

STATE BAR OF CALIFORNIA

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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 an [online complaint form](#) and in-house professional investigators and prosecutors housed in the Office of the Chief Trial Counsel (OCTC). The California Bar's attorney discipline system also includes the nation's first full-time professional attorney discipline court which neither consists of, nor is controlled by, practicing lawyers. The State Bar Court consists of the Hearing Department (which includes five full-time judges who preside over individual disciplinary hearings) and a three-member Review Department which reviews appeals from hearing judge decisions. State Bar Court decisions must be appealed to the Supreme Court, and its review is discretionary. The Bar may impose a wide range of potential sanctions against violators of the State Bar Act or the Rules of Professional Conduct; penalties can range from private reproof to disbarment, and may include "involuntary inactive enrollment" (interim suspension) under Business and Professions Code section 6007. In connection with its discipline system, the Bar operates two client assistance programs: its [Client](#)

[Security Fund](#), which attempts to compensate clients who are victims of attorney theft; and its [Mandatory Fee Arbitration Program](#), which arbitrates fee disputes between attorneys and their clients in an informal, out-of-court setting.

January 1, 2018, marked a historic organizational shift for the State Bar when [SB 36 \(Jackson\) \(Chapter 422, Statutes of 2017\)](#) became effective, mandating that the Bar “deunify” its trade association function from its regulatory function. [\[23:1 CRLR 157\]](#) At that time the 16 State Bar Sections and the California Young Lawyers Association separated from the Bar and formed a new, private, nonprofit entity called the California Lawyers Association (CLA). SB 36 also eliminated elected members from the Board, reducing the Board of Trustees from 19 to 13 members, and eliminated trustee officer elections, providing that the Supreme Court will approve the Chair and Vice Chair of the Board of Trustees on an annual basis.

On September 3, 2019, the California Supreme Court [appointed](#) Alan K. Steinbrecher as Chair of the State Bar Board of Trustees and Sean M. SeLegue as Vice-Chair. Pursuant to section 6021 of the Business and Professions Code, their terms began on September 20, 2019 and will end after the State Bar annual meeting in 2020. Additionally, the California Supreme Court reappointed Mark A. Broughton as a Trustee on September 3, 2019. Mr. Broughton is an attorney member of the Board.

These appointments mark the Board’s full transition into an all-appointed Board. At this writing, the Board consists 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 are appointed by the Governor, one appointed by the Senate Rules Committee, and one appointed by the Assembly Speaker. Trustees serve four-year terms.

MAJOR PROJECTS

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

◆ ***Legal Services Trust Fund Program:*** On April 30, 2019, pursuant to sections 6145 and 6222 of the Business and Professions Code, the State Bar submitted its [2018 Annual Legal Services Trust Fund Program and Report](#) to the Chief Justice of the California Supreme Court as well as the Assembly and Senate Judiciary Committees. The Legal Services Trust Fund provides greater availability of legal services in civil matters to indigent persons and creates new programs to provide such services. [[24:1 CRLR 270](#)] The report details the receipts, expenditures, and disbursements by county for the year ending on December 31, 2018. According to the report, the total revenues equaled \$27,656,995; total expenditures equaled \$15,770,555; and the ending fund balance was \$19,981,176.

◆ ***Financial Statement and Independent Auditor's Report:*** On April 30, 2019, in accordance with section 6145 of the Business and Professions Code, the State Bar submitted its [Financial Statement and Independent Auditor's Report](#) to the Chief Justice and the Assembly and Senate Judiciary Committees. The report contains information on the State Bar's current financial position, changes in its financial position, and results of operation. [[24:1 CRLR 270](#)] According to the report, the total assets and deferred outflows of resources equaled \$265,694,904; the total liabilities and deferred inflows of resources equaled \$131,943,527; and the total net position equaled \$133,751,377. Compared to the previous year, the total assets and deferred outflows of resources decreased by 4% while the State Bar's net position decreased by 8%.

◆ ***Annual Attorney Discipline Report:*** On April 30, 2019, pursuant to sections 6085.15 and 6177 of the Business and Professions Code, 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 Assembly and Senate Judiciary Committees. The report examines the State Bar’s attorney discipline system and its effectiveness in protecting the public from attorney misconduct. According to the report, OCTC implemented a case prioritization system that focuses on cases with the greatest potential harm to the public, issued multilingual fraud alerts and strengthened relations with law enforcement to stop the unauthorized practice of law, and initiated organizational reforms to the State Bar Rules to streamline case processing. The report also details information on complaints received, backlog, time for processing complaints, disciplinary outcomes, costs of the discipline system, and the condition of the Client Security Fund.

