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# Appendix A

## State Bar "White Paper"



The State Bar of California

# White Paper

The Functions, Authority & Structure of the State Bar of California

The State Bar Office of General Counsel  
May 12, 2016

# Executive Summary

This “White Paper” describes the complex responsibilities and functions of the State Bar of California. Its objective is to inform the public about the State Bar as an important institution dedicated to public protection, and also to assist the State Bar’s Task Force on Governance in the Public Interest, now beginning its 2017 triennial review of the State Bar’s governance structures.

As background, California has long been considered a leader in achieving public protection through the regulation and discipline of lawyers and its work to support and improve the functioning and accessibility of a legal system to serve all citizens. Yet its size, as the nation’s largest state-wide organization of lawyers, and the large number of activities supported under the umbrella of the California State Bar, set it apart and make difficult comparisons with all other sister bar organizations. Indeed, in the last three decades California’s size and diversity have so outstripped its counterparts that it may have become an example of a difference in degree that is also a difference in kind. If so, prescriptions for its ideal organization in the future may require approaches that are *sui generis*. Nonetheless, understanding the State Bar’s past contributions and current challenges in a national historical context offers a helpful starting point for looking to the future. This Summary thus briefly reviews the State Bar’s structure, functions and questions against such a backdrop, with reference to the current status of bar organizations across the nation. Hopefully comparisons to the challenges and choices of other state bar organizations will help to inform the recommendations of the State Bar Task Force and also foster deeper understanding of the descriptions and discussion which follow.

Modern organizations of lawyers, two hundred eighty of which are present today in California alone, are relatively recent creations.<sup>1</sup> They first appeared as voluntary professional associations at the end of the nineteenth century with the founding of The New York City Bar Association in 1870. These early bar associations were voluntary in nature, often designed to address an apparent crisis in the profession which had a poor reputation and lack of respect as a result of an absence of regulation, quality control and discipline. These problems were also seen as relevant to the profession’s financial problems. Voluntary associations of lawyers were formed to confront these problems by creating structures to support discipline and professionalism, thereby improving professional reputation, increasing respect and the possibility of greater financial success.

In the early part of the twentieth century the unified bar organization (sometimes called a mandatory or integrated bar), designed to combine professional association activities with those focused more directly on regulation and discipline functions into one organization, was introduced from Canada. In 1927 California became an early adopter, becoming one of the first states to pass legislation requiring bar membership for all lawyers licensed to practice. For the first half of the twentieth century the American Judicature Society and the American Bar Association promoted the unified bar as the best way to improve professional quality through self-regulation and discipline. And, by requiring lawyers to participate in the new organizations, these bar organizations also offered support for the legal system as a whole. The idea’s

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<sup>1</sup> See Theodore J. Schneyer, *The Incoherence of the Unified Bar Concept: Generalizing from the Wisconsin Case*, (1983) Am.B.Found.Res.J. 1, for an authoritative historical review of bar organizations in the United States.

popularity increased overtime and unified bars became the dominant model for American state bar organizations. Today, unified bar associations exist in thirty-three states.

Even so, the structural variations among unified state bars are numerous. There is also great variety in the activities that have been combined under the umbrella of state bar organizations, whether they are unified or voluntary. A broad continuum exists from activities that are clearly regulatory/disciplinary at one end, and those focused on the well-being of lawyers on the other, such as support for professional advancement or discounted insurance opportunities. The consequence of this diversity is that there is no single organizational model—no ‘gold standard’ for the best structure of a state bar organization. Making comparisons between California and other unified bar states is thus a difficult process. Nonetheless, one fundamental feature is present in all state bars. Whether a state bar is a voluntary association or a mandated unified governmental organization, in the United States responsibility for the regulation and discipline of lawyers is universally placed within the judicial branch of government. This approach, widely discussed in court precedent, reflects a consensus that such an arrangement is constitutionally required to protect separation of government powers. To this end, the State Bar of California was added to the California Constitution as a judicial branch entity in 1960.

Among other features, California’s size sets it apart. With 254,455 lawyers, the State Bar of California is more than double the size of Texas, the second largest unified bar with 112,270 lawyers. Another unique feature is the fact that the amount of the annual fees for membership in the California State Bar are set each year by the State Legislature, rather than the Supreme Court (although the California Supreme Court has, on one occasion, used its plenary authority to set fees to support the discipline system when the State Legislature failed to act).<sup>2</sup>

Like all its unified bar counterparts, the State Bar of California functions as the administrative arm of the California Supreme Court, acting on behalf of the Court for all regulatory and disciplinary functions related to the practice of law. While the State Bar’s associational activities may be the most obvious of its activities to its membership, in fact, by statute, the State Bar’s most important functions are its numerous regulatory and disciplinary activities. These are designed to protect the public and enhance the administration of justice and are managed by the State Bar with the Supreme Court’s direction and oversight. Nonetheless, all of the unusually large number of programs and services the California State Bar offers its members are ‘fully integrated’ into one organization. Here once again California is unusual. In most states, a state bar’s public protection activities are both smaller in number and more distributed among the state supreme court, the voluntary and mandatory bar organizations, or other separately created governmental organizations controlled by the judicial branch, rather than operated by one umbrella organization.

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<sup>2</sup> The State Legislature authorizes a maximum fee that the State Bar may charge its attorney members, which provides for some voluntary amounts that members may “opt-out” of paying for, e.g., lobbying activities or legal services. Further, the Board of Trustees has provided further “voluntary” or “opt-out” amounts that members may deduct from the maximum amount fixed by legislation.

California is unusual in other respects as well. It is one of only four states which does not use non-lawyers in discipline proceedings<sup>3</sup> and the only state to use a fully professionalized discipline system. Since 1989 all discipline proceedings have been handled by an independent prosecutor's office, the Office of Chief Trial Counsel (OCTC), and adjudicated by a special jurisdiction state court, The State Bar Court, which includes hearing and review departments, managed by judges variously appointed by the legislative and judicial branches and subject to the same standards of practice and discipline as all state judges. Both OCTC and the State Bar Court are widely admired, frequently cited to support the view that California's discipline system is the nation's best. The State Bar's discipline system also includes a probation department, an attorney diversion program, a statewide fee arbitration program and a Client Security Fund to compensate victims of attorney theft, using funds specially assessed as part of the annual mandatory fees paid by California lawyers. The State Bar also monitors compliance with Minimum Continuing Legal Education requirements.

The State Bar's regulatory functions also include admission to practice. In addition to managing three separate bar examinations (two for those seeking to enter practice and a second to test the first year competence of law school students studying outside the accreditation system of the American Bar Association), the State Bar administers special admissions programs for foreign practitioners, out-of-state lawyers, those with multi-jurisdictional practices, law students and certification for legal specialists in 16 areas of practice. The State Bar is also charged with accreditation and registration of law schools in California which are not a part of the accreditation system of the American Bar Association. Here, once again, California is unusual as one of only a few states which allows those who have not graduated from an ABA accredited law school to sit for the bar exam and which also oversees the independent accreditation of its own system of state law schools.

