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SB-211 State Bar: board of trustees: reports: complaints: attorneys' annual license fees: California Lawyers Association: Legal Services Trust Fund Commission: expenditure of funds. (2021-2022)

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Senate Bill No. 211

CHAPTER 723

An act to amend Sections 6056, 6086.15, 6094.5, 6140, 6140.2, 6141, 6141.3, 6145, 6213, 6216, and 6223 of, to add Section 6210.5 to, and to repeal Sections 6011 and 6069.5 of, the Business and Professions Code, relating to attorneys.

[Approved by Governor October 08, 2021. Filed with Secretary of State October 08, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 211, Umberg. State Bar: board of trustees: reports: complaints: attorneys' annual license fees: California Lawyers Association: Legal Services Trust Fund Commission: expenditure of funds.

(1) Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. The State Bar is governed by a board of trustees, to consist under the act of no more than 19 members and no fewer than 13 members. The act states that it is the intent of the Legislature that the board transition to a 13-member board, as specified, with the goal of instituting such a board by October 31, 2020.

This bill would delete these provisions on the size of the board of trustees.

(2) Existing law requires the State Bar to assist in the establishment of a private, nonprofit corporation, named the California Lawyers Association. Existing law requires the California Lawyers Association to be governed in accordance with its bylaws and sets forth requirements for the bylaws, including membership of its governing board.

This bill would delete the provision requiring the California Lawyers Association to be governed in accordance with its bylaws and setting forth requirements for its bylaws.

(3) The act requires the State Bar to conduct a review and study regarding errors and omissions insurance for attorneys licensed in this state, including determinations on prescribed topics, and to report its findings to the Supreme Court and the Legislature no later than March 31, 2019.

This bill would delete that study and report requirement.

(4) Existing law requires the State Bar to issue an Annual Discipline Report by April 30 of each year and requires the report to cover the previous calendar year.

This bill would require that report to be provided by October 31 of each year and would require the report to cover the period from July 1 of the previous calendar year to June 30 of the year in which the report is issued, except as provided. The bill would revise the information the State Bar is required to include in the report.

(5) Existing law states, among other things, that it is the goal and policy of the State Bar to dismiss a complaint, admonish the attorney, or forward a completed investigation to the Office of Trial Counsel within 6 months after receipt of a written complaint. Existing law also requires the State Bar to set as a goal the improvement of its disciplinary system, as specified.

This bill would revise the goal and policy of the State Bar as it relates to complaints alleging attorney misconduct and would require, among other things, the State Bar to propose, no later than October 31, 2022, case processing standards for competently, accurately, and timely resolving cases within the Office of Chief Trial Counsel, as specified. The bill would state that it is also the goal and policy of the State Bar, as to complaints designated as complicated matters by the Chief Trial Counsel, to dismiss a complaint, admonish the attorney, or have the Office of Chief Trial Counsel file formal charges within 12 months after it receives a complaint alleging attorney misconduct.

(6) Existing law, until January 1, 2022, requires the board to charge an annual license fee for active licensees of up to \$395 for 2021. The act also requires the board to charge an annual license fee for inactive licensees of up to \$97.40 for inactive licensees on and after January 1, 2021.

This bill would require the board to charge the annual license fee for active licensees for 2022 and the annual license fee for inactive licensees for 2022 up to \$395 and \$97.40, respectively.

(7) Existing law requires the State Bar to provide offers of discounts and other benefits to their active and inactive licensees, and to require any revenue generated by these programs to be used as provided. Existing law requires $\frac{1}{3}$ of revenue from certain programs to go to California ChangeLawyers, which shall then distribute the revenue to qualified legal services projects and support centers.

This bill would, among other things, permit a qualified legal services project or support center to elect in writing to direct their allocation to California ChangeLawyers for fellowships for law students and law graduates at qualified legal services projects and support centers. The bill would require California ChangeLawyers to use a competitive grant application process for determining grant awards, as specified.

(8) Existing law requires the board to contract with the California State Auditor's Office to conduct a performance audit of the State Bar's operations every 2 years, as prescribed.

This bill would require the California State Auditor's Office 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, as prescribed. The bill would require the audit to be submitted by no later than April 15, 2022, to specified entities. The bill would require the State Bar to use existing resources to reimburse the California State Auditor's Office for the costs of conducting the audit. The bill would also remove obsolete provisions.

(9) Existing law requires an attorney or law firm receiving or disbursing trust funds to establish and maintain an Interest On Lawyers' Trust Accounts (IOLTA) account in which the attorney or law firm is required to deposit or invest all specified client deposits or funds. Existing law directs IOLTA account interest and dividends to be paid to the State Bar of California to be distributed for the provision of civil legal services to indigent persons in a prescribed order, including, after payment of administrative costs, 85% of remaining funds to qualified legal services projects.

This bill would create within the State Bar a Legal Services Trust Fund Commission to administer IOLTA accounts, Equal Access Funds, or similar funds or grant moneys intended for the support of qualified legal services projects and support centers. The bill would establish the composition and duties of the commission, including, but not limited to, requiring the commission to establish rules to determine an applicant's eligibility and grant-making decisions. The bill would provide that the provisions relating to the commission supersede any conflicting State Bar rules regarding the commission or its responsibilities or oversight by the board of trustees.

Existing law sets forth allocation procedures for IOLTA funds going towards qualified legal services projects based on total budget expended for legal services in the county as compared in the prior year, as provided, and requires the State Bar to recognize only expenditures attributable to the representation of indigent persons as constituting the budget of the program. Existing law prohibits the use of these moneys for criminal proceedings.

