

THE STATE BAR OF CALIFORNIA
MINUTES
BOARD OF GOVERNORS MEETING
LOS ANGELES
NOVEMBER 9, 2007

The Board of Governors of the State Bar of California convened in open session in the Board Room of the bar's Los Angeles Office, 1149 South Hill Street, Los Angeles, California, 90015, at 1:30 p.m. on Friday, November 9, 2007, Jeffrey L. Bleich presiding.

The following members of the Board of Governors were present: Laura N. Chick, George O. Davis, Bonnie M. Dumanis (via conference call later in the meeting), John J. Dutton, Richard A. Frankel, Holly J. Fujie, William H. Gailey, William N. Hebert, Rex Heinke, Paul A. Kramer, Jr., Michael D. Marcus, John P. McNicholas, Howard B. Miller, Danni R. Murphy, James N. Penrod, John E. Peterson, M. Carmen Ramirez, Richard A. Rubin, and Patricia P. White.

The following members of staff were present: Starr Babcock, Kathleen Beitiks, Saul Bercovitch, Resty Buenavidez, Diane Curtis, Itzel Berrio, Scott Drexel, Mary Lavery Flynn; Robert A. Hawley, Heather Irwin, Judy Johnson, Dean Kinley, Nancy McCarthy, Marie Moffat, Gayle Murphy, Janis Thibault, Cathy Torney, Peggy Van Horn, Anthony Williams, Colin Wong, and Larry Yee.

Also present: Amy Yarbrough, *Daily Journal*; Steve Ellis, *Met-News*; and Mike McKee, *The Recorder*.

Because Ms. Dumanis was unable to attend in person, the Board voted unanimously to suspend its rule adopted at a Board meeting on January 25, 1997, to allow for her to participate and vote telephonically.

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

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

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

RESOLVED that the minutes of the Special Board Meeting for the Election of the 2007-08 President of the State Bar held on July 20, 2007, in Santa Monica, hereby are approved as written.

10 Upon motion made, seconded and unanimously adopted, it was
RESOLVED that the minutes of the regular meeting of the Board of Governors held on July 20, 2007, in Santa Monica, hereby are approved as written.

10 Upon motion made, seconded and adopted, it was
RESOLVED that the minutes of the special meeting of the Board of Governors held on September 26, 2007, in Anaheim, hereby are amended as follows (added language in bold), and the vote of the Board on the amended language is given below:

RESOLVED that the Board hereby tables action on **alternatives to** the Final Report and Recommendations of the Insurance Disclosure Task Force to its November 9, 2007, meeting in Los Angeles.

Voting yes: Ms. Chick, Mr. Dutton, Mr. Frankel, Ms. Fujie, Mr. Marcus, Mr. Miller, Ms. Murphy, and Ms. Ramirez.

Voting no: Mr. Davis, Mr. Gailey, Mr. Hebert, Mr. Penrod, Mr. Peterson, and Ms. White.

Abstaining: Mr. Kramer, Mr. McNicholas, and Mr. Rubin.

10 Upon motion made, seconded and unanimously adopted, it was
RESOLVED that the minutes of the Organization Meeting of the Board of Governors held on September 30, 2007, in Anaheim, hereby are approved as written.

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

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

30-1 Mr. Bleich announced that he had appointed three Board members as liaison to the Rules Revision Commission and requested the Board to ratify such appointments.

30-1 Upon motion made, seconded and unanimously adopted, it was
RESOLVED that the Board hereby approves the appointment of the following Board members as liaison to the Rules Revision Commission:

William N. Hebert, Rex Heinke, and Michael D. Marcus

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

- 30 A. Mr. Bleich reported on his outreach activities to local bar associations and other stakeholders, and encouraged Board members to engage in similar activities.
- B. Mr. Bleich thanked Anthony Williams for the warm reception that he and Ms. Johnson, Executive Director, received on their recent trip to Sacramento, which, he stated, resulted from the excellent preparation done by Mr. Williams and Mr. Doyle.

- C. He reported on the AB 2301, and encouraged Board members to publicize this new voluntary legal services to bar associations in their Districts.
- D. The Access and Fairness Council Task Force will discuss implementation on their work with the courts, local bar associations, and the judiciary.
- E. Mr. Bleich encouraged Board members to adopt a “Green Law Office” initiative, if they have not already done so.
- F. He congratulated Mr. Rubin on his selection as President of the Berkeley Repertory Theatre’s Board of Trustees.
- G. The ABA request for the State Bar to express support of the rule of law and condemn actions in Pakistan, especially for the lawyers in their struggle to re-open that nation’s courts and condemn the punishment of attorneys for seeking to promote equal treatment under law, was discussed at length. The Board declined to endorse such a resolution, but agreed that the President could speak to the issue as a concerned individual.