[\[24:1 CRLR 271\]](#)

Changes to Sub-Entity Governance, Structure, and Composition

During this reporting period, the State Bar continued its efforts to make changes to sub-entity governance, structure, and composition. [\[24:1 CRLR 272\]](#) At its May 17, 2019 [meeting](#), the Board implemented [staff’s recommendations](#) and approved the various rules affecting the operation of the State Bar’s sub-entities as introduced at the September 14, 2018 meeting. [\[24:1 CRLR 272\]](#) In May 2017, the 2017 Governance in Public Interest Task Force submitted a [report](#) setting forth the road map of reforms that changed the composition, structure, and governance of the Board Committees. [\[24:1 CRLR 272\]](#)

◆ **California Board of Legal Specialization:** At its May 17, 2019 [meeting](#), the Board approved [proposed revisions](#) (Attachment E) to the State Bar Rules concerning the operation of the California Board of Specialization. The 45-day [public comment](#) period for the proposed revisions ended on May 2, 2019. The proposed revisions reduce the size of CBLS to seven

members, replace the term “member” with “licensee,” and conform the State Bar Rules to the Bagley-Keene Open Meeting Act. [[24:2 CRLR 120-121](#)]

◆ **California Commission on Access to Justice (CCAJ):** At its September 19, 2019 [meeting](#), the Board voted to recognize CCAJ as a new, nonprofit public benefit corporation independent of the Bar. According to the [staff memo](#), CCAJ filed its articles of incorporation with the Secretary of State on August 14, 2019 and officially separated from the State Bar on October 1, 2019, well before its complete transition deadline of December 31, 2019. The Board approved CCAJ’s separation from the State Bar based on findings of CCAJ’s unique features to include its operational autonomy, breadth of work that exceeded the State Bar’s mission, and as part of CCAJ’s separate, and sometimes conflicting, priorities with the State Bar’s interests. [[24:2 CRLR 121](#)]

Furthermore, the Board approved a contract with CCAJ in the amount of \$187,500 for October 1, 2019 to December 31, 2020. According to the [staff memo](#), the contract allows the State Bar to receive CCAJ’s advice, expertise, information, and recommendations as related to the State Bar’s mission for greater access to civil justice. [[24:2 CRLR 122](#)]

◆ **Client Security Fund Commission:** At its May 17, 2019 [meeting](#), the Board approved the [proposed amendments](#) (Attachment H) to State Bar Rules 3.420, 3.421, 3.430, 3.432, 3.435, 3.436, 3.441, 3.442, 3.443, 3.444, and 3.461 regarding the operation of the Client Security Fund Commission. The [public comment](#) period ended on March 15, 2019. Specifically, the proposed amendments reduce the Client Security Fund Commission’s size to five members, change the term “member” to “licensee,” replace the term “Director” with “Manager,” and reference the Client Security Fund Commission as an appellate body under certain rules. [[24:1 CRLR 273](#); [24:2 CRLR 122](#)]

◆ **Committee on Mandatory Fee Arbitration:** Also at the May 17, 2019 [meeting](#), the Board approved the [proposed changes](#) (Attachment G) to State Bar Rule 3.537(c) that eliminate references to the Committee on Mandatory Fee Arbitration. The 45-day [public comment](#) period ended on March 15, 2019. The Board received five public comments, all of which staff deemed as failing to propose a change, or were already addressed by the proposed changes. The proposed changes reflect the Board’s decision to eliminate the Committee on Mandatory Fee Arbitration. [\[24:1 CRLR 273-274; 24:2 CRLR 123\]](#)

◆ **Lawyer Assistance Program (LAP) Oversight Committee:** At its May 17, 2019 [meeting](#), the Board approved “Option 2” presented in the 2017 Governance in the Public Interest Task Force’s recommendations regarding the transfer of the LAP to the California Lawyers Association. The Lawyer Assistance Program provides confidential assistance to lawyers, State Bar applicants, and law students who struggle with stress, anxiety, depression, substance abuse, and other career concerns. According to the [staff memo](#), Option 2 shifts the responsibilities for the LAP’s “voluntary” program to the California Lawyer’s Association. However, Option 2 still requires the State Bar to continue operating the LAP’s “mandatory” program for participants with disciplinary or moral character referrals. [\[24:1 CRLR 273–274; 24:2 CRLR 123–124\]](#)

Bar Convenes 2020 Governance in the Public Interest Task Force

On September 20, 2019, the 2020 Governance in the Public Interest Task Force [convened](#) for the first time to discuss the Task Force’s focus for its statutorily-mandated report due on May 15, 2020. Pursuant to section 6001.2 of the Business and Professions Code, the Board is required to convene this task force every three years and issue a report to the California Supreme Court, the Governor, and the Senate and Assembly Judiciary Committee that includes its recommendations

for enhancing the protection of the public and ensuring that protection of the public is the highest priority in the licensing, regulation, and discipline of attorneys. Following the 2017 Task Force's [report](#), the Board considered new purposes for the Task Force at its May 17, 2019 [meeting](#) to include a review of the State Bar's effectiveness in its regulatory functions since implementing organizational changes.

