

STATE BAR OF CALIFORNIA

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Protection of the public shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interest sought to be promoted, the protection of the public shall be paramount.

— Business and Professions Code § 6001.1

The State Bar of California was created by legislative act in 1927 and codified in the California Constitution at Article VI, section 9. The State Bar was established as a public corporation within the judicial branch of government, and licenses all attorneys practicing law in California. The Bar enforces the State Bar Act, Business and Professions Code section 6000 *et seq.*, and the Rules of Professional Conduct.

The Bar's attorney discipline system includes a toll-free complaint line and in-house professional investigators and prosecutors housed in the Office of the Chief Trial Counsel (OCTC). The California Bar's attorney discipline system also includes the nation's first full-time professional attorney discipline court which neither consists of, nor is controlled by, practicing lawyers. The State Bar Court consists of the Hearing Department (which includes five full-time judges who preside over individual disciplinary hearings) and a three-member Review Department which reviews appeals from hearing judge decisions. State Bar Court decisions must be appealed to the Supreme Court, and its review is discretionary. The Bar may impose a wide range of potential sanctions against violators of the State Bar Act or the Rules of Professional Conduct; penalties can range

from private reproof to disbarment, and may include “involuntary inactive enrollment” (interim suspension) under Business and Professions Code section 6007. In connection with its discipline system, the Bar operates two client assistance programs: its [Client Security Fund](#), which attempts to compensate clients who are victims of attorney theft; and its [Mandatory Fee Arbitration Program](#), which arbitrates fee disputes between attorneys and their clients in an informal, out-of-court setting.

Effective January 1, 2018, the passage of [SB 36 \(Jackson\) \(Chapter 422, Statutes of 2017\)](#), which eliminates the elected attorney positions on the Board of Trustees, will be implemented once the current elected members complete their terms. The Board will thereafter consist of 13 members: five attorneys appointed by the California Supreme Court, two attorneys appointed by the legislature (one appointed by the Senate Committee on Rules and one by the Speaker of the Assembly), and six public, non-attorney members, four of whom will be appointed by the Governor, one appointed by the Senate Rules Committee, and one appointed by the Assembly Speaker. Trustees will serve four year terms.

January 1, 2018, also marked a historic organizational shift for the State Bar—also mandated by SB 36—in which the Bar “deunified” its trade association function from its regulatory function. [\[23:1 CRLR 157\]](#) The 16 State Bar Sections and the California Young Lawyers Association separated from the Bar and formed a new, private, nonprofit entity called the California Lawyers Association (CLA).

On January 24, 2018, Senate President Pro Tempore Kevin de León [announced](#) two appointments to the Board of Trustees: of Joshua Pertulla of Los Angeles as an attorney member of the board, and Debbie Manning of Sacramento as a public member of the Board.

Mr. Pertulla is a practicing attorney and Ms. Manning is the retired Sergeant at Arms for the California Senate.

On January 17, 2018 the Supreme Court [appointed](#) Michael Colantuono as chair, and Jason Lee as vice chair, of the Board of Trustees. The term commenced the same day, and will end after the State Bar annual meeting in 2018.

MAJOR PROJECTS

Supreme Court Declines to Adjust Cut Score on Bar Exam as Studies Continue

On October 18, 2017, the Supreme Court issued a [letter](#) declining to adjust the cut score for the California Bar Examination. The letter is the culmination of a months-long effort by the Bar, at the Court’s February 2017 [direction](#), to study the causes behind the declining bar pass rates in California. [[23:1 CRLR 158-161](#)] In a September 12, 2017 [report](#) to the Supreme Court, the Bar summarized its studies and findings and presented three options for the Court to consider in altering the cut score. Ultimately, the Court, while acknowledging that California’s current cut score (also referred to as the “pass score”) is the second highest in the nation, and that that the score was not established through a psychometric standard setting study, it was “not persuaded that the relevant information and data developed at this time weigh in favor of departing from the longstanding pass score of 1440.” The Court went on to state that the Bar’s ongoing study and analyses of the Bar Exam may warrant modification of the score upon completion.

