bar and the CDCBA desire that the CDCBA continue to meet annually in conjunction with the State Bar’s annual meeting, to have its fees and donations for its support collected via the State Bar’s yearly annual dues statement to its members, and to present for the State Bar’s review and consideration legislative resolutions on matters relating to the State Bar of California and its operations, the regulation of the legal profession, professional standards governing attorneys, and other matters relating to the mission of the State Bar;

**WHEREAS**, the State Bar desires that the CDCBA continue and prosper in its role as independent successor to the Conference of Delegates, so that the State Bar and the people of California continue to receive the benefits of its expertise in proposing and analyzing resolutions that generate improvements in the laws of the State of California;

**NOW, THEREFORE**, the State Bar and the CDCBA agree to this Memorandum of Understanding:

**ARTICLE 1 - MEMBERSHIP BILLING**

- 1.1 Upon enactment of authorizing legislation, the CDCBA may solicit voluntary contributions from State Bar members utilizing the State Bar’s annual member fee statement, provided that the CDCBA include notice to members of the State Bar as required by Internal Revenue Code sections 162(e) and 6113(a). The State Bar reserves the right to review such notices and disclosures prior to their inclusion in the State Bar’s member fee statement.
- 1.2 The CDCBA will hold harmless the State Bar for any third party claim for damages arising from the CDCBA’s failure adequately to disclose the tax deductibility of members’ contributions. State Bar’s review of the CDCBA’s notice pursuant to Article 1.1 above will not constitute waiver of this Article 1.2.
- 1.3 The collection and processing of such voluntary contributions to support the CDCBA will be managed by the State Bar’s Member Billing department. The State Bar’s Office of Finance will remit any funds contributed in support of the CDCBA to the CDCBA via check on a monthly basis, less the cost of processing, collecting and remitting said funds as defined in Article 1.4.
- 1.4 Calculation of the State Bar’s cost of services rendered in the processing and remittance of voluntary contributions collected in support of the CDCBA will be based as follows:

1. The cost of processing and collecting voluntary contributions in support of the CDCBA will be based on the ratio of the total amount of voluntary contributions collected (in support of the CDCBA) in relation to the total amount of funds collected from the member fee statement applied against the annual cost of the Member Billing department.
  2. The cost of remitting voluntary contributions to the CDCBA will be based on the number of checks made payable to the CDCBA in a given year in relation to the total number of checks written on an annual basis applied against the annual cost of the Accounts Payable cost center in the Office of Finance.
  3. The initial calculation of the reimbursement ratios to be applied for year 2002 will be based on 2001 contributions and costs. Thereafter, calculation of each subsequent year's reimbursement will use the prior year's ratios. For example, 2003 reimbursement will be based upon 2002 contributions and costs.
- 1.5 If the State Bar's actual cost of processing, collecting and remitting said funds is found to exceed the reimbursement provided pursuant to the formula set forth in this Article, the parties will meet to discuss a reformulation of Article 1.4 for the purpose of ensuring that the State Bar's costs are fully reimbursed by the CDCBA.
- 1.6 For purposes of this Article and all other references to "voluntary contributions" in this MOU, voluntary contributions do not include any monies donated to the State Bar Foundation designated for the use of the CDCBA.

## **ARTICLE 2 - CDCBA RESOLUTIONS**

- 2.1 The Board of Trustees may review those resolutions proposed by the CDCBA relating to the State Bar of California and its operations, the regulation of the legal profession, professional standards governing attorneys, and other matters relating to the mission of the State Bar, and, may give consideration to the adoption of such resolutions that it deems worthy of enactment and appropriate to the mission of the State Bar as part of the legislative program of the State Bar.

