

# STATE BAR OF CALIFORNIA

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*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](http://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 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 reformed the composition of the Board of Trustees of the State Bar of California, eliminating six attorney positions on the Board, which had been elected by California attorneys. This reform 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.

Pursuant to section 6021 of the Business and Professions Code, the Supreme Court of California appoints the Chair and Vice Chair of the Board of Trustees to serve one year terms beginning in September of each year. The legislature sets the licensing fees for attorneys in California on an annual basis.

## **MAJOR PROJECTS**

### **Task Force on Access Through Innovation of Legal Services**

At its October 2018 [meeting](#), the Board voted to approve the appointment of 18 members of the newly-formed [Task Force on Access Through Innovation of Legal Services](#) (ATILS) the members and alternates to serve on the task force, for a term expiring on December 31, 2019. The Board also authorized ATILS Chair, Justice Lee Edmon, and staff, to select four additional non-attorney public members from the applicant list and a new set of alternates in order to secure a non-lawyer public member majority composition of the task force and better protect the public's interest in making decisions regarding access to justice and technology.

ATILS is charged with identifying possible regulatory changes to enhance the delivery of, and access to, legal services through the use of technology, including artificial intelligence and online legal service delivery models. The task force meets monthly and is divided into three subcommittees: the Unauthorized Practice of Law/Artificial Intelligence Subcommittee, the Rules and Ethics Opinions Subcommittee, and the Alternative Business Structures/Multi-Disciplinary Practice Subcommittee. The task force's final report setting forth recommendations is due to the Board on December 31, 2019.

## **Changes to Sub-entity Governance, Structure and Composition: Implementation Plans**

At its November 2018 [meeting](#), Bar staff [updated](#) the Board on its implementation plans for sub-entities as directed by the Board at its September 2018 meeting. [[24:1 CRLR 272–274](#)]. Specifically, staff reported on its progress implementing the following set of global recommendations that will apply to all sub-entities: Instituting formal orientation for all volunteers to the work of the State Bar; instituting and imposing term limits for all volunteers; instituting a conflict of interest policy for volunteers; formalizing desired qualifications for volunteers; establishing a standard sub-entity size of seven or fewer volunteers; instituting sunset review of all sub-entities every five years; and, eliminating sub-entity nominations committees. Included in Staff’s update is a chart identifying the statutes and rules governing the term limits and size of sub-entities. The Board also voted at the November meeting to include a global recommendation that sub-entity meetings should not occur on weekends unless absolutely necessary.

In addition to the global recommendations, the Board also considered the 2017 Governance in the Public Interest Task Force’s recommendations regarding the following specific sub-entities during this reporting period:

◆ ***California Board of Legal Specialization***: At its March 2019 [meeting](#), the Board authorized a 45-day public comment period for proposed changes to a series of State Bar Rules that will implement changes to the operation of the California Board of Legal Specialization according to the [notice](#) and [staff memo](#). The changes reduce the board from 15 to seven members, consisting of at least five attorneys and two non-attorneys; conform

with the Bagley-Keene open meetings act; change term limits; and change the term “member” to “licensee.”

◆ ***California Commission on Access to Justice (CCAJ)***: CCAJ was created by the Board of Trustees in 1996 to improve access to civil justice for low-income Californians. The establishment of CCAJ was proposed by the State Bar-appointed Access to Justice Working Group in its report, adopted by the Board of Trustees in 1996, entitled *And Justice for All: Fulfilling the Promise of Access to Civil Justice in California*. CCAJ was originally envisioned as the entity to provide ongoing leadership to increase the funding for and improve the delivery of legal services in civil matters for persons of modest means through representation from the State Bar, judiciary, business, and community organizations.

CCAJ consists of 26 members. The State Bar appoints 10; the remaining 16 are appointed by the Judicial Council; the Governor; the California Attorney General, California Chamber of Commerce, California Council of Churches, California Judges Association, California Labor Council, Council of California Law Librarians, Consumer Attorneys of California, League of Women Voters, Legal Aid Association of California, President Pro Tem of the Senate, Speaker of the Assembly, and the Supreme Court of California.