The Court also encouraged the State Bar and all California law schools to “work cooperatively together with others in examining 1) whether student metrics law school curricula and teaching techniques, and other factors might account for the recent decline in

bar exam pass rates; (2) how such data might inform efforts to improve academic instruction for the benefit of law students preparing for licensure and practice; and (3) whether and to what extent changes implemented for the first time during administration of the July 2017 exam—that is, adoption of a two-day exam and equal weighting of the written and multiple choice portions of the exam—might bear on possible adjustment of the pass score.” The Supreme Court based part of its decision on needing more information concerning ongoing studies, information from law schools about admittance practices, and the impact the two-day bar will have on the passage rate as compared to the three-day exam used in the past.

Shortly thereafter, on October 25, 2017, the State Bar released the [results](#) of the Content Validation Study on the California Bar Exam. In June of 2017, Chad Buckendahl, Ph.D., who also conducted the [Standard Setting Study](#) for the California Bar Exam, released July 28, 2017, conducted the Content Validation Study on the California Bar Exam. Overall, Dr. Buckendahl found the current version of the Bar exam measured important knowledge, skills, and abilities consistent with expectations of entry level attorneys on a national level. Dr. Buckendahl suggested, however, that in order to further evaluate the exam, the Bar should conduct a California-specific job analysis as to the knowledge, skills, and abilities requisite of a minimally competent, entry level attorney, and let that analysis help form the measurement of expectation required through the California Bar Exam.

On December 18, 2017, representatives from the Board of Trustees and Committee of Bar Examiners held a conference call to discuss planning for the 2018 California Attorney Job Analysis study recommended by Dr. Buckendahl. On April 13, 2018, the

State Bar [released](#) a request for information for vendor services to conduct an attorney job analysis study with proposals due by April 30, 2018.

July 2017 Bar Exam Results

On November 17, 2017, the Bar [announced](#) the results of the July 2017 Bar Exam—the first administration of the exam with the new two-day format. The overall pass-rate was 49.6%, up from 43% in July of 2016. In total, 4,236 people passed the Bar Exam out of the 8,545 applicants that completed the exam. 70% of first time takers from California law schools accredited by the American Bar Association (ABA) passed, while 37% of California ABA repeaters passed the exam. 33% of first time takers from California accredited schools passed, with 19% of repeaters from these schools passed.

State Bar Submits Series of Statutorily-Mandated Reports to Supreme Court and Legislature

◆ *Annual Budget*

On February 15, 2018, pursuant to section 6140.1 of the Business and Professions Code, the State Bar submitted its [2018 Proposed Final Budget](#) to the legislature. The expenditures totaled \$85.2 million, up 7 percent from the 2017 budget. The report also highlighted the financial pressures the Bar faced as it split itself off from its former affinity and insurance programs. Of note, the Bar pointed out that it has not increased licensing fees for twenty years, putting the Bar in a disadvantaged position because of its inability to keep up with inflation, reformed agendas, improved discipline systems, and investments in IT and capital infrastructure.

In compliance with [SB 36 \(Jackson\) \(Chapter 422, Statutes of 2017\)](#), effective January 1, 2018, the Bar submitted the following reports to the legislature and the Supreme Court on March 15, 2018:

◆ *Bar Exam Evaluation*

On December 1, 2017, the Bar submitted its [Final Report on the 2017 California Bar Exam Studies](#) to the Chief Justice of the Supreme Court of California, and on March 15, 2018, submitted a similar [report](#) to the legislature. Section 6046.8 of the Business and Professions Code directs the Board of Trustees to “oversee an evaluation of the bar examination to determine if it properly tests for minimally needed competence for entry-level attorneys and . . . make a determination, supported by findings, whether to adjust the examination or the passing score based on the evaluation.” The statute required the Bar to submit a report to the legislature and the Supreme Court by March 15, 2018, and at least every seven years going forward. California Rule of Court 9.6(b), adopted by the Supreme Court in July 2017, similarly requires regular review and evaluation of the Bar Exam. [\[23:1 CRLR 170\]](#) Both submissions summarize the results of the Bar’s three completed Bar Exam studies in 2017, advise that the California-specific occupational analysis will be moving forward, and report that the fourth study, the *Law School Bar Exam Performance Study*, is expected to be complete in June 2018, and that the Bar would update stakeholders with a report on the results of that study shortly thereafter.

