

STATE BAR OF CALIFORNIA

*Executive Director: Leah Wilson ♦ (415) 538-2000 ♦ (213) 765-1000 ♦ Toll-Free
Complaint Hotline: 1-800-843-9053 ♦ Ethics Hotline: 1-800-2ETHICS ♦ Internet:
www.calbar.ca.gov*

Protection of the public shall be the highest priority for the State Bar of California in exercising its 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 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.

The passage of [SB 36 \(Jackson\) \(Chapter 422, Statutes of 2017\)](#), eliminated the elected attorney positions on the Board of Trustees, and will be fully 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.

In accordance with this new law, the California Supreme Court [appointed](#) Jason Lee as Chair of the State Bar Board of Trustees and Alan Steinbrecher as Vice Chair on August 24, 2018. Their terms began on September 14, 2018 and will end after the State Bar annual meeting in 2019.

On September 6, 2018, Governor Brown [appointed](#) Sonia Delen to the Board of Trustees. Ms. Delen has been a senior vice president at Bank of America Merrill Lynch since 2002. Assembly Speaker Anthony Rendon appointed Ruben Duran to the Board of Trustees in September, 2018. Mr. Duran has been a partner at Best Best & Krieger since 2015.

MAJOR PROJECTS

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

◆ *Legal Services Trust Fund Program.* On April 30, 2018, pursuant to section 6222 and 6145 of the Business and Professions Code, the Bar submitted its [2017 Annual Legal Services Trust Fund Program Report](#) to the Chief Justice of the California Supreme Court and the Assembly and Senate Judiciary Committees. The Legal Services Trust Fund helps expand the availability of legal services in civil matters to indigent persons and to create new programs to provide these services. The report consists of the receipts, expenditures, and disbursements by county for the year ended December 31, 2017. Total revenues equaled \$14,096,023; total expenditures equaled \$14,602,517; and the ending fund balance was \$8,094,736.

◆ *Financial Statement and Independent Auditor's Report.* On April 30, 2018, pursuant to section 6145 of the Business and Professions Code, the State Bar submitted its [2017 Financial Statement and Independent Auditor's Report](#) to the Chief Justice and the Senate and Assembly Judiciary Committees. The report presents the State Bar's current financial condition, changes in its financial condition, and results of operations. According to the report, the total assets and deferred outflows of resources totaled \$278,979,734; total liabilities and deferred inflows of resources totaled \$133,590,020; and, total net position totaled \$145,389,714. The total assets and deferred outflows of resources were down by 2% from the previous year. The State Bar's net position was down by 7%, mostly due to the excess expenses over revenues from various programs.

◆ *Annual Attorney Discipline Report.* On April 30, 2018, pursuant to Business and Professions Code 6085.15, the State Bar submitted its [Annual Attorney Discipline Report](#) to the Chief Justice, the Governor, the Speaker of the Assembly, the President Pro Tempore of the Senate, and the Senate and Assembly Judiciary Committees. The report discusses the key reforms that the State Bar underwent in the past year, including the separation of the regulatory functions of the Bar from its trade association functions. Additionally, the report discusses the organizational restructuring of the OCTC, the implementation of workforce planning recommendations to streamline case processing, deployment of a new case management system, and the development of a new case prioritization system. Lastly, the report contains information on complaints, backlog, time for processing complaints, disciplinary outcomes, cost of the discipline system, and the condition of the Client Security Fund.

Bar Forms Access Through Innovation of Legal Services Task Force

At its July 2018 [meeting](#), Professor William D. Henderson, a law professor from Indiana University, presented his [landscape analysis](#) of the current state of the legal services market—including new technologies and business models used in the delivery of legal services—which the Bar commissioned him to conduct. Among Professor Henderson’s findings were his observations regarding current trends and the division in the profession between those serving individuals (“PeopleLaw”) and those serving corporations (Organizational Clients). Of note, the report concludes that the ways in which the legal market is structured, including ethics rules prohibiting collaboration with professionals from other disciplines, are preventing access to justice in the U.S. At the

meeting, the Board authorized the formation of a task force to analyze the report and conduct a study of possible regulatory reforms.

