

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 membership is a requirement for 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](#).

Approximately three-quarters of the Bar's annual budget is spent on its attorney discipline system, which includes a toll-free complaint hotline 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.

At this writing, the State Bar Act provides that the Bar is governed by a 19-member Board of Trustees (BOT): thirteen attorneys (six of whom are elected by attorneys from regions based upon the state’s six appellate court districts, and seven of whom are appointed by public officials) and six public members. Five of the lawyer members are appointed by the California Supreme Court; one lawyer member is appointed by the Assembly Speaker; and one lawyer member is appointed by the Senate Rules Committee. The Governor appoints four of the Board’s six public members; the Assembly Speaker and Senate Rules Committee each appoint one public member to the Board.

Effective January 1, 2018, with the passage of [SB 36 \(Jackson\) \(Chapter 422, Statutes of 2017\)](#), the elected attorney positions on the Board of Trustees will be eliminated, 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 will also mark a historic organizational shift for the State Bar—also mandated by SB 36—in which the Bar will “deunify” its trade association function from its regulatory function. The 16 State Bar Sections and the California Young Lawyers Association will separate from the Bar and form a new, private, nonprofit entity called the California Lawyers Association (CLA).

On April 26, 2017, the State Bar [announced](#) its decision to name Steven Moawad as the new Chief Trial Counsel. Moawad served as deputy district attorney in Contra Costa County since 1997, as a manager of the District Attorney’s Special Operations Division since 2012, and as a senior deputy district attorney since 2014. Moawad’s prosecutorial experience includes consumer protection, environmental protection, insurance fraud, and criminal cases.

On August 9, 2017, the Board of Trustees held a [special meeting](#), during which Elizabeth Parker [announced](#) her resignation as Executive Director of the State Bar, effective September 7, 2017. At the meeting, the Board of Trustees announced its decision to appoint Chief Operating Officer (COO), Leah Wilson, to become the new Executive Director on September 7, 2017. Prior to being appointed as the Bar’s first COO in 2015, Wilson served as the Court Executive Officer of the Alameda County Superior Court for two years.

On August 17, 2017, the California Supreme Court [reappointed](#) outgoing State Bar President James Fox to another three-year term on the Board of Trustees. On the same day, the Court also announced its appointment of Hailyn Chen, a litigation partner at Munger, Tolles & Olson, to the Board of Trustees. On August 25, 2017, Governor Brown

[reappointed](#) public member Renée LaBran to the Board of Trustees, where she has served since 2015.

MAJOR PROJECTS

State Bar “Deunifies” and Internally Reorganizes

This reporting period marks the final resolution of a decades-long, heated debate as to whether the Bar’s organizational structure as a “unified bar” improperly created a conflict of interest between its allegiance to attorneys as a trade association and its duty to protect the public as a regulatory agency. On September 6, 2017, with the impending passage of [SB 36 \(Jackson\)](#), the Board of Trustees authorized the Executive Director to approve the incorporation of a new entity that would contain the State Bar Sections (the Bar’s primary trade association vehicles) and to transfer a portion of the Section’s financial reserves to the new entity to assist with start-up fees. The move reflects an observable trend among members of the Board to emphasize the Bar’s public protection mission and a recognition that the Bar should align its practices and operations with those of other licensing boards in California. To assist with the transition, the Sections have been convening “new entity planning group” sessions.

In addition to the separation of the Sections, Bar executive leadership has undertaken a review as to the internal operations of the Bar. Incoming Executive Director Leah Wilson updated the Board at its September 6, 2017 meeting on the Bar’s efforts to implement the recommendations of Dr. Elise Walton, who was hired in 2016 to look at the organization of the Bar and give suggestions as to how the structure could be improved. Among Dr. Walton’s suggestions are: a new organizational structure of the Bar that would

be more transparent and accountable to the Board; and a team-based management structure consisting of seven direct reports to the Executive Director, in order to eliminate the key person dependency that an Executive Director/COO structure created. Dr. Walton also noted that the new Chief of Mission Accountability and Advancement would serve a compliance function to assure that the State Bar is following all applicable laws, regulations, and policies.