During the Appendix I review process, staff identified a number of unique features of CCAJ that set it apart from other sub-entities, including its operational autonomy, and the fact that its priorities may at times differ from the State Bar’s. At staff’s recommendation, the Board established a CCAJ Stakeholder Working Group (CCAJSWG) in the Fall of 2018 to explore these issues further with the access community and CCAJ

before making a recommendation. The CCAJSWG was co-chaired by Trustee Joanna Mendoza and CCAJ Chair Judge Mark Juhas, and included appointees from the legislature, the Board, the Judicial Council, and liaisons from the Supreme Court and State Bar staff.

After much discussion about the need for CCAJ to operate independently of the agendas of any of its appointing authorities, to speak on behalf of the consumers of justice services, and potentially to advocate for access for consumers in ways that could be contrary to the interests of one or more of its appointing authorities, the CCAJSWG concluded on November 27, 2018 that the best future for CCAJ would be to separate from the State Bar, with the understanding that CCAJ and the Bar would continue to work collaboratively on access issues where their interests overlap.

At the January [meeting](#), the Board accepted CCAJSWG's recommendations, and voted that CCAJ would separate from the State Bar, with the transition to occur no later than December 31, 2019; the CCAJ members would be reappointed to continue through the transition; the Board of Trustees and the State Bar would continue to provide support to CCAJ during the transition; and that the Bar staff would develop a contract or MOU to effectuate the transition.

◆ ***Client Security Fund Commission:*** Also at the January [meeting](#), the Board released for public comment a series of [changes](#) to the rules pertaining to the Client Security Fund commission, consistent with the Board's September 2018 decision to have the Commission act as an "appellate" body, as well as the Board's decision to reduce the size of the Commission from seven to five members to address the reduced workload.

[\[24:1 CRLR 273\]](#)

◆ **Committee of Bar Examiners (CBE):** Also at the January [meeting](#), the Board considered a series of recommendations from staff regarding CBE’s operations, including revisiting, at CBE’s request, its earlier decision to shift the responsibility to staff for conducting informal conferences to determine if an applicant for the Bar examination possesses the requisite moral character, with CBE hearing “appeals.” [\[24:1 CRLR 296–298\]](#) The Board also considered staff’s recommendations to restructure CBE’s law school engagement strategy and its responsibility for accrediting law schools in California that are not accredited by the American Bar Association. The Board voted to approve staff recommendations, and released [proposed](#) rule changes to effectuate these recommendations for a 45-day public comment period in January. *See* separate article on Committee of Bar Examiners for further details about these reforms. [\[24:2 CRLR 269\]](#)

◆ **Committee on Mandatory Fee Arbitration:** Given the Board’s adoption of staff’s recommendation to eliminate the Committee on Mandatory Fee Arbitration, and convert it to a staff-driven program at its September [meeting](#), [\[24:1 CRLR 273–274\]](#), the Board voted to release for public comment an [amendment](#) to Rule 3.537, which eliminates the reference to the Committee of Mandatory Fee Arbitration at its January meeting.

◆ **Committee on Professional Responsibility and Conduct:** At its March 15, 2019 [meeting](#), the Board resolved that the Committee on Professional Responsibility and Conduct be reduced from 16 members to 12 members, through attrition.

◆ **Lawyer Assistance Program (LAP):** [\[23:1 CRLR 164–165\]](#) The Board directed Bar staff to move forward with the implementation of Option 2 from the recommendations of the Governance in the Public Interest Task Force to the LAP program. Option 2 directs the State Bar to continue to operate the LAP but only for those

“mandatory” participants who are referred by moral character or the State Bar discipline system. All other “voluntary” participants will be separated and managed by a third-party entity. According to the staff recommendation, this plan is consistent with the Bar’s public protection mission, and will focus LAP on cases coming through the disciplinary system and moral character referrals. Staff pointed to underutilization of the LAP program by licensed attorneys in California, and survey results that showed participant concerns of confidentiality and privacy with the State Bar, in support of its recommendation to spin off self-referrals to a separate entity. The LAP oversight committee submitted a letter advocating for keeping the entire program within the Bar, but given the choice between options two and three, supported option two.