701 On September 26, 2007, the Board was presented with the Insurance Disclosure Task Force – Final Report and Recommendations. The Board considered the issues, and voted 9 to 8 against the Task Force’s recommendations. The Board discussed several alternative proposals, but further action was tabled to the November 9, 2007 Board meeting.

At the November 9, 2007 meeting, a motion was made and seconded to adopt proposed Rule of Professional Conduct 3-410 [Disclosure of Professional Liability Insurance], as recommended by the Insurance Disclosure Task Force. A motion was subsequently made to amend that motion. The proposed amendment to that motion would require disclosure to clients of the absence of insurance only when a written fee agreement is required under Business and Professions Code Section 6147 or 6148. The Board took the below action.

701 Upon motion made, seconded and adopted, it was

RESOLVED that the Board hereby approves an amendment to the motion to adopt proposed Rule of Professional Conduct 3-410 [Disclosure of Professional Liability Insurance], as recommended by the Insurance Disclosure Task Force, to require disclosure to clients of the absence of insurance only when a written fee agreement is required under Business and Professions Code Section 6147 or 6148.

The Board voted 10 to 9 as follows in favor of the motion to allow for amendment of the original motion:

Voting yes: Ms. Chick, Mr. Dutton, Mr. Frankel, Mr. Gailey, Mr. Kramer, Mr. Marcus, Mr. Miller, Ms. Murphy, Ms. Ramirez, and Ms. White.

Voting no: Mr. Davis, Ms. Dumanis, Ms. Fujie, Mr. Hebert, Mr. Heinke, Mr. McNicholas, Mr. Penrod, Mr. Peterson, and Mr. Rubin.

The Board did not vote on the motion as amended. Instead, the Board referred the proposal to the Regulation, Admissions and Discipline Oversight Committee (RAD) and staff for further consideration, deferring Board action on this and other elements of the Task Force’s recommendations.

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

RESOLVED that the Board hereby refers the insurance disclosure proposal to the Board Regulation, Admissions and Discipline Oversight Committee (RAD) and staff for further consideration in light of issues raised during the Board meeting

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

Mr. Penrod left the meeting and his name was deleted from the roll-call slip.

41/422 Ms. Johnson, Executive Director / Secretary, brought the Board's attention to the 2008 Board Election Schedule.

50 The consent agenda was presented to the Board, and no objection being raised thereto, all below consent matters were deemed unanimously adopted.

51 **RESOLVED**, upon recommendation of the Board Planning, Program Development, and Budget Committee, that the Board hereby receives the financial statement for the quarter ended June 30, 2007, as certified by the Chief Financial Officer, and on file in the San Francisco office of the State Bar.

52 **RESOLVED**, upon recommendation of the Board Planning, Program Development, and Budget Committee, that the Board hereby receives the investment report for the quarter ended June 30, 2007, as certified by the Chief Financial Officer, and on file in the San Francisco office of the State Bar.

53 **RESOLVED**, upon recommendation of the Board Planning, Program Development, and Budget Committee, that the Board hereby receives the Client Security Fund report for the quarter ended June 30, 2007, as certified by the Chief Financial Officer, and on file in the San Francisco office of the State Bar.

54-111 **RESOLVED**, upon the recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, that the Report on the Chief Trial Counsel's Performance Evaluation for the Period 2006-2007 is adopted and approved.

[The above is the report of action taken Board Committee on Regulation, Admissions and Discipline Oversight between regularly scheduled Board meetings.]

54-112 **RESOLVED**, following public comment period and upon recommendation of the Board Committee on Operations, that the Board of Governors hereby amends the Rules Governing Open Meetings, Closed Sessions and Records of the Board Of Governors of The State Bar Of California, article 1, section 4, [Meeting, Definition] in the form attached to these minutes and made a part hereof.

54-113A **RESOLVED** that, pursuant to its authority to act on behalf of the Board of Governors of the State Bar of California in between regular meetings, the Committee on Board Operations agrees to waive the conflict as described in the letter this date before the committee, and authorizes the General Counsel or her designee to execute any necessary documents.

54-113B **RESOLVED**, upon recommendation of the Board Committee on Operations, that the Board of Governors hereby delegates authority to the Executive Director or his or her designee to execute conflict of interest waivers.

