

STATE BAR OF CALIFORNIA

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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 eliminated elected members from the Board, reducing the Board of Trustees from 19 to 13 members, and eliminated trustee officer elections, providing that the Supreme Court will approve the Chair and Vice Chair of the Board of Trustees on an annual basis.

With the transition, the Board now consists of 13 members: five attorneys appointed by the California Supreme Court, two attorneys appointed by the legislature (one appointed by the Senate 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.

On August 25, 2020, Supreme Court of California [appointed](#) attorney member Sean SeLegue to serve as Chair of the Board of Trustees, and attorney member and Assembly appointee Ruben Duran as Vice-Chair of the Board. On the same day, the Supreme Court also appointed Christine Gonong, an appellate lawyer at Nguyen Lawyers, ALC in Long Beach, to serve as an attorney member of the Board, and reappointed attorney member Hailyn Chen for a second four-year term.

On September 23, 2020, the Senate Rules committee [appointed](#) veteran legislative aide Arnold “Arnie” Sowell Jr. as the Senate’s public member appointee to the Board, after Deborah Manning resigned midterm on September 10, 2020. The state Senate appointed Manning to a four-year term in 2018. Justice Joshua P. Groban of the California Supreme Court [swore in](#) the new officers and Trustees at the Board’s September 25, 2020 meeting.

At its September 24, 2020 meeting, the Board announced that it would close its original search for a new Executive Director after longtime legislative attorney Fredericka McGee alleged that the Bar had offered her the position and was in the advanced stages of contract negotiations when the Board of Trustees withdrew its offer this summer for reasons that have not been made public. Donna Hershkowitz will continue to serve as the interim Executive Director while the Bar opens a new search.

HIGHLIGHTS

Board of Trustees Approves Appointees to Closing the Justice Gap Working Group

On November 2, 2020, the State Bar of California Board of Trustees Executive Committee approved the Board’s Appointments Liaisons’ [recommended slate](#) of two officers and sixteen members to the Closing the Justice Gap Working Group (CTJG Working Group). The Board authorized the formation of the CTJG Working Group at its [meeting](#) on May 14, 2020, in response to the report and recommendations of the Task Force on Access Through Innovation of Legal Services (ATILS) and authorized the Executive Committee to make the final appointments at its September 24, 2020 meeting. [\[25:1 CRLR 88–90\]](#) The Board [formed](#) the ATILS Task Force in October 2018 to identify possible regulatory changes to enhance the delivery of and access to legal services. [\[24:2 CRLR 119\]](#)

At its July 16, 2020 [meeting](#), the Board voted to adopt the CTJG Working Group’s [charter](#), charging it with examining the propriety of relaxing rules regarding the unauthorized practice of law, including the development of a regulatory sandbox and the consideration of amendments to Rule 5.4 regarding fee-sharing with non-lawyer entities. In addition, the Working Group is charged with assessing concepts for amendments to the California Rules of Professional Conduct governing lawyer advertising and solicitation and fee sharing with nonlawyers, and to the statutes and Rules of the State Bar governing Certified Lawyer Referral Services. Finally, the Working Group is charged with evaluating a draft proposed new Rule 5.7 of the California Rules of Professional Conduct that was included in the final ATILS report. The charter requires that the Working Group “balance the dual goals of ensuring public protection and increasing access to legal services for all Californians” when carrying out its assignments.

As it is proposed in the [ATILS final report and recommendations](#), the regulatory sandbox is designed to function as a laboratory for the innovation of accessible legal services, where the group can experiment with legal delivery systems on a smaller scale, collect data, and then analyze the systems’ impacts. The sandbox works as a pilot program, aimed to control and mitigate potential risks while testing new rules.

In appointing members to the CTJG Working Group, the Board approved a specific group makeup which set forth roles to be filled, such as a Technology Expert, Legal Ethics Expert, Consumer of Legal Services, and a member who previously served on the ATILS Task Force. Some roles are appointed by outside organizations, such as the California Lawyers Association and the Consumer Attorneys of California. The resolution also allowed for a member from the Utah Regulatory Reform Task Force, [formed](#) by the Utah Supreme Court in 2019, to implement Utah’s own legal regulatory sandbox.