Bar Recommends Range of Bar Exam Cut Score Options to Supreme Court after Conducting a Series of Studies

On September 12, 2017, in response to a February 28, 2017 [directive](#) from the California Supreme Court, the Bar submitted a [letter](#) to the Supreme Court attaching a substantial [report](#) summarizing several studies the Bar had conducted with respect to (1) identification and exploration of all issues affecting California’s Bar exam pass rates; (2) a meaningful analysis of the current pass rate and information sufficient to determine whether protection of potential clients and the public is served by maintaining the current cut score; and (3) participation of experts and stakeholders in the process, including psychometricians, law student representatives, and law school faculty or deans. The current cut score, 144 on the Multistate Bar Examination (MBE), has not been changed or studied since 1987 and is the second highest cut score for the MBE in the nation behind Delaware. The Bar “scales” the scores on the California-specific essay questions to the MBE score. Specifically, the Bar retained psychometrician Chad Buckendahl, Ph.D., to conduct a standard setting study in May 2017, and a [content validation study](#) in June 2017, to inform

the Board's recommendation to the Court with respect to the proper cut score for the Bar exam.¹

On [July 31, 2017](#), the Committee of Bar Examiners (CBE) met in Los Angeles to discuss the 2017 Buckendahl [standard setting study report](#). In a [memo](#) to the Committee summarizing the study, Bar staff recommended either keeping the cut score at 1440 or adopting an interim revised cut score of 1414, which is one standard error below the study's median score of 1439. After hearing public comment from several Bar applicants, law school deans, and the Center for Public Interest Law urging CBE to release another, lower cut score option for public comment, the Committee accepted the report, and voted to release staff's recommended cut score options (1440 (status quo) or 1414) for public comment. Four Committee members opposed the release of these two options after expressing their opinion that the cut score should not be released until the pending studies are completed.

The Bar released the cut score options for a comment period ending on August 25, 2017, and held two public hearings on August 14 and August 15, 2017 in Los Angeles and San Francisco, respectively. Several of California's law school deans testified at these hearings, representing a range of schools from ABA-accredited (Stanford, UCLA, University of San Diego, University of La Verne, and Southwestern) to California-accredited (Santa Barbara College of Law, Monterey College of Law), to unaccredited law

¹ The Bar also proposed a Law School Performance study, designed by psychometrician Roger Bolus, Ph.D., which sought to analyze data produced by the law schools as to student performance for 2008 and 2016. The law schools have raised significant concerns about producing these data, including the potential violation of the Family Educational Rights and Privacy Act (FERPA). At this writing, the Bar is still negotiating the terms and parameters of that study with the law schools.

schools. The deans urged the Committee to consider a reduction of the cut score to align with the national average of 135 on the MBE. Several commenters pointed out that there are no data to support the assumption that the higher cut score correlates to increased public protection, while the data do show that the current score has a negative impact on diversity and access to justice in California.

All told, the Bar received nearly 5,500 written comments with respect to the cut score. The Bar sent a survey to California attorneys, the vast majority of whom responded that the current cut score should be maintained.

On August 30, 2017, the Committee of Bar Examiners met in San Francisco with the Law School Council to discuss the standard setting study, five days after the period for public comment ended. Bar staff member Ron Pi presented a study on the findings and articulated the addition of 1390 as a third option for an interim cut score rate. The Law School Council unanimously recommended adoption of an adjusted cut score in the range of 135–139 as an interim score for no less than three years, and voted to request a hearing in front of the Supreme Court regarding the cut score.

On August 31, 2017, CBE met in a joint session with the Admissions and Education Committee of the Board of Trustees to discuss the cut score recommendation the Committee would present to the Board of Trustees. The Committee voted 13–1 to leave the cut score unchanged until the completion of the content validity study and law school performance study despite the Law School Council’s recommendation.

At the Board’s September 6, 2017 meeting, CBE Chair Karen Goodman and Committee member Lee Wallach strongly urged the Board to adopt CBE’s recommendation to leave the cut score unchanged pending the completion of further

studies. Bar staff [recommended](#) that the Board of Trustees present three options to the Supreme Court: keeping the cut score the same, lowering the cut score to 1410, or lowering the cut score to 1390. The staff further explained its position that lowering the score would not affect attorney discipline and would increase diversity of the profession. The Board of Trustees voted 6–5 to approve the recommendation from the State Bar’s staff to recommend the three options to the Supreme Court.

The Court is expected to rule on the cut score later in October, and any change would be retroactive to the July 2017 Bar exam.