The State Bar sets an amount that members are not required to pay and may deduct from the annual membership fees. These deductions are allocated to the following activities: lobbying; Bar Relations and Elimination of Bias Programs; and Legal Services Assistance. The State Bar also supports some non-regulatory activities funded with voluntary funds. These activities include support for the membership and activities of sixteen subject specific law sections and the Office of Access & Fairness Programs. The State Bar Sections identify and track legislation specifically relevant to the State Bar and provide expertise on proposed legislation to the Legislature and the Governor, as requested. The State Bar also sponsors revenue generating programs designed to serve the needs of State Bar members. These programs include approximately 30 different offerings from 10-12 different partners. Services offered are roughly split between personal and professional goods and services. The categories of programs cover insurance, financial services, consumer products and professional software. The State Bar's Office of Legal Services uses funds provided by the voluntary contributions of members and other state and federal programs to expand support for, and the improvement of, delivery of legal services to low and moderate income Californians and to promote access to justice. It administers externally funded grant programs such as IOLTA, the Equal Access Fund, and the Justice Gap Fund.

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<sup>3</sup> This represents a change which occurred in 1999 when the Legislature amended Business and Professions Code section 6086.65 to eliminate the position of Lay Review Judge and to replace that judge with a second Lawyer Review Judge.

The Bar also has an unfunded mandate, the Judicial Nominees Evaluation Commission (JNE). JNE assist the administration of justice by independently evaluating all candidates appointed for judicial appointment by the Governor. JNE is funded with general Fund monies. Although the State Bar is an administrative adjunct of the Supreme Court, the Legislature, by statute, has traditionally set the annual required membership fee for attorneys admitted to practice in California. Such fees may only be mandated and used for non-political, non-ideological activities germane to the core functions of the Bar under *Keller v. State Bar of California*, 496 U.S. 1, 110 S. Ct. 2228 (1990). Thus they are limited to regulating the profession and improving the quality of legal services available to people in California. Additional fees allow members to contribute to specific other activities by opting in or out of the suggested activities.<sup>4</sup>

For all bar organizations, including the California State Bar, an operational tension results from combining regulatory/disciplinary functions with associational duties in a single unified bar structure. Regulation and discipline are typical functions of any state regulatory government agency. In contrast, membership service activities are more consistent with the role of a voluntary bar, operating as a non-profit private association. In most unified state bar states, this tension has begun to shift in favor of adopting the operational requirements and limitations of a state regulatory agency. This change is also evident in California. In recent years, the State Bar's governance structure has changed significantly, initially driven by legislation establishing public protection as the Bar's highest priority. Similarly, the composition of the Board of Trustees has evolved to place greater emphasis on unelected trustees. Appointments to the Board of Trustees made by the Supreme Court, the Legislature and the Governor now dominate, with a corresponding reduction in the number of attorney elected members. Another significant example of this evolution occurred in the State Bar's 2016 Fee Bill. There the State legislature imposed the open meeting requirements of the Bagley-Keene Act and the provisions of the California Public Records Act on all State Bar components. For most states, such requirements would have been imposed by court rule, allowing a more informed process for adapting such requirements for openness to the responsibilities of a judicial branch agency like a state bar. The goal of these changes was to increase public and stakeholder confidence in the Bar's work to support public protection in attorney licensing, regulation and discipline. Yet one unintended consequence may be to damage significantly the State Bar's relationship with its sections. Were this to lead to the de-unification of the State Bar, unknown damage to the State Bar's efforts to support an effective legal system might be the outcome.

Thus, the history of unified bar organizations continues to be written. The recent decision by the U.S. Supreme Court in *North Carolina State Bd. of Dental Examiners v. FTC*, 574 U.S. \_\_\_ (2015) has raised questions about the requirements for oversight of anticompetitive decisions by bodies composed of a majority of 'market participants' and other litigation, too, can be expected to challenge aspects of unified bar organizational structures and activities which combine both governmental and associational functions. Meanwhile the legal profession confronts changes from external forces brought about by the information revolution, which has

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<sup>4</sup> Optional donations support contributions to the Access to Justice Fund, the California Bar Foundation, Conference of California Bar Associations, the and the California Supreme Court Historical Society; optional deductions include fees to support Legislative Activity, Bar Relations and Elimination of Bias, and Legal Service Assistance. Members also may elect to pay fees to participate in the sixteen specialty sections of the State Bar.

also introduced new corporate players into the traditional legal services sector. The time for considering the effectiveness of the State Bar's current governance structures is right, but the questions necessary for consideration are both numerous and complex. In the end, a deliberate approach and one which 'does no harm' will be best in light of the significant challenges, important questions and unclear answers which confront the Task Force.

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## **I. The History of The State Bar of California**

The State Bar of California is an integral part of the justice system in California, designed for the purpose of public protection through two complementary missions: (1) attorney admissions and discipline; and (2) support for the justice system through the professional development of its attorney members. Because all activities relevant to these responsibilities are part of a single organization placed within the judicial branch of government, the State Bar of California is described as a ‘unified’ or ‘integrated’ bar, with mandatory membership.

With an annual budget of \$146 million, the State Bar stands today as an organization of 538 employees at two locations, Los Angeles and San Francisco, and supported by 738 volunteers. The State Bar oversees the more than 186,308 active members of the State Bar. For the last 85 years, the State Bar has been a leader in shaping the development of the law, regulating the professional conduct of its members, and providing greater access to justice through support for legal services.

### **a. Basic Authority for The State Bar<sup>5</sup>**

The State Bar of California (State Bar) is a public corporation and a constitutional agency within the judicial branch of state government created to assist the Supreme Court in regulating the legal profession and to aid in improving the administration of justice. The State Bar serves as the administrative arm of the Supreme Court in all matters related to attorney admission and discipline. (Cal. Const., art. VI, § 9; Bus. & Prof. Code, § 6001 et seq.; *Keller v. State Bar of California* (1990) 496 U.S. 1, 4-5, 110 S.Ct. 2228, 110 L.Ed.2d 1.)

The California Legislature created the State Bar in the 1927 State Bar Act. (Bus. & Prof. § 6000 et seq; Stats. 1927, ch. 34, p.38; *Greene v. Zank* (1984) 158 Cal.App.3d 497, 505; 2 State Bar Journal 92 (1927).) The Act created a public corporation known as the State Bar of California, which was to be organized by the Chief Justice of the California Supreme Court and others appointed by him. (Stats. 1927, ch. 34, §§ 2, 12, and 13.) It authorized the State Bar, with the approval of the Supreme Court, to fix the qualifications for the admission to practice, adopt Rules of Professional Conduct, and conduct disciplinary proceedings. (Stats. 1927, ch. 34, §§ 24-26.) The Act also gave the State Bar the general authority to aid in the administration of justice. (Stats. 1927, ch. 34, § 23.) Since 1927, both the Legislature and the Court have added to the regulatory matters that the State Bar must administer.

