

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 June 10, 2021, the State Bar Board of Trustees [announced](#) its appointment of Leah Wilson as Executive Director by a unanimous vote in a [closed session](#) meeting on June 9, 2021. [Agenda item 7001]. Wilson previously served as the Executive Director from September of 2017

to January of 2020 and returned to the position after 18 months as the Senior Director at Resource Development Associates.

On August 27, 2021, the State Bar Board of Trustees [appointed](#) George Cardona as Chief Trial Counsel (see HIGHLIGHTS).

HIGHLIGHTS

California State Auditor Finds State Bar Did Not Effectively Manage Its System for Investigating and Disciplining Attorneys Who Abuse the Public Trust

On April 29, 2021, Elaine Howle, the California State Auditor, presented her [audit](#) of the State Bar's discipline and bar examination administration systems. The State Auditor conducted this audit pursuant to section 6145(b) of the Business and Professions Code, which requires that the State Bar contract with the State Auditor every two years. The State Auditor focused her audit on the disciplinary system because it had not conducted an in-depth review of the State Bar's attorney discipline system since 2015. This audit also came at a time when the State Bar's discipline system was scrutinized for its handling of complaints against Thomas Girardi, who was accused of mishandling client funds for several decades without discipline by the State Bar. The Auditor further conducted analysis on the State Bar's response to COVID-19 in its administration of the bar exam and the State Bar's efforts to manage revenue and expenditures. The audit resulted in two key findings related to the State Bar's discipline system and one key finding related to its administration of the bar examination during the COVID-19 pandemic.

In her investigation, the State Auditor found that the State Bar's reorganization of its discipline system in 2016 had a negative effect and did not satisfy relevant statutory requirements

or previous audit recommendations. The audit found that case processing times between 2015 and 2020 in the investigation phase for attorney discipline cases increased by 56 percent and that the backlog of unresolved cases increased by 87 percent. The total number of cases that resulted in discipline also decreased, declining by 54 percent over the same time period. The audit also found that the State Bar failed to provide all of the required information in its 2019 discipline report to the legislature, limiting the legislature's ability to assess the annual licensing fee bill.

Regarding the bar examination, the Auditor reported that although the State Bar appropriately administered the bar exam during the COVID-19 pandemic, its procurement of the exam did not comply with its own policy. The Auditor noted that the State Bar entered into a \$4 million contract without providing evidence that the agreement represented the best value.

The State Auditor then produced a list of [recommendations](#) to both the Legislature and the State Bar regarding how to resolve these issues in the future. The State Auditor recommended, among other things, that the legislature amend the disciplinary report's publishing date to October 31 to ensure that it has sufficient time to review the discipline report before reviewing the annual fee bill. The State Auditor made several recommendations about how to reduce the current caseload backlog; recommended that the Bar review in committee the discipline report before it is issued; further assess the impact of its 2016 discipline system reorganization in its 2021 discipline report; and that the State Bar establish documentation standards and templates for contract managers when selecting vendors for the administration of the bar exam.

In its response ([Audit Report](#) at 41), the State Bar mostly agreed with the recommendations of the State Auditor but disagreed with some of the audit's conclusions. The State Bar noted its intent to work with the legislature to revise its approach to addressing its caseload backlog to place

the focus and priority on the cases that pose the most harm to the public, as opposed to those that are simply the oldest, as the current statutory backlog measure provides. Although the State Bar agreed that it should assess the 2016 reorganization of its discipline system, it argued that the reorganization was beneficial and that outside factors explain the audit's statistical findings. The State Bar also agreed with the State Auditor and noted that documentation standards and templates for contract managers are in place and that the State Bar's contract with ExamSoft was unique due to industry consolidation and a last-minute need to adopt a remote exam.

As with all audits, the State Bar must provide the State Auditor with information regarding its progress in implementing the recommendations from her reports at three intervals from the release of the report: 60-days, six months, and one year.