### **ARTICLE 3 - ANNUAL MEETING**

- 3.1 The State Bar and the CDCBA will hold their annual meetings together at the same time and locations in, 2003, 2004, 2005, 2006, 2007 and thereafter until such time as the parties mutually agree otherwise. Hereinafter, the “Annual Meeting” shall refer to the State Bar’s Annual Meeting.
- 3.2 As the entity in charge of the Annual Meeting, State Bar will make all final determinations regarding the Annual Meeting, including but not limited to the inclusion or exclusion of exhibits, MCLE classes, and the determination of necessary services to be provided to attendees. State Bar will be the sole registrar of attendees and will be the sole MCLE provider.
- 3.3 All Annual Meeting revenue will be used first to defray Annual Meeting general overhead. General overhead includes but is not limited to shared expenses such as promotional costs, ticketed events, computerized pre-registration and on-site registration administration, exhibition management and services, security, first aid services, printed programs, on-site meeting management, shipping and distribution of all materials on-site, meeting space, hotel attrition expenses and shuttle services. General overhead does not include educational expenses, expenses from Executive Committee or Board of Trustees Meetings, or CDCBA expenses. Gross profits will then be divided pro rata based upon CDCBA registration and non-CDCBA registration. The State Bar will subtract from the CDCBA’s share of the funds an education seat cost (the education seat cost will be seventy five percent [75%] of the average cost of an education seat at the Annual Meeting multiplied by the number of delegates attending CLE programs at the Annual Meeting). The CDCBA will pay separately for any and all CDCBA on-site expenses. The balance of the CDCBA share of the net gross profits shall be paid over to the CDCBA on or before July 31 of the year following the Annual Meeting. Both parties are responsible for the payment of their respective taxes lawfully due in connection with their share of the revenue received pursuant to this MOU.
- 3.4 The parties recognize that site contracts for the State Bar’s Annual Meeting are negotiated and signed years in advance of a particular meeting, and that the costs of such contracts are based on projected attendance, which in turn is based on historical trends. The CDCBA further acknowledges that should attendance at any Annual Meeting be significantly lower than expected, the State Bar may be liable to the venue provider under the terms of the attrition clause contained in the contract between the State Bar and the venue provider. “Attrition clause” generally means a fee charged by the venue provider for room cancellations that exceed a certain allowable percentage. Such fee is usually based on the lowest contracted room rate plus applicable taxes per room per day and may include a rate for meeting rooms and food and beverage revenue.
- 3.5 With respect to the above, and in view of contracts already in place, the CDCBA and the State Bar agree not to make any material change to the length or timing

of its annual meeting through the year 2007. Both parties agree to use their best efforts to have their members register as guests in the hotels where the annual meeting is being held. The CDCBA and the State Bar further agree that neither will promote any hotels other than those with which the State Bar has an Annual Meeting site agreement.

- 3.6 As stated in Section 3.3, above, in the event of “attrition clause” expenses, these expenses will be considered part of the overhead and deducted from the general Annual Meeting revenue. To the extent that gross profits are insufficient to reimburse fully the State Bar for Annual Meeting expenses, the CDCBA will owe the State Bar a pro rata share of attrition expenses based on CDCBA registration and non-CDCBA registration. The State Bar reserves the right to deduct any remaining and unpaid “attrition clause” expenses from the voluntary contributions collected by the State Bar on behalf of the CDCBA for the following year.
- 3.7 The State Bar’s Director of Section Education and Meeting Services and the Chairperson of the CDCBA, or their respective designees, will be the authorized representatives with respect to the planning and coordination of the annual meetings. The State Bar welcomes input from and will notify the CDCBA as to the location of each annual meeting in its customary manner. The CDCBA will continue to be responsible for working with the applicable site to make its annual meeting on-site services arrangements.
- 3.8 The CDCBA recognizes the State Bar’s desire to hold general assemblies for the purpose of conducting its ceremonial events (i.e., swearing in Board members, dignitary addresses to annual meeting attendees) and that such assemblies have traditionally been held in the space where the Conference of Delegates was convened. To accommodate the State Bar’s desire, the CDCBA agrees that the State Bar may use the CDCBA’s space at any annual meeting for such purpose so long as such assemblies do not unduly interfere with the CDCBA’s meeting activities. The State Bar and the CDCBA will work together in good faith on the planning and coordination of such events.

#### **ARTICLE 4 - MISCELLANEOUS MATTERS**

- 4.1 Websites. The CDCBA will provide a link or links, as appropriate, to State Bar website pages on the CDCBA website, and in accordance with CDCBA linking policy, if any. The State Bar will provide a link or links as appropriate to the CDCBA website on the State Bar website, in accordance with the State Bar linking policy.
- 4.2 Insurance. The State Bar as part of the annual meeting planning will have the CDCBA named as an additional insured at cost to the CDCBA on policies covering activities at the annual meeting, to the extent such coverage is necessary and available. If the CDCBA elects to have this coverage, this amount is due within thirty (30) days of receipt of notice by the CDCBA.