Also at the November 2018 [meeting](#), the Board adopted [revisions](#) to State Bar Rules 3.242, 3.246, 3.249, and 3.250 to reflect the LAP program’s replacement of its Evaluation Committees with a Clinical Review Team meeting, which consists of a case consultation where LAP staff are responsible for acceptance to and termination from LAP; and [amendments](#) to Rule 3.252, which limits eligibility for LAP financial assistance to active and inactive licensees and states that former members of the State Bar and candidates for admission are not eligible for financial assistance.

◆ ***Legal Services Trust Fund Commission (LSTFC)***: LSTFC was established in 1982 and administers grant programs that fund nonprofit civil legal aid organizations, including Interest on Lawyers’ Trust Accounts (IOLTA) grants and the Equal Access Fund. It is composed of 21 voting members (15 lawyers and six non-lawyer public members) and three non-voting bench officers. Pursuant to Business and Professions

Code section 6213(d), at least two of the public members must be eligible for services as indigent persons.

According to the [staff memo](#) presented to the Board at the January meeting, during the Appendix I sub-entity review process, staff initially recommended changes as to the size of LSFTC, and also suggested a shift to staff-driven grant making and grant management, under the direct supervision of the Board of Trustees. Due to concerns raised by both the LSTFC and IOLTA and Equal Access Fund grant recipients, recommendations regarding the LSTFC were ultimately not included in the Appendix I review reports to the Board in August and September, 2018. Instead the Board appointed a LSTFC Stakeholder Process Working Group (LSTFC SPWG) at its September 2018 meeting, which consisted of representatives from LSTFC, IOLTA grantees, non-grantee legal services programs the Assembly Judiciary committee, the Senate Judiciary Committee, the Board of Trustees, the Judicial Council , and the Legal Aid Association of California.

The working group met seven times between October 15, 2018 and February 22, 2019, and considered potential changes to the statutory IOLTA formula for distributing funds, non-statutory changes to the allocation formula or methodology, and governance reforms. The working group presented its [recommendations](#) to the Board at its January [meeting](#), which recommended no statutory changes, no changes to the size of LSTFC, and that the Board should receive training and regular reports about the activities of the LSTFC and the legal services funded by the State Bar.

At the January [meeting](#), the Board heard public comment with respect to the LSFTC, and Executive Director Leah Wilson confirmed that the Board would not seek any

statutory changes with respect to IOLTA distribution, and any decisions as to the size of LSTFC would be considered at the March meeting.

At its March [meeting](#), staff presented [further analysis](#) regarding the working group's processes and differing viewpoints from staff's recommendations as to LSTFC's size. Ultimately staff recommended, and the Board voted to retain the size of the Legal Services Trust Fund Commission at 21 voting members and 3 non-voting judicial advisors, reappoint several Commissioners whose terms had expired in 2018, and appointed two new members to the Commission.

## **Fee Increase**

At its March 2019 [meeting](#), the Bar's Executive Director Leah Wilson and Chief Financial Officer John Adams presented a [report](#) to the Board addressing the ongoing deficit faced by the State Bar, which will reach \$19.5 million in 2020. The report calculated that a 29.2% fee increase is needed to address this deficit. The report also states that an additional fee for active licensees is needed to support the Client Security Fund and pay all pending applications. Noting that the Bar has not increased its licensing fees in 20 years, the report recommends a \$100 average increase to the annual license fee for active licensees, a \$250 one-time special assessment for capital and technology investments, and an \$80 increase to the Client Security Fund.

After considering the report, the Board voted to authorize staff to pursue the recommended increases with the legislature, to be effective January 1, 2020. The Board also authorized the staff to work with the Board's Chair and Vice Chair to finalize the methodology for scaling the proposed fees to accommodate licensees with lower income

levels, and to pursue a multi-year fee bill in consultation with legislative and other stakeholders.