The California Legislature also established the Board of Governors of the State Bar (the Board) as its governing body when it created the State Bar in 1927. (Bus. & Prof. Code, § 6010 et seq.) The Board has the power to:

aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, including, but not by limitation, all matters that may advance the professional interests of the members of the State Bar and such matters as concern the relations of the bar with the public.

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<sup>5</sup> *Sup. Ct. Advisory Com. On Lawyer Regulation* (June 5, 2002)

Originally, the Board consisted of fifteen attorney members, eleven elected from congressional districts, and four elected at-large. As the governing body of the State Bar, the Board has only those powers and duties conferred by the Legislature or the Supreme Court. (Bus. & Prof. Code, § 6010; see also Cal. R. Ct. 950 *et seq.*) Although certain of the Board's functions are quasi-judicial or quasi-legislative in nature, they do not constitute the exercise of judicial or governmental powers.<sup>6</sup> Thus, all actions taken by the State Bar related to regulating the practice of law are subject to the final authority of the Supreme Court.

A key feature of the State Bar Act was that the State Bar would be a “self-governing” organization. It is, however, also a mandatory organization and so distinguished from a voluntary bar association. All practicing attorneys in California are required to be members of the State Bar; are subject to the rules of the bar, including a provision for payment of an annual fee; are required to adhere to a code of ethics; and are subject to disciplinary proceedings for infractions of the disciplinary code. (*Greene v. Zank, supra*, 158 Cal.App.3d at 504.) Notwithstanding statutory directions, the separation of powers doctrine limits the authority that can be directly delegated to the State Bar. The power to regulate the practice of law, including the power to admit and to discipline attorneys, has long been recognized as among the inherent powers that are exercised only by the courts in [article VI](#) of the California Constitution. *In re Attorney Discipline, supra*, 19 Cal. 4th, at 592. Accordingly, the State Bar's “power” to discipline or disbar members is subject to ultimate approval by the California Supreme Court. (Bus. & Prof. Code, § 6087.) Similarly, the State Bar has no power to promulgate rules of professional conduct; it can only propose rules to the California Supreme Court. (Bus. & Prof. Code, § 6076.)

In 1960, the voters of California added the State Bar to the state constitution as part of a ballot initiative that created the Commission on Judicial Qualifications (now the Commission on Judicial Performance) and expanded the membership of the Judicial Council to include State Bar attorney members. (Cal. Const., art. VI, § 1c, as adopted November 8, 1960.) Given that the State Bar was given the power to appoint the lawyer members of the Judicial Council and the Commission on Judicial Qualifications, the State Bar was thus given the status of a constitutional body as well. In implementing this ballot measure, it was recognized that the State Bar would still be subject to regulation by the legislature. Language in the ballot pamphlet stated: “The Legislature ... would continue to have power to regulate the administration of the State Bar by statute as it now does.” See *In re Attorney Discipline*, 19 Cal. 4th, *supra*, at 598. Subsequently, in 1966, articles III, IV, V, and VI of the California Constitution were revised to present a more orderly and coherent treatment of the constitutional provisions defining the separation of powers between the legislative, executive, and judicial branches. (Stats. 1966, First Ex. Sess. 1966, ch.139, p. 960.) At that time, Article VI, section 1 c was repealed and its language amended and reenacted by the voters as Article VI, section 9. (Cal. Const., art. VI, § 9, adopted November 8, 1966.) Consequently, Cal. Const. Art. VI, § 9 is not self-executing, as the State Bar is not provided any specific powers to carry out its mission. (*Cf.* Cal. Const. Art. 9, § 9 (providing that the University of California shall have powers of government)).

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<sup>6</sup> See *In re Attorney Discipline* (1998) 19 Cal. 4th 582,600 (“the Board of Bar Governors [is]... not invested with any power which can be said to possess the finality and effect of judicial orders”); relying on *Hirsh v. Justices of the Supreme Court of California*, 67 F.3d 708, 715 (9th Cir. 1995); and *Levanti v. Tippen*, 585 F. Supp. 499, 504-05 (S.D. Cal. 1984)

While attorneys are allowed to “self-govern” to some degree, the State Bar’s powers are circumscribed by the need for judicial, and sometimes legislative, approval. Although the State Bar, as an administrative adjunct of the Supreme Court, ‘performs quasi-judicial and quasi-legislative functions, it does not exercise traditional governmental powers. It does not admit anyone to the practice of law; it does not finally disbar or suspend lawyers; and it does not ultimately establish ethical codes of conduct for lawyers. California law reserves all of those functions for the California Supreme Court. (Bus. & Prof. Code, § 6064 (admissions); § 6076 (rules of professional conduct); § 6100 (disbarment or suspension).) Instead, its role in the regulation of the profession is for recommendations as to admission to practice, the disciplining of lawyers, codes of conduct, and the like to be made to the courts or the legislature. *Keller v. State Bar, supra*, 496 U.S. 1, 13. In the words of the United States Supreme Court in *Keller v. State Bar, supra*, 496 U.S. 1, 14, “the State Bar performs important and valuable services for the State by way of governance of the profession, but those services are essentially advisory in nature.”

The historical reasons underlying the creation of the State Bar as an integrated bar have been set forth in various law review articles and studies. A 1995 law review article that relied primarily on a 1956 case study of the State Bar of California, provides historical insight into the creation of the integrated bar: The central theme of the bar’s campaign in 1925 was to reform the profession – “kick the rascals out”<sup>7</sup> – by creating a unified and self-regulating bar. (Corinne L. Gilb, *Self-Regulating Professions and the Public Welfare: A Case Study of the California State Bar (1956)* (unpublished PhD thesis, Radcliffe College, at p.53.) To do this, the campaign sought support from local bar associations, district attorneys, real estate boards, chambers of commerce, and even the bar’s traditional enemies. (*Id.* at p. 54.) Thus, members of the banking community were also persuaded not to oppose the State Bar bill. In return, the bar promised not to oppose the banks’ attempts to raise executors’ fees. (*Id.* at pp. 54-55.)

This broad-based support facilitated passage of the State Bar bill. It was approved unanimously in the Senate and by a vote of sixty-five to eleven in the Assembly. (*Id.* at p.55.) Despite this, then Governor Friend W. Richardson vetoed the bill. (*Id.* at pp. 55-56.) Richardson’s main objection was that the proposed self-regulating bar would not be subject to state control. (*Id.* at p. 57.) In particular, Richardson wanted to add a provision to the legislation that would grant the Governor power to appoint the Bar’s Board of Governors, a move that would have transformed a self-regulating bar into one regulated “through an administrative commission.” (*Id.* at p. 57.)

