

STATE BAR OF CALIFORNIA

Executive Director: Leah Wilson ♦ (415) 538-2000 ♦ (213) 765-1000 ♦ Toll-Free Complaint Hotline: 1-800-843-9053 ♦ Internet: www.calbar.ca.gov

Protection of the public, which includes support for greater access to, and inclusion in, the legal system, 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 interests 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 a 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 an online complaint form 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.

January 1, 2018, marked a historic organizational shift for the State Bar when [SB 36 \(Jackson\) \(Chapter 422, Statutes of 2017\)](#) became effective, mandating that the Bar “deunify” its trade association function from its regulatory function. [\[23:1 CRLR 157\]](#) At that time, 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). SB 36 also eliminated elected members from the Board, reducing the Board of Trustees from 19 to 13 members, and eliminated trustee officer elections, providing that the Supreme Court will approve the Chair and Vice Chair of the Board of Trustees on an annual basis.

With the transition, the Board now consists of 13 members: five attorneys appointed by the California Supreme Court, two attorneys appointed by the legislature (one appointed by the Senate Rules Committee and one by the Speaker of the Assembly), and six public, non-attorney members, four of whom are appointed by the Governor, one appointed by the Senate Rules Committee, and one appointed by the Assembly Speaker. Trustees serve four-year terms. At this writing there are two attorney vacancies on the Board: one to be appointed by the Senate and one to be appointed by the Supreme Court.

In a February 7, 2022, [press release](#), General Counsel Vanessa Holton announced her retirement. She was hired in 2015, and the Bar expects her to retire effective July 2022.

HIGHLIGHTS

Paraprofessional Proposal Returns from Public Comment; Revisions Likely Amid Opposition

The California Paraprofessional Proposal Working Group (CPPWG) [met](#) on March 4, 2022, to review the public comments and discuss [staff recommendations](#) on potential amendments to its final report in light of the comments received. The Group adopted the following recommendations: 1) Regarding Rule 5.4: eliminate the ability of paraprofessionals to have an ownership interest in a law firm that includes lawyers; 2) Regarding Rule 1.5.1: eliminate the ability of paraprofessionals to share fees; and 3) recommend that fee caps or fee regulations should be part of the paraprofessional program. After a tied vote, the Group did not adopt a recommendation to limit in-court representation by paraprofessionals to responsive representation. Additionally, the Group agreed with the Board’s recommendation to exclude the public comments regarding adding new practice areas from their consideration.

The 110-day [public comment period](#) for the Group’s [report and recommendations](#) ended on January 12, 2022. After receiving more than 2,000 comments from 1,279 individuals and organizations, the Bar [presented](#) the comment data in publicly available tables and charts. Of 1,235 comments from individuals, 73% came from attorneys, who overwhelmingly commented against the proposal at 90%. Three percent of attorneys commented that they would “support if [the proposal was] modified,” and 6% commented in support. Conversely, non-attorneys were largely in favor of the proposal, with 78% commenting in support, 14% in opposition, and an additional 7% in “support if modified.” The Bar also received 47 comments from organizations. The plurality of comments from organizations in support of the proposal were from consumer advocacy

organizations, followed by academic and paralegal/Legal Document Assistant membership groups. The majority of comments in opposition were from attorney membership groups, followed by legal services organizations.

The significant opposition has driven political pressure on the Bar from the legislature. In December 2021, the Chairs of the Senate and Assembly Judiciary Committees wrote a [letter](#) to Bar leaders, expressing concern that by continuing regulatory reform efforts like the Closing the Justice Gap Working Group and CPPWG, the Bar is “diverting its attention” from “its core mission of protecting the public by correcting the delays and defects in the attorney discipline system.” In [response](#), Board Chair Ruben Duran acknowledged the Bar’s “statutory mission to protect the public” and the possibility that “disbanding or suspending” the efforts of the Closing the Justice Gap Working Group would be “the logical result of [the legislators’] concerns.” Although Duran did not mention the Paraprofessional Program Working Group, he referenced the Bar’s [California Justice Gap study](#), which found that 55% of Californians experienced at least one civil legal problem in their household, but 85% received no legal assistance or inadequate legal assistance. The Paraprofessional Program Working Group and report was created to address this justice gap. *[see [27:1 CRLR 147–149](#)]*