At the its September 2018 [meeting](#), the Board voted to approve staff's proposed [charter](#) for the Access Through Innovation of Legal Services (ATILS) Task Force. Pursuant to the charter, the Task Force will study possible regulatory reforms that will increase access to justice and public protection in the field of online delivery of legal services. Staff's recommended structure of the task force is 15 members.

State Bar Review of State Bar Sub-Entities

During this reporting period, the State Bar has been continuing its work evaluating the committees, commissions, boards, and councils that work under the umbrella of the State Bar. This review is guided by Appendix I of the [2017 Governance in the Public Interest Task Force Report](#). [[23:1 CRLR 165](#); [23:2 CRLR 264](#)]

At its September 2018 meeting, the Board considered staff's comprehensive [recommendations](#) as to several sub entities, and the Board voted to take the following action as to each of these sub-entities:

◆ ***Council on Access and Fairness.*** The Board voted to retain and focus the council by clarifying Board strategy and priority initiatives of the Council. Additionally, to clarify the charge of the council and align with the State Bar's diversity and inclusion mandate. The Council on Access and Fairness supports the Board of Trustee's diversity and inclusion goals and objectives. This includes a pipeline to the legal profession, retention and career advancement, and judicial diversity.

◆ ***Client Security Fund Commission.*** The Board approved the proposed staff recommendation that the Commission function only as an appellate body. The Commission staff will issue tentative decisions which will become final decisions if no objection is filed. They will adjudicate claims based on the original complaint and refer to itself only on Objections and Notices of Intention to Pay. The Client Security Fund Commission oversees the client security fund, which reimburses clients who have lost money or property due to dishonest acts by their attorney. The Commission determines which applications qualify for reimbursement, and makes recommendations for changes to the fund's rules, methods for reviewing applications, and the financial and administrative needs of the fund.

◆ ***Lawyer Assistance Program (LAP) Oversight Committee.*** The Board agreed that it needed more information regarding its questions about the work of the LAP Committee, and requested the State Bar staff to report back to the Board at its November 2018 meeting regarding the options of separating the voluntary referrals from the State Bar Program while retaining the disciplinary and moral character referrals; or, separating the entire Lawyer Assistance Program from the State Bar. The Lawyer Assistance Program helps lawyers, State Bar applicants, and law students who are struggling with stress, depression, substance abuse, or career concerns. This commission oversees the operation of the LAP, establishing procedures, practices, and policies as necessary to support the offering of rehabilitative programs.

◆ ***Committee on Mandatory Fee Arbitration.*** The Board approved the staff recommendation of a staff-driven program with volunteer presiding arbitrators as opposed to an entirely staff-driven program. This committee oversees the mandatory fee arbitration program that is mandated by Business and Professions Code sections 6200–6206. The

Committee reviews proposed legislation that may affect the program, makes recommendations to the Board of Trustees regarding amendments of statutes, monitors related developments in the law, and conducts continuing education seminars.

◆ *California Board of Legal Specialization.* The Board voted against the staff recommendation to eliminate the certification of legal specializations, and disagreed with staff's findings that certification is an associational activity that benefits lawyers in the marketing of their services. After receiving 15 public comments—13 of them from legal specialists who were against the elimination of the Board—the Board of Trustees rejected the recommendation and opted to retain the Board of Legal Specialization and to streamline it by reducing the role, size, and meetings of its 11 Specialty Advisory Commissions. The California Board of Legal Specialization was created by the State Bar to administer certification of legal specialization in California as mandated by the California Supreme Court in 1996. The certification serves to prove an attorney's competence in a specific field of the law and to give consumers confidence in their attorney's qualifications. Those who are against retaining the Board question whether the certification of legal specialists serves the public interest, and whether it might actually limit access to justice.