## **ARTICLE 5 - TERM AND TERMINATION**

- 5.1 This MOU will be effective as of October 13, 2002, and will continue from the effective date for a period of five (5) years, unless terminated earlier pursuant to this Article. The MOU may be renewed for terms upon mutual agreement of the parties.
- 5.2 The terms of this MOU are for the mutual benefit of both parties. Upon a finding of cause by an affirmative vote of two-thirds (2/3) of all serving members of the Board of Trustees of the State Bar or two-thirds (2/3) of the members of the Board of Directors of the CDCBA, respectively, either party may terminate the relationship at any time upon three hundred sixty five (365) days' written notice.
- 5.3 The CDCBA acknowledges that the State Bar incurs various potential contractual liabilities for the Annual Meeting. These liabilities are undertaken based on the existence of this MOU and incurred on behalf of both parties. In acknowledgment of the difficulty of ascertaining damages and apportioning fault, if the CDCBA terminates this MOU and the State Bar incurs attrition expenses at the next Annual Meeting following the effective date of such termination of this MOU, the CDCBA agrees to pay to the State Bar an amount equal to twenty percent (20%) of the attrition expenses. This amount is due within thirty (30) days of receipt of notice by the CDCBA.
- 5.4 The State Bar acknowledges that the CDCBA incurs various contractual liabilities that are undertaken based on the existence of this MOU and that it relies upon funding obtained through contributions paid utilizing the State Bar's annual member fee statement and may suffer damages as a result of the State Bar's failure or refusal to undertake the inclusion of the CDCBA on its annual member fee statement. In acknowledgment of the significance of this undertaking, if the State Bar terminates this MOU, on written demand by the CDCBA, for a period of one year following the effective date of said termination of this MOU, the State Bar shall continue to include the CDCBA on its annual member statement on the same terms and conditions as provided in Article 1 of this MOU.

## **ARTICLE 6 - DISPUTE RESOLUTION**

- 6.1 Prior to commencing a court action, the parties will use their best efforts to resolve any dispute arising under this MOU by good faith negotiation and mutual agreement. If a controversy or claim should arise and either party should desire to submit the matter to dispute resolution in accordance with this Article 6, that party will present a written request for dispute resolution to the other party, which request will make reference to this Article 6 and contain a sufficient description of the controversy to the receiving party. Said notice, if issued by the CDCBA will be signed by its Chair and, if issued by the State Bar, will be signed by the Executive Director of the State Bar. Upon tender of the request for dispute resolution, those individuals, or their respective designees, will meet and will attempt to resolve the matter(s) identified in the request. If the matter has not

been resolved within twenty (20) days of their first meeting, the matter will then be referred to the Board of Trustees of the State Bar and the Board of Directors of the CDCBA for settlement of the dispute. Both Boards, or their respective designated committees will meet for negotiations within fourteen (14) days of the end of the twenty (20) day period referred to above, at a mutually agreed time.

## **ARTICLE 7 - GENERAL PROVISIONS**

- 7.1 **Entire Agreement.** This MOU supersedes any and all other agreements, either oral or written, which may exist between the parties, and contains all of the covenants and agreements between the parties as of the last date written below. By signing below, each party acknowledges that no representations, inducements, promises or agreements which are not embodied herein have been made by any party and that no agreement, statement or promise not contained herein will be binding on the parties.
- 7.2 **Notice.** Any notices to be given by either party to the other shall be in writing, either by personal delivery or by mail, registered or certified, postage prepaid with return receipt requested, and addressed as set forth in this paragraph 7.2. Notices delivered personally shall be deemed received as of actual receipt; mailed notices shall be deemed received as of five (5) days after mailing. Mailed notices to the State Bar will be addressed to Marie Moffat, General Counsel, at 180 Howard Street, San Francisco, California 94105. Mailed notices to the CDCBA will be addressed to Stephen L. Marsh, Esq., 600 West Broadway, Suite 2600, San Diego, California 92101. Each party may change the address by written notice in accordance with this Article.
- 7.3 **Jurisdiction.** This MOU is deemed to have been made and entered into by the parties at San Francisco, California, and will be construed according to the laws of the State of California. Subject to Article 6 above, any litigation arising out of this agreement will be filed in the appropriate court in San Francisco, California.
- 7.4 **Titles.** The titles used herein are not part of this MOU and are included solely for convenience and have no bearing upon and do not in any way limit the application of the terms and conditions of this agreement.
- 7.5 **Changes.** No amendments, alteration or variation of the terms of this MOU will be valid unless made in writing and signed by both of the parties herein.
- 7.6 **Severability.** If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 7.7 **Assignment.** Neither party shall assign all or any partial rights or obligations under this MOU.