This bill would remove the requirement that the State Bar recognize only expenditures attributable to the representation of indigent persons as constituting the budget of the program. The bill would provide that civil legal services includes, in addition to matters traditionally considered civil, legal services related to expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, and infractions. The bill would make technical and conforming changes in this regard.

(10) This bill would incorporate additional changes to Section 6213 of the Business and Professions Code proposed by SB 498 to be operative only if this bill and SB 498 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6011 of the Business and Professions Code is repealed.

SEC. 2. Section 6056 of the Business and Professions Code is amended to read:

6056. (a) The State Bar, acting pursuant to Section 6001, shall assist the Sections of the State Bar to incorporate as a private, nonprofit corporation organized under Section 501(c)(6) of the Internal Revenue Code and shall transfer the functions and activities of the 16 State Bar Sections and the California Young Lawyers Association to the new private, nonprofit corporation, to be called the California Lawyers Association. The California Lawyers Association shall be a voluntary association, shall not be a part of the State Bar, and shall not be funded in any way through mandatory fees collected by the State Bar. The California Lawyers Association shall have independent contracting authority and full control of its resources. The California Lawyers Association shall not be considered a state, local, or other public body for any purpose, including, but not limited to, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(b) The California Lawyers Association shall establish the criteria for membership in the California Young Lawyers Association. The California Lawyers Association may change the name of the California Young Lawyers Association to another name consistent with the criteria for membership and its mission.

(c) The State Bar may assist the California Lawyers Association in gaining appointment to the American Bar Association (ABA) House of Delegates, consistent with the California Lawyers Association's mission and subject to the consent of the ABA.

(d) The State Bar shall support the California Lawyers Association's efforts to partner with the Continuing Education of the Bar (CEB), subject to agreement by the University of California.

(e) The State Bar of California shall ensure that State Bar staff who support the sections, as of September 15, 2017, are reassigned to other comparable positions within the State Bar.

(f) The Sections of the State Bar or the California Lawyers Association and the State Bar shall enter into a memorandum of understanding regarding the terms of separation of the Sections of the State Bar from the State Bar and mandatory duties of the California Lawyers Association, including a requirement to provide all of the following:

- (1) Low- and no-cost mandatory continuing legal education (MCLE).
- (2) Expertise and information to the State Bar, as requested.
- (3) Educational programs and materials to the licensees of the State Bar and the public.

(g) The State Bar of California shall assist the California Lawyers Association in meeting the association's requirement to provide low- and no-cost MCLE by the inclusion on the State Bar's internet website of easily accessible links to the low- and no-cost MCLE provided by the California Lawyers Association.

SEC. 3. Section 6069.5 of the Business and Professions Code is repealed.

SEC. 4. Section 6086.15 of the Business and Professions Code is amended to read:

6086.15. (a) The State Bar shall issue an Annual Discipline Report by October 31 of each year describing the performance and condition of the State Bar discipline system, including all matters that affect public protection. Except as set forth in subdivision (d), the report shall cover the period from July 1 of the previous calendar year to June 30 of the year in which the report is issued and shall include accurate and complete descriptions of all of the following:

- (1) The inventory of cases within the Office of Chief Trial Counsel which were open at the start of the reporting period, were opened during the reporting period, remain pending with the office at the close of the reporting period, or were disposed of during the reporting period by closure, by filing of a stipulation with the State Bar Court, by filing of a notice of disciplinary charges with the State Bar Court, or by transmittal of a criminal conviction to the State Bar Court. The State Bar shall also report on its success in meeting the case processing goals set forth in Section 6094.5, including, but not limited to, tables showing the number and percentage of cases meeting each goal, the number and percentage of those cases not disposed of within the case processing goals, and a high-level explanation of the reasons for failing to meet those case processing goals. The inventory of cases shall not be limited to case types that could result in the filing of a notice of disciplinary charges in the State Bar Court, but shall also include Nonattorney Unauthorized Practice of Law (NA-UPL), Section 6007 matters, moral character matters, resignations with charges pending, and mini-reinstatements.

(2) The number of inquiries and complaints and their disposition.

(3) The number, average pending times, and types of matters self-reported by licensees of the State Bar pursuant to subdivision (o) of Section 6068 and subdivision (c) of Section 6086.8.

(4) The number, average pending times, and types of matters reported by other sources pursuant to Sections 6086.7, 6086.8, 6091.1, subdivisions (b) and (c) of Section 6101, and Section 6175.6.

(5) The speed of complaint handling and dispositions by type, measured by the median and the average processing times.

(6) The number, average pending times, and types of filed notices of disciplinary charges and formal disciplinary outcomes.

(7) The number, average pending times, and types of other matters, including petitions to terminate practice pursuant to Section 6180 or 6190, interim suspensions and license restrictions pursuant to Section 6007, motions to enforce a binding arbitration award, judgment, or agreement pursuant to subdivision (d) of Section 6203, motions to revoke probation, letters of warning, private reprovals, admonitions, and agreements in lieu of discipline.

(8) The number, average pending times, and outcomes of complaints involving a State Bar licensee who has been disbarred or who has resigned, and is engaged in the unauthorized practice of law, including referrals to district attorneys, city attorneys, or other prosecuting authorities, or petitions to terminate practice pursuant to Section 6180.