Appointments include: Regulator, Crispin Passmore, former Executive Director of the Solicitors Regulation Authority in England who now works as an advisor for regulators in creating alternative business structures and multidisciplinary practices; Legal Ethics Expert, Kevin Mohr, who previously served on the ATILS Task Force and as a Special Advisor to the California State Bar Committee on Professional Responsibility and Conduct; Consumer of Legal Services, Kathy Hoang, Senior Director of Data, Evaluation and Development for YMCA of Metropolitan Los Angeles; and previous ATILS Task Force Member, Bridget Fogarty Gramme, Administrative Director of the Center for Public Interest Law at the University of San Diego School of Law.

The approved resolution included a provision that allows the Board to appoint additional non-voting advisors, as necessary, for the CTJG Working Group to fulfill its obligations, such as a consumer legal services focus group. The Board also authorized its Chair, Sean SeLegue, to appoint a Chair for the CTJG Working Group. Members will serve their term until December 31, 2022.

Board Approves Minor Amendment to Rule of Professional Conduct 5.4; Submits to Supreme Court of California

At its [meeting](#) on September 24, 2020 [Agenda [Item 54-123](#)], the Board approved an amendment to California Rule of Professional Conduct 5.4, as proposed by the ATILS Task Force, and will submit the recommended amendment to the Supreme Court of California for final approval. [[25:2 CRLR 88–90](#)] At the time the task force was convening, Rule 5.4 permitted fee sharing between a lawyer or a law firm and a nonprofit organization only if the fee shared came from a court-awarded fee. The new amendment expands possible fee-sharing by permitting a lawyer to share a legal fee where the fee arises from a settlement or other resolution of the matter, provided, among other things, that the recipient qualifies as a non-profit under section 501(c)(3)

of the Internal Revenue Code. According to the [staff memo](#), ATILS recommended the amendment because it would “directly enhance the ability of a nonprofit legal services organization to expand its activities and funding options through sharing in legal fees that are achieved through a settlement.”

The path to this amendment began in October 2018, when the Board of Trustees launched the ATILS Task Force to identify possible regulatory changes to enhance the delivery of and access to legal services. [\[25:2 CRLR 88\]](#) [\[24:2 CRLR 119\]](#) In July 2019, the ATILS Task Force [issued](#) for public comment sixteen options for innovation in the delivery of legal services. After review of public comment, and additional study, the Task Force ultimately presented seven recommendations to the Board, including the amendment to Rule 5.4 in 2020.

The Board initially approved the [ATILS Task Force recommendations](#) for amendments to Rule 5.4 in a [meeting](#) on March 12, 2020, releasing the amendment for a 60-day public comment period, and directing the State Bar Committee on Professional Responsibility and Conduct (COPRAC), which provides opinions on issues involving professional ethics, to receive and review the public comments submitted.

Following the initial public comment period, which expired on May 18, 2020, COPRAC determined that the sharing of non-court-awarded fees with a nonprofit organization merited its own subsection to the rule (a)(6), and the Committee also suggested that additional language be added to the rule to ensure additional safeguards. Specifically, COPRAC recommended that the rule require that the lawyer enters into a written agreement with the nonprofit organization to divide the fee; the lawyer to obtain written consent from the client after a full written disclosure regarding the division of fees, including the identity of the nonprofit organization to benefit from the fee share; and that the total fee charged by the lawyer would not be increased solely by reason

of the agreement to divide fees. The Board of Trustees accepted these proposed amendments and re-released the rule for an additional comment period ending on August 28, 2020.

As set forth in the September 24, 2020 staff memo, public comment on the amendment included concerns of “unscrupulous referral activity” between non-profit organizations and lawyers, such as repeated referrals from a non-profit to the same attorneys and firms. Other commenters noted the amendment might incentivize non-profits looking for operating funds to pressure a client and attorney to premature settlement. However, the memo notes that the amendment to Rule 5.4 does not change the current restrictions on a lawyer paying compensation to a person or entity that is conducting a referral business. Following consideration of all public comments received, COPRAC opted to leave the text of the proposed rule unchanged and instead add clarifying revisions to the comments, and the Board of Trustees voted to adopt the recommended amendment without further revision.

This amendment will become binding and operative once approved by the Supreme Court of California. At this writing, the Supreme Court of California has not approved the amendment.