In a cover letter to the legislature dated March 15, 2018, the Bar’s Executive Director, Leah Wilson, informed the legislature that the Bar’s Final report submitted December 1, 2017 to the Court, attached to the letter, would serve as the State Bar’s vehicle for compliance with section 6046.8 for 2018. Wilson closed the letter by stating that “the

State Bar is committed to exercising its licensing function in accordance with best practices in alignment with its mission to both protect the public and promote access to justice.”

◆ *Client Security Fund*

Pursuant to section 6140.56 of the Business and Professions Code, the Bar submitted its [2018 Client Security Fund Report](#) to the legislature on March 15, 2018. The Client Security Fund (CSF) reimburses victims of attorney misconduct for financial losses they have suffered.

The report provides an overview of the structure and operation of the CSF, projects that approximately \$23.4 million in currently-pending claims will be paid out and that the fund’s ongoing shortfall exceeds annual funding by approximately \$1.8 million; and identifies a number of initiatives that would provide additional resources to the CSF, including: reducing the minimum reserve amount for the CSF; transferring surplus Lawyer Assistance Program funds to the CSF; requiring certain categories of out-of-state attorneys who practice in California to pay the CSF assessment; increasing collections through the implementation of additional assessments on attorneys who are disciplined; requesting voluntary contributions to CSF; and eliminating the fee reduction that lower-income attorneys are currently granted for the CSF assessment. The report also identifies a one-time additional funding need of between \$5 and \$107 per license attorney and an ongoing assessment increase of \$10 per active licensed attorney.

The Board reviewed and discussed the report during its March 9, 2018 [meeting](#).

◆ *Fingerprinting*

Pursuant to section 6054(e) of the Business and Professions Code, the Bar submitted its [2018 Report RE Fingerprinting](#) to the legislature and the Supreme Court on

March 15, 2018. As amended, section 6054 authorizes the Bar to require the fingerprinting of licensed, active attorneys for the purpose of receiving Subsequent Arrest Notification (SAN) services from the California Department of Justice. The report summarizes the Bar's efforts, at the direction of the Board of Trustees, to develop the operational processes necessary for receiving, evaluation, and (where appropriate) destroying criminal arrest information received from DOJ.

Specifically, the Bar reported that it has: entered into a contracts with DOJ to begin receiving SAN services for Bar applicants and licensed attorneys; developed informational technology systems to allow for the secure transfer of data between the Bar and the DOJ; developed protocols for the internal review of criminal history information; developed an implementation plan for requiring the fingerprinting of all licensed, active attorneys by December 1, 2019; and submitted a proposed rule to the California Supreme Court codifying the fingerprinting requirements. [*see RULEMAKING*]

Board Forms Malpractice Insurance Working Group

Pursuant to newly-added section 6069.5 of the Business and Professions Code, effective January 1, 2018, the legislature directed the Bar, by March 31, 2019, to conduct a review and study regarding errors and omissions insurance for attorneys licensed in California, including the availability of insurance; measures for encouraging attorneys to obtain insurance; recommended ranges of insurance limits; the adequacy of the disclosure rule regarding insurance; and the advisability of mandating insurance for licensed attorneys.

At its December 1, 2017, meeting, the Board authorized the formation of a Malpractice Insurance Working Group (MIWG) to undertake the review and study mandated by the legislature; appointed Randall Miller to chair the MIWG; and directed staff to work with Mr. Miller, subject to the approval of the Chair and Vice-Chair of the Regulation and Discipline Committee, MIWG's charter, criteria for group membership to ensure a broad range of interests are represented, and, in consultation with the Supreme Court, the legislature, and other relevant stakeholders, recommendations for members of the working group by the Board at its January 2018 meeting.