(9) The number, average pending times, and outcomes of complaints against nonattorneys engaged in the unauthorized practice of law, including referrals to district attorneys, city attorneys, or other prosecuting authorities; petitions to terminate practice pursuant to Section 6126.3; or referrals to prosecuting authorities or actions by the State Bar pursuant to Section 6126.7.

(10) A description of the condition of the Client Security Fund, including an accounting of payouts.

(11) An accounting of the cost of the discipline system by function.

(12) Compliance with the requirement of Section 6101 to transmit, within 30 days of receipt, the record of any criminal conviction which involves or may involve moral turpitude to the Supreme Court, or to close the matter if transmittal to the Supreme Court is not appropriate.

(b) The Annual Discipline Report shall include statistical information presented in a consistent manner for year-to-year comparison.

(c) The Annual Discipline Report shall be presented to the Chief Justice of California, to the Governor, to the Speaker of the Assembly, to the President pro Tempore of the Senate, and to the Assembly and Senate Judiciary Committees, for their consideration and shall be considered a public document.

(d) (1) All data relating to the items set forth in subdivision (a) shall also be reported, if available, for the preceding five years. Data from 2020 and prior years shall be reported for the calendar year. Except as specified in paragraph (2), data from 2021 and future years shall be reported based on the state fiscal year.

(2) The Annual Discipline Report due on October 31, 2022, shall include data from both the prior state fiscal year and the prior calendar year.

SEC. 5. Section 6094.5 of the Business and Professions Code is amended to read:

6094.5. (a) It is the goal and policy of the State Bar to ensure that matters are handled competently, accurately, and timely. Until processing goals are established pursuant to subdivision (b) and codified in statute, the goal and policy of the State Bar is to dismiss a complaint, admonish the attorney, or have the Office of Chief Trial Counsel file formal charges within six months after it receives a complaint alleging attorney misconduct. As to complaints designated as complicated matters by the Chief Trial Counsel, it shall be the goal and policy of the State Bar to dismiss a complaint, admonish the attorney or have the Office of Chief Trial Counsel file formal charges within 12 months after it receives a complaint alleging attorney misconduct.

(b) No later than October 31, 2022, the State Bar shall propose case processing standards for competently, accurately, and timely resolving cases within the Office of Chief Trial Counsel.

(1) The case processing standards shall take into account all relevant factors, including, but not limited to, the mechanics of the discipline process, the risk to public protection, including multiple complaints against the same attorney, reasonable expectations of the public for resolution of complaints, and the complexity of cases. The case processing standards shall be based on and reflect all of the following:

(A) A review of case processing standards in attorney discipline systems in at least five other states, including large and small jurisdictions, with the goal of reviewing jurisdictions that have strong and effective discipline systems that protect the public.

(B) Consultation with state and national experts on attorney discipline.

(C) Reports from the Legislative Analyst's Office.

(D) Reports from the California State Auditor.

(2) The State Bar shall conduct an analysis of the data collected in subparagraphs (A) to (D), inclusive, of paragraph (1) and develop proposed case processing standards that reflect the goal of resolving attorney discipline cases in a timely, effective, and efficient manner while having small backlogs of attorney discipline cases and best protecting the public.

(3) Goals for case processing and disposition that are intended to encourage the prompt disposition of matters and apply to the overall inventory of matters of the type specified in subdivision (b) are not meant to create deadlines for individual cases, are not jurisdictional, and shall not serve as a bar or defense to any disciplinary investigation or proceeding.

(4) The analysis shall include staffing requirements for the Office of Chief Trial Counsel to achieve the case processing goals described in this paragraph.

(5) The State Bar shall provide its analysis and recommendations to the Legislative Analyst's Office for review. The Legislative Analyst's Office shall report to the Senate and Assembly Judiciary Committees on its review of the State Bar's proposal. The State Bar shall provide the Legislative Analyst's Office with any available information to assist the Legislative Analyst's Office in its review.

(6) It is the intent of the Legislature to enact legislation that would codify in statute case processing goals for the State Bar's discipline system based on the State Bar's proposal and the Legislative Analyst's Office review of that proposal to improve the effectiveness of the State Bar's attorney discipline system, best protect the public, and remain in place for an extended period of time to allow for adequate oversight of the State Bar and its performance over time.

(c) The case processing goals described in subdivision (a) shall not apply to the following matters: Nonattorney Unauthorized Practice of Law (NA-UPL), Section 6007 matters, moral character matters, resignations with charges pending, mini-reinstatements, and criminal conviction matters.

(d) To ensure that criminal conviction matters are handled competently, accurately, and timely, the State Bar shall report on its compliance with the requirement of Section 6101 to transmit, within 30 days of receipt, the record of any conviction which involves or may involve moral turpitude to the Supreme Court with such other records and information as may be appropriate to establish the Supreme Court's jurisdiction.

(e) Consistent with Section 6026.11, a notice of disciplinary charges is a public record when filed.

(f) The State Bar, subject to its record retention policy, shall respond within a reasonable time to inquiries as to the status of pending disciplinary cases in which a notice to show cause has been filed, or as to public discipline that has been imposed upon an attorney in California, or to the extent known by the agency, elsewhere, and, to the extent such information is known to the agency, all criminal cases in which an indictment or information has been brought charging a felony against an attorney or an attorney has been convicted of a felony, or convicted of any misdemeanor committed in the course of the practice of law or in any manner such that a client of the attorney was the victim, or any felony or misdemeanor, a necessary element of which, as determined by the statutory or common law definition of the crime, involves improper conduct of an attorney, including interference with the administration of justice, running and capping, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, dishonesty or other moral turpitude, or an attempt of a conspiracy or solicitation of another to commit such a crime. Such information acquired from the State Bar under this section shall not be used by an attorney to solicit business. The State Bar shall adopt regulations to carry out the purposes of this subdivision.