Governor Newsom Signs Bar’s Annual Fee Bill

[AB 3362 \(Committee on Judiciary\)](#), as amended August 7, 2020, is the Bar’s annual “fee bill.” This bill amends sections 6140 and 6141 of the Business and Professions Code to authorize the Bar to assess base annual licensing fees in 2021 for attorneys who actively practice law in California at \$395, and \$97.40 for inactive members, respectively. These amounts reflect a decrease from the fees paid in 2020 as a result of the expiration of several onetime fees approved in 2019 to stabilize the State Bar’s finances in accordance with the recommendations from the Legislative Analyst’s Office and the State Auditor. [[25:1 CRLR 129–131, 140–143](#)] According to the bill analyses, the Bar requested the same funding levels as 2020 but the legislature declined,

citing the impact of the COVID-19 pandemic on attorneys and law firms. All told, fees for 2021 will be decreased by \$34 over 2020 fees.

In addition to setting the fees for 2021, the bill makes the following changes:

- **Cost Recovery – Client Security Fund** – Section 1 of the bill contains a statement of findings and declarations recognizing that the CSF serves a critical role in its public protection mission by reimbursing victims of attorney misconduct for financial losses, and that “[t]here is a dramatic imbalance between payouts from the Client Security Fund to clients victimized by attorneys and reimbursement to the State Bar from dishonest attorneys on whose behalf payments were made.” It also includes a statement that “[t]here is a significant state interest in enhancing the State Bar of California’s collection of overdue Client Security Fund reimbursement in order to enhance revenue necessary to reimburse victims of attorney misconduct.” Accordingly, the bill amends section 6140.5 of the Business and Professions Code to require licensees whose actions have caused the payment of funds to an applicant from the CSF to owe those funds to the State Bar and reimburse the CSF for all moneys paid out as a result of the licensee’s conduct, with interest, and permits the Bar to collect from an attorney any funds paid to an applicant from the CSF related to conduct by that attorney through any means authorized by law. This portion of the bill will apply retroactively. According to the bill analysis, the State Bar reports that unreimbursed payments to the CSF account for the overwhelming majority of the \$177 million in debts that are owed to the State Bar. In amending section 6140.5, this bill seeks to bolster the State Bar’s ability to recover funds paid out from the CSF due to the misconduct of attorneys.
- **Bagley-Keene Open Meeting Act** – The bill also amends Business and Professions Code section 6026.7 to clarify that the Bar may hold closed session to discuss the

“preparation of examination materials, the approval, the grading, or the security of test administration” of examinations, and to add subsection (d), which mandates that the State Bar accept public comment in open session on all matters on the agenda for discussion or decision by the Board of Trustees, whether in an open or a closed session. According to the bill analyses, these changes to the Bar’s obligation to comply with the Bagley-Keene Open Meeting Act arose after the Board of Trustees continually held closed sessions to discuss potential changes to the exam in light of the pandemic, and limited public comment was allowed on these items despite large numbers of law students, professors, and members of the public who wished to comment.

- **Increased Optional Legal Services Fee** – The bill also amends section 6140.03 to temporarily increase the optional fees to support legal services from \$40 to \$45. New subsection (b) allocates \$5 of these fees to be used by qualified legal services projects and support centers in order to hire law school graduates with temporary provisional licenses pursuant to the Supreme Court’s July 16, 2020 [letter](#) directing the Bar to establish such a program to mitigate the impact of the pandemic on applicants to the Bar. This provision will last until 2023.
- **Complaint Avoidance Agreements** – The bill also amends section 6090.5 to expand the situations in which an attorney can be punished for seeking to avoid a complaint being filed against them or hindering a State Bar investigation by agreement with a client by clarifying that no attorney, or person acting on the attorney’s behalf, can solicit or seek an agreement where a client agrees not to file, or subsequently agrees to withdraw, a disciplinary complaint against the attorney. The prior version of this section limited these restrictions to civil complaints.

Governor Newsom signed AB 3362 on September 30, 2020 (Chapter 360, Statutes of 2020).

MAJOR PUBLICATIONS

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

- [*First Annual Report Card on the Diversity of California's Legal Profession*](#), State Bar of California, July 2020 (Presents statistics on the diversity of California's attorneys, examining factors such as race, gender, and physical ability across various sectors and professional roles; provides recommendations tailored to employers, attorneys, and the profession in general for enhancing diversity. Key findings include: the proportion of Asian-American or multiracial attorneys entering the profession more than tripled in the last three decades; at 7 percent of California's legal professionals, Latinos remain particularly underrepresented in a state with a large Latino population; and that while government and nonprofit sectors are the most diverse, women and people of color remain underrepresented in leadership. Findings are based on contributions from the Council on Access and Fairness, 2018 and 2019 Diversity Summit participants, 2019 Diversity Focus Group participants, 2019 California Attorney Census and other survey respondents.)