The 2020 Task Force is headed by Chair Alan Steinbrecher and its members include Hailyn Chen, Juan De La Cruz, Debbie Manning, and Sean SeLegue. At its September 20, 2019 meeting, which was [webcast](#), the Task Force decided to initiate a prospective approach for the upcoming report by researching ways the State Bar can anticipate the changing legal field. Specifically, the Task Force members agreed to conduct independent literature reviews regarding economic changes to the practice, litigation funding by businesses, technological replacement of lawyers, the modern skill sets learned in law school as opposed to skills needed to practice, and whether changes to the Rules of Professional Conduct resulted in their intended effect. Additionally, the Task Force resolved to meet at the scheduled Board meetings starting with the November 2019 meeting to further narrow its focus for the year.

Malpractice Insurance Working Group: Approval of Implementation Plan and Cost

At its July 11, 2019 [meeting](#), the Board reviewed [staff's report](#) on additional research it conducted, and its plan for further research to implement the recommendations contained in the March 15, 2019 [Malpractice Insurance Working Group Report](#). Pursuant to section 6069.5 of the Business and Professions code, and [SB 36 \(Jackson\) \(Chapter 422, Statutes of 2017\)](#), the Board voted to establish the Malpractice Insurance Working Group (MIWG) in December 2017 to fulfill its statutory mandate to conduct a review and study regarding errors and omissions insurance, and

to report its findings to the Supreme Court and legislature by March 31, 2019. Specifically, the statute requires the report to include a discussion of 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. [[24:2 CRLR 127](#)] In March 2019, MIWG submitted its report to the Board, which voted to accept it and provided it to the Court and legislative committees as required. [[24:2 CRLR 127](#)] Ultimately, the report concluded that more data were needed to determine whether a problem actually exists with respect to uninsured attorneys.

At the July meeting, staff presented survey data they had conducted with respect to existing licensees regarding malpractice insurance; identified low-cost malpractice insurance options; and recognized the possibility of extending malpractice insurance through the National Legal Aid and Defendant Association. The Board approved staff's recommendation to request research proposals for further study to assess the risk that attorneys without malpractice insurance pose on the public. Additionally, the Board instructed staff to research additional options for providing legal malpractice insurance through legal services programs to attorneys who provide pro bono and low bono services outside the scope of legal services programs.

Fee Increase

At the September 19, 2019 [meeting](#) [Agenda item 54-142], staff presented the Board with a [proposed schedule](#) of annual licensing fees in anticipation of the Governor's signing SB 176 (Jackson), the Bar's annual fee bill (see LEGISLATION). Pursuant to the Bar's fee bill last year, [AB 3249 \(Committee on Judiciary\) \(Chapter 659. Statutes of 2018\)](#), two separate audits were conducted to assess the Bar's need for a fee increase in 2020: a 2019 performance audit of the Bar by the California State Auditor, and an assessment by the Legislative Analyst's Office

with to study whether the State Bar effectively utilizes licensing fee revenues to maximize efficiencies. [[24:2 CRLR 126](#)]

At the Board's March 2019 meeting, Executive Director Leah Wilson and Chief Financial Officer John Adams presented the Board with their own [report](#), outlining the Bar's deficit, and proposing that the Board authorize staff to pursue a \$100 annual fee increase with an annual CPI adjustment, a one-time General Fund special assessment of up to \$250, and a one-time Client Security Fund assessment of up to \$80—in total, an increase from \$383 in 2019 to \$813 in 2020—with the legislature for the 2020 fee bill. [[24:2 CRLR 126](#)]

On April 30, 2019, the State Auditor released its [report](#), entitled *State Bar of California: It Should Balance Fee Increases with other Actions to Raise Revenue and Decrease Costs*. The report suggested the Bar's proposed fee increase could be reduced from the Bar's request to \$525 per licensee. To do this, the report suggested procedural changes to attorney misconduct cases, to mitigate the need for hiring new staff, as well as leasing out space in the Bar's San Francisco office to increase revenue.

At its May 2019 [meeting](#), in anticipation of the upcoming fee increase, the Board [Agenda item 703] discussed [staff's proposal](#) to incorporate a scaling model into the fee increase methodology to minimize the impact of the fee increase on low-income attorneys. The Board authorized staff to move forward with the model and authorized the Board's Chair and Vice-Chair to finalize the model.