State Bar's Regulation and Discipline Committee Works to Amend State Bar Rule 2201

On September 23, 2021, the State Bar's Regulation and Discipline (RAD) Committee unanimously approved the circulation for public comment of a proposed [amendment](#) to State Bar Rule of Procedure 2201. The RAD Committee requests public comment on the amendment to State Bar Rule of Procedure 2201 in accordance with the Bagley-Keene Open Meeting Act, Government Code section 11120. Many of the amendments to Rule 2201 were originally proposed at the Committee's previous [meeting](#) on July 22, 2021, and circulated for public comment, but the Committee determined that a broader set of revisions were necessary. [[Agenda item III-A](#)]. The current amendments to Rule 2201 also come after the State Bar named George S. Cardona as the new Chief Trial Counsel on August 27, 2021.

Under the current rules, Title III Division II Chapter 2 of the California State Bar Rules of Procedure, Rule 2201 sets the grounds for mandatory and discretionary recusals of the Chief Trial Counsel (Rule 2201 (a) and (b)). When the Chief Trial Counsel determines that recusal is appropriate, the inquiry or complaint is referred to the Special Deputy Trial Counsel Administrator (Administrator). (Rule 2201(c)(1)). The Administrator then determines whether to close the matter or appoint a Special Deputy Trial Counsel to investigate the matter (Rule 2201(c)(2) and (3)). The current version of Rule 2201 states that the Administrator and each Special Deputy Trial Counsel act in place of the Chief Trial Counsel regarding any inquiry, complaint, or other matter and any resulting investigation or prosecution. (Rule 2201(e)(1)).

The [proposed amendments](#) kept seven revisions proposed and circulated after the RAD Committee's July meeting. First, paragraphs were revised to vest the Chief Trial Counsel's power and duties solely in the Administrator. This revision was proposed to authorize further supervision by the Administrator and to ensure a higher level of consistency in decision-making, settlement, and prosecution. Second, the current amendment would add a new subparagraph that states that both the Special Deputy Trial Counsels and the Administrator are subject to the RAD Committee's oversight. Third, the amendment removes provisions that permit the State Bar's Office of General Counsel to remove the Special Deputy Trial Counsels or the Administrator for good cause. This revision will only grant the chair of the RAD Committee the authority to remove a Special Deputy Trial Counsel or the Administrator. Fourth, the amendment will require that the Administrator provide a report to the RAD Committee at each of the regularly scheduled meetings. Fifth, the amendment will substitute the word "track" for the word "monitor." Sixth, the amendment will

revise current subparagraph (e)(3) to provide reimbursement of “approved” reasonable expenses. Seventh, the amendment would then update all internal references to the rule paragraphs.

The proposed amendments also suggest three additional revisions to Rule 2201 that were not seen in the July proposal. First, the current proposal will remove a previous provision that required the RAD Committee to establish a compensation rate for the Special Deputy Trial Counsels and the Administrator. Second, the amendment will revise current subparagraphs (c)(2) and (c)(3) by adding the word “delegee” to provide flexibility to the Administrator to delegate the duties described to an appropriate Special Deputy Trial Counsel. Third, the amendment makes further changes as appropriate to update terminology and internal references.

On November 12, 2021, the deadline for the 45-day [public comment](#) period ended. At this writing, the Board has not yet taken further action on these proposed amendments.

State Bar Announces George Cardona as Chief Trial Counsel

On August 27, 2021, the State Bar announced in a [press release](#) that it appointed George S. Cardona as the new Chief Trial Counsel for the attorney discipline system. The Chief Trial Counsel leads OCTC in investigation and disciplinary matters, reviewing approximately 17,500 cases of attorney misconduct and unauthorized practices of law annually. Under the supervision of the Chief Trial Counsel, OCTC conducts investigations, files discipline charges, and prosecutes attorney misconduct in the State Bar Court. OCTC also investigates the unauthorized practice of law complaints and partners with other government agencies to enforce and prosecute the unauthorized practice of law.

Prior to his appointment as the Chief Trial Counsel, Cardona worked as a prosecutor for 30 years, primarily in the U.S. Attorney's Office for the Central District of California, where he served from 1991 to 2015 in both Los Angeles and San Francisco. As First Assistant U.S. Attorney, he managed approximately 250 attorneys in three litigating divisions, led the investigation and litigation of several significant criminal and civil cases, and oversaw issues related to the U.S. Attorney Office's budget and administration. Cardona received his J.D. from Yale Law School in 1986 and has been a lecturer at UCLA School of Law for many years. Cardona was admitted to the State Bar as a licensed attorney in 1988 and served as a member of the State Bar's Commission for the Revision of the Rules of Professional Conduct from 2015 to 2018.