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

◆ *Malpractice Insurance Working Group* (MIWG). At its March 2019 [meeting](#), the Board of Trustees approved and accepted the [Malpractice Insurance Working Group Report](#) and directed staff to submit the report to the Supreme Court and the legislature pursuant to the mandate in section 6069.5 of the Business and Professions Code that the report be submitted by March 31, 2019. The Board formed MIWG in December 2017 to conduct a review and study regarding errors and omissions insurance for attorneys licensed in California, including the availability of insurance; measures for encouraging attorneys to obtain insurance; recommended ranges of insurance limits; the adequacy of the disclosure rule regarding insurance; and the advisability of mandating insurance for licensed attorneys. [\[23:2 CRLR 259–260\]](#)

The report consists of a review and study on errors and omissions insurance, in recognition of protection of the public from attorney errors. The report includes determinations on the following: (1) adequacy, availability, and affordability of errors and omissions insurance; (2) proposed measures for encouraging attorneys to obtain errors and omissions insurance; (3) the ranges of insurance limits for attorneys; (4) the adequacy and success of the disclosure rule regarding errors and omissions insurance (Rule 3-410); (5) the advisability of mandating errors and omissions insurance; (6) and, other proposed measures relating to the insurance that will further the goal of public protection.

After releasing its proposed recommendations for public comment, [\[24:1 CRLR 277–278\]](#), MIWG ultimately concluded that more data is needed prior to making a recommendation regarding mandatory legal malpractice insurance, and that if insurance is required, minimum coverage of \$100,000 per occurrence/\$300,000 aggregate per year is reasonably sufficient to protect the public. It also recommended that the State Bar improve the model disclosure language in Rule 1.4.2 of the Rules of Professional Conduct, that an attorney’s lack of insurance be made public, that attorneys report whether they are insured on their annual licensing statement, and that the State Bar educate attorneys and the public about legal malpractice insurance. Lastly, the report recommends that the State Bar encourage attorneys to purchase malpractice insurance by retaining a professional communications firm to conduct an education campaign for lawyers and consumers, and to require uninsured lawyers to complete a free loss avoidance program.

◆ *Lawyer Assistance Program Oversight Committee.* On March 1, 2019, pursuant to Business and Professions Code section 6238, the State Bar submitted its [California Lawyer Assistance Program 2018 Annual Report](#) to the legislature. The report covers LAP operations and key program statistics, including improvements related to the “customer” experience, expanding educational outreach and programming, and creating performance goals to continue evaluating the impact of LAP. The report also discusses the procedural and structural changes that will take place following the recommendations of the 2017 Governance in the Public Interest Task Force. *[see MAJOR PROJECTS]* According to the report, LAP had 148 new participants, expenditures of \$2.09 million, and revenue of \$2.16 million in 2018.

◆ *Diversity Efforts.* On March 15, 2019, pursuant to Business and Professions Code section 6001.3, the Board of Trustees voted to receive and file the State Bar's [Diversity & Inclusion Plan: 2019–2020 Biennial Report](#) to the legislature. The report covers the history of the State Bar's diversity and inclusion initiatives; the State Bar's current diversity and inclusion initiatives, which include data collection and analysis, training on implicit bias, ensuring bar exam questions are inclusive, improving bar exam passage, and examining racial and ethnic disparities in the discipline system; the State Bar's future diversity and inclusion initiatives; and, its funding history and needs.

## **RULEMAKING**

### **State Bar Audit Submission Requirement for Legal Services Trust Fund Grantees**

At its January 2019 [meeting](#), the Board voted to approve amendments to State Bar Rule 3.680(E)(1) to conform the rule to the Board's streamlined procedures for processing Legal Services Trust Fund grants. The original rule required Legal Services Trust Fund Program grantees to submit an audit or reviewed financial statement as part of the annual grant application process for IOLTA funding. The Programs Committee and the Board voted to release the proposed amendments at the July 2018 [meeting](#). [[24:1 CRLR 278–279](#)]. Board staff recommended additional modifications to the rule in light of public comments received, and the Board authorized an additional [public comment](#) period on the modified rules at its October 2018 [meeting](#), which ended on November 26, 2018. At the January meeting, staff reported that it had received two public comments during the second comment period, both of which supported the proposed rules as modified. According to the [staff memo](#), the changes include updating the deadline for submission of audits to a

period within ninety days of the close of the organization's fiscal year. The newly-adopted rule also eliminates the authority for audits to be submitted after the application deadline.