SEC. 6. Section 6140 of the Business and Professions Code is amended to read:

6140. (a) The board shall fix the annual license fee for active licensees for 2022 at a sum not exceeding three hundred ninety-five dollars (\$395).

(b) The annual license fee for active licensees is payable on or before the first day of February of each year. If the board finds it appropriate and feasible, it may provide by rule for payment of fees on an installment basis with interest, by credit card, or other means, and may charge licensees choosing any alternative method of payment an additional fee to defray costs incurred by that election.

(c) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

SEC. 7. Section 6140.2 of the Business and Professions Code is amended to read:

6140.2. The State Bar shall set as a goal the improvement of its disciplinary system so that no more than six months will elapse from the receipt of complaints to the time of dismissal, admonishment of the attorney involved, or the filing of formal charges by the State Bar Office of Trial Counsel. As to complaints designated as complicated matters by the Chief Trial Counsel, it shall be the goal and policy of the State Bar to dismiss a complaint, admonish the attorney, or have the State Bar Office of Trial Counsel file formal charges within 12 months after it receives a complaint alleging attorney misconduct.

SEC. 8. Section 6141 of the Business and Professions Code is amended to read:

6141. (a) On January 1, 2022, and thereafter, the board shall fix the annual license fee for inactive licensees at a sum not exceeding ninety-seven dollars and forty cents (\$97.40). The annual license fee for inactive licensees is payable on or before the first day of February of each year.

(b) An inactive licensee shall not be required to pay the annual license fee for inactive licensees for any calendar year following the calendar year in which the licensee attains 70 years of age.

SEC. 9. Section 6141.3 of the Business and Professions Code is amended to read:

6141.3. (a) Except as provided in subdivision (b), the State Bar shall provide offers of discounts and other benefits to active and inactive licensees of the State Bar, including, but not limited to, insurance and noninsurance affinity programs, until December 31, 2018, and insurance affinity programs only, after December 31, 2018. Any revenue generated by these programs shall be used as follows:

(1) For all revenue received from January 1, 2018, until December 31, 2018, 50 percent of the revenue shall be used to assist the California Lawyers Association in transitioning to an independent entity, 25 percent of the revenue shall be distributed to qualified legal services projects and support centers as provided in Section 6216, and 25 percent shall be used to support the discipline functions of the State Bar or to support the Client Security Fund.

(2) For all revenue received on and after January 1, 2019, until December 31, 2019, 50 percent of the revenue shall be distributed to qualified legal services projects and support centers as provided in Section 6216, and 50 percent of the revenue shall be used to support the discipline functions of the State Bar or to support the Client Security Fund.

(b) Notwithstanding subdivision (a), if approved by the board of trustees, California ChangeLawyers, and Cal Bar Affinity, a subsidiary of California ChangeLawyers, the State Bar may transfer administration of the programs offering discounts and other benefits to active and inactive licensees of the State Bar under subdivision (a) to Cal Bar Affinity provided that any revenue received, less the administrative costs of the State Bar and Cal Bar Affinity in operating the programs, up to a maximum of 12 percent of the revenue received, and less the taxes incurred by Cal Bar Affinity in operating the programs, shall be distributed as follows from January 1, 2019, until December 31, 2019:

(1) All of the revenue received from the noninsurance affinity programs shall be kept by California ChangeLawyers, which shall distribute 50 percent of that revenue to support the programs of California ChangeLawyers and 50 percent of that revenue to qualified legal services projects and support centers as provided in Section 6216.

(2) For all revenue received from the insurance affinity programs, 50 percent of the revenue shall be kept by California ChangeLawyers, which shall distribute 50 percent of that revenue to support the programs of California ChangeLawyers and 50 percent of that revenue to qualified legal services projects and support centers in accordance with the formula provided in Section 6216, and 50 percent of the revenue shall be used to support the discipline functions of the State Bar or to support the Client Security Fund.

(c) If approved by the California Lawyers Association, California ChangeLawyers, and Cal Bar Affinity, and provided the California Lawyers Association complies with the requirement in subdivision (e), all revenue received from the noninsurance affinity programs and the insurance affinity programs, less the administrative costs of the State Bar and Cal Bar Affinity in operating the programs, up to a maximum of 12 percent of the revenue received, and the taxes incurred by Cal Bar Affinity in operating the programs, shall be distributed as follows on and after January 1, 2020:

(1) The first one hundred fifty thousand dollars (\$150,000) of revenue received in 2020 and the first one hundred fifty thousand dollars (\$150,000) received in 2021 shall go to the California Commission on Access to Justice, payable as follows:

(A) Seventy-five thousand dollars (\$75,000) shall be paid on or before March 31, 2020, and seventy-five thousand dollars (\$75,000) shall be paid on or before June 30, 2020.

(B) Thirty-seven thousand five hundred dollars (\$37,500) shall be paid on or before March 31, 2021, thirty-seven thousand five hundred dollars (\$37,500) shall be paid on or before June 30, 2021, thirty-seven thousand five hundred dollars (\$37,500) shall be paid on or before September 30, 2021, and thirty-seven thousand five hundred dollars (\$37,500) shall be paid on or before December 31, 2021.

(2) Any additional revenue shall be distributed as follows:

(A) One-third of the remaining revenue shall go to California ChangeLawyers.

