

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 a legislative act in 1927 and codified in the California Constitution at Article VI, section 9. The 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 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 Rules Committee 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. At this writing, there is one attorney vacancy on the Board to be appointed by the Supreme Court and one public, non-attorney vacancy to be appointed by the Governor.

On January 2, 2023, [Patricia Guerrero](#) was sworn into office as the 29th Chief Justice of California. She is the first Latina to serve as California’s Chief Justice.

On January 9, 2023, [Enrique Zuniga](#) was appointed as the Bar’s first Public Trust Liaison. The Public Trust Liaison's role at the Bar is to ensure that members of the public, applicants for admission, legal consumers, attorneys, and other constituents, can meaningfully voice their

complaints about the Bar’s action or inaction and receive assistance in having those complaints addressed.

On January 26, 2023, [Sarah Good and Raymond Buenaventura](#) were appointed to the State Bar of California Board of Trustees.

State Bar Releases Its Biennial Report to the Legislature on Diversity, Equity, and Inclusion Plan: 2023–2024

In March 2023, the Bar [submitted](#) its Diversity, Equity, and Inclusion Plan: 2023–2024, Biennial Report to the Legislature in accordance with Business and Professions Code section 6001.3, which directs that the State Bar develop and implement a plan demonstrating its ongoing “commitment to and support of effective policies and activities to enhance access, fairness, and diversity in the legal profession and the elimination of bias in the practice of law.”

This is the third report to be submitted pursuant to this statutory requirement. The report summarizes the activities undertaken over the last two years to promote diversity, equity, and inclusion (DEI) in the legal profession, as prioritized by the [State Bar’s 2017–2022 Strategic Plan](#) and described in the Bar’s prior biennial reports submitted in 2019 and [2021](#). The report specifically addresses the Bar’s efforts in the core pillars of its DEI work: statewide leadership, building a culture of diversity, pipeline to the profession, and retention and advancement in the profession.

Demographic Overview

There has been little change in attorney demographics since the last report; as highlighted in the Bar’s [2021 report](#), while the profession has become increasingly diverse over the last 30 years, much work is still needed to ensure that the state’s active attorneys reflect the rich diversity

of California’s adult population. The newest cohorts in the legal profession are far more diverse than those who have been in the profession for decades, with women comprising half of the newly admitted attorneys for the first time in 2003. People of color reached this milestone over 15 years later; women comprised 53 percent, and people of color 51 percent of newly admitted attorneys in 2019. While there was a slight decline in 2020, in 2021 the percentage of newly admitted attorneys who were women or people of color increased to 56 and 53 percent, respectively, continuing the trend of a more diverse population of admittees.

Statewide Leadership

The attorney census continues to be administered annually to all California attorneys. It is a voluntary survey administered during the annual licensing fee payment period through the Bar’s online portal. The survey was first issued in 2019, and it contained questions on (1) demographic characteristics, (2) primary employment sector, (3) workplace leadership, and (4) workplace climate. The State Bar has since developed two versions of the survey. A short version, containing demographic questions and formatted so that prior answers are stored and available for updating, is administered annually. An extended version of the survey that includes employment and workplace-related questions is administered every two to three years. The extended version of the survey was administered in 2021, and the shortened version was administered in 2022.

The 2019 attorney census included transgender as a response option to the gender identity question. California attorneys from LGBTQIA+ bar associations partnered with the Bar to explore how to allow transgender attorneys to best self-identify. Consistent with best practice, the solution was to create an additional question to allow respondents to identify as cisgender, transgender, or intersex, or to provide another category with which they identify. This new question immediately follows the gender identity question, which no longer has “Transgender” as a response option. The

new question was first administered in the 2021 attorney census. Additionally, the workplace climate questions were revised based on discussions held in focus groups with California licensed attorneys to review preliminary results of the 2019 attorney census.

Building a Culture of Diversity

The Bar launched and continued to improve existing internal DEI initiatives for its staff, including additional training and learning opportunities through online training courses and quarterly speaker and discussion series. Additionally, the Bar developed and maintained voluntary resources to develop and increase staff awareness and sensitivity. Resources include reference websites, books, videos, and podcasts, a guide for bias-free writing, and a glossary of key DEI words and phrases.