Special Master Justice Lui Releases Surplus Funds, Recommends Fee Increase to Support Discipline System

On January 10, 2018, Associate Justice Lui issued a [report](#) releasing the remaining balance of the Special Master's Fund of \$3.5 million in response to a letter from the Bar's Interim Chief Financial Officer requesting the release of the funds to support the attorney discipline system in 2018. Justice Lui reported that the Bar requested the additional funds in light of a projected \$5.5 million deficit for 2018, including a projected \$3.5 million loss in indirect cost allocations attributable to the separation of the State Bar Sections, additional staffing needed to support implementation of the active attorney fingerprinting rule; the implementation of a new case management system to support OCTC, the State Bar Court, and the Bar's probation office; and an estimated \$1.5 million in investments needed for the continued expansion of OCTC.

On March 12, 2018, Justice Lui issued his final [report](#) as Special Master, summarizing the results of the fourth quarter of 2017 in compliance with Rule 9.9 of the

California Rules of Court, and concluding with a series of observations and recommendations concerning “the serious financial challenges that [he] believe[s] the State Bar’s attorney discipline system is likely to face I the coming year and beyond.” Specifically, the Special Master projected that the Bar will have to dip into its general fund reserves to address an anticipated \$9 million general fund deficit in 2018. He also noted that annual licensing fees have remained the same for over twenty years while other sources of revenue have dissipated, and costs of maintaining the attorney discipline system continue to rise.

Thus, he recommended that “the Legislature, the Court, and the State Bar work closely together in the coming months to consider and agree on a reasonable increase in mandatory fees for State Bar members.” He also harkened back to a recommendation he made as Special Master in 2000 and once again recommended that “all stakeholders take up the issue of a multi-year funding bill,” and cited as support a [2015 audit](#) which concluded that “a yearly funding cycle significantly impedes the State Bar from engaging in the type of long-term financial and strategic planning needed to address its public protection mission and saps the agency of precious staff time and resources that may be better dedicated to those efforts.” At this writing, the Bar’s annual funding bill, AB 3429 (Assembly Judiciary Committee) does not include the Special Master’s recommendations. [see *LEGISLATION*]

Chief Trial Counsel Reforms Complaint Prioritization, Awaits Confirmation

On November 2, 2017, Chief Trial Counsel Steven Moawad [presented](#) to the Board a series of reforms he has been instituting at the OCTC after conducting a series of interviews with investigators. Specifically, the office instituted an “expeditor experiment” as well as a case prioritization system to increase efficiency in identifying and investigating the most egregious cases, as well as reduce the backlog of cases. Moawad additionally updated the Board on statistics and information regarding OCTC’s non-attorney Unauthorized Practice of Law (UPL) matters and collaborations with local law enforcement.

On March 9, 2018, Moawad provided additional [updates](#) to the Board of Trustees as to the progress of the initiatives, and the Regulation and Discipline Committee (RAD) and the full Board voted to authorize OCTC to proceed with the implementation of a case prioritization system that applies different processes to different categories of cases so that resources can be devoted to those cases that present the greatest risk to the public. OCTC will provide regular reports to RAD on the progress and performance of the case prioritization system. The Board also adopted a resolution in support of Moawad as Chief Trial Counsel; at this writing, he is still awaiting confirmation from the California State Senate.

California Bar Resolves Union Issues and Prevents Prolonged Strike by Staff

In January 2018, the Bar reached an agreement for new a Memoranda of Understanding with the Bar's labor union, Services Employees International Union (SEIU) Local 1000, after a prolonged battle involving wages at the Bar. [[23:1 CRLR 167-168](#)]. The MOU implements the [classification](#) and [compensation](#) structure recommended by two legislatively-mandated studies in 2016, and reflected a transition to a 40-hour work week for all staff. Generally, with respect to compensation, new salary ranges were put into effect for all employees; those staff with current salaries above the newly adopted ranges did not receive salary reductions but were essentially capped where they were.