Several steps must still occur before any implementation of a paraprofessional license. The CPPWG will continue to meet to develop its final proposal, which it will present to the Board. If the Board votes to approve it, the plan will go for final approval to the California Supreme Court and legislature, where it could face additional amendments amid significant political pressure.

State Bar's Chief Administrative Officer Provides Board with Summary and Update on Case Management System Data Breach

At the March 24, 2022, Board of Trustees [meeting](#), Chief Administrative Officer Steve Mazer provided an [update](#) on the recent Odyssey case management system breach that exposed over 300,000 State Bar case records. Mazer gave an overview of the Bar's initial response after it learned of the system vulnerability and its efforts to investigate and remedy the breach.

On February 24, 2022, the Bar became aware that public and nonpublic State Bar case records appeared on judyrecords.com, a public website that aggregates nationwide court case records into a searchable database. Upon awareness of the breach, the Bar organized a response team of Bar staff, a third-party IT security firm of forensic investigators and security engineers, and the law firm Cooley LLP for legal assistance related to notifications to affected parties and potential remedies. The Bar also cooperated with Tyler Technologies, the company that makes the Odyssey case management portal. The preliminary investigation by Bar staff and the third-party IT firm showed the exposure of 60,000 public and 260,000 nonpublic case records and that the Odyssey portal was likely the source of the breach. Tyler Technologies confirmed that the Odyssey portal contained a vulnerability, and the portal was taken offline.

Within 48 hours of awareness of the breach, the Bar issued a [press release](#) and created a summary and FAQ [webpage](#). After seeing media coverage of the press release, judyrecords.com took the records offline and contacted the Bar to help resolve the issue. In the subsequent two weeks, Tyler Technologies and the Bar's third-party IT security firm continued to investigate to determine which nonpublic records had been posted and viewed on judyrecords.com. The number

of records discovered to have been exposed was more than initially thought. Mazer presented the current number of confirmed posted records as 47,964 public and 322,525 nonpublic records, 188 of which contained personal information. Of the records posted, 60 public and 1,034 nonpublic records were viewed, including six that contained personal information. The information and cooperation from Tyler Technologies and judyrecords.com led the Bar to conclude that the breach was unintentional and that the Odyssey vulnerability caused nonpublic records to be accessed by judyrecords.com when it tried to obtain public records.

On March 15, 2022, the Bar’s case management portal was brought back online for public records access after the Bar’s IT staff and third-party IT firm installed Tyler Technologies’ security fix. In addition to continuing the periodic security assessments regularly conducted before the breach, the Bar will add IT security reviews assisted by the third-party IT firm hired as a result of the breach.

State Bar Proceeds with Recommendations from the Committee on Special Discipline Case Audit for the Development of a California Trust Account Program

On November 19, 2021, the State Bar of California’s Committee on Special Discipline Case Audit (Committee) submitted its [Report](#) to the Board of Trustees, recommending that the Board establish a Client Trust Account Protection Program (CTAPP) to increase the State Bar’s ability to effectively and proactively regulate attorney-client trust accounts (CTAs) and thereby enhance public protection. The Board established the Committee at a [special meeting](#) on July 1, 2021, to analyze the audit report on closed discipline cases against Thomas Girardi and to develop

a proposed corrective action plan that would be approved by either the Regulation and Discipline Committee (RAD) or the Board of Trustees.