Cardona's appointment as Chief Trial Counsel comes at a time when the State Bar's attorney discipline system is under scrutiny for its mismanagement of former attorney Thomas Girardi. [[26:2 CRLR 126–128](#)] An earlier version of the Bar's Annual Fee Bill, [SB 211 \(Umberg\) \(Chapter 723, Statutes of 2021\)](#), included a provision that would have removed its ability to collect fees from attorneys if it did not appoint a new Chief Trial Counsel (see HIGHLIGHTS). The last time the State Bar appointed a Chief Trial Counsel was in 2017 when it [appointed](#) Steven Moawad, however, Moawad later withdrew his nomination in 2018 before the Senate brought his confirmation for a vote. [[see 23:2 CRLR 262](#)]

Cardona started his position as Chief Trial Counsel on October 4, 2021. The Bar submitted his appointment to the California Senate Rules Committee, where the confirmation process is still pending at this writing. If Cardona is confirmed, he will be the first Chief Trial Counsel confirmed by the Senate since 2016.

State Bar’s Annual Fee Bill Paves the Way for Improving Attorney Misconduct Standards

[SB 211 \(Umberg\)](#), as amended September 2, 2021, is the State Bar’s annual “fee bill.” This bill amends sections 6140 and 6141 of the Business and Professions Code to authorize the Bar to assess 2022 base licensing fees at \$395 for attorneys who actively practice law in California and \$97.40 for inactive members. These amounts are the same as the fee amounts for 2021.

The bill also amends section 6094.5 of the Business and Professions Code to alter how the Office of Chief Trial Counsel, which is responsible for prosecuting attorney misconduct, handles complaints. The bill’s author referenced the California State Auditor’s [report](#) released on April 29, 2021, which found that “the State Bar’s backlog grew by 87 percent from the end of December 2015, to the end of June 2020” and that the backlog has become a public risk. The amendments aim to ensure that matters are handled competently, accurately, and timely. The Bar is required to propose case standards by October 31, 2022, and these standards should consider several enumerated but non-exhaustive factors, such as the risk of public protection and the complexity of cases. In addition to incorporating a review of attorney discipline systems in at least five other states, the amended processing standards include consultation with attorney discipline experts and reports from the Legislative Analyst’s Office and the California State Auditor.

An earlier version of the bill made the State Bar’s fee collection contingent on the appointment of a Chief Trial Counsel, which had been vacant for over five years. On August 27, 2021, the State Bar Board of Trustees appointed George Cardona as Chief Trial Counsel. As a result of his appointment, the contingency provision was dropped. The state Senate is expected to set a confirmation hearing for Cardona in 2022.

The bill seeks an outside, independent audit of the State Bar's discipline system to understand what went wrong in the highly publicized Thomas Girardi investigation and how to ensure that this type of mishandling does not happen again. The bill directs the State Auditor, by April 15, 2022, to conduct an independent audit to determine whether the State Bar's attorney complaint and discipline process adequately protects the public from misconduct by licensed attorneys or those who wrongfully hold themselves out as licensed attorneys. Due to concerns of systemic racism and discriminatory impacts of the State Bar's admissions and disciplinary systems, this bill also directs the State Auditor, as part of her audit of the discipline system discussed above, to examine data trends that could suggest racial or gender inequities in outcomes.

SB 211 allows a qualified legal services project or support center under section 6213 of the Business and Professions Code to allocate a minimum of \$10,000 in grant funding to law students and graduates, with preference to those projects or centers that serve rural or underserved communities regardless of the immigration or citizenship status of the client.

The bill adds section 6210.5 to the Business and Professions Code, creating and directing the Legal Services Trust Fund Commission to administer funds to support certain qualified legal projects and qualified service centers. The bill specifies details about the commissioners, including eligibility, appointment requirements, and term limits. It also requires the Commission to provide a funding report.

Governor Newsom signed SB 211 on October 8, 2021 (Chapter 723, Statutes of 2021).