In June 2019, the Legislative Analyst's Office issued its [report](#), *The California State Bar: Considerations for a Fee Increase*. This report confirmed the necessity for a fee increase to support some needs, such as the operating deficit, but questioned the fee increase to support potential additional disciplinary staff. The report also provided alternative fee increase options, ranging

from \$34–\$69 in annual fee increases and \$13–\$63 in onetime costs, and suggested increased legislative oversight.

Ultimately, [SB 176 \(Jackson\) \(Chapter 698, Statutes of 2019\)](#) increased the total annual fees for active and inactive rates to \$544 and \$108 respectively, for 2020 (see LEGISLATION).

Access Through Innovation of Legal Services Task Force

At its July 11, 2019 [meeting](#), [Agenda item 701] the Board of Trustees authorized a 60-day [public comment](#) period for the Access Through Innovation of Legal Services (ATILS) Task Force’s [16 concept options](#) for possible regulatory changes. The Board established ATILS in 2018, after receiving a [Legal Market Landscape Report](#) suggesting that some of the rules and laws governing the legal profession may be hindering innovations that could expand the availability of legal services. [[24:1 CRLR 271-272](#)] 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 16 concept options for reform involve the following categories:

◆ ***Unauthorized Practice of Law.*** Easing restrictions on the unauthorized practice of law (UPL) to allow persons or businesses other than a lawyer or law firm to render legal services, provided they meet appropriate eligibility standards and comply with regulatory requirements;

◆ ***Nonlawyer Interest.*** Permitting a nonlawyer to own or have a financial interest in a law practice; and

◆ ***Fee Sharing.*** Permitting lawyers to share fees with nonlawyers under certain circumstances and amending other attorney rules regarding advertising, solicitation, and the duty to competently provide legal services.

On August 10, 2019, in San Francisco, ATILS held a [public hearing](#) to receive public comments on the concepts. On September 19, 2019 in Los Angeles, the Chairperson of ATILS, staff [updated](#) the Board of Trustees [Agenda item 705] about various “town hall” meetings with various local bar associations across the state, the progress of a California- specific Justice Gap Study, and the reasons behind these recommendations.

The public comment period on the concepts ended September 23, 2019. At the October 7, 2019, ATILS [meeting](#) in Los Angeles, staff reported that the Bar had received over 2,000 comments on the proposals, most of which were from attorneys, and most of which were opposed to the concepts. ATILS also [reviewed](#) the public comments from the August hearing. At this writing, ATILS is still processing the comments, identifying common themes, and discussing appropriate responses. Pursuant to its charter, the Task Force must submit its report and recommendations to the Board by December 31, 2019.

Justice Gap Study

In September 2019, the Bar released the [technical report](#) of the 2019 California Justice Gap Study. The [State Bar Strategic Plan](#), Goal 4 objective (e) provides that the State Bar will complete a California Justice Gap Study no later than December 31, 2019. The California Justice Gap Study is modeled on the 2017 Legal Services Corporation (LSC) Justice Gap Study, but also includes an evaluation of the costs of legal education in California and the impact of those costs on access to justice, as well as possible approaches to addressing the costs of legal education including loan forgiveness programs or other means. Through interviews with nearly 4,000 California residents, the survey allows for a detailed analysis of the civil legal needs Californians faced in the past year, with a particular focus on those living in households at or below 125% of the federal poverty level (FPL), but also ranging across income levels.

At its September 19, 2019 [meeting](#), the Board [Agenda item 703] received an [update](#) on the study. Preliminary findings showed that for low-income Californians, problems related to child and custody issues, income maintenance, and homeownership have impacted them very much or severely; those low-income Californians were also less likely to have sought or received legal help.

Staff also presented the findings of the technical report at the ATILS task force’s October [meeting](#), and the task force will utilize this data to inform its final report and recommendations.

RULEMAKING

Bar Approves Revisions to Rules Pertaining to Arbitrator Compensation in Mandatory Fee Arbitration Program

On May 16, 2019, the State Bar Regulation and Discipline Committee (RAD) authorized a 45-day public comment period for [proposed revisions](#) (attachments A and B) to State Bar of California Model Rule of Procedure for Fee Arbitrations 38.1 and State Bar Rule 3.536(E). The [notice](#) requested public comment on refining the procedure for obtaining arbitration compensation and recognizing an arbitrator’s discretion to receive such compensation. The period for public comment ended on July 8, 2019 with only one [public comment](#) (attachment B) received.

The proposed revisions involve the State Bar’s Mandatory Fee Arbitration Program, which resolves fee disputes for attorney services at a lower cost, pursuant to sections 6200–6206 of the Business and Professions Code. According to the [staff memo](#), the proposed revisions are intended to clarify that in order for an arbitrator to receive compensation, which may only be received for proceedings lasting more than four hours, the parties must agree in writing that they will compensate the arbitrator. The staff memo also asserts that the revisions accomplish “greater

consistency among the local bar programs and the State Bar program, as well as afford great public protection.”