Bar Contracts with DOJ for Subsequent Arrest Notifications

At its May 12, 2017 meeting, the Board voted to accept staff’s [recommendation](#) that the Bar immediately enter into a “subsequent arrest notification” contract with the California Department of Justice (DOJ). Pursuant to the contract, the DOJ will receive the fingerprints of attorney applicants and will notify the Bar any time an attorney licensed in California is arrested. Staff initially made this recommendation at the Board’s March 2017 meeting, pointing out that without the contract, there is no way for the Bar to be notified of attorney arrests post-admission, but the Board directed staff to further research the recommendation in light of privacy concerns. At the May meeting, staff presented a memo containing the Office of General Counsel’s analysis, which revealed that Business and Professions Code section 6054 actually required the Bar to enter into the subsequent arrest notification contract with DOJ in 1989, but the Bar had never done so. The memo also

revealed that, with limited exception, the Bar has not retained the fingerprints of the vast majority of the 260,000 licensed attorneys in California.

Following the Board's authorization to do so, the Bar entered into a contract with the DOJ to receive subsequent arrest notifications for new attorney applicants on June 29, 2017. Under the contract, DOJ will retain the fingerprints of new applicants to the Bar after July 1, 2017 and notify the Bar of any arrests. While this will permit the Bar to be notified of arrests of attorneys admitted after July 2017, currently-licensed attorneys must be re-fingerprinted in order for the Bar to receive subsequent arrest notifications for actively practicing attorneys.

SB 36 (Jackson) authorizes the Bar to require attorneys to resubmit fingerprints (see LEGISLATION). However, at this writing, the matter of who will bear the costs of the estimated \$9 million to do so (individual attorneys or the Bar) remains unanswered.

California State Audit of the Bar Criticizes Bar's Financial Policies

On June 27, 2017, the California State Auditor released its 2017 audit of the State Bar, [Report 2017-030](#), entitled *The State Bar of California: It Needs Additional Revisions to Its Expense Policies to Ensure That It Uses Funds Prudently*. Pursuant to Business and Professions Code section 6145(b), the Bar is required to contract with the California State Auditor to audit the State Bar's operations every two years, but it does not specify the topics that the audits should address. In her [cover letter](#) addressed to the legislature when submitting the audit, State Auditor Elaine Howle stated that, given the legislature's increased scrutiny in recent years regarding the Bar's operational structure and the

prudence of its expenses, the 2017 audit focused on the appropriateness of the State Bar's expenses, including salaries and benefits, travel, catering, lobbying activities, and outside legal counsel, as well as the adequacy of funding for its attorney discipline system. According to Howle, the auditors' review of these six expense categories from 2014 through 2016, while recognizing that the Bar has revised its expense policies to ensure the prudent use of funds, the Bar's system still lacks sufficient management controls to verify that its costs are reasonable and appropriate.

The audit recommended that the State Bar update and formalize its salaries and benefit policies of its employees in line with those of comparable agencies, noting that most State Bar staff receive higher compensation and work fewer hours than do staff at comparable agencies. The audit also focused on the rampant spending by way of purchasing cards and recommended that purchasing cards only be assigned to appropriate staff and that staff use purchasing cards only for allowable and necessary steps. The audit suggested the State Bar request and maintain documentation from its lobbyists that justifies their charges and reduce costs related to contracts with outside counsel. Finally, the audit recommended the State Bar allocate additional resources to its attorney discipline system and implement measurable goals.

Executive Director Elizabeth Parker's [response](#) to the audit is included in the report as well. Parker assured the Auditor that the State Bar is committed to implementing the majority of the audit's recommendations and reminded the Auditor that the Bar was in the process of implementing the Bar's 2016 [classification](#) and [compensation](#) analysis, reducing spending on outside counsel, codifying earlier management-identified alcohol and catering

spending, developing additional controls of purchasing cards, and creating additional attorney discipline system funding and metrics.

Governance in the Public Interest Task Force

On May 15, 2017, the Governance in the Public Interest Task Force submitted its [report](#) to the legislature and the Supreme Court pursuant to section 6001.2 of the Business and Professions Code. The report focused on three themes for the State Bar: the adoption of a new mission statement focused on the State Bar's public protection responsibilities; the structure and functioning of the Board of Trustees; and the structure and functioning of the State Bar sub-entities and Board committees.

◆ ***State Bar Mission Statement Recommendation.*** One of the Task Force's key recommendations in light of the deunification proposed by SB 36 was the adoption of a new State Bar mission statement to define its public protection mission. After reviewing the Bar's history, its statutory public protection mandate, and after much discussion, the Task Force developed the following [State Bar mission statement](#) for Trustee consideration:

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

On July 14, 2017, the Board voted to adopt the Task Force's recommended mission statement.