- [*2020 Governance in the Public Interest Task Force Report*](#), State Bar of California, May 15, 2020 (Pursuant to Business and Professions Code section 6001.2(b), provides an analysis of risk-based regulation of the attorney discipline system focused on enhancing protection of the public; recommends collecting data to identify factors correlated with attorney misconduct and developing pilot programs such as warning letters and education programs that encourage attorneys to self-correct their own conduct and practice.)

- [*2018–2019 Financial Statement and Independent Auditor’s Report*](#), State Bar of California, April 30, 2020 (Pursuant to Business and Professions Code section 6145, presents findings from an independent auditor of the State Bar of California’s financial statements; financial highlights include a 10% increase in total assets and an increase of 11% in total liabilities from 2018 to 2019. The report also considers the financial effects of the COVID-19 pandemic, such as a reduction or delay in bar exam admissions fees and a significant reduction in Legal Services Trust Fund revenue based on the reduction of the federal funds rate.)
- [*2019 Annual Legal Services Trust Fund Program Report*](#), State Bar of California, April 30, 2020 (Pursuant to Business and Professions Code sections 6145 and 6222, presents the status of the Legal Services Trust Fund, which allocated \$27,463,024 to IOLTA grants in 2019; provides comprehensive list of grant recipients by county.)
- [*2019 Annual Discipline Report*](#), State Bar of California, April 30, 2020 (Pursuant to Business and Professions Code sections 6086.15 and 6177, Civil Code section 55.32(f)(1), and Insurance Code section 1872.95(a), provides a performance overview of the attorney discipline system; provides disciplinary statistics for 2019, including 619 cases, disciplining 303 attorneys, including 117 disbarments, 137 suspensions, and 49 reprovls; analyzes improvements in protections for the public (such as a new online complaint portal accessible in seven languages and outreach to vulnerable populations such as immigrants and wildfire victims). Key findings include a tenfold increase in the number of attorneys with criminal convictions corresponding with the new automated reporting of criminal charges.)
- [*2016–2020 Voluntary Legal Aid Contributions Report*](#), State Bar of California, April 30, 2020 (Pursuant to Business and Professions Code section 6140.03(c), reports the amount of voluntary Legal Services fees received and the percent of paying licensees who opted out of paying

the fee; shows that between 2016 to 2020, contributions increased only slightly, with an increase of about \$120,000 over four years, and the percent of licensees opting out increased 0.4%.)

RULEMAKING

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

- **Lawyer’s Duty of Competence:** On July 16, 2020, the Board [approved proposed changes](#) to California Rule of Professional Conduct 1.1 to add a new comment about lawyer’s duty of competence regarding changes in the law and practice to include technological advances, and submitted the proposed change to the Supreme Court for final approval. This is a recommendation of the ATILS task force. At this writing, the Supreme Court has not yet approved the proposed amendment.
- **Fee Sharing:** On September 24, 2020, the Board [approved proposed changes](#) to California Rule of Professional Conduct 5.4 to expand exceptions for fee sharing arrangements with certain nonprofit organizations. This is a recommendation of the ATILS task force (see HIGHLIGHTS).
- **Changes to Elimination of Bias MCLE Rules:** On September 24, 2020, the Board [approved proposed changes](#) to State Bar Rules 2.52, 2.71, 2.72, 3.601, 3.602, 3.603, and 3.604. These revisions align the Mandatory Continuing Legal Education (MCLE) rules with Business and Professions Code section 6070.5 by forming MCLE provider requirements, increasing bias training from one to two hours, and creating an implicit bias sub-topic. The amended rules became effective on the date of approval.
- **Amendment to Lawyer Referral Service Proposed Rules of Procedure:** At its September 24, 2020 [meeting](#), Regulation and Discipline (RAD) Committee approved the release

of staff's [proposed changes](#) to Rules of Procedure 4201–4208 that would allow for the State Bar Court to review the denial, suspension, or revocation of any certification by the State Bar staff of a Lawyer Referral Service for a 30 day [public comment](#) period. The Board previously approved amendments to Rules of Procedure 4201–4208 in January 2020, but then withdrew the request after realizing the proposed rule contained a drafting error. The public comment period expired on October 30, 2020. At this writing, the Board has not yet taken further action on these rules.

