

THE STATE BAR OF CALIFORNIA  
MINUTES  
BOARD OF GOVERNORS MEETING  
SAN FRANCISCO, CALIFORNIA  
SATURDAY, MARCH 6, 2010

The Board of Governors of The State Bar of California convened in open session in the Board Room of the State Bar offices at 1149 So. Hill Street, Los Angeles, California 90015 12:00 Noon on Saturday, March 6, 2010, Howard B. Miller presiding.

The following members of the Board of Governors were present: James H. Aguirre, Lowell Carruth, Laura N. Chick, Angela J. Davis, George O. Davis, Jeannine English, William H. Gailey, Clark E. Gehlbach, William N. Hebert, Rex Heinke, Cheryl L. Hicks, Patrick Kelly, Paul A. Kramer, Jr., Micha Liberty, Wells Lyman, Michael D. Marcus, Gwen Moore, Richard A. Rubin, Jon Streeter, Michael A. Tenenbaum, and Patricia P. White.

The following members of staff were present: Starr Babcock, Resty Buenavidez, Diane Curtis, Randy Difuntorum, Francisco Gomez, Robert A. Hawley, Judy Johnson, Gayle Murphy, Nancy McCarthy, Cathy Torney, Russell Weiner, Colin Wong, and Larry Yee.

Also present: Jennifer Wada, the Bar's outside legislative consultant

Members of the Board of Governors, who attended at the Board Operations Committee meeting in anticipation of the Board meeting which was to follow, voted in the interest of time to end the remainder of the Board Operations Committee meeting and go directly into the Board meeting.

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 regular meeting of the Board of Governors held on Saturday, January 9, 2010, in Los Angeles, California, hereby are approved as written.

- 30 Mr. Miller, President reported that the election of the State Bar President will take place on Saturday, July 24 at 2:00 p.m. Candidates will be announced at the May 2010 meeting of the Board of Governors.
- 41/42 Ms. Johnson, Executive Director advised that she would distribute to all of the eligible candidates the procedures Governing the Election of the 86th President of the State Bar.
- 50 All items on the consent agenda were presented to the Board, and no objection being raised thereto, the following items on the consent agenda were deemed unanimously adopted.
- 51, 52, 53 Items: 51 - Financial Statement for Quarter Ended December 31, 2009; 52 - Investment Report for Quarter Ended December 31, 2009; and 53 Client Security Fund Report for Quarter Ended December 31, 2009, were withdrawn.
- 54-151 RESOLVED, upon recommendation of the Board Member Involvement, Relations and Services Committee, that the Board hereby extends the terms of the 2009 Commission on Judicial Nominees Evaluation through April 3, 2010, or until further order of the Board, whichever occurs earlier.
- 54-152 RESOLVED, that the Board of Governors receives the report and thanks staff for its submission of the Lawyer Assistance Program 2009 Annual Report, in the form attached to these minutes and made a part hereof.
- 54-161 WHEREAS mediation is a dispute resolution process in which a neutral third person facilitates communication between the parties to a dispute to help them reach a mutually acceptable agreement;
- WHEREAS for decades, California community dispute resolution organizations have used mediation to resolve countless disputes and have been instrumental in the development and operation of mediation programs;
- WHEREAS during the past several decades, California trial and appellate courts have increasingly encouraged, offered, and provided mediation to assist litigants in resolving a broad array of disputes filed with the courts, including civil, family, juvenile, and criminal matters;
- WHEREAS mediation offers many potential benefits to litigants, the courts, and the public, including increasing participants' satisfaction with the dispute resolution process and outcome, while reducing court filings, pretrial motions and trials, the time from the filing of an action to disposition, court workloads, litigants' costs, future disputes between the parties, and recidivism;
- WHEREAS the availability and success of court mediation programs are largely attributable to the efforts of judicial officers, court staff, and justice partners, including community dispute resolution organizations, local government agencies, state and local bar associations, mediation organizations, and individual mediators, many of whom contribute significant time and resources toward conducting mediations;

WHEREAS widespread public awareness of the nature, availability, and benefits of mediation and court mediation programs is important to ensuring the use of these programs and access to justice; and

WHEREAS the Governor and other California state and local officials and agencies have traditionally recognized the third week of March as Mediation Week;

NOW, THEREFORE, BE IT RESOLVED that the Board of Governors of the State Bar of California recognizes the third week of every March as Mediation Week, commends the efforts of the individuals and organizations that make mediation and mediation programs available to the citizens of California, and encourages local bar associations to recognize those individuals and organizations, and publicize local mediation programs during Mediation Week.