◆ ***Structure and Functioning of the Board of Trustees Recommendation.*** The Task Force also included a set of recommendations to improve the structure and functioning of the Board of Trustees, most of which track the reforms set forth in SB 36, and include: the elimination of trustee elections; reducing the size of the Board; four-year

trustee terms; and changing the titles of President and Vice President of the Board to “Chair” and “Vice Chair.”

◆ *State Bar Sub-Entity Structure and Functioning Recommendation.* The Task Force also reviewed the State Bar’s current sub-entities to determine whether they are aligned with their assigned tasks and whether appropriate oversight of the sub-entities is in place. The Task Force recommended that the Board focus the sub-entities on their policy-making role and leave administrative work to staff. The Task Force recommended that the Board further study the following sub-entities: Committee of Bar Examiners, Law School Council, California Board of Legal Specialization, Client Security Fund, Committee on Mandatory Fee Arbitration, Lawyer Assistance Program Oversight Committee, Access to Justice and Diversity Related Sub-Entities, and the Committee on Professional Liability Insurance. In addition, the Task Force recommended that the Regulation and Discipline Committee be divided into two subcommittees, one to address administrative policy issues and the other to address operational issues.

The Task Force also reviewed and made recommendations as to the structure, size, composition, and functions of the Board’s committees and recommended that the State Bar implement a more vigorous committee process.

Lastly, the Task Force recommended that legislation should be sought to require a governance review of the State Bar to be ongoing, not limited to every three years.

Antitrust Policy

On September 26, 2017, the California Supreme Court approved the Bar’s proposed [antitrust policy](#). In a September 8, 2016 [letter](#) to the Bar’s then-President David Pasternak

and Executive Director Parker, the Chief Justice of the Supreme Court of California directed the Bar to “formulat[e] a policy, to be presented to the Supreme Court for approval, that the Bar must follow in identifying, analyzing, and bringing to the court any proposed Board action that implicates antitrust concerns.”

The policy addresses the application of the U.S. Supreme Court’s 2015 decision in [*North Carolina State Board of Dental Examiners v. FTC*, 135 S. Ct. 1101 \(2015\)](#), to the activities of the State Bar. Specifically, the policy provides guidance to State Bar personnel and the public regarding the application of antitrust laws to the State Bar, provides examples of potentially sensitive actions, and establishes a procedure for review of any actions that may implicate antitrust concerns. The policy points out that any action of the State Bar that has the effect of advancing the interests of attorneys without a clear benefit to the public must be scrutinized closely for antitrust violations. These violations can include collusion among attorneys to fix prices, limit market entry, or otherwise limit competition.

Pursuant to the policy, any item raising antitrust concerns must be submitted to the Bar’s Office of General Counsel (OGC) for review. If OGC determines that the item implicates antitrust concerns, the State Bar will delay implementation until after the Supreme Court has reviewed the item. The policy clarifies that the Supreme Court retains the ultimate authority to review any determination by OGC regarding antitrust issues, consistent with the Supreme Court’s procedures. The Board unanimously voted to adopt the policy at its July 14, 2017 meeting.

Special Master's Quarterly Report

On April 28, 2017, Special Master Hon. Elwood Lui issued his [quarterly report](#) for the first quarter of 2017. The Supreme Court [appointed](#) Justice Lui as the Special Master on October 17, 2016, to oversee the Bar's request for a special regulatory assessment that year after the legislature ended the legislative year without passing a bill authorizing the Bar to charge attorneys licensing fees during 2017. Once the Court [approved](#) the Bar's request to assess attorneys funds to maintain the Bar's disciplinary functions, it tasked the Special Master with managing the funds collected by the Bar, and authorizing disbursements throughout 2017 to ensure the funds were being appropriately used for only those purposes approved by the Court.

The Special Master's report for the first quarter of 2017 identified \$1 million in cost savings on the attorney discipline system during the first three months of the year, mostly because of slow hiring of supervising attorneys. As a result, the Special Master reduced the May disbursement from the Special Master's fund by \$1 million (from \$5.6 million to \$4.6 million) to account for the substantial budgetary deviation. Overall, the State Bar Court was \$125,585 over budget due to salary and benefit costs in its Hearing Department, while the Probation Department's spending was \$46,148 higher than budgeted due to salary expenses.

Tension with State Bar Employees' Union Runs High

Tensions have been running high between the State Bar employees' union, affiliated with SEIU Local 1000, and Bar management during this reporting period. At the

July Board meeting, union leaders criticized the agency for seeking to implement an outside consultant's recommendations regarding compensation, including a proposal to move Bar employees to a 40-hour workweek without higher pay. The pay differential between State Bar employees compared to other state agencies was also highlighted by the [State Auditor's 2017 audit](#). Union representatives have been highly critical of the Bar's executive management compensation compared to other state agencies, pointing out that the Executive Director's salary is higher than Governor Brown's salary.