The Report detailed the Committee's research of other jurisdictions' programs designed to regulate and protect client funds and made a series of recommendations for the State Bar of California. Of note, the Committee recommended that each licensed attorney, as part of the annual license renewal process, be required to report to the Bar whether they are responsible for any CTAs and if so, they must list each account they are responsible for by account number and financial institution. This information would not be considered public but would allow the Bar to ascertain which attorneys maintain trust accounts and would therefore be subject to additional regulatory measures.

The Committee also recommended that each licensed attorney who is responsible for CTAs would be required to certify annually in writing that they are knowledgeable about and compliant with the provisions of the Rules of Professional Conduct rule 1.15, "Safekeeping Funds and Property of Clients and Other Persons." In addition, each attorney responsible for CTAs would be required to annually complete a self-assessment, reporting on key indicators of client trust account management for attorneys. The assessment results would assist the Bar in identifying accounts that appear to be at risk for mismanagement.

In addition to recommending specific additions and amendments to the Rules of Professional Conduct to implement the program, the report detailed a series of other recommendations including compliance reviews of selected attorneys by independent Certified Public Accountants, risk review and follow up, required continuing legal education courses on CTA management for attorneys who manage CTAs, and public education and outreach.

The Report also addressed the potential cost of the proposed program, finding that its implementation would cost an estimated \$3.35 million annually and an additional one-time investment of \$500,000. The Committee recognized that the Bar does not currently maintain sufficient funds to implement the CTAPP and recommended an increase in licensing fees to support the program. It also recommended a phased implementation of the program so that certain recommendations might be implemented in the near term.

At its November [meeting](#), the Board of Trustees reviewed the Committee's recommendations and approved resolutions 1) directing staff to finalize the CTAPP's design per the Committee's recommendations and effectuate rule proposals for the Board's January or March meeting, 2) referring the Committee's proposed changes to rules 1.15 and 1.4 of the Rules of Professional Conduct to the Committee on Professional Responsibility and Conduct (COPRAC), 3) directing staff to study the potential role of bonds and insurance on CTA protection, and 4) extending the deadline for public comment on all recommendations stemming from the Committee's work to June 30, 2022. [[Agenda Item 701](#)]

At its February 18, 2022, [meeting](#), COPRAC considered the recommendations and developed language for proposed rule revisions pursuant to the Board's request.

At its March [meeting](#), the Board of Trustees reviewed COPRAC's proposed rule revisions and [recommendations](#). COPRAC made four recommendations to the Board of Trustees. First, COPRAC recommended including a mandatory reporting period of CTA information, which it believes would verify account transparency for self-reported data and encourage appropriate reconciliation of accounts. Second, COPRAC proposed a new Rule of Court 9.8.5, which would authorize the State Bar to administer the CTAPP and specify that failure to comply with a CTAPP

requirement will subject a licensee to be enrolled as an inactive licensee. Third, COPRAC recommended amending Rule of Professional Conduct 1.15 to replace the “promptly notify” standard with a requirement to notify within 14 days; remove the condition that a lawyer’s duty to distribute funds or property is triggered only when a request is received; add a presumed violation standard for lawyers who fail to promptly distribute undistributed funds or property within a 45-day timeframe; add a definition for “undisputed funds or property”; add a comment clarifying that the presumed violation does not apply to a client’s file, fees, or expenses paid in advance; and add a comment that lawyers must act diligently to resolve any dispute that delays the distribution of funds or property. Finally, COPRAC also recommended amendments to Rule of Professional Conduct 1.4 to clarify that a lawyer’s receipt of funds on a client’s behalf is a significant event and to include cross-references to Rule 1.15 that addresses the proposed 14-day notification period and a lawyer’s duty to promptly account for funds and property.

After discussion, the Board of Trustees approved resolutions 1) authorizing staff to include and pursue mandatory bank reporting of CTA information in the CTAPP design, 2) authorizing staff to make proposed new Rule 9.8.5 of the California Rules of Court available for a 60-day public comment period, 3) authorizing staff to make proposed amended Rules 1.4 and 1.15 of the California Rules of Professional Conduct available for a 60 day public comment period. [[Agenda Item 705](#)]. The [public comment period](#) on the proposed new Rule of Court 9.8.5 and amendments to 1.4 and 1.15 Rules of Professional Conduct will end on May 28, 2022.