Transfer of Excess Lawyer Assistance Program Funds to Client Security Fund

At its May 2018 [meeting](#), the Board adopted a [policy](#) to implement the transfer of excess funds from excess LAP to the Client Security Fund (CSF). Business and Professions Code section 6140.9 provides that LAP is to be funded by an assessment as part of the annual licensing fee of \$10 per active attorney and \$5 for each inactive attorney. In 2017,

the legislature amended this provision to authorize the Bar to transfer any excess funds not needed to support the LAP to the CSF. [[23:1 CRLR 176](#)]

After considering staff’s recommendation, the Board voted to amend section V of the Budget Policies and Procedure Manual regarding the transfer of LAP reserves to support the CSF. The amount of LAP funds available for transfer will be calculated by adding the budgeted revenues for the current year to the prior year’s reserve and then subtracting the amount of budget expenses and indirect costs, the funds necessary to meet target growths, and an amount necessary to maintain a year end reserve balance of 25% of operating costs. It also approved a one-time transfer of \$250,000 in excess funds in the LAP budget to support the needs of the CSF.

Relatedly, the Board [voted](#) to modify the State Bar Reserve Policy to exclude CSF payouts from the reserve calculation which will result in an additional \$1.5 million made available for 2018 CSF applications payments.

RULEMAKING

Rules of Professional Conduct

On May 10, 2018, the California Supreme Court issued an [order](#) approving 69 new Rules of Professional Conduct. The Court approved 27 rules as submitted by the Bar, modified and authorized 42 more, and rejected one rule that laid out the responsibilities of attorneys representing clients with diminished capacities. The new rules will go into effect on November 1, 2018, with the primary function of protecting the public. The order specifies each of the rules approved, and this is the first overhaul of the rules in almost 30 years. [[23:1 CRLR 171–172](#); [23:2 CRLR 265–266, 267–268](#)]

Fingerprinting

On May 23, 2018, the Supreme Court [adopted](#) Rule 9.9.5 of the California Rules of Court, which requires most California attorneys to be re-fingerprinted on or before April 30, 2019. The rule comes after the State Bar revealed in 2017 that it had been out of compliance with section 6054 of the Business and Professions Code, which requires the Bar to retain fingerprints and subscribe to the Department of Justice’s Subsequent Arrest Notification System. [[23:1 CRLR 161–162](#); [23:2 CRLR 258–259, 268–269](#)].

At its May 2018 meeting, the Board additionally unanimously [adopted](#) a State Bar Rule specifying that noncompliance with the Rule 9.9.5 will result in an administrative inactive enrollment. The Board originally authorized the 30-day public comment period on March 21, 2018. While many comments were received, none specifically addressed the proposed State Bar Rule. [[23:2 CRLR 269](#)].

Rule 9.9.5 became effective on June 1, 2018.

Revisions to the Lawyer Referral Service Certification Rules

At its September 13, 2018 meeting the Board authorized the release of the [proposed revisions](#) (attachment A) to the State Bar Rules relating to Lawyer Referral Service (LRS) certification for a 45-day public comment period. The proposed revisions contain adjustments to the ban on automatic referrals that may discourage consumers from accessing an LRS; adjustments to the rules regarding services for persons of limited means, including that these services must include particular programs and that waivers will no longer be available; allowing new or continuing LRS’s to submit one application for

separate service areas and offering discounted fees for additional counties to be served; and allowing attorneys to serve on multiple county panels for an LRS. Section 6155 of the Business and Professions Code requires the State Bar to promulgate rules that govern the certified LRS. According to the [staff's memo](#), the proposed revisions are an effort to incorporate advances in technology that can help expand access to legal services while also maintaining public protection. The deadline for public comment will end on November 5, 2018.