Except for those who are statutorily exempt, active attorneys in California must take 25 hours of minimum continuing legal education (MCLE) every three years, including credit related to “the recognition and elimination of bias in the legal profession and society.” In September 2020, the Elimination of Bias (EOB) MCLE requirement was doubled to two hours of credit every three years. The EOB MCLE requirement now includes an implicit bias subtopic to conform to the requirements of Business and Professions Code section 6070.5. Over the course of 2021, the Bar worked with a subject matter expert and learning design company to develop a free online program to support attorneys in satisfying this new requirement. The curriculum went live in early 2022 through the Bar’s online learning portal.

Pipeline to the Profession

The report focuses on how the law school to licensee pipeline may be used to foster a diverse legal profession representative of California’s communities, particularly as related to race, ethnicity, gender identity, sexual orientation, disability status, and veteran status. While the Bar

continues to focus on areas where it can be most impactful, it recognizes the important work of early pipeline initiatives that many stakeholders, such as local and affinity bar associations, are engaged in.

Retention and Advancement in the Profession

In its focus on retention and advancement in the profession, the Bar continues to engage with leaders in diversity, equity, and inclusion in the profession by hosting diversity summits annually. On October 24, 2022, the State Bar hosted the 2022 diversity summit with 113 attendees via Zoom. The summit featured a presentation on the new [Diversity Report Card](#); a panel discussion on advancement, mentorship, and sponsorship across sectors; and a presentation about the [DEI Leadership Seal Program](#). As reported in the 2021 report, the Bar initiated a study of complaints and discipline against attorneys admitted to the Bar between 1990 and 2009 to determine whether nonwhite attorneys experience disproportionate discipline. The study found that Black male attorneys experienced disproportional discipline and that factors associated with this discipline include the number of prior complaints and lack of counsel representation in discipline proceedings. The Bar invited Professor Christopher Robertson, N. Neal Pike Scholar and Professor at the School of Law of Boston University, to explore possible remedies. He identified 13 potential reforms across three broad areas: (1) client trust fund accounting, (2) the treatment of prior complaints and discipline history, and (3) securing legal representation for those facing discipline.

For more details, please refer to the [Diversity, Equity, and Inclusion Plan: 2023–2024](#).

MAJOR PUBLICATIONS

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

California Regulatory Law Reporter ♦ *Volume 28, No. 2 (Spring 2023)* ♦
Covers November 16, 2022–April 15, 2023

- [*Report to Legislature on Certain State Bar Expenditures \(2018–2022\)*](#), State Bar of California, January 15, 2023 (The report is in the form of a workbook detailing State Bar expenditures associated with three different working groups: The Task Force on Access Through the Innovation of Legal Services, the California Paraprofessional Program Working Group, and the Closing the Justice Gap Working Group.)
- [*2023 Adopted Final Budget*](#), State Bar of California, February 28, 2023 (The State Bar Board of Trustees adopted a new five-year strategic plan in May 2022 structured around four goals: (1) protecting the public by strengthening the attorney discipline system; (2) improving access to and inclusion in the legal system; (3) regulating the legal profession; and (4) engaging partners. The State Bar’s 2023 budget allocates resources to support the continued provision of core services and to advance the organization’s new five-year strategic plan.)
- [*Commission on Judicial Nominees Evaluation 2022 Statewide Demographics Report*](#), Commission on Judicial Nominees Evaluation of the State Bar of California (“Commission”), March 1, 2023 (The Commission collects and releases aggregate, statewide data on the following: (1) demographics provided by the judicial candidates reviewed relative to ethnicity, race, disability, veteran status, gender, gender identity, sexual orientation, and areas of legal practice and employment; and (2) a summary of Commission recommendations by the same categories.)
- [*Lawyer Assistance Program 2022 Annual Report*](#), State Bar of California, March 1, 2023 (Annual report each to the Board of Trustees and the Legislature on the operation of the Lawyer Assistance Program, including key program statistics.)
- [*Independent Investigation of Past Handling of Girardi Complaints by Halpern May Ybarra Gelberg LLP \(May Report\), Redacted, Oversight Committee of the Lawyer*](#)