In Response to Legislative Concerns, the Board of Trustees Approves Recommendations to Clarify the Scope and Composition of the Closing the Justice Gap Working Group

At its February 25, 2022 [meeting](#), the Board of Trustees voted to adopt the staff's [recommendations](#) to adjust the composition of the Closing the Justice Gap Working Group (CTJG), streamline its meeting processes, and revise its charter. The decision came after a months-long hiatus for the working group meetings following a December 7, 2021, [letter](#) sent by Assemblymember Mark Stone (Chair of the Assembly Judiciary Committee) and Senator Tom Umberg (Chair of the Senate Judiciary Committee) to Ruban Duran, Chair of the Board of Trustees for the Bar expressing concerns about CTJG's work.

The Board formed CTJG in May 2020 in response to the report and recommendations of the Task Force on Access Through Innovation of Legal Services (ATILS) and appointed 21 members to serve on the working group, including judicial officers, legal ethics experts, legal services organization experts, representatives from organized bar groups (the California Lawyers Association, Consumer Attorneys of California, and the California Defense Counsel), and legislative appointees. [\[26:1 CRLR 106–108\]](#) Specifically, the Board charged CTJG with examining the propriety of relaxing rules regarding the unauthorized practice of law, including the development of a regulatory sandbox and the consideration of amendments to Rule 5.4 regarding fee-sharing with nonlawyer entities; assessing concepts for amendments to the California Rules of Professional Conduct governing lawyer advertising and solicitation and fee sharing with nonlawyers and to the statutes and Rules of the State Bar governing Certified Lawyer Referral Services; and evaluating a draft proposed new Rule 5.7 of the California Rules of Professional

Conduct that was included in the final ATILS report. According to the staff memo, CTJG held eight full working group meetings and 14 subcommittee meetings before the Bar canceled meetings upon receipt of the December 7 letter to permit staff to gather further information about the legislature’s concerns for the Board’s consideration.

In the letter, the Judiciary Committee Chairs stated that “it appears that the State Bar has chosen to divert its attention from its core mission of protecting the public and addressing the critical issues affecting the discipline system,” citing hundreds of hours of staff time and State Bar resources used on the CTJG. They then urged the State Bar “to redouble its efforts to focus on the core mission of policing attorney misconduct and supporting proven programs offering access to justice and legal services such as legal aid, court-sponsored self-help, and pro-bono assistance, as well as innovative approaches to increasing the number of attorneys who are licensed in California.”

In response, the Chair, Ruben Duran, wrote the Judiciary Chairs a [letter](#) recognizing their concerns but noting the Board’s efforts to improve the discipline system and underscoring the importance of the CTJG. Mr. Duran also stated that the Bar is working to improve support for programs that provide access to justice and legal services, but it does “not believe that the public can be served sufficiently with our existing approaches to closing the access to legal services chasm.” The Board cited the [2019 Justice Gap Study](#), which found that 55 percent of Californians at all income levels experienced at least one civil need within one year but received inadequate or no legal help for 85 percent of these problems. [[25:1 CRLR 132–33](#)]

Staff reported that in the months following receipt of the letter, they had met with the legislature and other key stakeholders to understand better the concerns raised. Specifically, they

reported concerns that some working group members did not have experience living and working in California and, therefore, should not be voting on recommendations about California policies. They also relayed concerns about the potential for profit-driven corporations to interfere with the independent judgment of attorneys should the working group recommend some form of nonlawyer ownership.