Legal Malpractice Insurance

At its September [meeting](#), the Board voted to release a series of [recommendations](#) from the Malpractice Insurance Working Group (MIWG) for public comment. The Bar formed this MIWG to fulfill its obligation pursuant to Business and Professions Code 6069.5, which directs the State Bar to study the availability of professional liability insurance for attorneys; measures for encouraging attorneys to obtain insurance; recommended ranges of insurance limits; the adequacy of the current disclosure rule regarding insurance; and the advisability of mandating professional liability insurance for licensed attorneys, and submit a report to the California Supreme Court and the legislature on March 31, 2019. [[23:2 CLRL 259–260](#)]. The period for public comment ended on October 15, 2018.

Specifically, the MIWG sought public comment with respect to several recommendations it was considering for its report to the Board, including amending the rules that require attorneys to disclose that they do not carry legal malpractice insurance, whether to mandate legal malpractice insurance, developing continuing legal education to

help examine malpractice liability, and ways to promote the voluntary purchase of insurance. The deadline for public comment will end on November 5, 2018.

The Board also voted, at MIWG's request, to authorize staff to enter into a contract with the National Opinion Research Center (NORC), to conduct a public opinion survey about various issues impacting malpractice insurance to inform the working group's recommendations.

Proposed Amendments to Standards for Attorney Sanctions of Professional Misconduct

The new Rules of Professional Conduct adopted by the Supreme Court require changes to the Standards for Attorney Sanctions. The proposed changes do not rise to the level of major policy change. According to the [notice](#) and [staff memo](#), the proposed changes include changing the term "member" to "lawyer" or "licensee" throughout the standards, substituting the new rule numbers, and where specific conduct is mentioned, putting in language from both the new and old rules so that it will apply to those violations. The period for public comment will end on November 16, 2018.

State Bar Audit Submission Requirement for Legal Services Trust Fund Grantees

On July 19, 2018, the Programs Committee and Board of Trustees authorized a 30-day public comment period for proposed [amendments](#) to State Bar Rule 3.680(E)(1) to conform the rule to the new grants administration calendar that was implemented in 2015. The new calendar moved the date on which applications are due, and shifted reliance to audited/reviewed fiscal year data. The public comment period ended on August 27, 2018,

and a total of eight comments were received. The Board is scheduled to consider the comments at its meeting on October 19, 2018.

Bar Adopts Revisions to Rule of Procedure 2302 Pertaining to Confidentiality of Investigations, Proposes Additional Changes

At the Board's May [meeting](#), staff reported that after a 45-day comment period, they had not received any comments with respect to the Board's proposed revisions to Rule 2302 pertaining to the confidentiality of investigations. [[23:2 CRLR 271](#)] Accordingly, the Board voted to adopt the proposed amendments effective immediately.

Section 6086.1(b) of the Business and Professions Code provides for the confidentiality of disciplinary proceedings prior to the initiation of formal charges or proceedings. The section does not define "confidentiality" or state who can access information without violating it. State Bar Rule of Procedure 2302 interprets confidentiality to include information concerning complaints or investigations and implies that the Chief Trial Counsel (CTC) can access this information. The rule grants the CTC discretion to disclose confidential information to certain State Bar employees enumerated in the rule.

At the September [meeting](#) of the State Bar Regulation and Discipline Committee of the Board of Trustees (RAD), staff presented a [proposal](#) to further amend Rule 2302, and the committee voted to release the proposed amendment for public comment. According to the [notice](#), several situations have arisen where employees other than those enumerated in the statute have needed access to confidential information, including employees involved with Information Technology that need access to documents for Case

Management System implementation. The [proposal](#) seeks to amend Rule 2302 in a way that it does not address limitations on access to confidential information within OCTC. Additionally, it proposes that the CTC has discretion to grant disclosure of confidential information to any State Bar employee, or State Bar vendors, not just those enumerated in the current rule.

The deadline for public comment on the proposed amendment to Rule 2302 is October 19, 2018.