[Assistance Program](#), Halpern May Ybarra Gelberg LLP (“Halpern May”), February 1, 2023 (Halpern May was retained by the Board of the State Bar of California to conduct an independent, attorney-client privileged and confidential investigation into whether the State Bar’s handling of past discipline complaints against Thomas V. Girardi (“Girardi”) was affected by Girardi’s connections to or influence at the State Bar and identifying actions by anyone with ties to the State Bar that may constitute malfeasance in how discipline complaints against Girardi were handled. Based upon their investigation, Halpern May found that the State Bar’s handling of past discipline complaints against Girardi was more likely than not affected by Girardi’s connections to and influence at the State Bar, and that there were multiple State Bar insiders who did not properly disclose their connections to Girardi, including employees who handled Girardi discipline cases.)

- [Diversity, Equity, and Inclusion Plan: 2023–2024, Biennial Report to the Legislature](#), State Bar of California, March 15, 2023 (The State Bar submits this report to the Legislature in accordance with Business and Professions Code section 6001.3, which directs that the State Bar develop and implement a plan demonstrating its ongoing “commitment to and support of effective policies and activities to enhance access, fairness, and diversity in the legal profession and the elimination of bias in the practice of law.”) (See HIGHLIGHTS).

- [Report 2022-031 Fact Sheet](#), State Auditor, April 13, 2023 (Report finding the State Bar will need an increase in its mandatory licensing fees in fiscal year 2024.)

RULEMAKING

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

- **Proposed Amendment Rule 2.13:** At its July 2022 [meeting](#), the Board adopted amendments to Rule 2.11; these amendments expressly authorize the State Bar to require the form

and format of payment and to allow for delayed processing, or rejection, of nonconforming payments. However, based on Finance Committee feedback, at its November 17, 2022 [meeting](#), the Board adopted additional amendments that were identified to allow for the imposition of a noncompliance fee on applicable payors; these amendments were captured in Rule 2.13. [[Agenda Item 50-8](#)]

- **Proposed New Rule of Court 9.8.5, Amended Rules of Professional Conduct 1.15 and 1.4 to Implement CTAPP, and Proposed New Rule 2.5 of the State Bar Rules:** On October 24, 2022, after the Board submitted them for approval, the Supreme Court of California [approved](#) the following rules: new Rule of Court 9.8.5, which grants the State Bar the authority to implement the Client Trust Account Protection Program (CTAPP); amended Rules of Professional Conduct 1.15 and 1.4., which govern client communications and identify that a lawyer’s receipt of client funds triggers the lawyer’s duty to proactively communicate with a client within 14 days; and State Bar Rule 2.5, which addresses the administrative aspects of CTAPP Phase I reporting requirement. In its October 24, 2022, order, the Supreme Court modified Rule of Court 9.8.5 to require, rather than authorize, that the State Bar implement CTAPP requirements pertaining to annual reporting, trust account registration, and certification. As modified under Rule 9.8.5, the self-assessment, compliance review, and additional actions (such as an investigative audit) remain as regulatory activities the State Bar may impose under CTAPP. Accordingly, at the November 17, 2022, [meeting](#), State Bar Rule 2.5 was readopted to remove any possible doubts about the validity of the adoption of the rule. The rules took effect January 1, 2023. [[Agenda Item 50-9](#)]

- **Proposed Changes to Conflict of Interest Code for Designated Employees: Request for Approval:** At its November 17, 2022 [meeting](#), the Board adopted the [proposed changes](#) to the Conflict of Interest Code for Designated Employees of the State Bar of California.