The union's contract expired in September, and its members voted overwhelmingly to authorize its leadership to call a strike, if necessary. At this writing, the union and State Bar management continue to negotiate. No strike has been called.

MOU with State Bar Foundation: Affinity and Insurance Program Administration

SB 36 (Jackson) authorizes the Bar to transfer administration of its affinity and insurance programs to the California Bar Foundation. During its September 7, 2017 meeting, the Board approved the transfer of the administration of the affinity and insurance programs from the State Bar to the California Bar Foundation. The Board also approved the essential [terms and conditions of the MOU](#) to be presented to the Foundation for its approval, and authorized its staff to enter in an MOU upon approval.

RULEMAKING

Supreme Court Adopts New Rules Regarding the Committee of Bar Examiners

On June 21, 2017, the California Supreme Court [adopted](#) several amendments to, and restructured a variety of rules under, Title 9 of the California Rules of Court relating to the California Bar examination and the Committee of Bar Examiners. The Court's amendments came in the midst of intense public scrutiny of the Bar with respect to the declining pass rate for the California Bar exam.

Specifically, the Court added a new Chapter 2 to Title 9, entitled "Attorney Admissions," and added four new substantive rules, now numbered 9.3 through 9.6. New Rule 9.3 addresses the inherent power of the Supreme Court to admit persons to practice law in California, and affirmatively states that the State Bar and Committee of Bar Examiners serve as the Court's administrative arm for admissions matters, acting under the authority and at the direction of the Supreme Court. Rule 9.3 also authorizes CBE to administer the requirements for admission to practice law, to examine all applicants for admission, and to certify to the Supreme Court for admission those applicants who fulfill the admission requirement.

New Rule 9.4 provides that the Court (and not the Board of Trustees) will appoint ten examiners to CBE, each for a four-year term. At least one of the ten examiners must be a judicial officer in California, and the remaining nine must be attorneys licensed by the State Bar. At least one of the attorney examiners must have been admitted to practice law in California within three years from the date of his or her appointment. The rule permits

the Court to reappoint members to serve no more than three additional full terms. Per subdivision (b), the Court must make its appointments from a list of candidates nominated by the State Bar Board of Trustees pursuant to a procedure approved by the Court.

New Rule 9.5 requires that all rules adopted by CBE, and approved by the Board of Trustees, pertaining to the admission to the practice of law must be submitted to the Supreme Court for its review and approval.

New Rule 9.6 sets forth the procedures and requirements for Supreme Court approval of the Bar examination, providing that CBE is responsible for determining the Bar examination's format, scope, topics, content, questions, and grading process, subject to review and approval by the Supreme Court, but specifies that the Supreme Court must set the passing score for the Bar examination. Subdivision (b), for the first time, requires the State Bar to conduct an analysis of the validity of the Bar examination at least once every seven years, or whenever directed by the Supreme Court. It also requires the State Bar to prepare and submit a report summarizing its findings and recommendations to the Court, and provides that any recommendations proposing significant changes to the Bar examination, and any recommended change to the passing score, must be submitted to the Supreme Court for review and approval. Subdivision (c) requires the State Bar to provide the Supreme Court with a report on each administration of the Bar examination in a timely manner.

The amended rules become effective on January 1, 2018.

Rules of Professional Conduct

On May 1, 2017, the California Supreme Court issued [Administrative Order 2017-04-26](#), in which it granted in part and denied in part the State Bar's request for approval of amendments to Rule 5-110 and Rule 5-220 of the Rules of Professional Conduct of the State Bar of California, which generally set forth the duties of prosecutors in criminal matters. The Bar submitted its proposed amendments to these rules to the Supreme Court for approval on January 9, 2017.

The Court mostly granted the Bar's request, and attached the approved new rules 5-110 and 5-220 as Attachment 1 to its Administrative Order, effective May 1, 2017. The Court denied, however, the State Bar's proposal to add paragraph (D) to Rule 5-110, and its related discussion paragraphs [3] and [4], which concern prosecutors' ethical pretrial disclosure obligations. The Court directed the Bar to consider alternative revisions to paragraph (D), which the Court attached as Attachment 2 to its Administrative Order, and ordered the Bar to "assess whether any such revisions will warrant further public comment." The Court also ordered the Bar to explain the meaning of the terms "cumulative disclosures of information" as used in the second sentence of discussion paragraph [3], or alternatively, consider removing this portion of the sentence from the discussion paragraphs.