At its September 19, 2019 [meeting](#) (Agenda item [54-121](#)), the Board approved these revisions to Model Rule 38.1 and State Bar Rule 3.536(E). The new rules became effective on September 19, 2019.

Standards for Attorney Sanctions for Professional Misconduct

At its May 17, 2019 [meeting](#) (Agenda item [54-123](#)), the Board approved proposed amendments to Standards 2.2, 2.5, 2.6, 2.13, 2.15, and 2.21 of the Standards for Attorney Sanctions for Professional Misconduct. The Board originally released the proposed amendments for a 60-day public comment period at its September 2018 meeting. [[24:1 CRLR 278](#)] At its January 2019 meeting (Agenda item [III C](#)), RAD authorized a 45-day [public comment](#) period following combined changes by OCTC, the State Bar Court, and Association of Discipline Defense Counsel (ADDC). The public comment period ended on March 17, 2019 without any comments received. The [proposed amendments](#) (attachment A) align the Standards for Attorney Sanctions for Professional Misconduct with the new Rules of Professional Conduct adopted by the Supreme Court in May of 2018. [[24:1 CRLR 275](#)] Specifically, the proposed amendments identify the particular type of sanction that must be presumed when certain attorney misconduct occurs. The possible sanctions for attorney misconduct include actual suspension, reproof, or disbarment. According to the [staff memo](#), the proposed amendments assist in “determining the appropriate disciplinary sanction in a particular case and ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” The new rules became effective on May 17, 2019.

Proposed Rule of Procedure for Imposition and Collection of Monetary Sanctions

On September 19, 2019, the RAD authorized a 30-day public comment period on the [proposed amendments](#) (attachment A) to State Bar Rule of Procedure 5.137 as redrafted by the Board and State Bar Court. The deadline for [public comment](#) ends on October 25, 2019. The Board initially approved a 60-day public comment for the proposed amendments at its July 2018 meeting and received one public comment. [[24:1 CRLR 280](#); [24:2 CRLR 131](#)] However, according to the [staff memo](#), the California Supreme Court privately advised the Bar’s Executive Director that it would not approve proposed amendments as written, and requested further clarification.

The proposed amendments are the Board’s efforts to clarify the Bar’s compliance with section 6086.13 of the Business and Professions Code, and provide guidelines for imposing and collecting monetary sanctions in State Bar disciplinary proceedings.

Specifically, the proposed amendments provide the State Bar Court with broad discretion to determine the amount of monetary sanctions to impose depending on the particular case circumstances. The proposed amendments also authorize the State Bar Court to waive costs or extend time to pay based on findings of financial hardship, special circumstances, or in the interest of justice. Additionally, they clarify that one monetary sanction should be imposed when the same conduct of a particular attorney is embodied in separate violations. Lastly, the proposed amendments require monetary sanctions to be fully paid prior to reinstatement. At this writing, the Board has not yet considered the proposed amendments after return from public comment.

Proposed Amendments Regarding File Release and Retention Duties

At its September 19, 2019 [meeting](#), the RAD authorized a 60-day public comment period for proposed amendments to Rules 1.16, 1.4, and 3.8 of the Rules of Professional Conduct regarding file release and retention duties. The [public comment](#) period ends on December 2, 2019. According to the [staff memo](#), the proposed amendments seek to implement [AB 1987 \(Lackey\) \(Chapter 482, Statutes of 2018\)](#) by providing attorneys with guidance on the ethical and legal obligations of file release and retention procedures as well as post-conviction discovery.

The [proposed amendments](#) (attachment C and E) to Rule 1.16 and 1.4 would refer criminal defense attorneys to Penal Code section 1054.9 to determine whether the particular criminal matter requires retention of the client's file during the client's imprisonment. The [proposed amendments](#) to Rule 3.8 (attachment D) would require prosecutors to preserve certain types of evidence and comply with preservation orders in criminal cases according to the Constitution, statutory provisions, and case law. At this writing, the Board has not yet considered the proposed amendments after return from public comment.

Proposed Rule Changes Addressing Public Licensee Information and Required Reporting

At its September 19, 2019 [meeting](#), the Programs Committee authorized a 60-day public comment period for proposed revisions to State Bar Rules 2.2, 2.3, and 2.4 regarding licensees' mandatory reporting requirements. The [notice](#) requests public comment on the reporting, display, and public nature of licensee information by the deadline of December 15, 2019. According to the [staff memo](#), the proposed amendments are the Board's efforts to clarify what information licensees

must provide to the State Bar for attorney official records and emphasize that all information on licensee profiles may be publicly disclosed under the California Public Records Act.