State Bar Releases Paraprofessional Program Working Report for Public Comment

On September 23, 2021, the Board of Trustees [voted](#), after two hours of public comment, to release the California Paraprofessional Program Working Group’s (CPPWG) [report and recommendations](#) with a 110 day comment period. [[Agenda item 701](#)]. In 2019, the State Bar completed a [study](#) that showed an unmet need for civil legal services in California. After examining other jurisdictions’ programs, the Bar concluded that a paraprofessional program was needed to help address the justice gap, and it created the CPPWG in March 2020 to provide recommendations for the scope and implementation of the potential program. [*see* [25:2 CRLR 91–93](#)] The CPPWG then appointed subcommittees to develop recommendations regarding practice areas, scope of services, licensing requirements, regulatory measures, disciplinary structure, and program rollout.

The report recommends paraprofessional licensure eligibility for the following groups: those who have earned a JD or LLM from an ABA or California accredited or registered law school, paralegals under Business and Professions Code section 6450(c), and legal document assistants under Business and Professions Code section 6402.1(b). It also specifies education requirements for each included practice area, and it includes broad requirements for practical training, testing, and moral character.

In recommending practice areas and scope of services, the CPPWG considered “need for legal services, . . . complexity of the level of training and experience required to competently provide the services[,] availability of existing affordable services[,] and the relative risk to legal consumers of receiving poor services, compared to receiving no legal services.” The report recommends including the following practice areas: collateral criminal; consumer debt/general

civil; employment/income management; family, children and custody; and housing. Table 1 of [Appendix A](#) outlines in detail included and excluded activities by practice area for paraprofessionals, while the activities listed in Table 2 specify that paraprofessionals may practice full representation in court, excluding jury trials, except as explicitly modified. The program would be implemented in phases, with family, housing, and collateral criminal included in the initial implementation in limited counties that showed a particular need for services.

The CPPWG developed recommendations for a discipline system that is a hybrid of the attorney discipline system and the discipline system of the California Department of Consumer Affairs for professional licensing boards. The report's recommendations include guidelines for citations and fines, initial hearings, settlement conferences, appeals and stipulated discipline, and final discipline decisions. Additionally, the report recommends including two alternative discipline approaches, warning letters, and mandatory fee arbitration, and it includes recommendations for which disciplinary records would be public.

The report also recommends creating a Paraprofessional Licensing and Oversight Committee, which would provide operational oversight and hear disciplinary appeals. It also details recommendations regarding the functional oversight authority of the Supreme Court, the legislature, and the Board. The CPPWG recommends that an independent organization evaluate the program between three and five years after implementation. The evaluation would consider factors such as equity and access, case outcomes and client satisfaction, legitimacy and political sustainability, affordability, and efficiency in paraprofessional training.

The [public comment form](#) may be used to submit comments until January 12, 2022, after which, according to a State Bar [press release](#), the report will go to the State Bar Board of Trustees, the California Supreme Court, and the legislature for approval before implementation.

Board Approves Proposed Plan for Preventative Education for Attorneys

On July 22, 2021, the Board of Trusses [approved](#) a five-year preventative education [plan](#) to develop and deploy self-assessment modules and e-learning courses for attorneys. [[Agenda item 703](#)]. According to the plan, the State Bar first discussed a self-assessment program in its January 26–27, 2018 meeting to “facilitate[] a practitioner’s awareness of gaps in knowledge of, and compliance with, professional responsibilities.” One benefit of a self-assessment program is the targeting of attorneys’ areas of weakness to increase attorney competence and avoid misconduct. According to the plan, the self-assessment modules serve as “a diagnostic tool to facilitate identification of any trends in attorney performance of duties and best practices.” For completing self-assessment modules, attorneys could earn MCLE credit, which would serve as an incentive for the lawyers to participate in the courses. In July 2020, the Board [approved](#) the first phase of the self-assessment program, a training module addressing client trust accounting practices, which is currently available and will conclude at the end of 2021. The July 2021 plan is the next step in the self-assessment modules and e-learning courses.