(B) One-third of the remaining revenue shall go to the California Lawyers Association or an affiliated 501(c)(3) organization to support their respective diversity, equity and inclusion, access to justice, and civic engagement efforts.

(C) One-third of the remaining revenue shall go to California ChangeLawyers, which shall distribute that revenue to qualified legal services projects and support centers in accordance with the formula provided in Section 6216. However, in any year, a qualified legal services project or support center, as defined in Section 6213, may elect in writing to direct their allocation for that year to California ChangeLawyers for fellowships for law students and law graduates at qualified legal services projects and support centers. California ChangeLawyers shall utilize a competitive grant application process for determining grant awards. In awarding these statewide grants, preference shall be given to qualified legal services projects or support centers that serve rural or underserved communities and that serve clients regardless of immigration or citizenship status. The minimum grant amount shall be ten thousand dollars (\$10,000).

(d) Given the public protection mission of the State Bar, the Legislature finds that it would be inappropriate for the State Bar to administer the program on a long-term basis. Therefore, should the program continue to operate after December 31, 2018, it is the intent of the Legislature that the program be administered by an entity other than the State Bar.

(e) If the California Lawyers Association elects to accept any share of the affinity funds revenue under this section, the California Lawyers Association shall not create or operate, or participate in the creation or operation, or otherwise solicit its members, or arrange to have its members solicited, for any affinity or royalty program involving similar insurance or noninsurance products or services with a percentage or share of costs being distributed to the California Lawyers Association, other than as provided in this section. If the California Lawyers Association creates or operates, or participates in the creation or operation, or otherwise solicits its members, or arranges to have its members solicited for any affinity or royalty program involving the sale of insurance or noninsurance products or services with a percentage or share of costs being distributed to the California Lawyers Association, all funds that would have been provided to the California Lawyers Association from affinity or royalty programs that transferred from the State Bar or are similar to programs that transferred from the State Bar shall be provided to California ChangeLawyers, which shall distribute 50 percent of that revenue to support the programs of California ChangeLawyers and 50 percent of that revenue to qualified legal services projects and support centers as provided in subparagraph (C) of paragraph (2) of subdivision (c) of this section.

SEC. 10. Section 6145 of the Business and Professions Code is amended to read:

6145. (a) The board shall engage the services of an independent national or regional public accounting firm with at least five years of experience in governmental auditing for an audit of its financial statement for each fiscal year. The financial statement shall be promptly certified under oath by the chief financial officer of the State Bar, and a copy of the audit and financial statement shall be submitted within 120 days of the close of the fiscal year to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

The audit also shall examine the receipts and expenditures of the State Bar to ensure that the funds collected on behalf of the Conference of Delegates of California Bar Associations as the independent successor entity to the former Conference of Delegates of the State Bar are conveyed to that entity, that the State Bar has been paid or reimbursed for the full cost of any administrative and support services provided to the successor entity, including the collection of fees or donations on its behalf, and that no mandatory fees are being used to fund the activities of the successor entity.

In selecting the accounting firm, the board shall consider the value of continuity, along with the risk that continued long-term engagements of an accounting firm may affect the independence of that firm.

(b) The board shall contract with the California State Auditor's Office to conduct a performance audit of the State Bar's operations from July 1, 2000, to December 31, 2000, inclusive. A copy of the performance audit shall be submitted by May 1, 2001, to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

Every two years thereafter, the board shall contract with the California State Auditor's Office to conduct a performance audit of the State Bar's operations for the respective fiscal year, commencing with January 1, 2002, to December 31, 2002, inclusive. A copy of the performance audit shall be submitted within 120 days of the close of the fiscal year for which the audit was performed to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

For the purposes of this subdivision, the California State Auditor's Office may contract with a third party to conduct the performance audit. This subdivision is not intended to reduce the number of audits the California State Auditor's Office may otherwise be able to conduct.

(c) (1) The California State Auditor's Office shall 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. Specifically, this audit should analyze whether the State Bar takes reasonable steps to determine the existence and extent of alleged misconduct, if the State Bar has sufficient management controls, including conflict of interest policies, to ensure complaint investigations are not compromised by undue influence, and examine any data trends that could suggest racial or gender inequities in outcomes from the discipline process. The audit shall include consideration of possible options for the State Bar to more proactively protect the public, including, to the extent possible, the appropriateness of an independent discipline monitor to more closely review the State Bar's discipline process, an independent ombudsperson to assist the public, and other options to protect the public. Notwithstanding subdivision (b) of Section 6086.1, case-related findings may be included in the auditor's report, except that the names of the attorney investigated, the complaining witness or witnesses, and the names of other members of the public associated with a complaint shall not be included in the report.

(2) The audit required by this subdivision shall be submitted by no later than April 15, 2022, to the board of trustees, the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

(3) The State Bar shall use existing resources to reimburse the California State Auditor's Office for the costs of conducting the audit required by this subdivision.

SEC. 11. Section 6210.5 is added to the Business and Professions Code, to read:

6210.5. (a) There shall be created, within the State Bar, a Legal Services Trust Fund Commission to administer IOLTA accounts, Equal Access Funds, or similar funds or grant monies intended for the support of qualified legal services projects and qualified support centers, as those terms are defined in Section 6213.

(b) (1) The Legal Services Trust Fund Commission shall be comprised of 24 commissioners as follows:

(A) Six commissioners shall be appointed by the State Bar Board of Trustees.

(B) Two commissioners shall be appointed by the Senate Committee on Rules.