- 7.8 Waiver. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. Any consent to or waiver of a breach by any party to the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.
- 7.9 Authority. Each party hereby represents and warrants that it has full power and authority to enter into and perform its respective obligations under this agreement and that the person signing this MOU has been properly authorized and empowered to enter into this MOU. Each party acknowledges that it has read, understands and agrees to be bound by this MOU.
- 7.10 Counterparts. This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this Memorandum of Understanding as of the last day and year written below.

**“STATE BAR”  
THE STATE BAR OF CALIFORNIA**

**“CDCBA”  
CONFERENCE OF DELEGATES OF  
CALIFORNIA BAR ASSOCIATIONS**

By: \_\_\_\_\_  
Joseph Dunn  
Executive Director

By: \_\_\_\_\_  
Stephen L. Marsh  
Chair

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**(Board of Governors’ Resolution September, 2002.)**

**Article 3**  
**CALIFORNIA LAWYERS ASSOCIATION**

***Section 1 Memorandum of Understanding Between The State Bar of California and California Lawyers Association***

This Memorandum of Understanding (hereinafter "MOU") is made and entered into by and between The State Bar of California, a public corporation with its principal place of business at 180 Howard Street, San Francisco, California 94105 and the California Lawyers Association ("CLA"), a mutual benefit corporation with its principal place of business at 180 Howard Street, Suite 410, San Francisco, California 94105.

**WHEREAS**, recently enacted legislation, Senate Bill 36 (2017) ("SB 36"), mandates the separation of the Sections from the State Bar into an independent private non-profit corporation, to be called the California Lawyers Association ("CLA");

**WHEREAS**, SB 36 provides that the State Bar shall transfer the Sections' financial reserves, contracts, and intellectual property assets to CLA;

**WHEREAS**, SB 36 provides that the State Bar shall collect membership dues on behalf of the Association provided that the State Bar determines that CLA is continuing to comply with certain requirements set forth in SB 36;

**NOW, THEREFORE**, the State Bar and CLA agree to this Memorandum of Understanding:

**GENERAL PROVISIONS**

1. State Bar Sections to Become California Lawyers Association

The State Bar has incorporated CLA and will transfer control of CLA no later than January 1, 2018 to a board of directors designated by the State Bar Council of Sections. The State Bar recognizes CLA as the entity defined as the "Association" in Article 3 of SB 36 (2017) (amended Cal. Bus. & Prof. Code § 6056(a)).

2. Transfer of Sections Financial Assets to CLA

On or before January 31, 2018, the State Bar shall remit to CLA the "Transfer Amount", which is defined as the remaining balance in the Sections funds less withholdings for known expenses and liabilities previously incurred by the State Bar Sections that have not been yet been fully paid ("Known Liabilities"). The State Bar will concurrently provide CLA with an accounting of and documentation relating to the Known Liabilities. The State Bar will provide CLA with an accounting that specifies which funds are attributable to each individual section of CLA.

CLA acknowledges that State Bar's 2017 year-end accounting is subject to adjustment during annual audit by the State Bar's independent financial auditor, which takes place in the ordinary course in the spring of each year and will conclude

no later than May 31, 2018. Promptly after the annual financial audit is completed, the State Bar will inform CLA of any variance in the Sections balances between the Transfer Amount and the audited amounts and will provide CLA a final accounting of the monies previously withheld to cover Known Liabilities. In the event of a variance resulting in additional monies owed to CLA by the State Bar, the State Bar will pay the variance amount to CLA promptly. In the event of a variance indicating that the Transfer Amount exceeded the amount actually due to CLA, CLA will pay the variance amount to the State Bar promptly. No interest will be charged to either party as a result of any variance between the Transfer Amount and audited amounts.