The [proposed revisions](#) (attachment A) would repeal Rules 2.3 and 2.4, and amend Rule 2.2 to mandate public disclosure of official licensee records that are maintained by the State Bar. The proposed revisions to Rule 2.2 would distinguish mandatory information that must be reported in the licensee public records from discretionary information that licensees may include. Specifically, licensees would be required to report background, educational, law firm, discipline, and licensure information. The proposed revisions would authorize licensees to report public email addresses, fax numbers, professional photographs, area of practices, and languages spoken by the attorney or office staff on their attorney profile on the website. Also, the proposed revisions would require licensees to notify the State Bar within 30 days of information changes and verify such changes annually by February 1. At this writing, the Board has not yet considered the proposed revisions after return from public comment.

MCLE Provider Course Upload Program

At its May 17, 2019 Board of Trustees [meeting](#) [Agenda item [54-133](#)], the Board approved and adopted new changes to the Minimum Continuing Legal Education (MCLE) rules for providers and attorneys in Chapter 1 of the State Bar Rules. According to the [staff memo](#), the rule changes require providers to submit attendance data electronically instead of having attorneys self-report compliance with their requirements.

According to the [notice](#), this change provides the State Bar with a more effective and efficient way of auditing MCLE compliance. In November 2018, the Programs Committee [approved](#) circulating the proposed rules for public comment. [[24:2 CRLR 133–134](#)] The public comment period ended January 14, 2019. After reviewing the public comment, staff conducted a

meeting with the commenters to better understand and address their concerns. According to the staff memo, the changes made in response to the public comment were not substantive and did not require further circulation for public comment. The rules will become effective December 1, 2020.

Confidentiality Rule Changes

At its May 17, 2019 [meeting](#) [Agenda item [54-122](#)], the Board approved and adopted proposed amendments to Rules of Procedure 5.4, 5.9, 5.10, and 5.40 regarding the Bar's treatment of confidential licensee information in State Bar Court proceedings. The Bar's RAD [Agenda item [III. E](#)] voted to release the proposed amendments for a 45 day [public comment](#) period on January 25, 2019. The public comment period ended March 15, 2019. According to the [staff memo](#), the Board received no formal comments.

As stated in the [notice](#), the Board proposed these new rules and amendments because the Bar had no rules or procedures in place for protecting confidential information within documents filed within the State Bar Court. Because Business and Professions Code section 6086.1 states that all disciplinary proceeding hearings and records shall be public unless otherwise designated, these new rules and amendments allow the Bar to omit unnecessary confidential information and seal or redact necessary confidential information. The rules will alert parties to the need to protect certain information, and provide a method for protecting it if the information is necessary to the matter before the court. It also provides transparency as the rules clearly define what matters and documents will not be available to non-parties. The amended rules became effective July 1, 2019.

Vexatious Complainant Designation

On July 11, 2019, RAD [Agenda item [III. B](#)] voted to release proposed amendments to Rule of Procedure 2605 and 5.10 for a 45 day [public comment](#) period. According to the [staff](#)

[memo](#), the proposed amendments give authority to the OCTC to apply a vexatious complainant designation when specific criteria is met. OCTC may designate a person a vexatious complainant if they have filed 10 or more complaints in the preceding two-year period that were closed without investigation at the inquiry stage under the new rule. OCTC does not have to review new complaints by a vexatious complainant unless the complaint was made under penalty of perjury and submitted on the complainant's behalf by an active licensed attorney not subject to disciplinary proceedings. The State Bar Court would be able to review the designation. Proposed amendments to Rule of Procedure 5.10 clarify that a vexatious complainant's proceedings within the State Bar Court is confidential.

According to the staff memo, RAD proposed this rule and amendment because section 6093.5 of the Business and Professions Code requires the Bar to acknowledge receipt of a complaint within two weeks and provide the reasons for the disposition of a complaint to the complainant. The new rule and amendment create clear legal guidance to OCTC on how to treat complaints for vexatious complainants in order to conserve personnel resources and ensure a timely, fair, and appropriately resourced regulatory system. The public comment period ended August 26, 2019.

At its September 19, 2019 [meeting](#) [Consent Agenda item 54-122], the Board approved and adopted the proposed Rule of Procedure 2605 and amended Rule of Procedure 5.10. According to the [staff memo](#), the Board received two public comments: one from the California Lawyers Association Ethics Committee and one from the Los Angeles County Bar Association Professional Responsibility and Ethics Committee. Both public comments were in support of the proposed rule and amendment. The rule and amendment will be effective retroactively to January 1, 2018.

OCTC Recusal

On September 19, 2019, RAD [Agenda item [III. B.](#)] voted to release proposed amendments to Rule of Procedure 2201 for a [45 day public comment period](#). Rule 2201 sets forth grounds for mandatory and discretionary recusals for the OCTC for inquiries or complaints involving individuals with close ties to the State Bar, and when the CTC determines that recusal is appropriate, the inquiry or complaint is referred to the Special Deputy Trial Counsel (SDTC) Administrator. The SDTC conducts a preliminary review to decide whether to close the matter or appoint an SDTC to investigate the matter further.