(C) Two commissioners shall be appointed by the Speaker of the Assembly.

(D) Ten commissioners shall be appointed by the Chair of the Judicial Council, of which three shall be nonvoting judicial advisors. The three nonvoting judicial advisors shall be comprised of two superior court judges and one appellate justice.

(E) Four commissioners shall be appointed by the Legal Services Trust Fund Commission, of which at least two shall be, or have been within five years of appointment, indigent persons as defined by Section 6213.

(2) No employee or independent contractor acting as a consultant to a potential recipient of Legal Services Trust Fund grants shall be appointed to the Legal Services Trust Fund Commission. All commissioners shall be designated employees under the Conflict of Interest Code of the State Bar.

(3) Except as provided in paragraph (4), each commissioner shall serve for a term of four years that begins upon appointment. Upon completion of an initial term, a Commissioner may be reappointed for a second four-year term. An initial or second term may be extended by one or two years, for a maximum of 10 years, to allow a commissioner to serve as chair or vice chair. A commissioner currently serving as of January 1, 2022, may be reappointed to two additional full terms following the completion of their current term pursuant to paragraph (5).

(4) A commissioner appointed by the chair of the Judicial Council shall have no term limits.

(5) Each commissioner shall serve at the pleasure of the appointing entity. Each appointing entity may stagger their appointments so one-half of the commissioners are appointed in 2022 and the other one-half are appointed in 2023. A commissioner serving as of January 1, 2022, may continue to serve until replaced by the appointing entity or January 1, 2024, whichever occurs first.

(6) Commissioners who are not currently and have never been attorneys licensed in California or another jurisdiction and who submit a form designated by the commission to request a per diem shall be entitled to receive fifty dollars (\$50) per day for each day that they attend a commission meeting of at least one hour in length.

(c) The chair and the vice chair of the Legal Services Trust Fund Commission shall be selected by the Chair of the Judicial Council. The chair of the Legal Services Trust Fund Commission shall preside over the commission's meetings. The Chair of the

Judicial Council may select up to two chairs and two vice chairs to lead the commission.

(d) The Legal Services Trust Fund Commission shall be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(e) (1) The Legal Services Trust Fund Commission shall recommend to the Board of Trustees of the State Bar rules to determine an applicant's eligibility for grants under this article and for rules related to grant administration, including rules to monitor and evaluate a recipient's compliance with Legal Services Trust Fund requirements and grant terms based on criteria established by the Legal Services Trust Fund Commission.

(2) The Legal Services Trust Fund Commission shall recommend to the Board of Trustees of the State Bar the amount proposed to be made available for grant distribution from IOLTA funds, along with the amount to be maintained as a fiscally responsible reserve.

(3) The Board of Trustees of the State Bar shall approve each recommendation made pursuant to paragraphs (1) and (2) unless the Board of Trustees of the State Bar makes a finding in writing that a recommendation conflicts with a statutory, fiduciary, or legal obligation of the State Bar.

(4) The decisions of the Legal Services Trust Fund Commission regarding individual grant awards shall take effect without approval by the Board of Trustees of the State Bar. However, the board may reverse or modify an individual grant award if it makes a finding in writing that the award violates Legal Services Trust Fund rules or a statutory, fiduciary, or legal obligation of the State Bar.

(f) Except as provided by subdivision (a) of Section 6033 and by Section 6140.03, the State Bar's actual administrative costs to administer the Legal Services Trust Fund Program, including IOLTA, Equal Access Funds, and similar funds and grant moneys shall be fully funded through these grant programs. The State Bar shall not provide administrative services to the Legal Services Trust Fund Commission in excess of the administrative costs allocated to the State Bar by the Legislature, or by the Legal Services Trust Fund Commission as part of any request by the Legal Services Trust Fund Commission's request for administrative support.

(g) At the conclusion of each fiscal year, the Legal Services Trust Fund Commission shall include a report of receipts of funds under this article, expenditures for administrative costs, and disbursements of the funds on a county-by-county basis, in the annual report of the State Bar's receipts and expenditures required pursuant to Section 6145. To ensure that awards made by the Legal Services Trust Fund Commission are consistent with statute, rules, and other governing authority, the State Bar shall develop a program to audit a representative sample of grant awards each year. The results of the most recent audit shall be included with the report of receipt of funds described in this subdivision.

(h) This section supersedes any conflicting State Bar rules regarding the Legal Services Trust Fund Commission or its responsibilities or oversight by the State Bar's board of trustees.

SEC. 12. Section 6213 of the Business and Professions Code is amended to read:

6213. As used in this article:

(a) "Qualified legal services project" means either of the following:

(1) A nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function civil legal services without charge to indigent persons and that has quality control procedures approved by the State Bar of California.

(2) A program operated exclusively in California by a nonprofit law school accredited by the State Bar of California that meets the requirements of subparagraphs (A) and (B).

(A) The program shall have operated for at least two years at a cost of at least twenty thousand dollars (\$20,000) per year as an identifiable law school unit with a primary purpose and function of providing civil legal services without charge to indigent persons.

(B) The program shall have quality control procedures approved by the State Bar of California.

(b) "Qualified support center" means an incorporated nonprofit legal services center that has as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support for civil legal services without charge and which actually provides through an office in California a significant level of legal training, legal technical assistance, or advocacy support without charge to qualified legal services projects on a statewide basis in California.

(c) "Recipient" means a qualified legal services project or support center receiving financial assistance under this article.