In response, the Bar once again mobilized support. (*Id.* at p. 58.) The Bar bill was reintroduced into the 1927 legislative session, where it passed the Senate on a vote of twenty-five to fourteen and the Assembly by a margin of fifty-one to fifteen. (*Id.* at pp. 68-71.) This time the newly-elected Governor C.C. Young – elected in large part due to the support and influence of a leading unified bar advocate – signed the bill into law. (*Id.* at p. 74.) This legislation created the

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<sup>7</sup> Essentially, “[t]he courts were too busy to do the work of discipline; sometimes only mild reproof was necessary and disbarment proceedings were too inflexible; the bar, it was contended, could best discipline itself.” (*Glib, supra*, at p. 60.)

State Bar as a public corporation subject to supervision by the California Supreme Court. (*Id.* at pp. 71-74.)

The statute, as ultimately passed, was largely drawn from the American Judicature Society's model bar unification bill. (*Id.* at pp. 44-45.) However, it also contained an important change derived from the American Bar Association's model Bar Unification Act which had been approved by the ABA in 1920. (*Id.* at p. 46.) The change was not only a strategic move but was also legally important because it set the framework for a system where the State Bar is subject to judicial oversight. Whereas the earlier version of such legislation had proposed to create statewide bar organizations incorporating already existing voluntary bar associations, the new version was based on the premise that the "bar was already a body-politic," since lawyers were officers of the Court. Creating the State Bar on this premise meant that state supreme courts would retain ultimate control over the profession, but would delegate to the bar their pre-existing powers to regulate and control lawyers. (*Id.* at pp. 45-47.) (22 Pepp. L. Rev. 485, 524-525 [Ideologies of Professionalism and the Politics of Self Regulation in the California State Bar, 1995 Pepperdine University School of Law, William T. Gallagher]. )

A 1997 law review article further elaborated upon the purpose of such integrated bars:

In considering the establishment of a State Bar, the California Legislature saw the unified bar structure as a means of helping the legal profession to better meet its responsibilities to society. (Fn.)<sup>8</sup> The California Legislature believed that a unified Bar would permit the legal profession to protect the public from unethical or incompetent lawyers by improving lawyer admissions and discipline. (Fn.) In addition, a unified Bar could provide legal services and accessibility to justice to those with limited finances. (Fn.)

(27 Golden Gate L. Rev. 601 (1997) [Senate Bill 11413: The Answer to SB 60 Plebiscite and Its Constitutionality Under the Inherent Powers Doctrine].)

#### **b. The California Bar Functions as a Unified or Integrated Entity**

Since 1927, all attorneys licensed to practice law in California have been required to be members of the State Bar, except while holding office as a judge of a court of record. An "integrated bar" is an association of attorneys in which membership and dues are required as a condition of practicing law in a State. (*Keller v. State Bar of California* (1990) 496 U.S. 1, 5.) The term "integrated bar" is used interchangeably with "unified bar" or "mandatory bar." (*See Morrow v. State Bar of California* (9th Cir. 1999) 188 F.3d 1174, 1175.) In an integrated bar,

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<sup>8</sup> All footnotes referenced The Future of the California Bar Final Report, Legal Profession and the State Bar of California 147 (1995). Particular reference was made to comments by Joseph Webb, the first president of the State Bar, who commented on the purpose of the State Bar: "... the purpose of the State Bar is to place full responsibility upon the Bar, both as to qualifications for admission to practice and conduct after admission, to see that every lawyer recognizes that one who practices law holds a position of public trust. An attorney's primary duty is to be faithful to that trust, and to organize the Bar upon an efficient and businesslike basis." (The Future of the California Bar Final Report, note 24, at 147-148.)

regulatory functions (such as admission, continuing education, and attorney discipline) *may* be combined with non-regulatory activities (such as arranging social functions, obtaining rental car discounts for members, and political lobbying). (*See id.*; *Lathrop v. Donohue* (1961) 367 U.S. 820, 832-34.) Nonetheless, the variety of activities combined in such unified or integrated bar organizations vary widely and the only essential elements of an integrated bar are the requirements of membership and the payment of fees. (*Lathrop*, at 843; *Keller*, 496 U.S. at 4, 8.) Courts have construed the requirement of compulsory enrollment itself to impose only the duty to pay fees. (*Lathrop*, at 827; *Keller*, at 9; *see Morrow*, 188 F.3d at 1177.)

### **c. History of Attorney Discipline**

From the creation of the State Bar of California in 1927 through the end of 1965, the Board of Governors acted as the State Bar's final adjudicator in attorney disciplinary proceedings. The Board of Governors was delegated such authority pursuant to the State Bar Act. The Board of Governors reviewed the findings of fact, conclusions of law and disciplinary recommendations of local administrative committees, which were composed of volunteer attorneys appointed by the Board, and made the State Bar's final recommendations of suspension or disbarment to the Supreme Court. (*In re Shattuck* (1929) 208 Cal. 6, 10-11.) The Board also exercised the power to impose public and private reprovls upon attorneys in cases involving more minor misconduct. (Bus. & Prof. Code, § 6078.)

Initially, the investigative, prosecutorial, and adjudicatory functions of the State Bar in attorney regulation were delegated to and conducted by the Board or any local committee appointed by the Board. The State Bar Act also created a bureau of investigations and provided for a pre-investigation of the accusations. These local administrative committees investigated the matters, held hearings, and made recommendations to the Board, which in turn made recommendations to the Supreme Court.

If, after the pre-investigation, the committee concluded that a hearing was required, one was ordered. The committees, or later disciplinary boards, filed a report with the Board, which could either act upon the recommendation; take further evidence; or set aside the report and hear the case *de novo*. The committee or discipline board was required to conduct a preliminary investigation before an Order to Show Cause (OSC) could be issued. Originally, these boards, but not the attorney prosecutors, made the determination whether to issue an OSC. Thus, the local committees, or discipline boards, and the Board shared both investigation and fact-finding powers.

Commencing in 1966, however, the Board of Governors appointed "disciplinary boards" to act in its place in the review of local administrative committee findings and recommendations in disciplinary and reinstatement proceedings. (Stats. 1965, ch. 973, p. 2590.) Although these disciplinary boards were initially composed entirely of volunteer attorneys appointed by the Board, public members appointed by the Governor were later added to them. (Stats. 1975, ch. 874, p. 1954, § 9.)

During this same period, a number of other adjudicative bodies were created within the State Bar as the right or opportunity for a hearing was extended to other functions or programs,

e.g., admission moral character matters, Legal Specialization proceedings, Legal Services Trust Fund proceedings, Client Security Fund proceedings, etc.