Monetary Sanctions in Disciplinary Proceedings

On July 19, 2018, RAD voted to release [proposed Rule 5.137](#) of the Rules of Procedure of the State Bar of California for a 60-day public comment period relating to the Bar's procedures for the imposition and collection of monetary sanctions in disciplinary proceedings. According to the [notice](#), and [staff's memo](#) to RAD, the proposed regulation is the Committee's effort to comply with section 6086.13 of the Business and Professions Code, which requires the State Bar to adopt rules that set forth guidelines to collect monetary penalties from attorneys in connection with their suspension, disbarment, or resignation with charges pending. According to staff, although the legislature imposed this requirement on the Bar in 1994, and the Bar proposed guidelines that year, the Board never voted on them and the Bar never actually adopted any guidelines despite the statutory mandate that they do so.

The proposed rule would permit the Supreme Court to order a monetary sanction not to exceed \$5,000 for each violation, to a maximum for \$50,000 per order in which the respondent attorney is suspended, disbarred, or resigns with charges pending. The proposed rule also requires respondents who are ordered to pay monetary sanctions to pay them

directly to the Client Security Fund, and sets forth the criteria for the enforcement and collection of the sanctions including how to determine the amount of the sanction, conditions for waiver or a payment plan, financial hardship implications, and the factors to be considered when determining whether to impose a monetary sanction.

The public comment ended on October 2, 2018. The proposed rule and any comments received will be reviewed by the Board of Trustees during its November 15–16, 2018 meeting.

Lawyer Assistance Program Participant Eligibility for Financial Assistance

On July 19, 2018, RAD voted to release for a 45-day public comment period the Bar’s proposed amendments to Rule 3.252 of the Rules of Procedure of the State Bar. According to the [notice](#), this rule currently states that active or inactive members of the State Bar are eligible for financial assistance to participate in the Lawyer Assistance Program. The [proposal](#) would add former California attorneys and candidates for admission to the Bar as eligible for financial assistance for the program. The public comment period ended on September 8, 2018. The proposed rule and any comments received will be reviewed by the Board of Trustees during its November 15–16, 2018 meeting.

Lawyer Assistance Program Elimination of Evaluation Committees

On July 19, 2018, RAD authorized a 45-day public comment period for proposed amendments to the Rules of Procedure of the State Bar. According to the [notice](#) and [staff memo](#), this proposal would amend Rules 3.242, 3.246, 3.249 and 3.250 to clarify that the

Clinical Review Team is fully empowered to deny an application for the LAP, determine if a participant may successfully complete the program, or determine if a participant meets the criteria for termination from the program. The Clinical Review Team is now replacing the Evaluation Committee process for LAP applicants and these amendments will update the rules to reflect this change. The public comment period ended on September 8, 2018, and the Board is expected to review the rule, and any comments received, at its November meeting.

Proposed Policy Regarding Consumer Notices and Alerts

On May 17, 2018, RAD authorized a 60-day public comment period for a proposed amendment to Board policy regarding consumer alerts. According to the [notice](#) and [staff memo](#), OCTC proposed consumer alerts in the following circumstances: (1) Filing of a Notice of Disciplinary Charges and Substantial Threat-of-Harm Proceedings; (2) Imposition of Discipline; (3) Felony Charges Pending in Court; (4) Superior Court Assumption of Jurisdiction over Attorney's Caseload; and (5) Inactive Enrollments, Suspensions, Disbarments, and Resignations with Charges Pending.

At the September Board of Trustees meeting, staff presented the public comments received and discussed their data. Six comments were received, most of them concerned with the alert regarding the filing of a Notice of Disciplinary Charges. The concerns focused on the fact that some attorneys have their charges dismissed and would be prejudiced by the consumer alert. The staff and Board debated over the fact that the State Bar has a statutory obligation to turn over this information when requested by a consumer

and whether checking the website should be considered an inquiry or is unfair to the attorney.

Executive Director Leah Wilson expressed concern over the lack of information on attorneys due to the lack of attorney fingerprint on file. The posting of consumer alerts at this time would not accurately include the entire population of attorneys in California. The Committee voted to have this item tabled indefinitely to allow staff time to conduct further research on the issue of posting consumer alerts on an attorney's State Bar Profile.