- **Proposed Amendment to Client Security Fund Rule:** On July 13, 2020, the State Bar RAD Committee authorized staff to release [proposed amendments](#) to Client Security Fund Rule 3.434(B)(5) for a 30 day [public comment](#) period. Presently, the Rule authorizes the Client Security Fund to distribute collected monetary sanctions, imposed after suspension or disbarment of an attorney, to eligible applicants. The amendment would allow distribution of funds to victims who are unable to collect criminal penalties or civil judgments awarded to them as a consequence of the sanctioned attorney's conduct. The public comment period expired on August 17, 2020. At this writing, the Board has not taken further action on these proposed amendments.

LEGISLATION

- [AB 3362 \(Committee on Judiciary\)](#), as amended August 7, 2020, is the Bar's annual "fee bill." This bill amends sections 6140 and 6141 of the Business and Professions Code to authorize the Bar to assess base annual licensing fees in 2021 for attorneys who actively practice law in California at \$395, and \$97.40 for inactive members, respectively. Governor Newsom signed AB 3362 on September 30, 2020 (Chapter 360, Statutes of 2020) (see HIGHLIGHTS).

- [AB 3364 \(Committee on Judiciary\)](#), as amended August 20, 2020, and as it relates to the State Bar, is an omnibus bill that amends section 6070.5 of the Business and Professions Code to clarify that the statutorily required MCLE curriculum regarding implicit bias training for

California attorneys commences with the compliance period ending after January 31, 2022. Governor Newsom signed AB 3364 on August 31, 2020 (Chapter 36, Statutes of 2020).

The following bills, reported in Volume 25, No. 2 (Spring 2020), died in committee or otherwise failed to be enacted during the 2019–2020 legislative session: [SB 1151 \(Jones\)](#), regarding fees for the Lawyer Assistance Program; and [SB 1382 \(Hueso\)](#), regarding immigration consultants.

LITIGATION

- ***The State Bar of California v. LegalMatch.com, et al., Case No. CGC20-584278 (Super. Ct. San Francisco)***. On May 7, 2020, in a telephonic hearing, San Francisco Superior Court Judge Ethan Schulman denied the Bar’s [motion for a temporary restraining order](#) (TRO) to shut down LegalMatch.com for failure to register with the Bar as a Legal Referral Service (LRS) pursuant to Business and Professions Code section 6155. The Bar argued that the First District Court of Appeal’s December 17, 2019 [opinion](#) in *Jackson v LegalMatch.com*, 42 Cal. App. 5th 760 (2019), and the Supreme Court’s subsequent [denial](#) of the petition for review on March 11, 2020, found that LegalMatch.com’s operations met the definition of a LRS and consequently necessitated an immediate cease of operations until it was approved and certified by the Bar. According to news reports, in denying the Bar’s TRO, Judge Schulman criticized the Bar and its counsel for failing to bring the fact that LegalMatch.com had filed an application for approval as an LRS after the Supreme Court declined review of the *Jackson* case, and that application was still pending at the time the Bar filed the TRO. While the *ex parte* application for a TRO pending the litigation was denied, the matter is ongoing. The Bar filed its First Amended Complaint for injunctive relief and statutory penalty on June 30, 2020. On November 2, 2020, LegalMatch filed its [First Amended Cross Complaint](#) against the Bar, challenging the constitutionality of section

6155 and the requirements for LRS certification on first amendment grounds. At this writing, the matter is still at the pleadings stage of litigation and no dispositive motions have been ruled upon.

- ***In re Albert-Sheridan*, 960 F.3d 1188 (9th Cir. 2020).** On June 10, 2020, the Ninth Circuit Court of Appeals issued an [opinion](#) holding that attorneys are required to pay the costs of State Bar disciplinary proceedings even if they file for bankruptcy but can discharge discovery sanctions in bankruptcy proceedings. It also held that the Bar was within its rights to condition reinstatement of petitioner’s license to practice law on her payment of the costs of discipline to the Bar. The State Bar of California filed Notices of Disciplinary Charges against petitioner, Lenore Albert-Sheridan, in 2015 and 2016 for failure to cooperate with State Bar investigations, refusal to pay court-ordered discovery sanctions, failure to perform competent legal services, failure to render accounts of client funds, and failure to refund unearned fees. Albert-Sheridan filed a petition for certiorari with the U.S. Supreme Court on October 20, 2020.