Accordingly, the Board adopted a series of resolutions to refine the CTJG charter and address these concerns. First, it voted to revise the CTJG composition only to include individuals with California-specific experience. Second, it directed staff to work with the Chair of the CTJG on revisions to the Working Group's charter to, at a minimum, 1) direct CTJG to specify the roles that they seek the legislature and Supreme Court to fulfill in setting parameters for the sandbox and the application of existing statutes; 2) direct CTJG to adopt screening and monitoring procedures for the regulator to reduce the risk of undue influence by corporate interests; 3) relieve the working group of its additional rule revision assignments; 4) extend the deadline for the CTJG's report to the Board of Trustees; and 5) make other revisions necessary to address the concerns raised by the legislature. Finally, the Board also voted to authorize the Chair to appoint an attorney member and public member of the Board to serve as liaisons to the working group.

At its March 24, 2022, [meeting](#), the Board voted to adopt the staff's recommendation for a revised charter pursuant to the Board's direction. It also formally appointed Trustees Hailyn Chen as an attorney member and Mark Toney as a public member to serve as Board liaisons to CTJG. Pursuant to the [revised charter](#), the Working Group's deadline to submit its report to the Board was extended from December 2022 to May 2023.

MAJOR PUBLICATIONS

The following reports/studies have been conducted by or about the State Bar during this reporting period:

- [*The State Bar of California’s Attorney Discipline Process: Weak Policies Limit Its Ability to Protect the Public From Attorney Misconduct California State Auditor’s Report 2022-030*](#), California State Auditor, April 14, 2022 (Provides analysis and recommendations for the Bar’s attorney discipline process, which “failed to effectively prevent attorneys from repeatedly violating professional standards.” Key findings were that the Bar prematurely closed cases and “did not adequately investigate some attorneys with lengthy patterns of complaints,” finding a lack of clear policies for closing complaints and investigations and not enough attention to conflicts of interest between Bar staff and attorneys under investigation. Key recommendations are for the Bar to amend its policies to “increase independence and objectivity of the external review of its case files” by requiring its external review to select cases for semiannual review and establish formal oversight to follow up on the external reviewer’s findings. The report also recommends specific policy changes that would allow the Bar to “appropriately review[] complaints involving overdrafts and alleged misappropriations from client trust accounts.”)

On April 14, 2022, the Bar issued a [statement](#), which agreed with most of the auditor’s recommendations. Board Chair Ruban Duran noted that the Board is “committed to incorporating the audit findings in [its] ongoing efforts” and that some of the challenges to improving the discipline system “reflect a complex and unproductive cycle of insufficient funding, poor outcomes, and low morale.” The Bar’s [formal response](#) estimates that full implementation of the auditor’s recommendations would require \$1 million, a 30-person staff increase, and \$200,000

ongoing annually.

- [*2021 Commission on Judicial Nominees Evaluation Statewide Demographics Report*](#), State Bar of California, March 1, 2022 (Pursuant to Government Code section 12011.5(n)(b), presents the Commission on Judicial Nominations Evaluation’s (JNE) aggregate data on the demographics of judicial candidates including race, gender identity, and sexual orientation for 2022; reports that the JNE Commission reviewed 138 candidates and found that slightly more women than men were exceptionally well qualified but found that the number of white candidates that were at least “Qualified” was twice as high as any other ethnicity. Overall, 56 candidates were white, 22 were black, and 20 were Hispanic or Latino.)
- [*2021 Lawyer Assistance Program Annual Report*](#), State Bar of California, March 1, 2022 (Pursuant to section 6238 of the Business and Professions Code, provides the Oversight Committee of the Lawyer Assistance Program’s (LAP) report to the Board of Trustees and the legislature regarding the implementation and operation of LAP. Notable highlights from the report include a 36 percent increase in new intakes from 2020, which is the largest one-year increase in LAP’s history, and 34 percent of closed cases met their stated program goals.)