111 This item was withdrawn from the agenda.

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

RESOLVED, that upon recommendation of the Board of Governors Operations Committee, the Board of Governors authorizes staff to renew the agreement between the State Bar of California and The W Group Strategic Public Affairs, LLC, as successor to Wada Williams Law Group, LLP for Government Affairs advocacy representation through December 31, 2010; and it is

FURTHER RESOLVED that the terms of the agreement remain unchanged with the exception that services to the State Bar Sections may be performed by a subcontractor and charges for services rendered to the Sections may be renegotiated with the Sections; and it is

FURTHER RESOLVED that the contract amount for which the State Bar's Board of Governors is liable, as opposed to the Sections, shall remain unchanged from the initial contract that is being renewed; and it is

FURTHER RESOLVED that the necessary amendments to the contract be effectuate by the Office of General Counsel.

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

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

RESOLVED, that the Board Committee on Operations recommends that the Board of Governors:

Support in principle, AB 2485 (Feuer), which would increase the fee for filing in the superior court an application to appear as counsel pro hac vice from \$250 to \$500 and support in principle, increased revenue for court funding.

Oppose AB 2649 (Torricono), ABX8 8 (Committee on Budget), and SBX8 8 (Committee on Budget), which would authorize the suspension of professional and occupational licenses, including attorneys, for failure to pay state taxes, unless amended to exclude attorneys from the bill's provisions or conform the process to that used in section 17520 of the Family Code (process for child support).

Support AB 2764 (Committee on Judiciary), which would amend the State Bar Act as it relates to attorney fees.

Support AB 2766 (Committee on Judiciary), which would make a technical correction to the definition of "eligible institution" as defined in section 6213 of the Business & Professions Code related to IOLTA accounts.

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

- 114 The below reports of action were presented to the Board; these actions were taken by the Board Committee on Operations, on behalf of the Board, between regularly scheduled meetings of the Board.

RESOLVED, that the Board Committee on Operations, acting on behalf of the Board of Governors between meetings, hereby approves the following legislative proposals for inclusion in the 2010 Section and Committee Legislative Program: BLS-2010-02, BLS-2010-03, BLS-2010-04, BLS-2010-05, T&E-2010-06, T&E-2010-07, T&E-2010-08, T&E-2010-09, T&E-2010-10, CAJ-2010-11, CAJ-2010-12.

The above is a report of action taken by the Board Committee on Operations via conference call on January 26, 2010, on behalf of the Board between regularly scheduled Board meetings. All members, except Ms. English, Mr. Gailey and Mr. Rubin, were present. All members present voted yes.

- 115 Proposed Amendments to 2010 Schedule of Charges and Deadlines

RESOLVED, that the Board Committee on Operations, acting on behalf of the Board of Governors in between regular meetings, hereby approves that under State Bar Rules 2.13 and 2.71, respectively, the 2010 dates for the attachment of (1) the late payment penalties of the annual membership fees and (2) the MCLE noncompliance fee are hereby extended to March 30, 2010; and it is

FURTHER RESOLVED, that under State Bar Rule 2.15, the deadline for requesting scaling of the 2010 active membership fee is extended to March 30, 2010; and it is

FURTHER RESOLVED, that the State Bar's fees and schedule of charges and deadlines for 2010 is amended in the form attached hereto.

The above is a report of action taken by the Board Committee on Operations via e-mail poll on February 17, 2010, on behalf of the Board between regularly scheduled Board meetings. All members except Mr. Gailey, responded to the poll, and all members responding, voted yes.

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

RESOLVED, upon the recommendation of the Discipline Oversight Committee, that the Board of Governors hereby approves the proposed revisions to the State bar Model Rules of Procedure for Fee Arbitrations, in the form attached hereto as Attachment A; and it is

FURTHER RESOLVED, that upon recommendation of the Discipline Oversight Committee, the Board of Governors hereby provide that amendments by local bar associations to their local fee arbitration rules and procedure that conform with the Model Rule revisions approved here are deemed approved by the Board and its designee (DOC) upon the filing with the Director of the State Bar's Office of Mandatory Fee Arbitration such amendments.

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

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

RESOLVED, upon recommendation of the Discipline Oversight Committee, that the Board of Governors hereby approves the proposed revisions to the Sample Written Fee Agreement forms, in the form attached hereto as Attachment A.