The Court likewise denied the Bar's proposal to add paragraph (E) to Rule 5-110, regarding the conditions under which a prosecutor may issue a subpoena to a lawyer to present evidence about former or current clients. The Court directed the Bar to "reconsider whether this is an ethical obligation that should be imposed on all attorneys, not only

prosecutors.” The Court further directed the Bar, to the extent it chooses to recommend a more broadly applicable rule patterned on the language in proposed paragraph (E), to reconsider some of its chosen language, and permitted the Bar to resubmit a recommendation for a new or revised rule on this subject matter at any time.

On May 30, 2017, the Board released proposed modifications to both sections, pursuant to the Court’s suggestions, for a 30-day public comment period. On July 7, 2017, the Board considered the 171 public comments, as summarized by staff, and voted to approve the [revised amendments to Rule 5-110](#).

The Board submitted its modified amendments to Rule 5-110 to the Supreme Court of California on August 31, 2017. At this writing, the Court has not yet ruled on the revised amendments.

Ten-Hour New Admittee MCLE Requirement

On May 11, 2017, the Board’s Admissions and Education Committee directed staff to develop a curriculum that will satisfy the Board’s newly-adopted rules to require ten hours of mandatory continuing legal education (MCLE) for new admittees, as recommended by the Task Force on Admissions Regulation Reform (TFARR) in 2016. The Board accepted TFARR’s recommendations at its September 26, 2016 meeting, and established a Working Group to determine the topics of study and to oversee the development of the content.

At the Board’s September 12, 2017, meeting, staff presented the Working Group’s [recommendations](#) for the ten-hour new admittee MCLE requirements to the Board. On October 6, 2017, the Board approved an E-learning services contract with InfoPro Learning

as the selected vendor after a request for proposals process, not to exceed \$218,570. The “New Attorney Training Program,” under Rule 2.53(D) of Title 2, Division 4, Chapter 1 of the Rules of the State Bar, will be effective on February 1, 2018.

The Working Group has tentatively agreed upon the following structure to fulfill the ten-hour requirement: four hours of legal ethics, three hours of basic lawyering skills, one and one-half hours of competence, and one and one-half hours of elimination of bias training. The ten-hour requirement will be part of the 25-hour MCLE requirement.

LEGISLATION

[SB 36 \(Jackson\)](#), as amended August 28, 2017, is landmark legislation that amends various sections of the Business and Professions Code to impose significant structural reform upon the State Bar, permit the Bar to collect up to \$390 in active membership dues for 2018, and separates the State Bar Sections into a separate nonprofit corporation, thus severing the Bar’s “trade association” functions from its “regulatory” functions. Of note, the bill imposes the following significant reforms:

◆ ***Board Composition and Appointment.*** SB 36 amends and repeals several provisions of the Business and Professions Code to reform the composition and appointment structure of the Board or Trustees as follows:² The Board will consist of a maximum of 19 members and no less than 13 members, with the goal being a 13-member Board by October 21, 2020. The Supreme Court will appoint five attorney members of the Board, while the Senate Rules Committee and the Assembly Speaker shall each appoint

² Specifically, SB 36 repeals sections Business and Professions Code sections 6009.7, 6012, 6013.2 and section 6018; and amends sections 6011, 6013.1, 6013.3, 6013.5, 6015, 6016, 6019, 6021, 6022, and 6029.

one attorney member of the Board. A maximum of six members of the Board will be public members, one appointed by the Senate Rules Committee, one by the Assembly Speaker, and four appointed by the Governor. Board member terms are extended to four years. The six attorney positions of the Board that were previously elected by California attorneys from various geographical regions of the state are eliminated, and will occur through the expiration of the terms of the elected members who are serving as of December 31, 2017. The bill also provides that Supreme Court will appoint the Chair and Vice Chair of the Board, meaning the Board will no longer elect its officers each year. The Chair and Vice Chair shall serve one-year terms and may not serve more than two terms. The Board will appoint the secretary of the State Bar annually. The bill also provides that the Board's Executive Committee must be comprised of one member appointed by each of the following: the Supreme Court, the Governor, the Assembly Speaker, and the Senate Rules Committee.

◆ ***Transparency.*** SB 36 also eliminates certain State Bar exceptions to the Bagley-Keene Open Meeting Act, including in part for the Committee of Bar Examiners; adds an exception from both the Bagley-Keene Open Meeting Act and the California Public Records Act for the State Bar Court; and provides that access to records of the State Bar Court are governed by the laws applicable to the records of the judiciary.