Access to Justice

At its annual strategic planning meeting on January 26, 2018, the Board focused its efforts on addressing the issue of access to justice. Various panelists presented to the Board throughout the day, noting the attorney shortage problems in rural California, with some counties having as little as one attorney in private practice, making it very difficult for residents in these counties to seek and obtain legal services. Panelists also noted that extremely high law school debt contributes to the lack of attorneys in rural California, because most attorneys cannot afford to repay their law school loans while working in rural communities rather than in large firms in urban areas. The Board discussed several ideas for addressing this issue in the coming year including loan repayment assistance programs, fellowships for rural attorneys, and federal loan forgiveness and stipends.

At its February 16, 2018 [meeting](#), the Board voted to approve [modifications](#) to the 2017–2022 Strategic Plan to reflect the access to justice initiatives discussed at the January

meeting. Of note, the Board amended its admissions objectives to review special admissions rules “with an access to justice lens” to determine whether changes are needed; and to seek finding to support the Bar’s Unauthorized Practice of Law. It also added a series of objectives to Strategic Plan Goal 4 to “[s]upport access to justice for all California residents and improvements to the state’s justice system.” Of note, the Board plans to review the Lawyer Referral Service certification rules and the Rules of Professional Conduct with an eye towards how they impact access to justice and how they can be revised to support access through technology; establish a task force to consider adoption of Limited License Legal Technicians (LLLT) program reflecting lessons learned from other states with similar programs; study the rising costs of law school, corresponding bar passage rates, and ability to obtain employment after becoming licensee by 2019; undertake a California specific examination of loan forgiveness options, including attorneys who practice in a rural areas; and conduct a California-specific justice gap study and continue to spotlight the need to make changes to support increased access to justice.

Governance in the Public Interest Task Force

On November 3, 2017, the Board voted to direct the Programs Committee, RAD, and assigned Board Committee Coordinators and other responsible staff, to complete the sub-entity review pursuant to Appendix I of the [2017 Report of the Governance in the Public Interest Task Force](#) by August 31, 2018. This review is intended to assess whether the structure of the sub-entities aligns with the Board’s recently—adopted mission statement and public protection mission, as well as to evaluate whether appropriate oversight mechanisms are in place.

Bar Actions to Implement Deunification Process

At its December 1, 2017 meeting, the Board took action on several items to transition the Bar's trade association activities to private entities. First, the Board voted to approve the transfer of the administration of the Bar's affinity and insurance programs from the State Bar to a subsidiary of the California Bar Foundation, and authorized staff to enter into a [Memorandum of Understanding](#) with the California Bar Foundation governing the administration of such programs. Second, the Board voted to dissolve Bar's Professional Liability Insurance Committee, which was formed in 1990 to verse the State Bar Approved Professional Liability Insurance Program. Given that these programs will no longer be administered by the State Bar, the responsibility for administration of the State Bar's Professional Liability Insurance Program now rests with the California Bar Foundation.

The Board also approved two [agreements](#) with the California Lawyer's Association (CLA), detailing the terms of separation of the Sections from the State Bar and establishing a framework for future collection of CLA membership dues by the Bar. First, a Memorandum of Understanding memorializes the Bar's statutory obligations to transfer to CLA the Sections' financial reserves, intellectual property, and contracts entered into by the Bar on behalf of the Sections. The Board also approved an employee leasing agreement allowing Bar employees to support CLA during a six-month to one-year transition period.

Extension of Commission for the Revisions of the Rules of Professional Conduct

At its February 16, 2018 meeting, the Board unanimously voted to approve the extension of the Commission for the Revision of the Rules of Professional Conduct and the terms of its officers and members until June 30, 2018, or when terminated by the Board,

whichever is earliest. The Commission was set to terminate on March 9, 2018 and is responsible for reviewing any substantive questions, or requests for further action received from the Supreme Court, concerning the proposed rules and providing recommendations for a State Bar response. The Board approved an extension of the Commission in case any questions arose regarding the proposed new and amended rules currently pending in the Supreme Court.