(d) "Indigent person" means a person whose income is (1) 125 percent or less of the current poverty threshold established by the United States Office of Management and Budget, or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project that provides free services of attorneys in private practice without compensation, "indigent person" also means a person whose income is 75 percent or less of the maximum levels of income for lower income households as defined in Section 50079.5 of the Health and Safety Code. For the purpose of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses.

(e) "Fee generating case" means a case or matter that, if undertaken on behalf of an indigent person by an attorney in private practice, reasonably may be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from the opposing party. A case shall not be considered fee generating if adequate representation is unavailable and any of the following circumstances exist:

(1) The recipient has determined that free referral is not possible because of any of the following reasons:

(A) The case has been rejected by the local lawyer referral service, or if there is no such service, by two attorneys in private practice who have experience in the subject matter of the case.

(B) Neither the referral service nor any attorney will consider the case without payment of a consultation fee.

(C) The case is of the type that attorneys in private practice in the area ordinarily do not accept, or do not accept without prepayment of a fee.

(D) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(2) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.

(3) A court has appointed a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

(4) The case involves the rights of a claimant under a publicly supported benefit program for which entitlement to benefit is based on need.

(f) "Legal Services Corporation" means the Legal Services Corporation established under the federal Legal Services Corporation Act of 1974 (P.L. 93-355; 42 U.S.C. Sec. 2996 et seq.).

(g) "Older Americans Act" means the federal Older Americans Act of 1965, as amended (P.L. 89-73; 42 U.S.C. Sec. 3001 et seq.).

(h) "Developmentally Disabled Assistance Act" means the federal Developmentally Disabled Assistance and Bill of Rights Act, as amended (P.L. 94-103; 42 U.S.C. Sec. 6001 et seq.).

(i) "Supplemental security income recipient" means an individual receiving or eligible to receive payments under Title XVI of the federal Social Security Act (42 U.S.C. Sec. 1381 et seq.) or payments under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(j) "IOLTA account" means an account or investment product established and maintained pursuant to subdivision (a) of Section 6211 that is any of the following:

(1) An interest-bearing checking account.

(2) An investment sweep product that is a daily (overnight) financial institution repurchase agreement or an open-end money market fund.

(3) An investment product authorized by California Supreme Court rule or order.

A daily financial institution repurchase agreement shall be fully collateralized by United States Government Securities or other comparably conservative debt securities, and may be established only with any eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money market fund shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities or other comparably conservative debt securities, shall hold itself out as a "money market fund" as

that term is defined by federal statutes and regulations under the federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars (\$250,000,000).

(k) "Eligible institution" means either of the following:

- (1) A bank, savings and loan, or other financial institution regulated by a federal or state agency that pays interest or dividends on the IOLTA account and carries deposit insurance from an agency of the federal government.
- (2) Any other type of financial institution authorized by the California Supreme Court.

(l) "Civil legal services" includes, in addition to matters traditionally considered civil, legal services related to expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, and infractions.

SEC. 12.5. Section 6213 of the Business and Professions Code is amended to read:

6213. As used in this article:

(a) "Qualified legal services project" means either of the following:

- (1) A nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function civil legal services without charge to indigent persons and that has quality control procedures approved by the State Bar of California.
- (2) A program operated exclusively in California by a nonprofit law school accredited by the State Bar of California that meets the requirements of subparagraphs (A) and (B).
 - (A) The program shall have operated for at least two years at a cost of at least twenty thousand dollars (\$20,000) per year as an identifiable law school unit with a primary purpose and function of providing civil legal services without charge to indigent persons.
 - (B) The program shall have quality control procedures approved by the State Bar of California.

(b) "Qualified support center" means an incorporated nonprofit legal services center that has as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support for civil legal services without charge and which actually provides through an office in California a significant level of legal training, legal technical assistance, or advocacy support without charge to qualified legal services projects on a statewide basis in California.

(c) "Recipient" means a qualified legal services project or support center receiving financial assistance under this article.

(d) "Indigent person" means a person whose income is (1) 200 percent or less of the current poverty threshold established by the United States Office of Management and Budget or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project that provides free services of attorneys in private practice without compensation, "indigent person" also means a person whose income is 75 percent or less of the maximum levels of income for lower income households as defined in Section 50079.5 of the Health and Safety Code. For the purpose of this subdivision, the income of a person who is disabled shall be determined (1) after deducting the costs of medical and other disability-related special expenses and (2) after deducting disability compensation from the United States Veterans Administration paid to a veteran with a service-related disability.

(e) "Fee generating case" means a case or matter that, if undertaken on behalf of an indigent person by an attorney in private practice, reasonably may be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from the opposing party. A case shall not be considered fee generating if adequate representation is unavailable and any of the following circumstances exist:

(1) The recipient has determined that free referral is not possible because of any of the following reasons:

- (A) The case has been rejected by the local lawyer referral service, or if there is no such service, by two attorneys in private practice who have experience in the subject matter of the case.
- (B) Neither the referral service nor any attorney will consider the case without payment of a consultation fee.
- (C) The case is of the type that attorneys in private practice in the area ordinarily do not accept, or do not accept without prepayment of a fee.
- (D) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(2) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.

(3) A court has appointed a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

(4) The case involves the rights of a claimant under a publicly supported benefit program for which entitlement to benefit is based on need.

(f) "Legal Services Corporation" means the Legal Services Corporation established under the federal Legal Services Corporation Act of 1974 (P.L. 93-355; 42 U.S.C. Sec. 2996 et seq.).