In the event that the parties have a dispute regarding the amount of funds to be transferred by the State Bar to CLA pursuant to this section, including the variance amount, the parties agree that such dispute shall be resolved through binding arbitration. Either party may serve notice to the other party on or after January 31, 2018, to commence arbitration proceedings. The parties agree that the arbitration shall be governed by Cal. Code Civ. Proc. § 1282 et seq., including Section 1283.5, except that the selection of an arbitrator and the allocation of costs will be governed by Cal. Bus. & Prof. Code § 6056.3(f), which states: "If the parties cannot agree on a neutral arbitrator, each shall select a neutral arbitrator and the two neutral arbitrators shall select a single neutral arbitrator to determine the amount. The neutral arbitrator chosen to oversee the matter may hire an auditor to assist in this task. The fees charged by the arbitrator, including any auditor fees, shall be borne equally by the State Bar and the Association." The State Bar shall transfer to CLA the undisputed portion of the Transfer Amount no later than January 31, 2018.

### 3. Assignment of Sections Contracts to CLA

On or before January 1, 2018, the State Bar will assign to CLA contracts previously entered into by the State Bar on behalf of the State Bar Sections for services to be rendered or events occurring on or after January 1, 2018, transferring to CLA all of the State Bar's rights and obligations under those contracts. The State Bar will provide to CLA an inventory identifying each contract, a copy of each contract, and a copy of each assignment notice.

### 4. Transfer of Intellectual Property

No later than January 1, 2018, the State Bar will transfer to CLA all intellectual property created by the State Bar Sections, including ownership rights in publications, educational materials, online education, membership lists of section members, and products. On or before December 21, 2017, the State Bar and CLA will execute a separate asset transfer agreement further detailing terms.

### 5. Collection of CLA Membership Fees by the State Bar

The State Bar shall collect fees for CLA by including an option on the annual licensing fee statement sent to California attorneys, in a manner similar to that in

which the State Bar has historically collected fees for the State Bar Sections, provided that CLA submits to the State Bar no later than September 1 of each year the results of a performance audit conducted by an independent auditor who is either a certified public accountant or a certified internal auditor that certifies that CLA is in compliance with the statutory requirements listed in subsections (a) and (b) below. The audit report must describe with particularity the methodology used in the audit and the information evaluated and obtained by the auditor that informed the audit's conclusion. CLA must commission and pay for the audit.

CLA must also provide to the State Bar no later than October 1 of each year the schedule of fees for membership in CLA Sections to be included on the State Bar's annual licensing fee statement.

a. Governance Structure

The performance audit must certify that CLA maintains and adheres to a governance structure that complies with Section 24 of SB 36 (amended Cal. Bus. & Prof. Code § 6056 (b)), which states:

“The Association shall be governed in accordance with the bylaws of the Association, which shall ensure that all of the [CLA] Sections and the California Young Lawyers Association are adequately represented and are able to make decisions in a fair and representative manner that complies with all provisions of state and federal law governing private nonprofit corporations organized under Section 501(c)(6) of the Internal Revenue Code. The bylaws of the Association shall ensure that the governing board of the Association includes one representative of each of the 16 sections of the State Bar [CLA] Sections and one representative from the California Young Lawyers Association. The bylaws shall ensure that each of these 17 governing board members have equal voting power on the governing board. The bylaws shall ensure that the governing board may terminate individual sections or add individual sections by a two-thirds vote of the governing board.”

No later than January 31, 2018 the State Bar will request from the attorneys retained to prepare bylaws for CLA a determination as to whether the bylaws comply with the requirements set forth in Cal. Bus. & Prof. Code § 6056 (b) that the CLA sections and CYLA are adequately represented on CYLA's governing board and are able to make decisions in a fair and representative manner that complies with all provisions of state and federal law governing private nonprofit corporations organized under § 501(c)(6) of the Internal Revenue Code (the “Initial Certification”). If the drafting attorneys certify that CLA's bylaws do so comply, no future certification of such compliance will be required unless the bylaws are materially amended or the applicable law is changed in a manner that affects the requirements of § 6056 (b).