RULEMAKING

The following is a status update on recent rulemaking proceedings that the State Bar has initiated:

- **Proposed Amendment to Rules of Procedure 5.65 (Discovery Procedures), 5.337 (Expedited Proceeding; Limited Discovery), and 5.345 (Hearing Department Procedures):** At its January 20, 2022 [meeting](#), after a 45-day [public comment](#) period, the Board approved the proposed amendments to Rules of Procedure that authorize discovery of a

respondent's financial records or financial hardship when respondent intends to request a waiver, extension, or a payment installment plan for monetary sanctions [[Agenda item 50-3](#)].

- **Proposed New Rule of Court 9.8.5 and Amended Rules of Professional Conduct 1.15 and 1.4 to Implement CTAPP:** At its March 24, 2022 [meeting](#), after a [presentation](#) about CTAPP, the Board approved a 60-day [public comment](#) period for the following rules: New Rule of Court 9.8.5, which would grant the Bar authority to implement the CTAPP, and Rules of Professional Conduct 1.15 and 1.4, which govern client communications and identify that a lawyer's receipt of client funds triggers the lawyer's duty to proactively communicate with a client within 14 days (see HIGHLIGHTS) [[Agenda item 705](#)].

- **Proposed Rules of Procedure 5.17, 5.18, and 5.154 to Conduct State Bar Court Proceedings Remotely:** At its March 24, 2022 [meeting](#), after a 45-day [public comment](#) period and previous [adoption](#) of interim Rules 5.17, 5.18, and 5.154, the Board approved Rules of Procedure 5.17, 5.18, and 5.154, which allow the Bar Court to conduct proceedings remotely. The Board rescinded the interim rules upon approving the proposed rules [[Agenda item 50-4](#)].

- **Proposed Amendments to Rule 5.21 of the Rules of Procedure (Limitations Period):** At its March 24, 2022 [meeting](#), after a 45-day [public comment](#) period, the Board approved proposed amendments to Rule 5.21 of the Rules of Procedure, which sets out the limitations period for initiation of disciplinary proceedings. The amendments ensure that OCTC has the necessary time to investigate complaints submitted at or near the five-year time limit, with up to two years to investigate and initiate disciplinary proceedings based on complaints. The amendments also provide for tolling of the time limit under certain circumstances [[Agenda item 54-122](#)].

- **Proposed Amendments to Rule of Procedure 2201 (Appointment and Authority):** On November 18, 2021, the Board [voted](#) to approve proposed amendments to Rule of Procedure 2201 to enhance the power of the Special Deputy Trial Counsel Administrator and expand RAD’s oversight [[Agenda item 50-5](#)]. RAD released the proposed amendment for a 30-day public comment period at its September 23, 2021, meeting. [*See* [27:1 CRLR 141–143](#)]
- **Voting Procedures of the Commission on Judicial Nominees Evaluations:** On November 12, 2021, proposed amendments to State Bar Rule 7.61 that will exclude abstentions from the total vote count that a judicial candidate receives from the Commission on Judicial Nominees Evaluation returned from a 45-day public comment period. [*See* [27:1 CRLR 153](#)] At its November [meeting](#), the Board approved the proposed amendments to State Bar Rule 7.61 [[Agenda item 50-6](#)]. The proposed amendment became effective immediately.
- **Proposed Amendments to State Bar Rules 3.440, 3.445 (Client Security Fund-Electronic Service and Electronic Signatures):** At its November 18, 2021 [meeting](#), RAD approved and released proposed amendments to State Bar Rules 3.440 and 3.445 for a 30-day [public comment](#) period. According to the staff memo, the amendments to Rules 3.440 and 3.445 update the Client Security Fund (CSF) portion of the State Bar Rules to allow the electronic service of CSF decisions and electronic signatures [[Agenda Item III-B](#)]. The CSF reimburses those who lost money or property due to theft or dishonest conduct committed by California attorneys in their professional capacities. On December 23, 2021, the proposed amendments were returned from public comment. At its January [meeting](#), the Board approved and adopted the amendments to Rules 3.440 and 3.445 [[Agenda Item 54-121](#)].