Proposed Change to Rule 5.104

On September 13, 2018, the Board adopted amendments to Rule 5.104 of the Rules of Procedure of the State Bar which sets forth the evidentiary rules applicable in State Bar proceedings. The OCTC proposed that the rule be amended to expressly authorize the State Bar Court to take judicial notice of uncertified court records. The new rule now requires parties to provide advance notice of their intention to use uncertified records from outside courts. According to the [staff memo](#), the amendments will help reduce significant time and resources spent obtaining certified court records for presentation to the State Bar Court.

Rules Pertaining to the Investigation of Reinstatement Cases

At the May 2018 meeting, RAD authorized a 60-day public comment period for proposed amendments to Rules 5.400, 5.403, 5.405, 5.408, 5.409, 5.411, 5.440, 5.443. The comment period ended on July 31, 2018 and one comment was received. At its September 2018 meeting, the Board [adopted](#) the amendments to the rules which included the following: (1) delete requirements that reinstatement proceedings be expedited and state

that they do not take precedence over disciplinary proceedings; (2) expand the time that OCTC has to conduct follow-up investigation after the deposition of a disbarred or resigned attorney who is seeking reinstatement into the practice of law; and (3) broaden OCTC's ability to obtain information concerning suspended attorneys who are petitioning to return to active practice based on a claim that they are rehabilitated.

Proposed Change to Rule of Procedure 5.106

On May 17, 2018, RAD authorized a 60-day public comment period for proposed amendments to Rule 5.106 of the California Rules of Procedure that deal with an attorney's prior record of discipline. According to the [notice](#), the rule previously stated that evidence of an attorney's prior discipline was inadmissible until the court makes a finding of culpability. According to the [staff memo](#), the revision proposed to codify the long-standing practice of requiring only a tentative decision of culpability of at least one count to satisfy this requirement and receive evidence of prior misconduct by the respondent. The deadline for public comment ended on July 30, 2018.

At its September [meeting](#), the Board adopted the amendments which will become effective on January 1, 2019.

Proposed Rule of Procedure Regarding Rule of Limitations

On May 17, 2018, RAD authorized a 45-day public comment period for proposed amendments to the State Bar Rule of Procedure 5.21. The State Bar Court has authority to place attorneys on inactive status for reasons of mental capacity under Business and Professions Code section 6007 (a) & (b). According to the [notice](#) and [staff memo](#), the

proposed rule would provide that the rule of limitations be tolled while an attorney is on inactive status because of mental incapacity. This would allow the State Bar Court to dismiss any pending disciplinary allegations against them without prejudice to reopening. The Committee also proposed a clarification of when the tolling period begins and ends for when an attorney conceals, misrepresents, or fails to cooperate in an investigation. The proposal states that the tolling period would begin when the offense is discovered. Lastly, back in 2016, the Board transferred responsibility for reviewing complaints after the closing of an investigation from the Audit and Review Unit to the Complaint Review Unit of the Office of General Counsel but never amended the Rule of Limitation tolling to reflect this. The proposed amendment would codify this transfer of responsibility. The period for public comment ended on July 6, 2018.

On July 20, 2018, the Board [adopted](#) the amendment to Rule 5.21, which became effective the same day.

Reconsideration of Rule 1.2.1

At its May 2018 [meeting](#), the Board authorized a 45-day public comment period for two [alternative proposals](#) to modify Rule 1.2.1 of the Rules of Professional Conduct. This rule prohibits a lawyer from advising or assisting the violation of law and includes an explanatory comment that addresses conflicts in state and federal law. This comment would guide lawyers who advise marijuana dispensaries because California state law permits certain sales and use of marijuana while federal law does not. Rule 1.2.1 was originally adopted by the Board at its March, 2017, meeting but the Supreme Court substantially revised the rule in its April 11, 2018, [order](#), and directed the Board to consider whether it warrants further public comment. The new public comment period ended on July 3, 2018.