◆ ***Regular Validation of the California Bar Examination.*** The bill adds section 6046.8 of the Business and Professions Code to require the Board (for the first time) to oversee an evaluation of the California Bar examination to determine if it adequately tests for minimal competence of entry-level attorneys. The Board shall then decide, based on its findings, whether to adjust the exam or the passing score. The Board must report the results

of the evaluation to the Supreme Court and the Legislature by March 15, 2018 and at least every seven years following that report.

◆ ***Fingerprint Authorization.*** The bill amends section 6054 to authorize the Bar to require members to submit or resubmit their fingerprints to the Department of Justice. The Department of Justice will retain fingerprints for the purpose of notifying the State Bar of any arrests of its licensees. Any licensee who fails to be fingerprinted upon request may be placed on inactive status. The State Bar must report to the Supreme Court by March 15, 2018, on its compliance with the fingerprinting requirements.

◆ ***Deunification.*** A substantial portion of the bill is dedicated to facilitating the separation of the State Bar Sections and the California Young Lawyers Association, as well as its other trade association activities, from the Bar as a regulatory agency. Of note, SB 36 adds Article 3, commencing with section 6055, to the State Bar Act, to require the Bar to assist the Sections in forming a nonprofit corporation (the Association), and enter into a memorandum of understanding regarding the terms of separation; permits the Bar to collect Section fees when it collects annual member dues, and requires the Bar to transfer such fees to the Association as collected; requires the Bar to ensure that State Bar staff who support the Sections as of September 15, 2017, are reassigned to other comparable positions within the State Bar (section 6056); requires the Sections' reserves held by the Bar and the Sections' intellectual property maintained by the Bar to be transferred to the Association (section 6056.3); requires the Association to provide for the development of low-cost programs by which members of the State Bar may satisfy their MCLE requirements (section 6070); and provides that any revenue received from the Bar's former affinity programs will support the California Bar Foundation (section 6141.3).

◆ ***Malpractice Insurance Study.*** SB 36 adds section 6069.5 to require the State Bar to conduct a review and study regarding errors and omissions insurance for attorneys in order to protect the public from attorney error. Under this new provision, the Bar must report its findings to the Supreme Court and the legislature relating to errors and omissions insurance for attorneys by March 31, 2019.

◆ ***Client Security Fund.*** The bill also adds section 6140.56 to require the Bar to conduct a thorough analysis of the Client Security Fund to ensure that the fund can adequately compensate consumers who are victimized due to intentional dishonesty by lawyers, and provide a report regarding its analysis to the legislature by March 15, 2018. Relatedly, it amends section 6140.9 to authorize the Bar to transfer any excess funds not needed to support the Lawyer Assistance Program to the Client Security Fund.

◆ ***Antitrust Review.*** Section 38 of the bill requires the Bar to adhere to a Supreme Court-approved policy to identify and address any proposed decision of the Board of Trustees that raises antitrust concerns, including a procedure for submitting any such proposed decisions to the California Supreme Court for review prior to implementation and for processing complaints from the public about antitrust issues.

Governor Brown [signed](#) SB 36 on October 2, 2017 (Chapter 422, Statutes of 2017).

[SB 690 \(Jackson\)](#), as amended July 2017, amends section 6060.25 of the Business and Professions Code to specify information that the State Bar may disclose about applicants seeking admission to the Bar. This bill remedies unintended consequences that resulted when the legislature enacted [SB 387 \(Jackson\) \(Chapter 537, Statutes 2015\)](#), which subjected the State Bar to the California Public Records Act, but specifically exempted identifying information on law school applicants from disclosure.

After the implementation of SB 387, the Deans and Assistant Deans of all but one of the American Bar Association-accredited California law schools sent a letter to the author noting that the State Bar ceased releasing information to law schools that the law schools need in order to comply with their accreditation and regulatory requirements. For example, law schools are required to report and certify Bar exam pass data for accreditation purposes, and are required to post their Bar exam pass rates online for regulatory purposes. According to the Deans and Assistant Deans, law schools were unable to fulfill these important requirements without reviewing the information previously provided to law schools by the State Bar.

To remedy this problem, this bill allows the State Bar to disclose information to law schools that is necessary for the purpose of the law school's compliance with accreditation or regulatory requirements. Specifically, it amends section 6060.25 to permit the Bar to disclose (1) the names of applicants who have passed any examination administered, given, or prescribed by the Committee of Bar Examiners; (2) information that is provided at the request of an applicant to another jurisdiction where the applicant is seeking admission to the practice of law; (3) information provided to a law school that is necessary for the purpose of the law school's compliance with accreditation or regulatory requirements; and (4) information to the National Conference of Bar Examiners in connection to the administration of State Bar examinations.