- **Interim Rule of Procedure Authorizing the State Bar Court to Conduct Remote Proceedings due to Omicron Variant:** At its January [meeting](#), the Board adopted Interim Rule 5.19 of the State Bar Rules of Procedure [[Agenda item 702](#)]. According to the staff memo, Interim Rule 5.19 authorized the State Bar Court to order all court proceedings to occur remotely until April 1, 2022, to mitigate the surge of the COVID-19 Omicron variant. The Board adopted Interim Rule 5.19 because the Judicial Council amended Emergency Rule 3 to exclude civil proceedings from the scope of that rule on January 1, 2022, and the State Bar Court determined that it could no longer rely on Emergency Rule 3 to conduct court proceedings remotely. By adopting Interim Rule 5.19, the Board resolved that 1.10(c) of the Rules of the State Bar of California required the adoption of Interim Rule 5.19 so the State Bar Court could conduct remote proceedings and that an emergency justified the adoption of the rule on an interim basis without public comment. Interim Rule 5.19 came into effect on January 20, 2022, and expired on April 1, 2022.

- **Proposed Amendment to Rule of Procedure 5.80 (Motion for Entry of Default):** At its November 18, 2021 [meeting](#), RAD approved the release for a 45-day public comment period proposed amendments to Rule of Procedure 5.80 pertaining to the procedure for the default of a respondent-attorney who failed to file a timely response to Notice of Disciplinary Charges (NDC) in State Bar Court. Specifically, the amendments would replace the general requirement that the deputy trial counsel take steps “a reasonable person would take” with specific steps that should be taken depending on the circumstances [[Agenda item III-D](#)] At its March 24, 2022 [meeting](#), having received no public comments on this matter and upon RAD’s

recommendation, the Board voted to approve and adopt the proposed amendments to Rule 5.80, effective April 4, 2022 [[Agenda Item 54-121](#)].

- **Proposed Amendments to the Rules of Procedure of the State Bar, Provisional Licensure Program:** At its February 25, 2022 [meeting](#), the Board approved the release of the proposed new State Bar Rules of Procedure 5.480–5.486 for a 45-day [public comment period](#) [[Agenda item 704](#)]. According to the staff memo, the proposed rules would create a process to adjudicate allegations of misconduct made against Provisionally Licensed Lawyers in the State Bar Court. These rules are proposed in response to the California Supreme Court’s adoption of Rules 9.49 and 9.49.1 of the California Rules of Court, which permit certain qualified law school graduates to engage in the practice of law without passing the California Bar until June 1, 2022. The public comment period expired on April 11, 2022. At this writing, the Board has not yet taken further action on these proposed rules.

- **Proposed Amendments to Consumer Alert Policy to Clarify That It Applies to Felony Charges in All Courts:** At its November 18, 2021 [meeting](#), upon recommendation from the RAD Committee, the Board (after pulling the agenda item from the consent agenda) adopted proposed amendments to its policy regarding posting of a consumer alert upon the filing of felony charges against an attorney [[Agenda item 50-8](#)].

- **Adoption of Requirement of Proof of COVID-19 Vaccination or Negative Test for Meetings:** At its January 20, 2022 [meeting](#), the Board adopted a policy requiring proof of COVID-19 vaccination or negative test for all members of the Board, the Bar sub-entities, and invited guests to Board and sub-entity meetings. Bar staff will develop specific policy procedures

and have the authority to make changes according to future public health directives [[Agenda item 701](#)].