## **Proposed amendments to Rules of Procedure 5.340, 5.341, 5.342, and 5.343 re Conviction Proceedings**

At its January 2019 meeting, the Board adopted proposed [amendments](#) to Rules 5.340, 5.341, 5.342, and 5.343 of the State Bar Rules of Procedure pertaining to the Bar's treatment of conviction proceedings. These amendments are an effort to comply with the new Business and Profession Code sections 6007(c) and 6102(c) implemented in the Bar's 2019 fee bill ([AB 3249 \(Committee on Judiciary\) \(Chapter 659, Statutes of 2018\)](#)). [[24:1 CRLR 287–288](#)] The Board released the proposed amendments for [public comment](#) at its November [meeting](#).

According to the [staff memo](#), these new sections require that an attorney who is sentenced to incarceration for 90 days or more because of a criminal conviction be placed on involuntary inactive enrollment for the period the attorney is incarcerated. It also requires that these attorneys be required to comply with Rule 9.20 of the California Rules of Court, which requires them to notify their clients of the conviction. Section 6102(c) also added an additional ground for summary disbarment when the facts and circumstances of the offense involve moral turpitude.

In order to comply with these new statutory requirements, amended Rule 5.340 adds that the rule applies also to convictions resulting in a sentence or incarceration for 90 days; amended Rule 5.341 adds a reference to a conviction with a sentence of incarceration for 90 days or more to the conviction proceedings that can be initiated; amended Rule 5.342

adds the words “involuntary inactive enrollment,” and the new requirement that the licensee must comply with Rule 9.20 of the Rules of Court; and amended Rule 5.343 adds that the review Department may refer the case to the Hearing Department to determine whether facts or circumstances involve moral turpitude. According to the [staff memo](#), only one public comment was received, and it did not address the specific rule changes. The new rules became effective on January 25, 2019.

## **Proposed State Bar Rule 5.137 Regarding Monetary Sanctions in Disciplinary Proceedings**

At its November 2018 [meeting](#), the Board and the Regulation and Discipline Committee voted to submit to the California Supreme Court the Bar’s [proposed](#) State Bar Rule of Procedure 5.137 for approval. The rule sets forth guidelines for the imposition and collection of sanctions to be ordered by the California Supreme Court when imposing suspension or disbarment of an attorney. The initial 60-day [public comment](#) period for the rule ended on October 2, 2018. [[24:1 CRLR 280–281](#)] According to the [staff memo](#), the Bar received one public comment that outlines three issues. First, that the drafting of this rule before being directed by the Supreme Court was premature; second, that the rule is at odds with the attorney discipline system. Third, that the State Bar has had difficulty collecting costs from discipline attorneys. At this writing, the Court has not yet approved the proposed revision.

## **Further Amendments to Rule 2302 of the State Bar Rules of Procedure Regarding Confidentiality of Investigations**

At its November 2018 [meeting](#), the Board adopted further proposed [amendments](#) to Rule 2302 of the Rules of Procedure of the State Bar to grant the Chief Trial Counsel discretion to allow State Bar employees and State Bar vendors access to confidential information in order to permit information sharing and allow the OCTC and the State Bar to conduct their necessary activities. The Board released the proposed amendments for [public comment](#) at its September 2018 [meeting](#). [[24:1 CRLR 279–280](#)] According to the [staff memo](#), the Board received only one public comment during the comment period which did not address the substance of the proposed rule. The newly-amended rule became effective on November 16, 2018.