Board of Trustees Submits Proposed Amendments to Law School Regulation Statutes and Rules Regarding Law School Accreditation to Supreme Court

At its November 3, 2017 meeting, the Board of Trustees considered and approved a series of [proposals](#) recommended by the Programs Committee and the Committee of Bar Examiners (CBE) regarding potential amendments to the Law School Regulation statutes and rules regarding the mandatory accreditation of law schools. Among several other changes, the proposed amendments would mandate that all unaccredited law schools become accredited over a set period of time and permit the accreditation of online law schools. CBE has been studying these issues since 2013, and the Board authorized CBE to circulate its package of proposed amendments for a 45-day public comment period ending September 15, 2017. No public comments were received.

Following discussion, the Board unanimously approved in principle CBE's proposed amendments to sections 6046.7, 6060, and 6060.7 of the California Business and Professions Code, Rule 9.30 of the California Rules of Court; the Accredited Law School Rules; directed staff to submit the proposal to the California Supreme Court for review and

approval in principle; and resolved that if the Court approves the proposed amendments to the Business and Professions Code and adopts the proposed amendments to the Rule 9.30, that the proposed statutory amendments be included in the State Bar's legislative program.

At this writing, the Court has not issued a decision with respect to this proposal.

Board Votes to Increase in Fees for Law School Regulation Program

On November 3, 2017, the Board of Trustees voted to approve the Finance and Planning Committee's [proposal](#) to increase the law school inspection fees by 20%, and the annual reporting fees by 25%, for all law schools under the State Bar's jurisdiction effective January 1, 2018. The Finance and Planning Committee proposed the increase in an attempt to address the estimated \$279,000 shortfall between revenues and expenses for the Law School Regulation Program. This program regulates law schools and assures the schools' compliance with both the Accredited and Unaccredited Law School rules.

RULEMAKING

Rules of Professional Conduct—Rules 5-110, 3.8

On November 2, 2017, the California Supreme Court issued [Administrative Order 2017-11-01](#), approving the Bar's proposed [amendments](#) to Rule 5-110(D) and Discussion Paragraphs [3] and [4], regarding disclosure obligations of prosecutors regarding exculpatory evidence or information. This was the Bar's second submission of this particular rule, after the Court [rejected](#) the Bar's original proposal in May of 2017. [*see 23:1 CRLR 171-172*]

With respect to Rule 5110(E), on November 3, 2017, the Board voted to approve the [recommendation](#) of the Commission for the Revision of the Rules of Professional Conduct to cease efforts to add subdivision (E) to Rule 5-110, finding that no rule of professional conduct concerning issuing a subpoena to an attorney is necessary, and instead amend proposed Rule 3.8, which addresses the special responsibilities of a prosecutor. The Board approved the Commission’s recommended amendment to Rule 3.8, and directed staff to submit to the Supreme Court a request that the prior proposed rule 3.8 as submitted on March 30, 2017 be withdrawn and substituted with the proposed new rule. At this writing the Court has not yet ruled on the proposed amendment to Rule 3.8.

Fingerprinting

On October 20, 2017, the Chief Justice of the Supreme Court sent a [letter](#) to Board president Michael Colantuono and Executive Director Leah Wilson directing the Bar, in light of SB 36 (Jackson)’s amendment of Business and Professions Code section 6054, to “consider and present to the court any proposed court rules that may be appropriate to facilitate implementation of the fingerprinting requirement for all State Bar applicants and active attorney members.” [*see MAJOR PROJECTS; [23:1 CRLR 161-162, 175](#)*]

Accordingly, at its November 3, 2017 meeting, the Board authorized a 45-day public comment period for a [proposed court rule](#) to implement a fingerprinting requirement for active licensed attorneys. The proposed rule would require all active licensed attorneys to submit or resubmit fingerprints to the Department of Justice by a set deadline, and require attorneys to pay the fingerprint processing and furnishing costs in connection with such submissions. The public comment period ran from November 9 through December 26, 2017.