(g) "Older Americans Act" means the federal Older Americans Act of 1965, as amended (P.L. 89-73; 42 U.S.C. Sec. 3001 et seq.).

(h) "Developmentally Disabled Assistance Act" means the federal Developmentally Disabled Assistance and Bill of Rights Act, as amended (P.L. 94-103; 42 U.S.C. Sec. 6001 et seq.).

(i) "Supplemental security income recipient" means an individual receiving or eligible to receive payments under Title XVI of the federal Social Security Act (42 U.S.C. Sec. 1381 et seq.) or payments under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(j) "IOLTA account" means an account or investment product established and maintained pursuant to subdivision (a) of Section 6211 that is any of the following:

(1) An interest-bearing checking account.

(2) An investment sweep product that is a daily (overnight) financial institution repurchase agreement or an open-end money market fund.

(3) An investment product authorized by California Supreme Court rule or order.

A daily financial institution repurchase agreement shall be fully collateralized by United States Government Securities or other comparably conservative debt securities, and may be established only with any eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money market fund shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities or other comparably conservative debt securities, shall hold itself out as a "money market fund" as that term is defined by federal statutes and regulations under the federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars (\$250,000,000).

(k) "Eligible institution" means either of the following:

(1) A bank, savings and loan, or other financial institution regulated by a federal or state agency that pays interest or dividends on the IOLTA account and carries deposit insurance from an agency of the federal government.

(2) Any other type of financial institution authorized by the California Supreme Court.

(l) "Civil legal services" includes, in addition to matters traditionally considered civil, legal services related to expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, and infractions.

SEC. 13. Section 6216 of the Business and Professions Code is amended to read:

6216. The State Bar shall distribute all moneys received under the program established by this article for the provision of civil legal services to indigent persons. The funds first shall be distributed 18 months from the effective date of this article, or upon such a date, as shall be determined by the State Bar, that adequate funds are available to initiate the program. Thereafter, the funds shall be distributed on an annual basis. All distributions of funds shall be made in the following order and in the following manner:

(a) To pay the actual administrative costs of the program, including any costs incurred after the adoption of this article and a reasonable reserve therefor.

(b) Eighty-five percent of the funds remaining after payment of administrative costs allocated pursuant to this article shall be distributed to qualified legal services projects. Distribution shall be by a pro rata county-by-county formula based upon the number of persons whose income is 125 percent or less of the current poverty threshold per county. For the purposes of this section, the source of data identifying the number of persons per county shall be the latest available figures from the United

States Department of Commerce, Bureau of the Census. Projects from more than one county may pool their funds to operate a joint, multicounty legal services project serving each of their respective counties.

(1) (A) In any county which is served by more than one qualified legal services project, the State Bar shall distribute funds for the county to those projects which apply on a pro rata basis, based upon the amount of their total budget expended in the prior year for civil legal services without charge for indigent persons in that county as compared to the total expended in the prior year for civil legal services without charge for indigent persons by all qualified legal services projects applying therefor in the county.

(B) The State Bar shall reserve 10 percent of the funds allocated to the county for distribution to programs meeting the standards of subparagraph (A) of paragraph (3) and paragraphs (1) and (2) of subdivision (b) of Section 6214 and which perform the services described in subparagraph (A) of paragraph (3) of Section 6214 as their principal means of delivering civil legal services. The State Bar shall distribute the funds for that county to those programs which apply on a pro rata basis, based upon the amount of their total budget expended for free civil legal services for indigent persons in that county as compared to the total expended for free civil legal services for indigent persons by all programs meeting the standards of subparagraph (A) of paragraph (3) and paragraphs (1) and (2) of subdivision (b) of Section 6214 in that county. The State Bar shall distribute any funds for which no program has qualified pursuant hereto, in accordance with the provisions of subparagraph (A) of paragraph (1) of this subdivision.

(2) In any county in which there is no qualified legal services projects providing services, the State Bar shall reserve for the remainder of the fiscal year for distribution the pro rata share of funds as provided for by this article. Upon application of a qualified legal services project proposing to provide legal services to the indigent of the county, the State Bar shall distribute the funds to the project. Any funds not so distributed shall be added to the funds to be distributed the following year.

(c) Fifteen percent of the funds remaining after payment of administrative costs allocated for the purposes of this article shall be distributed equally by the State Bar to qualified support centers which apply for the funds. The funds provided to support centers shall be used only for the provision of civil legal services within California. Qualified support centers that receive funds to provide services to qualified legal services projects from sources other than this article, shall submit and shall have approved by the State Bar a plan assuring that the services funded under this article are in addition to those already funded for qualified legal services projects by other sources.

SEC. 14. Section 6223 of the Business and Professions Code is amended to read:

6223. No funds allocated by the State Bar pursuant to this article shall be used for any of the following purposes:

(a) The provision of legal assistance with respect to any fee generating case, except in accordance with guidelines which shall be promulgated by the State Bar.

(b) The provision of legal assistance with respect to any criminal proceeding. For purposes of this article, "criminal proceeding" does not include expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, or proceedings concerning infractions.

(c) The provision of legal assistance, except to indigent persons or except to provide support services to qualified legal services projects as defined by this article.

SEC. 15. Section 12.5 of this bill incorporates amendments to Section 6213 of the Business and Professions Code proposed by both this bill and Senate Bill 498. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 6213 of the Business and Professions Code, and (3) this bill is enacted after Senate Bill 498, in which case Section 12 of this bill shall not become operative.