No later than March 30, 2018, the State Bar's Executive Director (or her designee), acting under the authority of the State Bar Board of Trustees, will

review the bylaws and governance structure of CLA, along with the Initial Certification provided pursuant to the preceding paragraph, and will provide CLA a written determination (“Initial Determination”) as to whether CLA is in compliance with Cal. Bus. & Prof. Code § 6056 (b).

If the initial determination certifies that CLA is then in compliance with Cal. Bus. & Prof. Code § 6056 (b), future performance audits conducted under this section may rely on the initial determination as a factor in determining whether CLA remains in compliance if the bylaws and governance structure and the applicable law have not changed materially from the bylaws and governance structure and law in effect at the time of the State Bar’s initial determination. The performance audit must also determine the following: (1) that CLA’s governing board includes one representative of each section of CLA and one representative of the California Young Lawyers Association; (2) that all section and CYLA representatives on CLA’s governing board have equal voting power; and (3) as a result of such representation and equal voting power, all CLA sections and the CYLA are adequately represented and are able to make decisions in a fair and representative manner. Satisfaction of (1) and (2) shall be deemed to satisfy (3) unless evidence to the contrary is brought to the attention of the auditor, in which event (a) the contrary information will be relayed to CLA’s Executive Director and to the State Bar’s Executive Director, and (b) if either Executive Director so decides, the auditor will investigate the matter and make a further determination. At least seven (7) days prior to the scheduled commencement of the annual performance audit, each member of CLA’s governing board will receive notice of the pending audit with an opportunity to bring to the auditor’s attention concerns, if any, about CLA’s compliance with (1), (2) or (3) above.

b. Legal Education

The performance audit must certify that CLA is continuing to provide legal education on the terms stated in Cal. Bus. & Prof. Code § 6070 (d), which states:

“The Association shall provide and encourage the development of low-cost programs and materials by which members of the State Bar may satisfy their continuing education requirements. Special emphasis shall be placed upon the use of internet capabilities and computer technology in the development and provision of no-cost and low-cost programs and materials. Towards this purpose, as a condition of the State Bar’s collection of membership fees on behalf of the Association pursuant to subdivision (b) of Section 6031.5, the Association shall ensure that any member possessing or having access to the Internet or specified generally available computer technology shall be capable of satisfying the full self-study portion of his or her MCLE requirement at a cost of twenty dollars (\$20) per hour or less.”

c. Notice of Determination and Opportunity to Cure

Within ten (10) days of receiving the results of the performance audit required by this Section, the State Bar will provide CLA with its written determination as to whether the audit demonstrates CLA's compliance with Cal. Bus. & Prof. Code §§ 6056 (b) and 6070 (d). If the State Bar determines that the audit report fails to demonstrate such compliance, the State Bar will provide CLA with detailed reasons for that determination and will give CLA not less than thirty (30) days in which to cure the cited deficiencies ("Cure Period").

If the State Bar determines that a lack of compliance with Bus. & Prof. Code § 6056 (b) or § 6070 (d) prevents it from collecting CLA membership fees by including an option on the annual licensing fee statement sent to California attorneys, the State Bar will notify CLA of that determination, with a detailed explanation, no later than ten (10) days after expiration of the Cure Period. Any dispute relating to the State Bar's decision not to collect dues for CLA may be resolved by a court of competent jurisdiction. The resolution of such dispute may include any appropriate relief, including injunctive relief.

#### d. CLA Membership Fees Held Separately in Trust

Beginning January 1, 2018, all monies received by the State Bar for membership in CLA will be placed within a separate account within the State Bar's general ledger. The State Bar agrees to hold those funds in trust for the benefit of CLA.

### 6. Information from Association to the State Bar

Cal. Bus. & Prof. Code § 6056 (f)(2) requires CLA to provide "expertise and information to the State Bar, as requested."

Pursuant to that Section, the State Bar requires that CLA provide the following information to the State Bar: (1) the performance audit results described in Section 5 of this MOU; and (2) no later than September 1 of each year, a letter from the President of the CLA to the Chair of the State Bar Board of Trustees describing generally the status of CLA and activities of CLA over the preceding year.

### 7. Remittance of CLA Membership Fees

The State Bar will remit funds collected on behalf of CLA to CLA as soon as practicable and no less than once monthly unless otherwise agreed to in writing between the State Bar and CLA.