Specifically, the [proposed amendments](#) lift the OCTC’s mandatory recusal ground from a judicial conflict of interest standard to a more appropriate prosecutor’s conflict of interest standard; allow the SDTCs to handle matters where the OCTC has a conflict; designate certain mandatory conflicts as discretionary conflicts; revise current mandatory recusal to only apply to the CTC; and include all attorney conflicts for Board of Trustee members in the discretionary recusal section.

According to the [impact report](#), the Bar proposed these amendments to reduce the number of complaints referred to SDTC by the OCTC. The complaints should be resolved more efficiently in the OCTC because the attorneys who work in OCTC are full time employees and have resources such as investigators and support staff. The public comment period ends November 4, 2019.

LEGISLATION

[SB 176 \(Jackson\)](#), as amended September 3, 2019, is the Bar’s annual “fee bill.” This bill authorizes increases in active licensee fees and inactive licensee fees in a manner that is consistent with the [California State Auditor’s Report](#) released on April 30, 2019, and the [Legislative Analyst’s Office report](#) released on June 26, 2019 (see MAJOR PROJECTS). In total, the fees for

active licensees increased from \$430 to \$544. According to a [press release](#) from the Bar, this fee increase was necessary to match the needs of the expanding agency responsibility and growing technology, especially since there has not been a fee increase in 20 years. In addition to making technical changes, the legislation makes the following changes:

◆ **Legislative Intent.** Section 1 of the bill states the intent of the legislature that the State Bar be included as part of the annual budget process for the State of California beginning with the 2021–2022 fiscal year. Section 17 of the bill amends the Business and Professions Code section 6230 to state the legislative intent that the Bar seeks ways and means to identify and rehabilitate attorneys with impairment due to substance use or a mental health disorder affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety.

◆ **Composition Changes.** Section 2 of the bill amends the Business and Professions Code section 6001.2 to revise the composition of the six appointed members of the Governance in the Public Interest Task Force (Task Force) to include three attorney members and three public members, and revises the manner of appointment of those Task Force members. This bill also repeals the law requiring the secretary of the Bar to be selected annually.

◆ **Discipline.** Sections 7, 9, and 10 of the bill amend the Business and Professions Code sections 6052, 6077, and 6101 to authorize the State Bar Court, in specified disciplinary hearings, to administer oaths and issue a subpoena and to discipline licensees of the State Bar for willful breach of a rule of professional conduct. This bill also requires the OCTC to be notified of the pendency of a conviction of a licensee of a felony or misdemeanor involving moral turpitude, requires the clerk of the court to transmit a certified copy of the record of conviction to the OCTC, and requires the OCTC to transmit the record of conviction to the Supreme Court within 30 days.

◆ **Fees.** The bill also amends sections 6140, 6141.3, 6141.9, and 6141 of the Business and Professions Code to set the new fees, and lowers the fee paid for the Lawyer Assistance Program from \$10 to \$1 for active licensees, and zero for inactive licensees, for 2020 only.

◆ **Fee Scaling.** Section 15 of the bill amends section 6141.1 of the Business and Professions Code to require the Board to adopt a rule or rules providing that an active licensee who can demonstrate total gross annual individual income from all sources of less than \$60,478.35 presumptively qualifies for a waiver of 25% of the annual license fee.

◆ **Legal Services Fund.** Section 12 of the bill amends section 6140.03 of the Business and Professions Code to require the Bar to submit to the Senate and Assembly Committees on Judiciary, on or before by April 30, 2020, a report on the total fees the Bar collected in 2020 by April 30, 2020, in voluntary financial support for nonprofit organizations that provide free legal services to persons of limited means—a \$40 fee that is added to the total licensing fee unless the licensee opts out—and the percentage of licensees who elected to opt out of the fees for specified time periods. The bill also amends section 6032.1 to authorize the Bar to collect voluntary donations on behalf of and for the purposes of funding California Change Lawyers, which promotes a better justice system for all Californians.

◆ **Distribution of Revenue.** Section 16 of the bill amends the Business and Professions Code section 6141.3 to authorize the State Bar to transfer administration of the Bar's noninsurance affinity programs these programs to Cal Bar Affinity, subject to specified approval, provided that revenue has been distributed as specified from January 1, 2019, until December 31, 2019. The bill requires that all revenue received from the noninsurance affinity programs and the insurance affinity programs, less the administrative costs of the State Bar and Cal Bar Affinity in operating the programs, to be distributed in a specified manner.