- 54-114A **RESOLVED**, that the Board Committee on Operations, acting on behalf of the Board of Governors in between meetings, appoints Peter J. Arth to the Council on Access and Fairness, effective immediately, with a term to expire on September 13, 2009.
- 54-114B **RESOLVED**, that the Board Committee on Operations, acting on behalf of the Board of Governors in between meetings, appoints Gordon (Sam) Overton to the Council on Access and Fairness, effective September 30, 2007, with a term to expire on September 13, 2009, or until further order of the Board, whichever occurs earlier; and it is
- FURTHER RESOLVED**, that the Board Committee on Operations, acting on behalf of the Board between meetings, suspends the consideration of this appointment by the Committee on Volunteer Involvement.
- 54-121 **RESOLVED**, upon recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, that the Board of Governors hereby approves the Rules of Procedure for Fee Arbitrations by the Northern Santa Barbara County Bar Association in the form attached to these minutes and made a part hereof, as being in compliance with Business and Professions Code sections 6200-6206 and the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitrations.
- 65-122 **RESOLVED**, upon recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, that the Board of Governors hereby approves the Rules of Procedure for the Resolution of Fee Disputes (Arbitration and Mediation) by the Santa Monica Bar Association in the form attached to these minutes and made a part hereof, as being in compliance with Business and Professions Code sections 6200-6206 and the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitrations.
- 54-123 **RESOLVED**, upon recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, that the Board of Governors hereby approves the proposed revisions to the Rules of Procedure for the Hearing of Fee Arbitrations and Mediations by the Contra Costa County Bar Association in the form attached to these minutes and made a part hereof, as being in compliance with Business and Professions Code sections 6200-6206 and the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitrations.
- 54-131 There were no requests from members seeking adjustments to fee and/or penalties submitted to the Board for consideration at this meeting.
- 54-132 **RESOLVED**, following publication for comment and no comments having been received, and upon the recommendation of the Board Committee on Member Oversight, that the Board of Governors of the State Bar of California hereby amends paragraphs (A), (B), and (C) of Section 2, of the Rules Governing the Financial Assistance Plan of the State Bar of California Lawyer Assistance Program, in the form attached to these minutes and made a part hereof, and that the modifications be effective immediately.
- 54-133 **RESOLVED**, following publication for comment and no comments having been received, and upon the recommendation of the Board Committee on Member Oversight, that the Board of Governors of the State Bar of California hereby amends Section 3 of the Rules Governing the Financial Assistance Plan of the State Bar of California Lawyer Assistance Program, to read as set forth below, and that the modifications be effective immediately.

Rules Governing the Financial Assistance Plan of the State Bar of California Lawyer
Assistance Program

Section 3, C

The Committee will have the right by which to approve, deny, or condition any Application, and to determine the veracity of all statements therein. The Committee shall have discretion to determine the length of an approval for assistance. No less than sixty (60) days prior to the expiration of that approval, Applicants desiring an extension of the term of their approval for assistance shall submit a written request and justification along with updated tax returns or other similar income verification.

54-151 **RESOLVED**, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby extends the terms of the 2007 Commission on Judicial Nominees Evaluation through March 31, 2008, or until further order of the Board, whichever occurs earlier.

54-165 **RESOLVED**, that the Board of Governors officially receives and approves the public distribution of the Diversity Pipeline Model Program Self-Evaluation Guidelines in the form attached to these minutes and made a part hereof.

55 **RESOLVED** that the Board hereby confirms that the Board will meet in the library of the San Jose State University, San Jose, on Thursday-Friday, May 15-16, 2008, as set forth below; and it is

FURTHER RESOLVED that the Board hereby approves the date change of July 08 meeting from Thursday-Friday, July 17-18, to Thursday-Friday, July 10-11, 08, as set forth below; location remains unchanged, i.e., San Francisco.

November 8- 9, 2007	Thursday - Friday	Board Meeting	Los Angeles
January 10 - 12, 2008	Thursday - Saturday	Board Planning Meeting	Palm Springs
March 6 - 7, 2008	Thursday - Friday	Board Meeting	San Francisco
May 15 - 16, 2008	Thursday - Friday	Board Meeting	San Jose State University
July 10 - 11 17-18 , 2008	Thursday - Friday	Board Meeting	San Francisco
September 24, 2008	Wednesday	New Member Orientation	Monterey
September 25, 2008	Thursday	Bar Leaders Conference	Monterey
September 25 - 28, 2008	Thursday - Sunday	Annual Meeting	Monterey

115 Mr. Hawley, Deputy Executive Director, addressed the Board regarding the status of labor negotiations.

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

RESOLVED, upon recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, and following its emergency adoption in July 2007 and the expiration of a subsequent 90-day public comment period, that the Board hereby adopts rule 657 of the Rules of Procedure of The State Bar of California [Interim Procedure for Consideration and Transmittal of Resignations with Disciplinary Charges Pending], in the form attached to these minutes and made a part hereof.