At the January 27, 2018 Board meeting, staff [reported](#) that over 2,600 public comments were received, mostly expressing strong disagreement with the proposition that attorneys would be asked to re-submit fingerprints, and pay for such re-submission, when they already provided fingerprints upon application for admission to the State Bar. Other comments suggested shifting the re-fingerprinting costs to the Bar. Upon discussion and consideration of the public comment, the Board voted to accept staff's recommended amendments to the proposed rules, including amendments which would allow attorneys to apply for a fingerprinting fee waiver if they would demonstrate financial hardship, and released the [amended proposal](#) for an additional public comment period ending on March 3, 2018. At its March 9, 2018 meeting, after Bar staff [reported](#) on additional public comments received, the Board authorized staff to submit the proposed Court Rule to the Supreme Court for approval. At this writing, the Court has not yet ruled on the proposed Court Rule.

Also at the March meeting, the Board approved staff's recommended language for and authorized a 30-day public comment period for a [proposed rule](#) regarding the impact of non-compliance with the proposed Court Rule regarding mandatory fingerprinting. Specifically, the proposed rule would provide that a licensee determined by the State Bar to be in non-compliance with the fingerprinting requirements would be enrolled as inactive and not eligible to practice law; that licensees would receive notice of non-compliance at least 60 days prior to involuntary inactive enrollment; and that enrollment as inactive for fingerprinting noncompliance would terminate when a licensee submits proof of compliance. The public comment period for this rule expires April 20, 2018.

Conflict of Interest Code for Designated Employees

On December 1, 2017, the Board of Trustees authorized a 45-day public comment period on its [proposed amendments](#) to the State Bar’s Conflict of Interest Code. Specifically, the Board proposed to amend and update the list of “Designated Employees” who are subject to Fair Political Practices Commission’s reporting requirements, including the Chief Programs Officer, Chief Court Counsel/Administrator, Chief Administrative Officer, Chief of Mission Advancement & Accountability, and Supervising Attorney. It also revised titles for some executive and confidential positions consistent with the Bar’s newly-adopted classification system.

At the January 27, 2018 meeting, staff [reported](#) that no public comments were received; the Board approved the amendments without discussion.

Law Student Access to Lawyer Assistance Program

On January 27, 2018, the Board of Trustees agreed, without discussion, to adopt the State Bar’s [proposed amendment](#) to Rule of the State Bar 3.244 that controls its Lawyer Assistance Program. The change clarifies, in light of newly-amended section 6232 of the Business and Professions Code that law students are eligible to participate in the Lawyer Assistance Program if they followed the rules requiring voluntary participation, provide medical information as required, and sign a participation agreement agreeing to comply with all Lawyer Assistance Program recommendations.

Confidentiality of Investigations

On March 8, 2018, RAD authorized a 45-day public comment period for a [proposed](#) amendment to the Rules of Procedure of the State Bar, Rule 2302. The proposed amendment would make clarifying changes to the rule, which, currently states that the Chief Trial Counsel “may waive confidentiality” of State Bar investigations. According to the notice, staff believes that this phrase misrepresents the effect of disclosure of information pursuant to Rule 2302(d)(1). For example, even after disclosure of information to another regulatory agency or to a law enforcement agency, OCTC would still consider the investigation confidential. The proposed amendment would also remove the authority of the President of the State Bar (now called the Chair) to disclose information concerning complaints of investigations, because OCTC has exclusive jurisdiction over State Bar disciplinary matters pursuant to Rule 2101.

All public comments on the proposed amendments are due by April 30, 2018 and the Board of Trustees will review during its May 17–18, 2018 meeting.

Electronic Notification of Letters of Inquiry

On March 8, 2018, RAD authorized a 45-day public comment period for a [proposed](#) amendment to the Rules of Procedure of the State Bar, Rule 2409. Currently, Rule 2409 specifies that before filing disciplinary charges, the OCTC is required to notify the attorney in writing about the nature of the charges, and provide the attorney an opportunity to provide an explanation or defense to the allegations. This notification is referred to as a “letter of inquiry.”

The proposed amendment would specifically authorize OCTC to use a licensee’s “My State Bar Profile” page to transmit letters of inquiry to licensees who are the subject

of misconduct allegations. OCTC would provide the licensee with substantially contemporaneous notification of the posting of the written notice of the nature of the charges by sending an email to the licensee's confidential email address. Once a licensee has opened the letter of inquiry, the State Bar's computer system would provide a notification to OCTC.