## **Consumer Notices and Alerts**

At its November 2018 [meeting](#), the Board adopted a series of [amendments](#) to the Board’s policy regarding the posting of a consumer alerts about California attorneys who have been disciplined on the State Bar’s website, effective immediately. The Bar adopted the new policies after staff presented further recommendations after the Board tabled this discussion at its September meeting following a lengthy discussion and consideration of public comments received after a 60-day comment period. [[24:1 CRLR 282–283](#)]

Pursuant to the new policy, the following information will now be publicly disclosed in a “Consumer Alert Box” on the attorney’s State Bar Profile page: pending felony charges against an attorney, assumption of jurisdiction over an attorney’s law practice; the imposition of involuntarily inactive status, or when OCTC files a petition

alleging that the attorney should be placed on inactive status because he or she poses a substantial threat of harm to the public or clients.

Additionally, the new policy will change the manner in which certain information already posted is presented. Upon the filing of any Notice of Disciplinary Charges (NDC), or upon a decision imposing a period of probation or a public reproof with condition, a notation and link would be added to the top of the attorney's page. Under this proposal, the notation and link would remain on the licensee's State Bar Profile page until, as applicable, resolution of the NDC, completion of probation, or satisfaction of reproof conditions.

## **Revisions to the Special Admissions Rules**

At its November 2018 [meeting](#), the Board and the Programs Committee authorized staff to submit to the California Supreme Court for approval [amendments](#) to the Rules of Court, Rule 9.46 for registered in-house counsels, Rule 9.45 for registered legal aid attorneys, Rule 9.44 for registered foreign legal consultants, and Rule 9.41.1 for registered military spouse attorneys. These rule changes aim to increase access to legal services and address unnecessary roadblocks to gaining special admission to the State Bar. [[24:1 CRLR 304–308](#)] The new rules became effective on March 1, 2019.

## **Accommodate MCLE Provider Course Upload Program**

At the November 2018 [meeting](#), the Programs Committee authorized staff to release for a 60-day [public comment](#) period [proposed](#) rule changes to the MCLE rules for providers and attorneys in the Chapter 1 of the State Bar Rules—specifically in Title 2, Division 4 regarding rules for attorneys, Title 3, Division 5 regarding rules for providers,

and Title 2, Division 2, regarding Legal Specialization. The proposed rule changes require providers to submit attendance data instead of having attorneys self-report compliance with their requirements. The proposals include requirements to submit attendance data electronically so that the State Bar can effectively and efficiently monitor attorney compliance. At this writing, the Board has not yet considered the amendments after public comment.

## **Standard for Attorney Sanctions for Professional Misconduct**

At its January 2019 [meeting](#), the Board and the Regulation and Discipline Committee approved the [amendments](#) to the standards for attorney sanctions for Professional Misconduct. The Board released the proposed amendments for [public comment](#) at its September [meeting](#) [[24:1 CRLR 278](#)] and the comment period ended on November 16, 2018. These amendments are the result of the adoption of new rules of Professional Conduct by the Supreme Court and will eliminate the use of the term “member” to be consistent with the regulatory nature of the reformed State Bar. The changes also substitute the new rule numbers and where specific conduct is mentioned, put in language from both the new and old rules so that it will apply to those violations.

## **Lawyer Referral Certification Rules**

At its January 2019 [meeting](#), the Board and the Programs Committee approved and adopted proposed [amendments](#) to the State Bar Rules amending the Lawyer Referral Service Certification rules following a 45-day public comment period. The 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; 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. [[24:1 CRLR 276–277](#)]

## LEGISLATION

[AB 1060 \(Gray\)](#), as amended April 4, 2019, would amend sections 6033 and 6140.03 of the Business and Professions Code to eliminate the opportunity for attorneys licensed in California to opt out of paying the \$40 fee to fund legal services providers in California, and instead make that fee mandatory. This bill would also clarify that the State Bar may only use these funds for the purpose of providing financial support to nonprofit organizations that provide free legal services to persons of limited means. According to the author, “[f]or more than fifty years, the [United States] Supreme Court has acknowledged that without the ability to access an attorney, no person can be guaranteed a fair trial. While the right to counsel has generally been extended to criminal proceedings, indigent litigants in civil matters are often forced into self-representation, because they lack the means to hire an attorney. For too many, access to justice depends on the size of their bank account.”