The changes updated the list of designated employees to reflect several new, removed, and changed titles. [[Agenda Item 50-12](#)]

- **Adoption of Written and Verbal Public Comment Policy for Board of Trustees and State Bar Subentity Meetings:** At its November 17, 2022 [meeting](#), the Board adopted the public comment policy, for all subsequent Board of Trustees and State Bar subentity meetings; and direct staff to implement and ensure that all meetings of the Board of Trustees and State Bar subentities follow the public comment policy. The new policy dictates new time minimums of two hours per comment period and two minutes per person, while also permitting time extensions for individuals and groups directly affected by an agenda item. [[Agenda Item 702](#)]

- **Proposed Amendments to Rule 9.7 of the California Rule of Court and the Rules of Professional Conduct Based on Recommendations by the California Civility Task Force: Request to Circulate for Public Comment:** At its November 17, 2022 [meeting](#), the Board authorizes staff to make available for public comment proposed amendments to Rule 9.7 of the California Rules of Court and proposed amended to Rules 1.2 and 8.4 and new Rule 8.4.2 of the California Rules of Professional Conduct. At the March 24, 2022, Board of Trustees meeting, the Board approved a recommended action plan to evaluate and advance the recommendations of the California Civility Task Force (CCTF), including a new civility training requirement for Minimum Continuing Legal Education (MCLE), amendments to the Rules of Professional Conduct, and to require each lawyer to annually affirm or reaffirm their civility oath. The attorney oath was last revised in 2014. [[Agenda Item 704](#)]

- **Proposed Amendments to Rules Governing Minimum Continuing Legal Education: Request to Circulate for Public Comment:** At its November 17, 2022 [meeting](#), the Board authorized staff to make available for public comment the proposed amendments to Title 2,

Division 4 of the rules of the State Bar and Title 3, Division 5, Chapter 1 of the rules of the State Bar. The proposed changes would add three topic requirements to the required courses that licensees must complete as part of their existing 25 credit hours per 36-month compliance period. Specifically, the changes would add one hour on civility in the legal profession, one hour on technology in the practice of law, and change the competence requirement from one to two hours. [[Agenda Item 705](#)]

- **Proposed Amendments to Admissions Rules Related to Testing Accommodations, Moral Character, Law Office Study, and the Practical Training of Law students Program: Request to Circulate for Public Comment:** At its November 17, 2022 [meeting](#), the Board approved circulating for public comment the changes to the rules regarding testing accommodations, changes to the rules regarding moral character, changes to the rules the Practical Training of Law Students program, and changes to the rules regarding the Law Office Study program. [[Agenda Item 706](#)]

- **Elimination of Five-Year Period of Validity for Passing Bar Exam Score:** At its November 17, 2022, [meeting](#), the Board adopted rule revisions and approved a 45-day public comment period. The proposed amendments to Title 4 of the Rules of the State Bar, Rules 4.17, 4.51, 4.52, and 4.60, would eliminate the requirement that an applicant for admission to the practice of law get certified for admission and sworn in within five years of the date of the bar exam they passed. [[Agenda Item 707](#)]

- **Proposed Amendments to State Bar Rules 3.671 (Primary Purpose), 3.672 (Civil Legal Services), 3.680 and Appendix A (Audit and Late Submissions), and 3.690 and 3.692 (Complaints); and Proposed New State Bar Rule 3.674 (Income and Indigent Persons): Request to Circulate for Public Comment:** At its November 17, 2022 [meeting](#), the Board, upon

recommendation of the Legal Services Trust Fund Commission, authorizes staff to make available proposed revisions to State Bar Rules relating to the Legal Services Trust Fund Program for a public comment. [[Agenda Item 708](#)]

- **Proposed Rule of Professional Conduct 8.3 (Reporting Professional Misconduct):** At its November 17, 2022 [meeting](#), Board Chair directed the State Bar’s Standing Committee on Professional Responsibility and Conduct (COPRAC) to prepare a proposal for a new Rule of Professional Conduct addressing a lawyer’s duty to report the misconduct of another lawyer. At the direction of the Board chair, COPRAC formed a drafting team to prepare a proposed rule at its December 2, 2022, meeting. COPRAC reviewed and modified the drafting team’s proposed rule at its January 13, 2023, meeting, and voted to issue the proposed rule for a 30-day public comment period and to hold a public hearing to receive comment. At its March 16, 2023, [meeting](#), the Board voted to authorize staff to make the proposed rule available for public comment, for a period of 45 days. [[Agenda Item 60-1](#)]