Staff attorneys were hired to assist in the investigations and prosecutions, although the actual prosecutions remained with volunteers until sometime in the 1970s. By the early 1970s, and possibly much earlier, the Office of General Counsel, or its designee, was authorized to appoint one or more examiners either from the membership or from the State Bar staff to assist or serve an examiner in a matter. This designee appears to be the precursor of the current Chief Trial Counsel (CTC) position; and this person's staff appears to be the precursor of OCTC. In 1986, the Legislature formalized the CTC position and required that he or she be confirmed by the Senate and not serve under the chief executive officer of the State Bar. The Board still appoints the CTC and the CTC serves under the Discipline Committee of the Board and at the pleasure of the Board.<sup>9</sup>

The system, as it existed before 1979, raised potential conflict and due process concerns. (*See, e.g., Kitsis v. State Bar* (1979) 23 Cal. 3d 857, 864-65 [rejecting claim that because the complainant, prosecutor, and adjudicator in attorney's discipline proceedings were all attorneys, a due process violation occurred].) Consequently, in 1979, the investigative and prosecutorial functions were separated from the fact-finding functions. Around this time, the rules of procedure started to authorize the CTC to appoint and assign an examiner or co-examiner to handle the investigations and prosecutions. The rules also stated that the examiner worked at the pleasure of the CTC. Later, the Rules of Procedure were also amended to read that "[a]n examiner shall serve at the pleasure of, and perform such duties as the Chief Trial Counsel shall direct." Finally, these disparate adjudicative entities were merged into a single, unified "State Bar Court" of general jurisdiction over virtually all attorney disciplinary and regulatory proceedings. The State Bar Court continued to be composed of both volunteer attorneys and volunteer public members; it was organized into both a trial department (the Hearing Department) and an appellate department (the Review Department). In order to promote consistency, the Review Department was required to review, on an *ex parte* basis, every decision filed by the Hearing Department, whether or not a party to the proceeding had filed an appeal or requested review.

Further, the volunteer examiners were eliminated and the staff attorneys of OCTC began handling all disciplinary trials, except moral character cases. These remained with the volunteer examiners until the early 1990s, while the hearing judges, too, remained volunteers until 1989. Meanwhile, the Bar's Office of General Counsel continued to handle cases before the Supreme Court, representing either the Board or State Bar Court.

In the early 1980s, concerns arose about substantial delays in the hearings of complex or lengthy disciplinary cases. As a result, the Legislature enacted Business and Professions Code section 6079, which required these complex or lengthy trials to be conducted by a compensated, retired judge of a court of record, instead of by three-member, volunteer hearing panels or local administrative committees. (Stats. 1986, ch. 1114, § 2.)

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<sup>9</sup> The Executive Director continues to provide the staff and logistical support for OCTC.

Then in 1985, the San Francisco Examiner published a series of five articles that were highly critical of the State Bar's discipline system, at both the prosecutorial and adjudicatory levels. The Examiner articles charged that the discipline system was slow, secretive and lenient. To compound the problem, at approximately the same time (*i.e.*, 1985-1986), a significant backlog of more than 4,000 uninvestigated disciplinary complaints was discovered in the disciplinary prosecutor's office.

In response to these revelations and the concerns they raised about the discipline system, in 1986, the Legislature enacted Business and Professions Code section 6086.9, which required the Attorney General to appoint a Discipline Monitor to monitor and evaluate the State Bar's discipline system and its procedures and to make periodic reports to the Assembly and Senate Judiciary Committees, with copies to the California Supreme Court. (Stats. 1986, ch. 1114, § 6.) Professor Robert C. Fellmeth was appointed as the State Bar Discipline Monitor in 1987 and served in that capacity until 1992.

This 1986 legislation, the response to a growing backlog of disciplinary investigations at the State Bar and the Examiner articles led to a separation in the prosecutorial functions, dividing fact finding functions from other State Bar functions. Further, subject to the Supreme Court's rules, the CTC was authorized to petition the Supreme Court for a different disposition of a matter than the one recommended by the review department or the board.

In 1987, the investigation functions were separated from OCTC. A separate Office of Investigations (OI) with a separate Director of Investigations was created. OCTC, similar to the operation of a district attorney's office, only decided what it accepted from Investigations in determining what cases to file. OCTC continued to handle the trials. In 1994, OI was returned to OCTC's control and again became part of OCTC. The Director of OI position was eliminated.

The Discipline Monitor's key recommendation about the State Bar's adjudication functions was to abandon the volunteer and retired judge system in favor of full-time judges. He noted a number of significant advantages in this approach, including more expedited adjudications, greater consistency and increased predictability. The disadvantage was increased cost.

The Legislature, the Supreme Court and the Board of Governors supported the Discipline Monitor's recommendation. As a result, in 1988 the Legislature enacted Business and Professions Code section 6079.1 and 6086.65, which created the full-time State Bar Court, commencing on September 1, 1989. (Stats. 1988, ch. 1159, §§ 7, 13.)

When the full-time Court was created in 1989, it consisted of a Hearing Department of six full-time judges (four in Los Angeles and two in San Francisco) and a Review Department of three full-time judges, including a Presiding Judge, a Lawyer Review Judge and a Lay Review Judge. In addition to being a member of the Review Department, the Presiding Judge exercised administrative oversight over both the Review Department and the Hearing Department. All of the State Bar Court judges were appointed to six year terms by the California Supreme Court, based upon the recommendations of the Board of Governors. The

Presiding Judge and other Review Judges receive the same salary as superior court judges while the Hearing Judges are paid 91.32% of the salary of a superior court judge. Bus. & Prof. Code § 6079.1(d). State Bar Court judges may only be censured, disciplined or removed from office on the same grounds as judges of courts of record following proceedings initiated and conducted by the Commission on Judicial Performance.

One of most the significant changes made in the processing of disciplinary proceedings before the full-time State Bar Court was the elimination of “mandatory review” by the Review Department. In contrast to the volunteer system, in which the Review Department was required to review every decision of the Hearing Department to ensure consistency, the full-time Review Department could only review those proceedings in which one or both of the parties had requested review. (Bus. & Prof. Code, § 6086.65, subd. (d).) If neither party sought review from the Hearing Judge’s decision, the matter would either become final upon expiration of the review period (in the case of dismissals or the imposition of public or private reprovls) or, in cases of disbarment, be transmitted directly to the Supreme Court with the Hearing Judge’s decision or other disposition order constituting the final recommendation of the State Bar Court.

During this period, the Supreme Court had its own concerns about its ability to handle a burgeoning caseload. In February 1988, the Select Committee on Internal Procedures of the Supreme Court, chaired by retired Supreme Court Associate Justice Frank K. Richardson, issued a report to Chief Justice Malcolm M. Lucas, recommending that the ultimate review of State Bar disciplinary proceedings be transferred from the Supreme Court to the Courts of Appeal. This recommendation was motivated, in large part, by the increase in attorneys admitted to the practice of law beginning in the mid-1970s, and a corresponding increase in disciplinary complaints and proceedings against them. In fact, by 1989, nearly 40% of the Supreme Court’s docket consisted of attorney disciplinary and regulatory proceedings.