### 8. Costs of Collection

Cal. Bus. & Prof. Code § 6031.5(b) mandates that CLA "shall pay for the actual costs of the collection" of CLA's membership fees by the State Bar.

a. Collection Fee

The State Bar's actual costs of collecting CLA membership fees, reflecting only the necessary costs of membership billing and not including the costs of maintaining online membership records or the costs of other ancillary services shall be computed by adding the Administrative Collection Costs and Checking Collection Costs (collectively, "Total Collection Costs") defined below:

- Administrative Collection Costs – The ratio of the total amount of voluntary contributions collected by the State Bar in support of CLA over the total amount of funds collected by the State Bar annual licensing fee statement will be applied to the costs related to collection within the Office of Finance and the costs related to billing within the State Bar's Attorney Regulation and Consumer Resources Department to compute the "Administrative Collection Costs."
- Checking Collection Costs – The "Checking Reimbursement Ratio," defined as the ratio of voluntary contributions collected by check in support of CLA over the total amount of funds collected by check by the State Bar from the annual licensing fee statement, will be applied to the State Bar's bank fees for processing check collections [lockbox fees] to compute the "Checking Collection Costs."

The State Bar shall deduct the Total Collection Costs from CLA funds collected by the State Bar.

b. Audits and Periodic Re-Evaluation

The State Bar shall ensure that its annual financial audit and the financial audit required by Business and Professions Code Section 6145 are required to confirm that the amount of Total Collection Costs charged to CLA reimburses the full costs, and no more than the full costs, of collecting CLA membership fees. No later than fifteen (15) days after receiving the results of the audits, the State Bar will provide those results to CLA with a detailed explanation of the cost allocation methodology used to determine each element of the Total Collection Costs, an itemization of the costs included in the cost pool, and supporting documentation. The State Bar will re-assess the Total Collection Costs based on the results of the audit(s) and no later than October 1 of each year the State Bar will inform CLA of any change to the Administrative Collection Costs, Checking Collection Costs or Total Collection Costs. CLA and the State Bar will be responsible for paying the difference to the other party in the event that the audit determines that CLA was either overcharged or undercharged for the actual costs of collection.

Nothing in this MOU will restrict the ability of CLA to dispute the collection costs or the soundness of the methodology used to determine those costs, including the methodology described in subsection (a) above.

## 9. CLA Membership Records

To ensure that CLA receives CLA Section membership information from the State Bar in a timely manner and a usable format, the State Bar will continue to maintain CLA Section membership information in the State Bar's internal attorney information database and will transmit that information electronically to CLA's membership database, InfusionSoft, using the currently existing interface that links the two systems. The State Bar will be responsible for updating the interface if the State Bar changes to a different internal attorney information database in the future.

CLA is responsible for maintaining its own membership database. If CLA changes its database system from InfusionSoft or causes any other changes that necessitate an update to the interface, CLA will be responsible for updating or developing a new interface to the State Bar's then-existing attorney information database, and CLA will be responsible for bearing any associated costs.

The State Bar will continue to identify membership of CLA Sections as an attribute on public attorney profiles on the State Bar website with a notation that CLA is an independent organization and is not part of the State Bar. CLA acknowledges that the State Bar is a government entity subject to the California Public Records Act, and that records of membership in CLA Sections maintained by the State Bar may be disclosable to the public.

CLA agrees to pay the State Bar an amount equal to 0.3% of the amount of funds collected on behalf of CLA by the State Bar as the cost of the State Bar's provision of this service ("Records Fee"). CLA agrees that the State Bar may deduct the Records Fee from the funds remitted to CLA by the State Bar. The Records Fee will be re-assessed annually pursuant to the approach outlined in Section 8b.

## 10. Partnerships

The State Bar will provide assistance upon request in support of CLA's efforts to join the American Bar Association (ABA) House of Delegates and to establish a partnership with Continuing Education of the Bar (CEB), including by writing letters of support and making State Bar leadership personnel reasonably available to discuss the State Bar's support of CLA with officials at those agencies.

## 11. Benefit Program Revenues

Cal. Bus. & Prof. Code § 6141.3(a)(2)(A) requires the State Bar to transfer to CLA fifty (50) percent of the revenue received by the State Bar between January 1, 2018 and December 31, 2018, from insurance benefit programs. The State Bar and CLA will enter into a separate agreement no later than March 31, 2018, further detailing the terms and timetable of the State Bar's required transfer to CLA of these funds.