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

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

RESOLVED, following publication for comment and consideration of comments received, that the Board of Governors of the State Bar of California hereby adopts the proposed new and amended Rules of Professional Conduct of the State Bar of California, in the form attached to these minutes and made a part hereof, and hereby directs that said rules be transmitted by staff to the Supreme Court with a request that the rules be approved by the Court; and it is

FURTHER RESOLVED, that the Board's adoption of the proposed rules is subject to consideration of possible revisions following a comprehensive public comment distribution of the entire body of proposed rules.

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

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

RESOLVED, that the Board of Governors authorizes staff to make available for public comment for a period of 90-days, the proposed new or amended Rules of Professional Conduct prepared by the Special Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that the Board of Governors authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

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

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

RESOLVED, following publication for comment and review of the one comment that was received, and upon recommendation of the Board Committee on Regulation and Admissions, that the Board of Governors of The State Bar of California hereby adopts the proposed Rules of the State Bar of California, Title 3 – Programs and Services, Individuals not Members of State Bar regarding the State Bar programs for the practical training of law students, out-of-state arbitration attorneys, foreign legal consultants, registered legal services attorneys, and registered in-house counsel, which will replace the current State Bar rules for these programs, in the form attached hereto, to be effective July 1, 2010.

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

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 hereby adopt appropriations to the 2010 State Bar budget whereby a capital improvements budget is established in the amount of \$2,230,000 in the 180 Howard Street Building Fund and an amount of \$1,230,000 is transferred from General Fund beginning fund balance, which, when combined with the \$1,000,000 in available cash in the Building Fund, will provide the funding necessary to complete the facility improvements. This budget appropriation will be carried forward until such projects are complete.

FURTHER RESOLVED upon recommendation of the Board Planning, Program development and Budget Committee that the Board of Governors hereby adopt an amendment to the 2010 budget whereby four positions originally budgeted in the Trial Unit in San Francisco and one position budgeted in the Investigative unit be reclassified to the proper cost centers. This action will reduce the Trial Unit SF budget by \$370,776 and increase the Investigation SF budget by an equal amount This action results in no increase in the 2010 budget.

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 the State Bar's contracting policy is amended as follows:

No contracts for consulting services, capital equipment, or technology purchases exceeding \$75,000 may be entered into, by or on behalf of the State Bar unless authorized by the Board of Governors. Any future amendments to a contract originally below the \$75,000 threshold that will result in bringing the total contracted amount to this level will also require Board approval.

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.

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

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

RESOLVED, following publication for comment and consideration of comments received, and upon recommendation of the Board Committee on Member Involvement, Relations and Services, that the Board of Governors of the State Bar of California hereby adopt, in the form attached, the proposed rules for law corporations as Division 2, Chapter 2 of Title 3 of the Rules of the State Bar and repeal the Law Corporation Rules of the State Bar of California, and direct that the proposed new rules be transmitted by staff to the Supreme Court with a request that the new rules be approved and the current rules repealed by the Court.

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

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

RESOLVED, that upon the recommendation of Board Committee on Member Involvement, Relations and Services, the Board of Governors of the State Bar of California adopts, in the form attached, the proposed rules for limited liability partnership as Division 2, Chapter 3 of Title 3 of the Rules of the State Bar, Programs and Services, to be effective August 1, 2010 and repeals on that date the current Limited Liability Partnership Rules and Regulations of The State Bar of California.

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

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

**RESOLVED**, that upon the recommendation of the Board Committee on Member Involvement Relations and Services, the Board hereby denies the Emergency Petition of member Richard Coleman.

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

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

RESOLVED, upon recommendation of the Board Committee on Legal Services, Pro Bono & Equal Access, that the Board hereby approves that the distribution of IOLTA grants from the Legal Services Trust Fund Program for the grant period July 1, 2010 through June 30, 2011 shall be made in the order and manner provided by Business and Professions Code Section 6216, and the funds to be distributed shall be \$11,873,143 calculated as follows:

1. The amount projected to be received by the Legal Services Trust Fund Program from March 2010 through February 2011, totaling \$5 million, shall be allocated for the grant period July 1, 2010 through June 30, 2011.