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

125 This item requesting Board approval for filing with the Supreme Court the Report of the State Bar of California to the Supreme Court of California Regarding Nonprofit Entity Legal Practice in Response to the Supreme Court's Referral to the State Bar in Frye v. Tenderloin Housing Clinic, Inc (2006) 38 Cal. 4th 23, was withdrawn from the Board's agenda.

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

RESOLVED, upon recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, that the Board hereby confirms the decision of the Committee of Bar Examiners not to release bar examination applicant data to Professor Richard Sander's research group.

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

134 There was no Bank of America Affinity Agreement presented to the Board at this meeting.

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

RESOLVED, upon recommendation of the Board Planning, Program Development and Budget Committee, that the Board of Governors of the State Bar of California hereby approves the proposed charges and deadlines for unaccredited law schools, in the form attached to these minutes and made a part hereof, to be effective January 1, 2008.

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

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

RESOLVED that upon recommendation of the Board Committee on Planning, Program Development and Budget, the Board of Governors hereby sets the annual membership fee for inactive members at \$115 for 2008; and it is

FURTHER RESOLVED that the MCLE noncompliance fee be set at \$75 and the reinstatement fee to terminate MCLE inactive enrollment be set at \$200 for 2008.

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

161 There was no report from the Office of Government Affairs given at this meeting.

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

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

RESOLVED, upon recommendation of the Board Committee on Stakeholder Relations, that the Board of Governors hereby approves the following legislative proposals for inclusion in the 2008 Section and Committee Legislative Program: FL-2008-01; FL-2008-02; FL-2008-03; T&E-2008-04; T&E-2008-05; BLS-2008-06; BLS-2008-07; and BLS-2008-08.

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

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

RESOLVED, upon recommendation of the Board Committee on Stakeholder Relations, that the Board of Governors hereby authorizes a petition to the Supreme Court to rescind the Supreme Court Order pursuant to Statutes 1981, Chapter 789, and issue an interim order directing the State Bar to implement the comparability legislation.

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

The Board went into closed session at _____ p.m., and those persons present, except the senior executive staff, left the meeting.

The Board resumed open session at 4:40 p.m.

The appointments were considered in closed session by the Board and the action taken is reported below.

The closed consent appointment agenda was presented to the Board and no objection being raised thereto, all below consent appointments were deemed unanimously adopted.

6011 **RESOLVED**, upon the recommendation of the Board Committee on Volunteer Involvement, that the Board of Governors hereby reappoints the fee arbitrators whose names appear on the list attached hereto as Attachment A to the State Bar Fee Arbitration Department, each for a one-year term commencing January 1, 2008 and expiring December 31, 2008; and it is

FURTHER RESOLVED that the Board hereby appoints the applicants whose names appear on the list attached hereto as Attachment B to the State Bar Fee Arbitration Department, each for a term commencing November 12, 2007 and expiring December 31, 2008; and it is

FURTHER RESOLVED, that the Board hereby reappoints Arne Werchick, Palm Desert, Presiding Arbitrator, for a term effective January 1, 2008 and expiring December 31, 2008.

6012 **RESOLVED**, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints James S. Cochran, Los Angeles, member, Business Law Section Executive Committee, effective immediately, replacing Daniel J. Weiser, deceased, for the remaining portion of Mr. Weiser's term, expiring at the close of the 2009 State Bar Annual Meeting (i.e., September 13, 2009), or until further order of the Board, whichever occurs earlier.