After observing the operation of the State Bar Court for almost fifteen months, the Supreme Court took two significant actions:

- In December 1990, the Supreme Court delegated to the State Bar Court the power to act on certain “finality” matters which it had previously performed itself, *e.g.*, suspending attorneys convicted of crimes and ruling on a large variety of motions.
- In February 1991, the Supreme Court adopted a “discretionary review” standard for disciplinary and regulatory proceedings, requiring exhaustion of review before the State Bar Court Review Department and limiting the grounds for which Supreme Court review would be granted. Prior to 1991, the Supreme Court granted review on all petitions filed by attorneys challenging their disciplinary decisions.

The Supreme Court’s delegation to the State Bar Court of the power to act on “finality” matters has relieved it of the obligation to review and act upon 400-500 of such matters annually. Adoption of the discretionary review standard has greatly reduced the Supreme Court’s review and issuance of opinions in attorney discipline matters. Since the adoption of the “finality rule,” the Supreme Court has published only 11 opinions on attorney discipline

matters. By comparison, in 1990 alone, the Supreme Court granted review in 40 attorney disciplinary and regulatory cases.

Between 1990 and 1993, the huge backlog of disciplinary complaints discovered in the prosecutor's office in the late 1980s arrived at the State Bar Court. In order to assist the full-time Hearing Judges with this significant increase in caseload, the Board of Governors appointed a total of 13 *pro tempore* judges, whose combined service amounted to an additional two full-time judges. In addition, the Legislature authorized the addition of a seventh State Bar Court Hearing Judge commencing in January 1993. However, as the backlog of disciplinary cases was successfully processed through the State Bar Court, the use of *pro tempore* judges was discontinued and in June 1994 the Presiding Judge notified the Supreme Court that the appointment of the seventh Hearing Judge was unnecessary.

In February 1995, prior to the expiration of the State Bar Court judges' first terms of office, the Supreme Court amended rule 961 of the California Rules of Court to remove from the Board of Governors the responsibility for recruitment, interview and recommendation of candidates for appointment or reappointment to the State Bar Court. Instead, it placed that responsibility in the Applicant Evaluation and Nomination Committee, a seven member body appointed directly by the Supreme Court and consisting of two current or retired judges of courts of record, two members of the Board of Governors, two practicing attorneys and one public member.

In May 1996, one of the State Bar Court Hearing Judges resigned from the Court to accept a position as a Superior Court Commissioner in Los Angeles. At the request of the State Bar Court Presiding Judge, the Supreme Court agreed to temporarily leave this Hearing Judge position vacant in order to provide the State Bar Court with an opportunity to determine whether the sixth full-time Hearing Judge position was needed. After operating for approximately one year with only five Hearing Judges, the Presiding Judge notified the Supreme Court in June 1997 that, barring an unexpected, substantial increase in the State Bar Court's caseload, the sixth Hearing Judge position was unnecessary.

Finally, in 1999, the Legislature amended Business and Professions Code section 6079.1 to remove from the Supreme Court the power to appoint all five of the State Bar Court Hearing Judges. The amendment to section 6079.1 provided that, commencing in November 2000, the Supreme Court would appoint two Hearing Judges and that the Governor, the Speaker of the Assembly and the Senate Committee on Rules would each appoint one Hearing Judge. At the same time, the Legislature amended Business and Professions Code section 6086.65 to eliminate the position of Lay Review Judge and to replace that judge with a second Lawyer Review Judge. However, all appointments to the State Bar Court Review Department continued to be made by the Supreme Court. (Stats. 1999, ch. 221.) The Supreme Court upheld the constitutionality of these amendments in *Obrien v. Jones* (2000) 23 Cal.4th 40.

#### **d. History of the State Bar's Sources of Funding**

The State Bar's annual budget (in 2016 amounting to \$146 million) is made up of four sources of funding, both public and private, adding to its organizational complexity. Its primary source of funding is from the annual fees all practicing lawyers are required to pay by the State

Legislature. Restrictions on the use of such fees has been the subject of evolving legal standards, described below. Second, the Bar receives fees for certain specified activities for which the recipient or member who receives the services or benefit or who is subject to regulation pays a fee (e.g. bar examinations, legal specialization examinations, section membership). Some of these funds are authorized by statute to be collected in conjunction with the annual fee bill; others are paid directly at the time of service. Third, the Bar participates in various insurance benefit programs on behalf of its members, receiving a percentage of the revenue thus generated. Fourth, the Bar manages substantial grant funds, received from a variety of sources. These amounts, less the costs of administration, are distributed directly to legal service provider organizations to further their work in support of legal access.

### **i. Fee Bill**

The State Bar's primary source of revenue is the annual membership fees paid by attorneys admitted to practice in California. The membership fees are regulatory exactions (*Carpenter v. State Bar* (1931) 211 Ca1.358; *Herron v. State Bar* (1944) 24 Ca1.2d 53, 65; *Hill v. State Bar of California* (1939) 14 Ca1.2d 732, 735) and, like other revenues received by the State Bar, are "held for essential public and governmental purposes in the judicial branch of government." (Bus. & Prof. Code, §§ 6008, 6144.) The Legislature has historically set the amount of fees paid by attorneys to fund the State Bar's disciplinary system, which it does in its approval of and amendments to the annual fee bill. (See Bus. & Prof. Code §§ 6140-6145, specifically §§ 6140, 6140.1, 6140.3, 6140.4, 6140.6, 6140.9.) The original 1927 State Bar Act set the amount of annual State Bar membership fees and authorized the State Bar Board of Governors to increase this fee up to a set maximum. (Stats. 1927, ch. 34, § 43.)

This statutory structure, requiring legislative approval only when an increase in the cap on membership fees was sought, remained in effect for more than fifty years. In 1979, a "sunset" provision was added to Business and Professions Code section 6140, the statute setting the basic amount of the fees for active members, repealing the statute as of that specific date. (Stats. 1979, ch. 1041, § 2.) Since that time, periodic legislative re-authorization of the State Bar's basic active membership fee, which constitutes the principle source of funding for the State Bar, has been required.<sup>10</sup> In the last 20 years the Bar's fee bill<sup>11</sup> has been approved by the Legislature on an annual or biannual basis, allowing legislative review on a regular basis in a re-authorization process that has become increasingly time consuming and which, as will be seen, has encountered various difficulties as the result of political and practical concerns about the Bar's functioning.