Governor Newsom signed SB 176 on October 9, 2019 (Chapter 698, Statutes of 2019). He included a [signing message](#) stating, “the Administration will need to work closely with the State Bar to understand the implications [of] including the Bar in the state budget process. As such, I am directing the Department of Finance to begin discussions with the State Bar but I am not committing to including the State Bar in the annual budget process.”

[AB 242 \(Kamlager-Dove\)](#), as amended on September 6, 2019, adds section 6070.5 to the Business and Professions Code and amends section 68088 of the Government Code regarding implicit bias training. The bill makes specific legislative findings that “unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system.” New section 6070.5 requires the State Bar to adopt regulations that implement a mandatory continuing legal education curriculum on implicit bias training and bias-reducing strategies for all licensees by January 1, 2022. Additionally, section 6070.5 requires the State Bar to ensure implicit bias training providers agree to comply with the bill, incorporate steps for licensees to combat implicit biases in the training, and hire diverse trainers with academic expertise or experience in implicit bias training. Section 68088 directs the Judicial Council to create implicit bias training for all judges and court staff. Specifically, section 68088 requires all court staff who interact with the public on matters before the court to complete two hours of implicit bias training every two years. Lastly, the bill authorizes implicit bias training to include survey courses, discussions on the historical reasons for implicit bias, examples of implicit bias effects, and bias-reducing strategies.

Governor Newsom signed AB 242 on October 2, 2019 (Chapter 418, Statutes of 2019).

[AB 558 \(Petrie-Norris\)](#), as amended on June 27, 2019, amends section 6074 of the Business and Professions Code to require the State Bar to provide pro bono legal assistance for

veterans, active duty service members, and their families who cannot afford legal services. The bill makes specific legislative findings that “securing civil legal assistance is difficult for veterans, service members, and their families who cannot afford legal services, for reasons unique to their military or veteran status,” and that “the State Bar is uniquely suited to bring together organizations to help coordinate the delivery of civil legal services for veterans and service members and their families.” The bill also requires the State Bar to work with military service providers to improve military members’ access to legal services, and to update its website to reflect a list of willing pro bono legal services that includes military service providers.

Governor Newsom signed AB 558 on September 20, 2019 (Chapter 303, Statutes of 2019).

[AB 692 \(Maienschein\)](#), as introduced on February 19, 2019, amends section 6206 of the Business and Professions Code and section 340.6 of the Code of Civil Procedure relating to the Mandatory Fee Arbitration Act (MFAA). Section 6206 allows clients to request arbitration after an attorney commences an action in any court or proceeding against the client. Section 340.6 tolls the statute of limitations for clients to bring civil actions against attorneys for misconduct while a fee dispute between the client and attorney is pending resolution under the MFAA. According to the author, these amendments allow clients to resolve fee disputes related to attorney misconduct through arbitration without incurring litigation costs or jeopardizing additional legal claims against the attorney.

Governor Newsom signed AB 692 on June 26, 2019 (Chapter 13, Statutes of 2019).

[AB 1213 \(Chen\)](#), as amended on May 28, 2019, amends sections 6400 *et seq* of the Business and Professions Code to extend statutory provisions that authorize and regulate legal document assistants and unlawful detainer assistants from January 1, 2021 to January 1, 2024. The bill requires legal document assistants to continue to register in counties where they serve clients

and their principal place of business is located. According to the author, this bill helps provide affordable and easily accessible legal services to low-income litigants throughout the civil court process as legal assistants provide legal forms, documents, and factual information to persons representing themselves in legal matters.

Governor Newsom signed AB 1213 on July 30, 2019 (Chapter 128, Statutes of 2019).

[SB 544 \(Umberg\)](#), as amended June 5, 2019, amends section 6060 of the Business and Professions Code to prohibit Bar staff from considering or reviewing an applicant's mental health records when determining if an applicant is of good moral character. Additionally, SB 544 precludes Bar staff, or members of the Committee of Bar Examiners, from requesting or seeking to review these mental health medical records, unless the applicant seeks to use the medical records to demonstrate good moral character or to use them as a mitigating factor for a specific act of misconduct. According to the author, this bill is consistent with U.S. Department of Justice guidance, as well as a report from the American Bar Association's National Task Force on Lawyer Well-being recommending that that state bars re-evaluate bar application inquiries about applicants' mental health histories after finding that students who need mental health counseling are not getting it for fear they will be denied admission to the state bar.

Governor Newsom signed SB 544 on July 30, 2019 (Chapter 152, Statutes of 2019).

Legislative Bills That Died

The following bills reported in Volume 24 issue 2 either died or are still pending in committee: [AB 685 \(Reyes and Ramos\)](#) (regarding legal services for Indian tribes); [AB 1060 \(Gray\)](#) (regarding voluntary monetary contributions to the State Bar).