At its July, 2018, meeting the Board adopted the revised Rule 1.2.1 found in [attachment 1](#) and the Supreme Court approved it. The rule will become effective on November 1, 2018.

Rule 1.15(e)–Record Keeping Standards

Rule 1.15(e) of the Rules of Professional Conduct, which will become operative on November 1, 2018, governs the safekeeping of funds and property of clients and other persons. On July 19, 2018, the Board [adopted](#) proposed standards developed by the Rules Revision Commission. The revisions make corrections in the rule’s language such as adding the prior rule number “4-100” and correcting “client” to say “client or other person.” The operative date of the adopted standards will be November 1, 2018.

Proposed Rule of Procedure Regarding Electronic Notification of Letters of Inquiry

At its May 17, 2018 meeting, the Board approved proposed amendments to rules 2409 and 5.104 of the Rules of Procedure of the State Bar to allow the OCTC to use electronic communications to notify attorneys before filing disciplinary charges, as opposed to the letters of inquiry sent through U.S. mail. The emails would be sent using the attorneys’ State Bar Profile and confidential email and would allow OCTC to be notified as soon as the attorney opens the email.

RAD originally [authorized](#) a 45-day public comment period for the amendment on March 8, 2018 in order to avoid delays in filing disciplinary charges and improve the speed and accuracy of communication with attorneys. [[23:2 CRLR 271](#)]

LEGISLATION

[AB 3249 \(Committee on Judiciary\)](#), as amended on August 22, 2018, is the Bar’s annual “fee bill,” which authorizes the State Bar to collect up to \$390 for active licensing fees for 2019, increases attorney discipline, revises the biannual audit of the State Bar’s finances, and directs the State Bar to enhance diversity. In addition to making technical changes throughout the State Bar Act to refer to licensed attorneys as “licensees” instead of “members” of the Bar, the legislation makes the following additional changes:

◆ *Diversity and Access to Justice.* Section 5 of the bill adds section 6001.3 to the Business and Professions Code to ensure the State Bar maintains its commitment to and support of access, fairness, and diversity in the legal profession. The legislature requires a justice system that is accessible and free of bias and that diversity and inclusion are an integral part of the State Bar’s mission of public protection stating that diversity increases public trust and confidence and the appearance of fairness in the justice system which results in increased access to justice. The legislature instructs the State Bar to implement a plan to meet these goals, which may include an assessment of needed revenue. The report is due to the legislature by March 15, 2019, and every two years thereafter.

◆ *Attorney Discipline.* Section 12 of the bill amends section 6007 to require the State Bar Court to order the involuntary inactive enrollment of attorneys that are sentenced to incarceration for 90 days or more because of a criminal conviction for at least the period that the attorney is incarcerated. The attorney is also required to notify all clients and opposing counsel, and to return any papers, property, and unused fees.

The section also requires the Supreme Court to disbar an attorney who has a final felony conviction for a crime if the facts and circumstances involve moral turpitude. Additionally, this section requires an attorney, as a condition of return to active status, to reimburse the Client Security Fund for all payments made because of the attorney's misconduct. This section also allows the State Bar to provide social security numbers to collections agencies to collect funds owed to the State Bar by a licensee for discipline costs or to reimburse the Client Security Fund.

◆ *State Auditor.* Section 113 of the bill adds subdivisions (c) and (d) to section 6145 of the Business and Professions Code to specify the terms of the 2019 performance audit of the Bar by the California State Auditor, which can be reviewed in conjunction with the legislation that authorizes the State Bar's licensing fee in 2020. Specifically, the bill provides that the audit should evaluate each program of the State Bar receiving support from annual Bar licensing fees. The audit must include an assessment of how much fee revenue, staff, and resources are currently budgeted and expended to perform existing tasks and responsibilities; an assessment of whether the State Bar has appropriate program performance measures in place; an assessment of the usage of real property owned by the State Bar; a review of the State Bar's cost allocation plan for administrative costs; a review of any proposals for additional funding or resources requested by the State Bar; and a calculation of how much fee revenue would be needed from each State Bar active and inactive licensee to fully offset State Bar costs to perform existing tasks and responsibilities. The audit must be submitted by May 1, 2019.