All public comments on the proposed amendments are due by April 30, 2018 and the Board of Trustees will review during its May 17–18, 2018 meeting.

Qualifications of Out-of-State Attorney Applicants

On March 8, 2018, the Board of Trustees unanimously [approved](#) the Committee of Bar Examiners' proposal to amend to Rule 4.41 of the Rules of the State Bar (Admissions Rules) to clarify the criteria for submission of moral character determination applications by out-of-state attorneys who have been suspended for administrative reasons. The Rule previously denied the right of a lawyer suspended for any reason to apply for determination of moral character; the amended language adds the term "for disciplinary reasons" after the word "suspended."

Ten-Hour New Attorney Training Program

At the Board's December 1, 2017 meeting, staff provided an [update](#) on the Bar's implementation of the New Attorney Training Program. [*see* [23:1 CRLR 172-173](#)] Staff reported that most E-learning modules would be made available on February 1, 2018 and any remaining modules would be made available by March 1, 2018. The Board voted to approve February 1, 2018 as the start date for the new program pursuant to Rule 2.53(D) of Title 2, Division 4, Chapter 1 of the Rules of the State Bar.

LEGISLATION

[AB 3249 \(Assembly Committee on Judiciary\)](#), as introduced February 27, 2018, is the Bar’s annual “fee bill.” Specifically, it would amend section 6140 of the Business and Professions Code to fix the annual membership fee for active members at \$315 for 2019, and remain in effect until 2020. *[A. Jud]*

[AB 3076 \(Reyes\)](#), as amended April 12, 2018, would add section 6214.4 to the Business and Professions Code regarding child welfare for Indian tribes. New section 6214.4 would authorize the Bar to administer grants to qualified legal services projects and qualified support centers for the purpose of providing legal services to Indian tribes in child welfare matters under the federal Indian Child Welfare Act. The bill also provides that the section would become operative upon an appropriation of \$1,000,000 to the Bar in the annual Budget Act expressly identified for the purposes of this section. *[A. Jud]*

[SB 766 \(Monning\)](#), as amended, January 11, 2018, would add Article 1.5 (commencing with section 1297.185) to the Code of Civil Procedure, to permit out-of-state and foreign attorneys to represent clients in international commercial arbitrations in California under certain conditions. This bill is the codification of the recommendations of the Supreme Court of California’s International Commercial Arbitration Working Group. Of note, it would require any qualified attorney rendering legal services pursuant to the bill be subject to the disciplinary authority of the State Bar with respect to the California Rules of Professional Conduct and the laws governing the conduct of attorneys; permit the Bar to report complaints and evidence of disciplinary violations against an attorney practicing pursuant to the provisions of this bill to the appropriate disciplinary authority of any jurisdiction in which the attorney is licensed; and require the State Bar to

submit a report to the Supreme Court annually that specifies the number and nature of any complaints that it has received against attorneys who provide legal services pursuant to these provisions and any actions it has taken in response to those complaints. According to the author, “[t]he bill’s purpose is to remove one of the principal impediments to foreign and out-of-state parties from choosing California as the location for their international commercial arbitrations and to allow California to compete with the other leading jurisdictions for international commercial arbitrations.” *[A. Desk]*

[SB 954 \(Wieckowski\)](#), as introduced January 30, 2018, would add section 1129 to the Evidence Code to require an attorney representing a person participating in a mediation to inform his or her client of the confidentiality restrictions related to mediation, and to obtain informed written consent from the client that he or she understands the restrictions before the client participates in the mediation or mediation consultation. *[S. Jud]*

RECENT MEETINGS

At its January 27, 2018 meeting, the Board authorized staff to enter into a ten year [Memorandum of Understanding](#) between the Productive Mindset Intervention Research Team and the State Bar in order to improve applicants’ performance on the State Bar Exam in July 2018 and beyond. The non-financial partnership creates a strategy to share data, and conduct analyses, for a productive mindset intervention to help students appraise learning and performance challenges as common, surmountable, and useful. The Research Team will conduct its entire study online and will use both control and treatment groups to evaluate its effectiveness.