



BUSINESS LAW SECTION

THE STATE BAR OF CALIFORNIA

March 30, 2016

Robert G. Harris
Chair, Business Law Section of the State Bar of California ("SBC")
Binder & Malter
2775 Park Avenue
Santa Clara, CA 95050

Re: BLS Voluntary Task Force Recommendation to Support SBC Restructure
Dear Rob,

This letter is addressed to you as Chair of the Business Law Section ("BLS") from the BLS Voluntary Bar Task Force ("Task Force") that you appointed and reflects numerous conference call meetings, research and discussions by and among the members of the Task Force. After thoughtful consideration, the Task Force is recommending that the BLS support deunification of the SBC into a regulatory and licensing board and a separate statewide professional lawyers practice association consisting of all of the current Sections of the Bar, provided there is cooperation with SBC or legislation directing the SBC to assist in the transition, to transfer materials, funds and other assets developed by the volunteer members of the Sections and to provide adequate transition services for a limited time to that new association so it can become independently operational.

Historically, the integrated structure of the SBC and the Sections has not functioned well. The SBC exercises traditional regulatory powers, examining prospective licensees, developing rules of professional conduct, exercising disciplinary powers over miscreant lawyers and the like. The Sections, on the other hand, have mission statements that include advancing the law in their practice areas by lobbying to improve laws and by educating, networking and collaborating with their members to improve their professional competence. Membership in the SBC is mandatory, while membership in the Sections is voluntary. There are critical reasons to impose ethical rules of transparency and openness and other governmental mandates on the regulatory functions of the SBC, but imposing those rules on the Sections is restrictive and, increasingly, threatens their very viability.

Under California law, the Sections are funded from separate Section member dues, and the SBC cannot support operations of the Sections with revenues of the mandatory bar. The SBC staff supports the Sections with administrative back-up, and the SBC charges the Sections an overhead assessment annually for these services. Although the Sections are self-funded, as a whole and individually, they have little or no control over, and often no input into or warning of, policies imposed on them by the Legislature, the Board of Trustees and senior management of the SBC. One example of such a development is the imposition of the Bagley-Keene Act ("Bagley-Keene") on the Sections.

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As of April 1, 2016, the Sections will be subject to the open meeting constrictions of Bagley-Keene passed in 2015 with the SBC dues bill. The Sections perform much of their work by email, telephone conference calls and other electronic means. Bagley-Keene, among other requirements, virtually eliminates the ability to work electronically and through conference calls without onerous advance notice requirements and limitations on locations from which calls may originate. Members calling in must provide an address that is open and qualified under the Americans with Disabilities Act (“ADA”) at least 10 days prior to conference calls. Some Standing Committees of the BLS have already informed BLS that they will halt any volunteer work when Bagley-Keene goes into effect. Others are looking for separate bars with whom to conduct their work.

Another example relates to the assessment. As noted, the SBC charges an overhead assessment to ensure that it is not subsidizing the Sections. That overhead charge started at 25% of voluntary Section dues collected in or about 1988 but has risen in 2016 to nearly 67%. Moreover, the staff of the financial function of the Bar calculated the assessment for many years without indication of their methodology and without input from the Sections. When recently pressed as the assessment rose, the SBC management, without consulting the Sections, chose and appointed an expert to determine the reasonableness of the assessment methodology. The Sections raised objections to the expert’s report and negotiated with the Bar to alleviate the problems created by rising assessments, but, to date, those efforts have resulted in little meaningful relief. It is clear that SBC continuing overhead increases threaten to exhaust the Sections’ economic resources.

These current threats to the Sections are only the most recent and most serious. The BLS has labored under significant and unnecessary burdens deriving from functioning within the Bar, which as indicated is primarily a regulatory agency. Those burdens have ranged from: deprivation of all staff services for several months in 1998; threats of dues bill retribution; severe budget restrictions that hampered support staffing; threats of interference with decisions regarding maintenance of reserves; virtual elimination of the Sections’ websites and their valuable content; and, imposition by the SBC of website compliance measures to conform with the ADA, which restricted Sections solely to the SBC’s cumbersome remediation procedures and which also imposed significant expenses in excess of the assessment on the Sections. Tomorrow may bring yet another unpredictable imposition on the Sections that can divert and drain their resources away from productive efforts. In light of many similarly serious historical threats to the viability of the Sections arising out of the integrated structure of the SBC, there are compelling reasons now to support a restructuring of the SBC.

Lawyers in California are the only professionals in the State who do not have a statewide practice association that is organizationally separate from regulators of that profession to enhance the profession and act as an advocate for their interests. Doctors, CPAs, engineers, firefighters, plumbers, acupuncturists and many, many others all have professional associations that lobby, educate and enhance their profession. In fact, that is the universal pattern of functional separation in the entire US for nearly all professions except law. The restrictions imposed upon the Sections, as part of the SBC, severely limit positions they can take at the legislature, notwithstanding that no

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mandatory dues are used for those activities. A separate bar association's positions may be self-restricted but that would be member driven.

Some have an erroneous view that the Sections have a powerful connection with the legislature primarily because they are organizationally part of the SBC regulatory agency. This notion is ill-conceived. The real reason for the influence of the Sections is that the Sections include some of the most respected, highly placed, brilliant lawyers in California, who work on legislative matters in the public interest. Their connection with the legislature is due to the thoughtful and well-reasoned comments and proposals they have provided to the legislature with great continuity and credibility for almost 40 years. Their power is not derivative and does not arise by virtue of association with the SBC agency.

In summary, the current structure, the economics and the open-meeting constrictions about to be imposed on the Sections are only the most recent examples of threats that are assuredly going to lead to the Sections' ineffectiveness. Accordingly, the Task Force advises the BLS Executive Committee to support restructuring the SBC into 1) a separate regulatory agency and 2) a separate statewide voluntary bar association similar to those in several other states with a de-unified bar structure. This recommendation is qualified with the proviso that the SBC agree to, or is directed by the legislature to, transfer all of the Sections' assets, including intellectual property, reserve dues funds and all other materials to the new voluntary bar association, continue to provide for the Sections a dues check-off facility on the annual fee bill, and provide adequate transition services for a limited time to that new association to allow it to become independently operational.

Very Truly Yours



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Co-Chair BLS Voluntary Bar Task Force

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