- **Proposed Amendments to State Bar Rules 7.52 and 7.60 Regarding Commission on Judicial Nominees Evaluation In Person Interview and Meeting Requirements to Conform to 2023 Budget:** At its March 16, 2023 [meeting](#), the Board authorized staff to make the proposed amendments available for a 45-day public comment period. Presently, State Bar Rules 7.52 and 7.60 require interviews and presentations conducted in the course of evaluations by the Commission on Judicial Nominees Evaluation (JNE) to occur in person absent unusual circumstances. Notably, candidate interviews have been taking place remotely throughout the COVID-19 pandemic. [[Agenda Item 701](#)]

LEGISLATION

- [SB 42 \(Umberg\)](#), as introduced December 5, 2022, would add section 6090.8 to

the Business and Professions Code. The bill would require a licensee of the State Bar who knows that another licensee has engaged in professional misconduct that raises a substantial question as to that licensee's honesty, trustworthiness, or fitness as an attorney in other respects, to inform the State Bar. *[S. Jud]*

- [AB 747 \(McCarty\)](#), as amended April 3, 2023, would, among other changes, add section 6090.5.5 to the Business and Profession Code to provide that it may be cause for suspension, disbarment, or other discipline for any licensee of the Bar to enter into with an employee, prospective employee, or former employee, present an employee, prospective employee, or former employee as a term of employment, or attempt to enforce any employee contract or other agreement on the licensee's behalf, or on behalf of their client, that violates the bill's proposed prohibition against entering into a contract or contract term that requires a debtor to pay for a debt if the debtor's employment or work relationship with the employer is terminated. *[A. Jud]*

- [SB 40 \(Umberg\)](#), as amended March 21, 2023, would amend section 6140 of the Business and Professions Code. This bill is the annual State Bar licensing fee bill. The bill would set the fee for licensure for attorneys in the state of California through January 1, 2025. This amendment does not set a fee, however, CPPC would like to see the fee raised to help fund disciplinary cases. *[S. Jud]*

LITIGATION

- *In re Joseph Lawrence Dunn*, SBC Case No. 22-O-30655 (State Bar Court, Los Angeles): On February 9, 2023, the State Bar Court issued an [order](#) dismissing with prejudice Count One and the AB 852 allegations contained in Count Three of the charges. On February 24, 2023, the State Bar filed a [Petition for Interlocutory Review](#) of the February 9, 2023, order. On

March 6, 2023, the petition was [denied](#). March 9, 2023, the State Bar filed a [Motion for Stay Pending Interlocutory Review](#).

On July 5, 2022, the State Bar filed [disciplinary charges](#) against its former Executive Director, Joseph Dunn. Dunn faces potential disbarment for the alleged charges of moral turpitude and breach of his fiduciary duties as executive director, a position he was fired from in 2014. These charges are alleged after Dunn made misleading statements regarding policy matters and overspent on trips with State Bar funds. This litigation is currently pending. [[28:1 CRLR 145–146](#)]

- ***In re Grand Jury, No. 21-1397 (Supreme Court of the United States)***: On January 23, 2023, the Supreme Court of the United States (SCOTUS) [dismissed](#) as improvidently granted the [Petition for a Writ of Certiorari](#) to the United States Court of Appeals for the Ninth Circuit. The writ presented the question as to whether a communication involving both legal and non-legal advice is protected by attorney-client privilege where obtaining or providing legal advice was one of the significant purposes behind the communication.

- ***In the Matter of: John Charles Eastman, Case No. SBC-23-O-30029 (State Bar Court)***: On January 26, 2023, the State Bar filed [disciplinary charges](#) against California attorney John Eastman (“Eastman”). In December 2020, Eastman began working for President Donald Trump. Eastman faces potential disbarment for the alleged charges of failure to support the Constitution of the United States, seeking to mislead the court and moral turpitude. These charges allege Eastman aided President Trump and his campaign to develop a legal and political strategy to dispute the results of the November 3, 2020, election, in which President Trump had lost his bid for reelection, by promoting the idea that the election was tainted by fraud, disregard of state election law, and misconduct by election officials. On February 15, 2023, Eastman filed a [response](#). This litigation is currently pending.