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<sup>10</sup> Since 1927, several special fees have been added to the basic membership fees charged by the State Bar. In 1958, a special building fund was added. (Stats. 1958, First Ex. Sess., ch 49; Bus. & Prof. Code, § 6140.3.) In 1971, a fee for the client security fund was added. (Stats. 1971, ch. 1338; Bus. & Prof. Code, § 6140.55.) In the late 1980's, several new fees were added to support statutorily required reforms to the State Bar's attorney discipline system, including the establishment of a State Bar Court with full-time, professional judges and increases in the number of staff investigators and prosecutors. (Stats. 1986, ch. 1510; Stats. 1988, ch. 1149; Bus. & Prof. Code, §§ 6140.4, 6140.6 and 6140.9.)

<sup>11</sup> "Fee bill" is the term commonly used to describe the bills containing the provision amending Business and Professions Code section 6140 to set the amount of the basic active fees and extending the sunset clause

In 1985, the State Bar's efforts to have its fee bill approved were met with resistance by factions within the Legislature. Separate challenges led by Senator Robert Presley and Assembly Minority leader Pat Nolan shared the same goal of reducing the State Bar's power and resulted in the State Bar's inability to pass its fee bill in a timely manner. Consequently, the State Bar was forced to ask for voluntary contributions from its membership and file a petition to the Supreme Court, which proved unsuccessful. The fee bill was eventually approved, with greater legislative oversight of the State Bar. Thus, beginning in 1986, the Bar was required by statute to submit its budget to the Legislature for review and approval as part of any bill authorizing the imposition of membership dues. (Bus. & Prof. Code § 61401.1.)

In 1997, the Governor vetoed a fee bill that would have set State Bar active membership fees for 1998 and 1999 at an annual maximum of \$458. As a result of this action, the State Bar had the authority under existing statutory provisions to collect only \$77 from each member. Consequently, the State Bar was almost completely shut down the following year. (*See In re Attorney Discipline System* (1998) 19 Cal.4th 582.)

Finally, beginning in 2000, the statute requiring the State Bar to prepare an audited annual financial statement, showing its receipts and expenditures, to the Chief Justice of the California Supreme Court was expanded in scope to require a biannual performance audit by the California State Auditor, which also had to be submitted to the Assembly and Senate Committees on Judiciary in addition to the Chief Justice. (Bus. & Prof. Code § 6145.)

## **ii. Regulatory or Administrative Fees**

The Court has also authorized the State Bar to assess various regulatory or administrative fees related to the practice of law, in the absence of any statute permitting the imposition of such fees. (*See* Cal. R. Ct., rules 983(c) [applicants for admission to appear as counsel pro hac vice to pay reasonable fee not exceeding \$50]; 983.2(f) [authority of the State Bar to set and collect appropriate fees and penalties for the certified law student program]; 983.5(e) [authority of the State Bar to set and collect appropriate fees and penalties for certifying legal specialists]; and 988(f) [authority to set and collect appropriate fees and penalties for registering foreign legal consultants]<sup>12</sup>.

In sum, the Board of Governors may fix and collect only such reasonable amounts of membership fees as authorized by the Supreme Court or the Legislature. (*See Carpenter v. State Bar, supra*, 211 Cal. at 360 [assessment of membership fees is a regulatory measure fixed by the Legislature]; *Attorney Discipline, supra*, 19 Cal. 4th at 619-20 [where Legislature has not acted,

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<sup>12</sup> The Court has upheld the imposition of fees or dues "to enforce the State Bar Act, recognizing that licensed attorneys properly may be required to pay the reasonable expenses of a disciplinary system. We subsequently reiterated this conclusion: [I]t has been held that the reasonable expenses necessary to pay the costs of enforcement of the act, in furtherance of the purposes thereof, maybe imposed upon the membership in the form of fees or dues." (*Herron v. State Bar* (1944) 24 Ca1.2d 53,64 [147 P.2d 543.]; *Attorney Discipline System, supra*, 19 Cal.4th at 594.)

Supreme Court has power to impose fee.) The amount of the fees and the State Bar's expenditures are subject to legislative oversight. (Bus. & Prof. Code §§ 6140.1, 6145 [requiring annual budget reviews by the Legislature, annual audits, and bi-annual performance audits by the State Auditor<sup>13</sup>]; *see also Attorney Discipline, supra*, 19 Cal. 4th at 595, 620 [requiring oversight over expenditure of fees authorized by the Supreme Court]; *Hersh v. State Bar* (1972) 7 Cal. 3d 241 [although annual membership fees are authorized by statute, the Supreme Court reviews challenges to them in original petitions.]

### **iii. Affinity Programs**

The State Bar's Affinity and Insurance Programs were created to offer State Bar members and their families quality products or services, conveniently and on better terms than they might otherwise obtain on their own. The goal of the programs is to assist members in meeting their professional responsibilities (e.g., by offering affordable malpractice insurance and other forms of insurance support). The revenue generated from these programs comes from a percentage of total premiums on each product or service sold and is used to cover the cost of program oversight and support the general operations of the Bar.

### **iv. Grant Funds**

The Bar receives substantial funds to expand on the availability and improve the quality of free legal services to indigent persons. Currently these funds support grants to approximately 100 nonprofit legal aid organizations, along with reimbursement of the administrative expenses incurred by the Bar's Legal Services Trust Fund which manages these funds. The Interest on Lawyer Trust Accounts (IOLTA) is statutorily authorized to manage interest earned on client trust accounts held by California attorneys. Since 2015 this amount has been increased by an annual voluntary contribution of \$40 per member, authorized by the Legislature to be collected as part of the annual fee bill. In addition, the State Bar administers two recent sources of funding to support civil representation of indigent Californians. In 1999 the California Budget Act began authorizing funds to be added to the budget of the State Judicial Council's Equal Access Fund. In 2005, the Uniform Civil Fees and Standard Fee Schedule Act (AB 145) established a distribution to the Equal Access Fund based on a \$4.80 charge per court filing.

### **e. Restrictions on the Use of Funds**

As will be seen, the State Bar's funding structure has been closely entwined with an evolving body of state and federal case law, imposing substantive limitations on the use by a unified or integrated bar of mandatory fees, which are designed to support activities serving a public purpose. The State Bar has been at the center of much of the debate caused by these developments which have resulted in substantive limitations on which State Bar funds may be spent. In addition, as an entity of state government, the State Bar is also subject to a variety of regulatory limitations on its spending of public funds.

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<sup>13</sup> "The duties of the California State Auditor's Office are to examine and report annually upon the financial statements prepared by the executive branch of the state and to perform other related assignments, including performance audits that are mandated by statute." (Gov. Code § 8543.1.)