The plan includes the following nine additional self-assessment modules: (1) competence and diligence in representing clients; (2) fee arrangements, fee disputes, and fee-sharing; (3) law office management, staffing, and supervision; (4) conflicts of interests; (5) client files, including electronically stored information; (6) communications with clients and marketing; (7) duty of

confidentiality; (8) access to justice; and (9) attorney wellness and implicit bias recognition and elimination. The modules would be deployed in sequence over five years, with each module available for six months, after which the State Bar's Office of Professional Competence would identify trends within particular modules and develop new resources to address attorney weaknesses. At the end of the five years, the Office of Professional Competence will report to the Board and conduct an evaluation of the developed courses, data, and resources.

The e-learning courses are separate from the self-assessment modules, but they follow the same five-year plan. There are eleven one-hour e-learning courses, four of which (client trust accounting, elimination of bias, updated new Rules of Professional Conduct, and probation) are already in progress. The remaining courses set through 2025 are: provision of limited scope representation; fee arrangements, fee disputes, and fee-sharing; overview of the licensed paraprofessional program; lawyer advertising and solicitation; overview of regulatory sandbox program; lawyer provision of nonlegal services and fee-sharing with a nonlawyer; and trial conduct duties. According to the plan, in 2026, the Office of Professional Competence will review the currently implemented new attorney training program and consider updating content based on the results of self-assessment modules and any changes to the California Bar Examination.

The vendor cost of each e-learning course is \$36,000, so the remaining eight e-learning courses will cost a total of \$288,000. Production of the new attorney training refresh will cost \$360,000, for a total e-learning estimated cost of \$648,000. The self-assessment modules are roughly estimated at \$45,000 each, with an estimated cost of \$450,000 for the ten planned courses and \$360,000 for up to eight additional courses created after data evaluation of the ten initial courses.

The proposed five-year plan requires dedicated staff, including a legal ethics attorney, a program analyst, and a program assistant, all of whom would handle course development. Current State Bar offices, including OCTC and the Office of Professional Competence of Attorneys, would also likely contribute.

MAJOR PUBLICATIONS

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

- [2020 Digital Annual Report](#), State Bar of California (Highlights actions taken by the State Bar in response to the COVID-19 pandemic and towards its goals of improving regulation and discipline, expanding admissions, promoting access, and furthering diversity and inclusion. The report also provides links to other reports and fact sheets published by the State Bar during the reporting period.)
- [2020 Annual Legal Services Trust Fund Report](#), State Bar of California, April 30, 2021 (Pursuant to Business and Professions Code sections 6145(a) and 6222, consists of the operating statement of the Legal Services Trust Fund (LSTF) for 2020, notes to the operating statement, and provides a comprehensive list of grant recipients by county.)
- [2020 Financial Statement and Independent Auditor's Report](#), State Bar of California, April 30, 2021 (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 14.9% decrease in total assets and an increase of 5.9% in total liabilities from 2019 to 2020.)

- [*Audit-California State Auditor*](#), California State Auditor, April 29, 2021 (Pursuant to Business and Professions Code section 6145(b), presents findings from the California State Auditor’s audit of the State Bar’s discipline and bar examination administration systems.) (see HIGHLIGHTS).
- [*California Paraprofessional Program Working Group \(CPPWG\) Report and Recommendations*](#), State Bar of California, September 23, 2021 (Pursuant to the Board’s direction in the CPPWG’s [Charter](#), provides recommendations for creating a paraprofessional licensure/certification program, including practice areas, scope of services, licensing requirements, regulatory measures, disciplinary structure, and program rollout) (see HIGHLIGHTS).
- [*2020 Annual Discipline Report*](#), State Bar of California, April 27, 2020 (Pursuant to Business and Professions Code sections 6086.15, 6095(b), 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 2020, including opening 17,500 cases (a 14% reduction from 2019), disciplining 180 attorneys including recommending 97 disbarments, 114 suspensions, and 50 reprovations, reimbursing about \$11.75 million to more than 800 victims of attorney misconduct and reducing backlogged cases by 5%; and analyzes the Bar’s response to the COVID-19 pandemic (such as allowing electronic service of some pleadings, electronic signatures, and electronic document exchange). Key actions include recommendations of potential reforms based on the Bar’s prior finding of racial disparities in attorney discipline outcomes [[see 25:2 CRLR 85–86](#)], OCTC’s completion of “second look” complaint reviews, and OCTC’s outreach in response to those fraudulently holding themselves out as attorneys.)