LEGISLATION

- [AB 2958 \(Committee on Judiciary\)](#), as introduced March 8, 2022, would amend sections 6140, 6140.03, and 6140.05 of the Business and Professions Code as the legislative vehicle for the Bar’s annual “fee bill.” Currently, a licensee may deduct \$5 from the fee if the licensee elects not to support lobbying activities by the Bar. The bill would instead provide licensees the option of opting in to add the \$5 to the annual fee to support lobbying activities by the Bar. Accordingly, the bill would require the Bar to charge a licensing fee for 2023 of up to \$390 for active licensees, a decrease from the previous fee of up to \$395. The bill would also require the Board to keep the required allocation of \$45 of the licensing fee to support legal services. [*A. Jud*]

- [AB 2520 \(Gabriel\)](#), as amended April 7, 2022, would add Chapter 4 (commencing with section 15210) to the Government Code to create a Department of Justice “Office of Access to Justice” by January 1, 2024, “for the purpose of increasing the availability of meaningful access to justice for all Californians.” The bill includes legislative findings and declarations based on the 2017 Legal Services Commission’s “Justice Gap Report” and the State Bar of California’s 2019 “The California Justice Gap” report showing an unmet need for legal services for low-income Americans generally and Californians specifically. The bill would “promote access to justice for low-income and other underrepresented people in the California criminal and civil justice systems,” including advising the Attorney General on access to justice. The bill would also establish a legal aid interagency roundtable. The Office of Access to Justice would submit an

annual report to the legislature describing the Office’s activities. [A. Jud]

LITIGATION

- ***Roe v. State Bar of California, Case No. 30-2022-01250695-CU-AT-CXC (Super. Ct., Orange County)***. On March 18, 2022, the Law Offices of Lenore Albert, on behalf of four Roe defendants, filed a [class action complaint](#) related to the data breach of State Bar case records (see HIGHLIGHTS). The complaint names as defendants the Bar, judyrecords.com, and the Doe Bar employee responsible for the data breach and alleges violations of the California Information Practices of 1977 under California Civil Code section 1798.24, state and federal invasion of privacy claims, and antitrust violations. At this writing, the Bar has not yet filed an answer.

- ***Anthony Kassas v. State Bar of California, Case No. 21-55900 (9th Cir. 2022)***. On [oral arguments](#) on whether a formerly disbarred attorney may discharge money owed to the State Bar’s CSF after declaring bankruptcy. On June 16, 2021, U.S. Bankruptcy Judge Ernest M. Robles of the Central District of California ruled that Anthony Kassas, who was disbarred for misconduct related to a foreclosure rescue scheme, could not discharge the \$2 million he owed to the State Bar for money paid to his former clients through the CSF because the debt owed bore the hallmarks of a “fine, penalty, or forfeiture.” On October 25, 2021, Anthony Kassas [appealed](#) the ruling of the bankruptcy court to the Ninth Circuit. On December 7, 2021, the State Bar [replied](#) to Anthony Kassas’s appeal. At the time of this writing, the Ninth Circuit had not yet made its ruling.

- ***In the Matter of Thomas Vincent Girardi, Case No. SBC-21-O-30192 (State Bar Ct., Los Angeles)***. On January 10, 2022, the State Bar Court [recommended](#) to the Supreme Court

of California that Thomas Girardi be disbarred from the practice of law. The State Bar Court's recommendation comes after the Court granted the State Bar's Motion for Entry of Default after Thomas Girardi failed to file a response to the NDC. [*See* [27:1 CRLR 158](#)]

On March 2, 2022, the Supreme Court of California [ordered](#) the disbarment of Thomas Girardi and his removal from the roll of attorneys. Pursuant to the Court's order, Thomas Girardi must make restitution payments of \$2,282,506.55 plus interest to injured clients. The Supreme Court also ordered Girardi to notify all clients and opposing counsel of his disbarment under rule 9.20 of the California Rules of Court and pay \$5,000 in monetary sanctions to the State Bar of California CSF in accordance with section 6083 of the Business and Professions Code and Rule 5.137 of the State Bar Rules of Procedure. *See also In re Girardi Keese, No. 2:20-bk-21022-BR (Bankr. C.D. Cal.)*. Bankruptcy proceedings for the Girardi Keese law firm are ongoing.