The bill also requires the Bar, beginning with the release of the results of the July 2018 Bar exam, to provide law schools with the Bar examination results of their respective graduates, and the scores of those graduates who did not pass the Bar examination, so long

as the graduates consent. Under the bill, the aforementioned disclosure provisions apply retroactively to January 1, 2016.

SB 690 further adds a provision with respect to the “Law School Bar Exam Performance Study,” which the Bar has undertaken as part of its California Supreme Court-directed study of the Bar examination regarding the recent trend of low Bar exam passage rates. According to the author, law schools have been hesitant to provide student-specific data in response to such a study until they can be assured that such information will not be disclosed. Accordingly, the bill adds subdivision (d) to section 6060.25, which provides that all information the law schools produce in response to this study, other than aggregate, summary, or statistical data that does not identify any person and does not provide substantial risk of identification of any person, shall be confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act.

Governor Brown [signed](#) SB 690 on October 2, 2017 (Chapter 433, Statutes of 2017); given its designation as an urgency statute, the bill took effect immediately upon signing.

[AB 103 \(Committee on Budget\)](#), as amended June 8, 2017, as it pertains to the legal profession, is a budget trailer bill affecting the distribution of *cy pres* awards in California. *Cy pres* funds are the residual funds after class action awards have been distributed to the claimants, and are governed by section 384 of the Code of Civil Procedure. Historically, these funds are distributed to specified nonprofit organizations. This bill amends section 384 to require that at least 25% of unpaid cash residue or unclaimed or abandoned class member funds generally attributable to California residents,

plus any accrued interest that has not otherwise been distributed, be transmitted to the State Treasury for deposit in the Trial Court Improvement and Modernization Fund, and be continuously appropriated to the Judicial Council to fund trial court operations. The bill further requires that at least 25% of these funds be transmitted to the Equal Access Fund of the Judicial Branch. Governor Brown [signed](#) AB 103 on June 27, 2017 (Chapter 17, Statutes of 2017).

[AB 360 \(Muratsuchi\)](#), as amended May 3, 2017, adds section 6074 to the Business and Professions Code, which requires the Bar to administer a program to coordinate pro bono civil legal assistance to veterans and their families who otherwise cannot afford legal services. Subsection (c) requires the Bar to provide the resources to support the program through compiling a list of local bar associations, legal aid organizations, veterans service providers, and volunteer attorneys willing to provide pro bono legal services to veterans, organized by city and county, and posting the list on the Bar's website. Subsection (c) also requires the Bar to conduct a statewide survey of programs that provide civil legal assistance to veterans in order to identify whether and where this is a need for legal advice clinics, to publish a report and recommendations based upon its findings no later than December 31, 2018, and to post the report on its website.

The original version of the bill would have required the State Bar to provide this assistance and host advice clinics but, as amended, only requires the Bar to coordinate and encourage such services. Governor Brown [signed](#) AB 360 on October 2, 2017 (Chapter 401, Statutes of 2017).

RECENT MEETINGS

The Board of Trustees (BOT) convened in Los Angeles at a special meeting on July 14, 2017, to conduct elections for the 2017–18 officers of the BOT. The BOT elected Todd Stephens as treasurer on a vote of 8–6; and Jason Lee, running unopposed, was deemed elected as Vice President. The presidential voting, however, proved more contentious. [Danette Meyers](#) ran against [Michael Colantuono](#). After hearing statements and a question and answer session from each candidate, the Board voting ended in a 7–7 tie. Pursuant to Bar rules, the Board proceeded with two additional voting sessions to see if anyone changed his/her mind; no one did. Outgoing President Jim Fox then cast the tie-breaking vote in favor of Michael Colantuono. All three officers are attorneys.

During its August 9, 2017 meeting, the Board of Trustees voted to create an Ad Hoc Transition Committee to assist with the transition between Elizabeth Parker and Leah Wilson as executive directors. The Committee will be chaired by Jim Fox, with Michael Colantuono serving as vice chair, and will include Trustees Jason Lee, Alan Steinbrecher and Sean SeLegue, with Elizabeth Parker as an *ex officio* member. On September 7, 2017, the Board approved the reauthorization of the Ad Hoc Transition Committee to consist of the same members, with a term lasting until February 2018.