RULEMAKING

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

- **Grounds for Mandatory and Discretionary Recusals of the Chief Trial Counsel:** At its September 23, 2021 [meeting](#), RAD Committee approved the release of staff's [proposed amendments](#) to Rule of Procedure 2201 for a 45 day public comment period. According to the staff memo, the proposed amendments will to enhance the power of the Special Deputy Trial Counsel Administrator and expand the RAD Committee's oversight. [[Agenda item III-B](#)] (see HIGHLIGHTS).

- **Voting Procedures of the Commission on Judicial Nominees Evaluations:** At its September 23, 2021 [meeting](#), the Board approved the release of proposed amendments to State Bar Rule 7.61 for a 45 day [public comment](#) period. The proposed amendments would exclude abstentions from the total vote count that a judicial candidate receives from the Commission on Judicial Nominees Evaluation (JNE) [[Agenda item 704](#)]. According to the [staff memo](#), the exclusion of abstentions would resolve a contradiction in the rules that allowed a judicial candidate to receive a rating of either Not Qualified, Qualified, Well Qualified, or Exceptionally Well Qualified by the JNE without receiving a majority of votes. The public comment period expired on November 12, 2021. At this writing, the Board has not yet taken further action on these proposed amendments.

- **Proposed Formal Opinion Regarding Improper Contract Provisions:** At its October 8, 2021 [meeting](#), the State Bar's Committee on Professional Responsibility and Conduct (COPRAC) voted to release its [proposed](#) Formal Opinion Interim No. 19-0003 regarding improper

contracts provisions for a 60 day [public comment](#) period. [[Agenda item B-1](#)]. COPRAC revised the opinion in response to public comment received after it approved the release of the opinion for a 90 day public comment period at its meeting on February 26, 2021. The proposed opinion comes at the [request](#) of the Center for Public Interest Law (now named Consumer Protection Policy Center), who expressed concern over lawyers knowingly writing unenforceable contract provisions into contracts, such as employment non-compete agreements. The proposed opinion would clarify that a California attorney's duty not to counsel or assist a client in conduct that the lawyer knows is criminal, fraudulent, or a violation of any law, rule, or ruling of a tribunal includes the use of a contract provision in a transaction with a third party that has been found to be illegal under the law of the jurisdiction applicable to the transaction. [*see* [26:2 CRLR 136](#)] The public comment period will expire on December 22, 2021.

- **Proposed Revisions to Legal Services Trust Fund Commission (LSTFC) Term of Appointments:** At its May 13, 2021 [meeting](#), after a 30 day [public comment](#) period, the Board approved proposed changes to State Bar Rule 3.662, which extends the terms of members of the LSTFC from up to two three-year terms to four-year terms with the possibility of reappointment as an officer, aligning the LSTFC with other State Bar sub-entities. [[Agenda item 54-111](#)]. [*see* [26:2 CRLR 135–136](#)]

- **Proposed Technical Amendment to Minimum Continuing Legal Education (MCLE) Requirements for New Licensees:** At its May 13, 2021 [meeting](#), after a 30 day [public comment](#) period, the Board approved a proposed technical amendment to State Bar Rule 2.53, which governs the MCLE requirements for new licenses. [[Agenda item 50-7](#)]. The amendment to Rule 2.53 allows provisional licensed lawyers to take the Bar's New Attorney Training Program

during their period of provisional licensure to satisfy the New Attorney Training program requirements.

- **Proposed Rule Governing Client Security Fund (CSF) Payment Plans:** At its May 13, 2021 [meeting](#), after a 30 day [public comment](#) period, the Board approved permanent adoption of State Bar Rule 3.453, which allows certain nondisbarred and nonresigned licensees to request a payment plan for outstanding interest on reimbursements paid to clients by the CSF. [[Agenda item 705](#)]. The rule was first adopted on March 19, 2021, on an emergency basis. [*see 26:2 CRLR 135*]

- **Proposed Amendments to Rule 9.23 of the California Rules of Court – Enforcement as money judgment disciplinary orders directing the payment of costs and disciplinary orders requiring reimbursement of the Client Security Fund:** At its July 23, 2021 [meeting](#), after a 45 day [public comment](#) period, the Board authorized staff to submit proposed amendments to Rule 9.23 of the California Rules of Court to: (1) implement the recent statutory changes to California Business and Professions Code section 6140.5, allowing the Bar to enforce final determinations of the CSF as money judgments; (2) implement Rule 5.137 of the Rules of Procedure, allowing the Bar to enforce monetary sanctions as money judgments; and (3) provide a process for the Bar and debtor to amend, vacate, or stay the enforcement of a money judgment. [[Agenda item 54-121](#)]. At this writing, the Supreme Court has not yet adopted the proposed amendments.