## 12. Effect of Statutory Amendment

Sections 5 (except subsection (d)), 6, 8, and 9 of this MOU will remain in effect so long as the provisions of the California Business and Professions Code requiring the collection of CLA fees by the State Bar on behalf of CLA, provided that CLA performs the obligations required by statute, remain operative.

In the event of any material amendments to the sections of the California Business and Professions Code cited in Section 5 of this MOU or any statutory changes that alter the duties or obligations of CLA or the State Bar, such statutory changes will supersede any provisions of this MOU that are in conflict with the new or revised statutes. In addition, the State Bar and CLA must meet and confer no later than 60 days following the date that any such bill is signed into law by the governor to amend this MOU.

## 13. Amendments to this MOU

No amendments, alteration or variation of the terms of this MOU will be valid unless made in writing and signed by both of the parties herein.

Either party may request to meet and confer for the purpose of seeking modifications to this MOU by delivering written notice to the other party under Section 14. The meet and confer must occur within 30 days of the notice.

## 14. Entire Agreement

This MOU supersedes any and all other agreements pertaining to the subject matter of this MOU, either oral or written, which may exist between the parties, and contains all of the covenants and agreements between the parties as of the last date written below. By signing below, each party acknowledges that no representations, inducements, promises or agreements which are not embodied herein have been made by any party and that no agreement, statement or promise pertaining to mandatory duties and obligations under SB 36 not contained herein will be binding on the parties.

## 15. Notice

Any notices to be given by either party to the other shall be in writing, either by personal delivery, email, or overnight delivery. Notices delivered personally shall be deemed received as of actual receipt; emailed notice shall be deemed received immediately unless a rejection notice is received; and overnight delivery shall be deemed received as of the next business day. Mailed notices to the State Bar will be addressed to General Counsel, 180 Howard Street, San Francisco, California 94105. Emailed notices to the State Bar will be addressed to [Vanessa.Holton@calbar.ca.gov](mailto:Vanessa.Holton@calbar.ca.gov). Mailed notices to CLA will be addressed to Executive Director, 180 Howard Street, Suite 410, San Francisco, California 94105. Emailed notices to CLA will be addressed to [Tricia.Horan@cla.legal](mailto:Tricia.Horan@cla.legal). Each party may change the address by written notice in accordance with this Section.

## 16. Jurisdiction and Venue

This MOU is deemed to have been made and entered into by the parties at San Francisco, California, and will be construed according to the laws of the State of California. Any litigation arising out of this agreement will be filed in the appropriate court in the county or judicial district where either the State Bar or CLA's principal place of business is located, except that disputes arising out of Section 2 of this MOU shall be resolved in accordance with the procedures specified in that Section.

## 17. Titles

The titles used herein are not part of this MOU and are included solely for convenience and have no bearing upon and do not in any way limit the application of the terms and conditions of this MOU.

## 18. Severability

If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

## 19. Assignment

Neither party shall assign all or any partial rights or obligations under this MOU.

## 20. Waiver

No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. Any consent to or waiver of a breach by any party to the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

## 21. Authority

Each party hereby represents and warrants that it has full power and authority to enter into and perform its respective obligations under this agreement and that the person signing this MOU has been properly authorized and empowered to enter into this MOU. The Council of State Bar Sections, as the predecessor to CLA, has full power and authority to agree to and bind CLA to this MOU.

## 22. Counterparts

This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this Memorandum of Understanding as of the last day and year written below.

**THE STATE BAR OF CALIFORNIA**

By: \_\_\_\_\_ /s/ \_\_\_\_\_

Name: Leah Wilson, Executive Director

Dated: \_\_ December 15, 2017 \_\_\_\_\_

**CALIFORNIA LAWYERS ASSOCIATION**

By: \_\_\_\_\_ /s/ \_\_\_\_\_

Name: Perry L. Segal, Co-Chair, Council of Sections

Dated: \_\_ 12-18-2017 \_\_\_\_\_

By: \_\_\_\_\_ /s/ \_\_\_\_\_

Name: Mark Ressa, Co-Chair, Council of Sections

Dated: \_\_ 12-18-2017 \_\_\_\_\_

**(Source: Board of Trustees Resolution, December 2017.)**