*[A. Jud]*

[SB 544 \(Umberg\)](#), as amended March 27, 2019, would amend section 6060 of the Business and Professions Code to prohibit the staff of the State Bar or members of the examining committee from reviewing a person's medical records as they relate to mental health when they are determining whether an applicant is of good moral character. The State Bar Act requires that an applicant be of good moral character in order to be certified to the Supreme Court for admission and a license to practice law. *[S. Jud]*

[AB 242 \(Kamlager-Dove\)](#), as amended April 12, 2019, would add section 6070.5 to the Business and Professions Code, and amend section 68088 of the Government Code. New section 6070.5 would require the Bar to adopt regulations mandating that the mandatory continuing legal education for all licensees include training on implicit bias and the promotion bias-reducing strategies to address how unintended biases undermine confidence in the legal system. A licensee would need to meet the requirements of this section for each MCLE compliance period ending February 1, 2023, or later. Section 68088 would be amended to allow the Judicial Council to develop training on implicit bias. The course should include the following: a survey of the social science on implicit bias, including the ways that bias affects institutional policies and practices; a discussion of the historical reasons for, and consequences of, the implicit biases that people hold; examples of how implicit bias affects the perceptions, judgments, and actions of judges, commissioners, referees, and court staff that result in disparities in access to justice; the taking of implicit association tests; the teaching and practice of strategies to reduce the impact of implicit bias; and, inquiry into how judges can disrupt the effects of juror implicit bias. The Judicial Council would need to adopt a rule of court, effective January 1, 2022, to implement this subdivision. *[A. Jud]*

[AB 558 \(Petrie-Norris\)](#), as amended March 27, 2019, would amend section 6074 of the Business and Professions Code to expand the State Bar’s existing program that coordinates legal service organizations to provide pro bono services to veterans so that it would also apply to active duty service members and their families. *[S. Rules]*

[SB 176 \(Jackson\)](#), as amended March 27, 2019, is the Bar’s annual “fee bill.” Specifically, it would amend sections 6140 and 6141.1 of the Business and Professions

Code to require the board to charge an annual license fee of an unspecified amount for 2020. Section 6141.1 would be amended to allow an active licensee who can demonstrate total gross annual income of less than \$60,478.35, shall qualify for a waiver of 25% of the annual license fee. This would be an increase from the previous amount of income of \$40,000, adjusted for 20 years of inflation. *[S. Jud]*

[AB 692 \(Maienschein\)](#), as introduced February 19, 2019, would amend section 6206 of the Business and Professions Code and section 340.6 of the Code of Civil Procedure. Amended section 6206 would provide that the statute of limitations for filing an action against an attorney for a wrongful act or omission shall be tolled during a dispute between the lawyer and client that concerns fees or costs, and that is being adjudicated under the Mandatory Fee Arbitration Act. Amended section 340.6 would clarify provisions in the Mandatory Fee Arbitration Act that allow tolling of the statute of limitations, to provide that the provision is triggered any time arbitration is requested following an attorney commencing an action in court. *[S. Rules]*

[AB 685 \(Reyes and Ramos\)](#), as introduced February 15, 2019, would add section 6214.4 to the Business and Professions Code, and amend sections 317 and 395 of the Welfare and Institutions Code. New section 6214.4 would create a program to support qualified legal services projects that provide legal services to Indian tribes on child welfare matters under the federal Indian Child Welfare Act (ICWA). This would require the State Bar, subject to an appropriation to the State Bar of no less than \$1,000,000, to administer grants to qualified legal services projects. Amended section 317 would add to the required training for counsel appointed to represent children to include ICWA and cultural competency and sensitivity relating to providing care to Indian children in out-of-home

care. Amended section 395 would require the court of appeals in any dependency proceeding involving an Indian child, upon the request of the child's Indian tribe, to appoint separate counsel for the Indian tribe. *[A. Appr]*