LEGISLATION

- [AB 474 \(Chau\)](#), as amended August 16, 2021, enacts conforming and technical changes to AB 473, which recodifies the California Public Records Act. As it relates to the State

Bar, AB 474 amends sections 30, 6001, 6026.11, 6056, 6060.2, 6060.25, 6086.1, 6086.5, 6090.6, 6168, 6200, and 6232 of the Business and Professions Code to recodify the formation of the State Bar and State Bar Court, as well as its obligations under the California Public Records Act. AB 474 also amends section 19528 of the Revenue and Taxation Code, allowing the Franchise Tax Board to require that the State Bar provide information about every licensee such as name, address, and status of the license. Governor Newsom signed AB 474 on October 7, 2021 (Chapter 615, Statutes of 2021).

- [SB 498 \(Umberg\)](#), as amended June 15, 2021, amends sections 6213 and 6214 of the Business and Professions Code to expand the definition of “indigent persons” who are eligible to receive free legal services through the Interest on Lawyer Trust Accounts (IOLTA) program from individuals with incomes at or below 125% of the Federal Poverty Level (FPL) to 200% of the FPL. The bill also requires that the income of a veteran be determined after deducting disability compensation. Governor Newsom signed SB 498 on October 8, 2021 (Chapter 688, Statutes of 2021).

- [SB 211 \(Umberg\)](#), as amended September 2, 2021, amends sections 6094.5, 6140, and 6141 of the Business and Professions Code and adds section 6210.5. This year’s annual “fee bill,” in addition to setting licensee fees, references, and seeks to address the Bar’s handling of attorney discipline, including concern about the prior mishandling of the Girardi investigation (see HIGHLIGHTS). Governor Newsom signed SB 211 on October 8, 2021 (Chapter 723, Statutes of 2021).

- [AB 716 \(Bennett\)](#), as amended September 3, 2021, amends section 124 of the Code of Civil Procedure and repeals and adds the heading of Article 1 of Chapter 6 of Title 1 of Part 1

of the Code of Civil Procedure to expand court access. The bill prohibits courts from excluding the public from physical court access because remote access (including, but not limited to, an audio stream) is available unless necessary to restrict or limit physical access to protect health or safety. When a courthouse is physically closed, it must provide, at a minimum, a public audio stream or telephonic access, except when the law authorizes or requires a proceeding to be closed. According to the author, Covid-19 has made it difficult for the public to have meaningful access to open court proceedings; this bill is designed to increase public transparency in government. Governor Newsom signed AB 716 on October 5, 2021 (Chapter 526, Statutes of 2021).

- [AB 1487 \(Gabriel\)](#), as amended September 3, 2021, would have added article 17, commencing with section 6250, to the Business and Professions Code and would have established a Homelessness Prevention Fund under the administration of the State Bar’s Legal Services Trust Fund Commission to fund prescribed legal services related to tenant eviction or displacement. On October 8, 2021, Governor Newsom issued a [veto message](#) supporting the bill’s intent but stating, “to have real effect, these policy changes must be accompanied by a budgetary appropriation or reallocation of existing legal aid money.”

LITIGATION

- *In re Conservatorship of Thomas V. Girardi, Case No. 21STPB00413 (Super. Ct. Los Angeles County)*. On June 9, 2021, a probate court [granted](#) the permanent conservatorship of Thomas Girardi to his brother, Robert Girardi, after finding that Thomas Girardi is unable to make his own healthcare decisions and has a neurological disorder. The court’s ruling comes after it granted temporary conservatorship of Thomas Girardi and overruled the State Bar’s challenge, which claimed that Thomas Girardi’s claims of dementia were a strategy to avoid discipline. *[see*

[26:2 CRLR 136](#)] See also *In re Girardi Keese*, No. 2:20-bk-21022-BR (Bankr. C.D. Cal.). Bankruptcy proceedings for the Girardi Keese law firm are ongoing.