- 6013 **RESOLVED**, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints Peter D. Rubin, Santa Rosa, member, Family Law Section Executive Committee, effective immediately, replacing Steven Bass, resigned, for the remaining portion of Mr. Bass's term, expiring at the close of the 2009 State Bar Annual Meeting (i.e., September 13, 2009), or until further order of the Board, whichever occurs earlier.
- 6014 **RESOLVED**, upon the recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints Dan L. Carroll, Sacramento, member, Committee on Professional Responsibility and Conduct, effective immediately, replacing Christine Burdick, resigned, for the remaining portion of Ms. Burdick's term expiring at the close of the 2008 State Bar Annual Meeting (i.e., September 28, 2008), or until further order of the Board, whichever occurs earlier.
- 6015 **RESOLVED**, upon the recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints William H. Bentley, Mill Valley, member, Legal Services Trust Fund Commission, effective immediately, for a term to expire at the close of the 2008 State Bar Annual Meeting (i.e., September 28, 2008), or until further order of the Board, whichever occurs earlier.
- 6016 **RESOLVED**, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints Michael Ueltzen, Sacramento, member, Taxation Law Advisory Commission, effective immediately, for a term expiring at the close of the 2010 State Bar Annual Meeting (i.e., September 26, 2010), or until further order of the Board, whichever occurs earlier.
- 6017 **RESOLVED**, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints Nancy J. Brown, Irvine, Vice Chair, Workers Compensation Law Advisory Commission, effective immediately, for a term expiring at the close of the 2008 State Bar Annual Meeting (i.e., September 28, 2008), or until further order of the Board, whichever occurs earlier.
- 6018 **RESOLVED**, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby appoints the Hon. Steven K. Austin, Pittsburg, and Joseph L. Chairez, Costa Mesa, Co-Chairs of the 2008 California Commission on Access to Justice, effective January 1, 2008, each for a term to expire December 31, 2008, or until further order of the Board, whichever occurs earlier.
- 6019-A **RESOLVED**, upon recommendation of the Board Committee on Volunteer Involvement, that the Board hereby reappoints Garrett O'Connor, Rancho Mirage, member, Lawyer Assistance Program Oversight Committee, for a term commencing January 1, 2008, and expiring December 31, 2011, or until further order of the Board, whichever occurs earlier; and it is
- FURTHER RESOLVED**, that the Board appoints Philip Belleville, Los Angeles, Chair, of said committee, for a term commencing January 1, 2008, and expiring December 31, 2008, or until further order of the Board, whichever occurs earlier.
- 6019-B **RESOLVED**, upon recommendation of the Board Committee on Volunteer Involvement, that the Board appoints or reappoints, as the case may be, the following, members, Board of Directors of the California Bar Foundation, each for a two-year term commencing January 1, 2008, and expiring December 31, 2009, or until further order of the Board, whichever occurs earlier:

Reappointment:

1. Bruce Hamilton, Redwood City
2. Diane Hutnyan, Los Angeles
3. Bruce Iwasaki, Los Angeles
4. Lindsay L. Lee, Oakland
5. Bradley S. Phillips, Los Angeles
6. Steven G. Tidrick, San Francisco
7. Theodore T. Ting, Oakland
8. Douglas A. Winthrop, San Francisco

New Appointment:

9. Peter Boutin, San Francisco
10. Martha Gooding, Irvine
11. Steven Kaufhold, San Francisco
12. Mark Parnes, Palo Alto
13. Paul Tepper, Los Angeles

The Board adjourned its meeting at 5:02 p.m., on Friday, November 9, 2007, to meet again at the call of the President at any time prior to the next regularly scheduled meeting of the Board, or, if no such meeting be called, at the State Bar Office, 180 Howard Street, San Francisco, CA 94105, on Friday, March 7, 2007.

**ATTACHMENTS
MINUTES
BOARD OF GOVERNORS MEETING
NOVEMBER 9, 2007**

- 54-112 **Rules Governing Open Meetings, Closed Sessions and Records of the Board Of Governors of The State Bar Of California, article 1, section 4, [Meeting, Definition]**
- 54-121 Rules of Procedure for Fee Arbitrations by the Northern Santa Barbara County Bar Association
- 54-122 Rules of Procedure for the Resolution of Fee Disputes (Arbitration and Mediation) by the Santa Monica Bar Association
- 54-123 Rules of Procedure for the Hearing of Fee Arbitrations and Mediations by the Contra Costa County Bar Association
- 54-132 Paragraphs (A), (B), and (C) of Section 2, of the Rules Governing the Financial Assistance Plan of the State Bar of California Lawyer Assistance Program.
- 54-133 Section 3 of the Rules Governing the Financial Assistance Plan of the State Bar of California Lawyer Assistance Program
- 54-164 Diversity Pipeline Model Program Self-Evaluation Guidelines
- 124 Rule 657 of the Rules of Procedure of The State Bar of California [Interim Procedure for Consideration and Transmittal of Resignations with Disciplinary Charges Pending
- 141 Charges and deadlines for unaccredited law schools, in the form attached to these minutes and made a part hereof, to be effective January 1, 2008.
- 6011 Fee arbitrators, reappts, ATTACHMENT A; new appts, ATTACHMENT B