The bill also tasks the Legislative Analyst's Office with assessing whether the State Bar effectively utilizes licensing fee revenues to maximize efficiencies for each program

or division assessed by the California State Auditor. The report is due to the legislature and the Chief Justice by July 1, 2019.

◆ ***Lawyer Assistance Program.*** The bill amends section 6235 is amended to specify that participants in the Attorney Diversion or Assistance Program are responsible for all expenses relating to treatment and recovery. Funds collected pursuant to section 6140.9 may be used for treatment services for participants with an inability to pay. The funding for financial assistance shall be drawn exclusively from the ten-dollar fee paid by active licensees to support the Attorney Diversion and Assistance program. This section also requires that, beginning January 1, 2019, one dollar of this ten-dollar fee will be transferred to a nonprofit corporation that provides peer support to attorney's recovering from alcohol and substance abuse.

◆ ***Conference of Delegates.*** This bill sunsets the State Bar's authorization to collect fees for the Conference of Delegates of California Bar Associations after 2019.

Governor Brown signed AB 3249 on September 21, 2018 (Chapter 659, Statutes of 2018).

[SB 766 \(Monning\)](#), as amended January 11, 2018, is a two year bill that adds 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 requires 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; permits 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 requires 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.”

Governor Brown signed SB 766 on July 18, 2018 (Chapter 134, Statutes of 2018).

[SB 954 \(Wieckowski\)](#), as amended on August 16, 2018, adds 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.

Governor Brown signed SB 954 on September 11, 2018 (Chapter 350, Statutes of 2018).

[AB 3019 \(Reves\)](#), amends section 2025.220 of the Code of Civil Procedure to require that a party desiring to take the oral deposition of any person shall give notice in writing and be in at least 12-point type.

Governor Brown signed AB 3019 on September 5, 2018 (Chapter 268, Statutes of 2018).

[AB 1987 \(Lackey\)](#), as amended August 23, 2018, amends section 1054.9 of the Penal Code to expand the right of access to discovery materials to any case in which a defendant is convicted of a serious or violent felony resulting in a sentence of 15 years or more. The bill includes an uncodified legislative request, in light of the Bar's obligation to make public protection its highest priority, that the Bar study the issue of closed-client file release and retention by defense attorneys and prosecutors in criminal cases, and provides.

If the Bar opts to study the issue, the bill mandates that the Bar

ascertain whether an attorney's duties related to file release and retention upon the finality of a case or the termination of the attorney-client relationship are clear in light of the Rules of Professional Conduct that becomes operative on November 1, 2018. To the extent the State Bar finds there are generally applicable file release and retention duties that are not sufficiently apparent in the specific context of post-conviction discovery, the State Bar shall consider issuing an advisory ethics opinion that makes those duties evident. If the State Bar finds that any file release or retention duties in the new rules are deficient in protecting clients and the public in the context of post-conviction discovery, the State Bar shall consider adopting an appropriate new or amended Rule of Professional Conduct for submission to the Supreme Court of California for the Supreme Court's consideration and possible approval.

Governor Brown signed AB 1987 on September 18, 2018 (Chapter 482, Statutes of 2018).

Legislative Bills that Died

The following bill reported in Volume 23, No. 2 (Spring 2018) died in committee or otherwise failed to be enacted during 2018: [AB 3076 \(Reyes\)](#), relating to child welfare for Indian tribes.

RECENT MEETINGS

The Board of Trustees held its annual meeting in Los Angeles on September 13–14, 2018 where Chief Justice Cantil-Sakauye addressed the Board and performed the swearing in of the new Board of Trustees members, the Chair, and the Vice Chair.