- ***In the Matter of Thomas Vincent Girardi*, Case No. SBC-21-O-30192 (State Bar Ct. Los Angeles)**. On April 27, 2021, the State Bar filed a [Motion for Entry of Default](#) after Thomas Girardi failed to file a response to the [Notice of Disciplinary Charges](#). On August 6, 2021, the judge of the State Bar Court, Yvette D. Rowland, [entered](#) the default after Thomas Girardi failed to file a timely written response.

On November 10, 2021, the State Bar filed a [Petition for Disbarment](#), claiming that the judge must recommend Thomas Girardi's disbarment after default under rule 5.85 of the Rules and Procedure of the State Bar because he failed to file a timely response to the Notice and Disciplinary charges and failed to have the default set aside or vacated within the time period prescribed. At this writing, Thomas Girardi has not filed a response to the petition, and the judge has not recommended Thomas Girardi's disbarment.

- ***Los Angeles Times Communications LLC v. State Bar of California*, Case No. S269401 (Cal.)**. On June 17, 2021, the Los Angeles Times filed a [Verified Petition for Writ of Mandate to Compel Public Disclosure of Attorney Discipline Information](#) related to the State Bar's handling of complaints against attorney Thomas Girardi, named as a real party in interest. The petition seeks a California Supreme Court order to compel the Bar to release information about past investigations of Girardi. The Los Angeles Times seeks the disclosure by way of a writ of mandate pursuant to Article 6, Section 10 of the California Constitution and California Rule of Court 8.485(a) and/or the court's oversight of the Bar under California Rule of Court 9.13(d). The petition claims that a writ is necessary to answer questions about the Bar's handling of prior

complaints and investigations of Girardi, given that prior misconduct allegations and investigations did not result in any charges brought against Girardi and the Bar didn't bring disciplinary charges until March 30, 2021. [see [26:2 CRLR 126–128](#)] Specifically, the Los Angeles Times requests that pursuant to Business and Professions Code section 6086.1(b)(2), the Bar disclose information about all its investigations of Girardi. According to the petition, a Los Angeles Times reporter requested that the Chief Trial Counsel and/or State Bar Chair waive confidentiality about the prior Girardi investigations, but the Bar did not agree to waive confidentiality, asserting that section 6086.1(b)(2) only applies to pending investigations against a licensee.

On June 10, 2021, the State Bar issued a [news release](#) announcing a review of a special disciplinary audit of past complaints filed against Girardi. The news release acknowledged mistakes in the handling of Girardi and “significant issues regarding OCTC’s investigation and evaluation of high-dollar, high-volume trust accounts.” In the news release, the Bar stated that the OCTC is considering several actions in response to the audit, including using accounting experts for high-volume, high-dollar client trust accounts; implementing tools to identify patterns of misconduct; and investigating new means of regulating client trust accounts. The Bar claimed the audit is confidential under section 6086.1.

On September 1, 2021, the California Supreme Court issued an order to show cause as to why the petition should not be granted. The court ordered that the Bar answer the following questions by October 1, 2021:

1. Does the court have the authority to reverse a discretionary decision by the State Bar’s Interim Chief Trial Counsel not to waive the confidentiality of disciplinary investigations involving alleged professional misconduct by Thomas V. Girardi, and if so, was such a waiver of confidentiality in this matter “warranted

for protection of the public” within the meaning of Business and Professions Code section 6086.1, subdivision (b)(2)?

2. Are the State Bar of California’s Chief Trial Counsel and Chair of the Board of Trustees authorized under Business and Professions Code section 6086.1, subdivision (b)(2) to disclose information and records regarding confidential disciplinary investigations that were closed without charges filed?

3. Is the scope of disclosures permitted under the confidentiality waiver in section 6086.1, subdivision (b)(2) limited to releases of information “confirming the fact of an investigation or proceeding, clarifying the procedural aspects and current status, and defending the right of the licensee to a fair hearing”?

On October 1, 2021, the State Bar filed a written return. At this writing, the court has not yet taken further action.