2. Funds from the reserve in the amount of \$7,443,143 shall be allocated for the grant period July 1, 2010 through June 30, 2011.
3. Donations to the Justice Gap Fund in the amount of \$750,000 shall be allocated for the grant period July 1, 2010 through June 30, 2011.
4. Other revenue, including investment income and reimbursement for expenses for reimbursement of the Equal Access Fund in the amount of \$280,000.
5. Actual administrative costs, projected at \$1,600,000 for the period July 1, 2010 through June 30, 2011, shall be deducted.

FURTHER RESOLVED that grant payments are to be made from funds received pursuant to California Business and Professions Code, Sections 6212 et seq. and Section 6033, and that payment of grants is contingent upon the State Bar having sufficient money on hand from such sources to make the scheduled payments; and it is

FURTHER RESOLVED that the Legal Services Trust Fund Program is directed to monitor program revenue during the grant year, and to recommend changes to the grant amount, if necessitated by significant variances between projected and actual revenue.

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

701 Attached for ratification, are the revised Committee and Section Liaison Assignments for the 2009-2010 Board Year, which reflect a change in assignment for the Group Insurance Committees from Jeannine English to Patrick Kelly.

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

The Board went into closed session at 12:15 p.m., and those other persons present, including senior executive staff left the meeting.

The Board resumed open session at 12:20 p.m.

6010 The closed consent appointments agenda was presented to the Board, and no objection being raised thereto, the following items on the consent appointments agenda were deemed unanimously approved.

6011 RESOLVED, upon recommendation of the Board Committee on Member Involvement Relations and Services, that the Board appoint Natalie Bocanegra, Los Angeles, member, Committee on Professional Responsibility and Conduct, effective immediately, replacing Jeffrey Tidus, Los Angeles, deceased, for the remaining portion of Mr. Tidus's term, i.e., September 18, 2011, or until further order of the Board, whichever occurs earlier.

6012

RESOLVED, upon recommendation of the Fee Arbitration Department, that the Board Committee on Member Involvement, Relations and Services recommends that the Board of Governors appoint the following candidates to the State Bar Fee Arbitration Department, each for a term commencing March 8, 2010, and expiring December 31, 2010, or until further order of the Board, whichever occurs earlier:

Name	County	Bar Number or Layperson
Grier, John C.	San Diego	85987
Kohan, Arezou	Los Angeles	187779
Laeuchli, Urs	Santa Clara	201171
O'Brien, William J. Jr.	San Diego	98547
Sacks, Adam Michael	Los Angeles	227408
Watson, Stephen W.	Sacramento	Layperson

6021

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board Committee on Member Involvement, Relations and Services recommends that the Board of Governors appoint or reappoint, as the case may be, the following, State Bar delegates, American Bar Association (ABA) House of Delegates, contingent upon appointees being of good standing with the ABA, effective upon the conclusion of the 2010 ABA Annual Meeting (i.e., August 10, 2010) and expiring at the conclusion of the 2012 ABA Annual Meeting, or until further order of the Board, whichever occurs earlier:

Nancy de Ita, San Mateo  
Ernestine Forrest, Compton  
Steven K. Hazen, Los Angeles  
Diane L. Karpman, Beverly Hills  
Alyssa McCorkle, San Diego  
John Uilkema, San Francisco

and it is

FURTHER RESOLVED, that the board committee recommends that the Board appoint , Anthony Barash, Qiang Bjornbak, and Emilio E. Varanini to serve as alternate(s) to its delegation to the ABA House of Delegates, contingent upon the alternates being of good standing with the ABA, effective upon conclusion of the 2010 ABA Annual Meeting (i.e., August 10, 2010) and expiring at the conclusion of the 2011 ABA Annual Meeting, or until further order of the Board, whichever occurs earlier:

Anthony Barash, Chicago, first Alternate  
Qiang Bjornbak, Los Angeles, second alternate  
Emilio E. Varanini, San Francisco, third alternate

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

6022 Item deferred to the May meeting.

6023 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board of Legal Specialization, the Board Committee on Member Involvement Relations and Services recommends that the Board of Governors appoint Gary M. Kaplan, San Francisco, member, Bankruptcy Law Advisory Commission, effective immediately, replacing Stephen R. Wade, Upland, resigned, for the remaining portion of Mr. Wade's term, i.e., September 26, 2010, or until further order of the Board, whichever occurs earlier.

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

The Board may meet again at the call of the President at any time prior to the next regularly scheduled meeting of the Board, or, if no such meeting be called, at the State Bar offices, 180 Howard Street, San Francisco, CA 94105, on Saturday, May 15, 2010, at a time to be determined.