### **i. Substantive Limitations: Expressive Activities under *Keller* and *Brosterhous***

A series of decisions now limits the State Bar from engaging in activity in two main areas: speech activities which implicate the First Amendment rights of dissenting members; and taking partisan positions in electoral campaigns. *Keller v. State Bar of California* and *Brosterhous v. State Bar of California* limit the Bar's ability to expend mandatory dues on activities outside the parameters of regulating the legal profession or improving the quality of legal services provided by attorneys to their clients. *Stanson v. Mott* and related cases prohibit public agencies like the State Bar, absent explicit legislative authorization, from using public funds to promote partisan positions in electoral campaigns. In addition to these legal restrictions, during the time in which the *Keller* and *Brosterhous* cases proceeded, the Bar also became subject to increased political scrutiny of its actions by the Legislature and the Governor, culminating in Governor Pete Wilson's veto of the State Bar's fee bill in 1997. Governor Wilson's veto message cited a 1996 plebiscite by a "significant minority" of members to abolish the mandatory bar in favor of a voluntary bar model. He noted further the Bar's employment of a contract lobbyist and support for legislation which he characterized as partisan. This veto caused the Bar's closure for 18 months until January 2000, when the issues raised in this litigation were finally resolved.

Later Governor Arnold Schwarzenegger also vetoed the 2009 fee bill, but with less disastrous impact. This history and the developments they produced are detailed below. Together they demonstrate the significance of the political scrutiny and control to which the State Bar is now subject to on a continuing basis.

#### **The *Keller* Decision**

*Keller v. State Bar of California* (1990) 496 U.S. 1 considered the challenge of 21 members of the State Bar of California who sued alleging that the Bar expended their mandatory membership dues on certain political and ideological activities with which they disagreed, thus violating their First and Fourteenth Amendment rights to freedom of speech and association.<sup>14</sup> Relying on its line of cases determining whether mandatory agency shop union dues could be constitutionally expended on political and ideological causes unrelated to collective-bargaining activities, the United States Supreme Court held that the Bar could constitutionally fund activities germane to the Bar's permissible goals of regulating the legal profession and improving the quality of legal services with mandatory dues, but could not fund activities of an ideological nature outside of these goals. In so holding the Court set forth the following "guiding standard": ". . . whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or 'improving the quality of the legal

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<sup>14</sup> In the state case, *Keller v. State Bar of California* (1989) 47 Cal.3d 1152, the California Supreme Court had applied its decision in *Stanson v. Mott* (1976) 17 Cal. 3d 206 (government funding must have explicit authorization, but would raise serious constitutional questions if used to favor one side in an electoral contest) to analyze whether the State Bar could distribute an information packet regarding judicial independence six weeks before a recall election of six members of the Supreme Court. The educational packet included a speech by the then president of the Bar regarding judicial independence. The Court held that the use of public funds to distribute the information packet was impermissible despite the fact that the State Bar's actions were related to the administration of justice, one of the Bar's explicit statutory goals under Business and Professions Code section 6031.

service available to the people of the State.” (*Keller, supra*, 497 U.S. at 14, quoting *Lathrop v. Donohue* (1961) 367 U.S. 820, 843.)

The Court acknowledged that at times it might be difficult to determine where the line falls between permissible and impermissible activities, but emphasized that the extreme ends of the spectrum were clear. “Compulsory dues may not be expended to endorse or advance a gun control or nuclear weapons freeze initiative; at the other end of the spectrum. . . [there is] no valid constitutional objection to . . . compulsory dues being spent for . . . disciplining members of the Bar or proposing ethical codes for the profession.” (*Id.* at 16.)

In analyzing activities falling in the middle area of the spectrum, courts have noted that some arguably germane activities may have such strong political and ideological content that they dominate the activity and create a First Amendment issue. (See *Popejoy v. New Mexico Board of Bar Commissioners* (D. New Mexico. 1995) 887 F. Supp. 1422, 1430 [while pro bono activities are generally considered related to the goal of improving delivery of legal services, a state bar would be hard pressed to justify legal aid for gun rights advocates or pro-abortion groups on non-ideological grounds.]; *Schneider v. Colegio de Abogados de Puerto Rico* (1st Cir. 1990) 917 F.2d 620, 633 [bar could lobby on technical, non-ideological aspects of substantive law, but could not use dissenting members’ fees to promote a system of no-fault automobile insurance, endorse a pro-life amendment to the Commonwealth constitution or generate support for a death penalty.] More recently, courts have clarified that non political and ideological activities must still be germane to a Bar’s core functions to be chargeable to members. (*Kingstad v. State Bar of Wis.* (7th Cir. 2010) 622 F.3d 708, 718; *Romero v. Colegio De Abogados De Puerto Rico* (1st Cir. 2000) 204 F.3d 291, 302.)

The *Keller* court ruled that the Bar could meet its constitutional obligations to dissenting members by establishing a so called “*Hudson* deduction procedure,”<sup>15</sup> to allow dissenting members an opportunity to have an advance deduction of fees that fell outside the *Keller* standard and a subsequent opportunity to arbitrate the State Bar’s calculation of mandatory dues. Following the *Keller* decision, in 1990 the Board of Governors approved the first *Hudson* deduction after a review of the Bar’s programs and expenditures for 1989. The \$3.00 deduction was authorized to allow objecting members to decline to pay mandatory dues to support five State Bar activities. These activities were expenses of the Conference of Delegates relating to 40 conference resolutions; the Volunteers in Parole program; expenses of the Office of Governmental Affairs for lobbying on six specific bills; travel expenses related to the ABA Convention; and the cost of two public service announcements.

### **The Brosterhous Trial**

*Brosterhous v. The State Bar of California* (1995) 12 Cal.4th 315 was a challenge to the first *Hudson* deduction. The *Brosterhous* plaintiffs were members who objected to the adequacy of the \$3.00 *Hudson* deduction and participated in a 14-day arbitration to determine whether the Bar’s chargeability determinations were correct. Following this 1991 arbitration, in which plaintiffs were each awarded an additional \$4.36 refund, plaintiffs next filed suit in Sacramento

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<sup>15</sup> In *Teachers v. Hudson* (1986) 475 U.S. 292, the Supreme Court addressed procedures by which the amount of dues related to expressive activities of an objecting union member might be determined and ultimately forgiven.

Superior Court. The 1999 trial focused on a broader group of State Bar activities, including the following: Bar Relations; Conference of Delegates; Office of Governmental Affairs; Sections and Appointments Administration; Volunteers in Parole; Lobbying activities of the Legal Services Section; and Communications/Public Affairs and General and Administrative Expenses, to the extent that these areas supported the programs plaintiffs challenged.

The August 1999 decision in *Brosterhous* applied a narrow interpretation of the *Keller* standard to the State Bar and created a germaneness test which required “a simple, direct connection between the activity and the core purposes of the integrated bar,” i.e. regulation of the profession or improvement of the quality of legal services available to people in California. The decision further held that to be germane to the goal of improving the quality of legal services, an activity “must pertain directly to the services provided by an attorney to his or her client.” If a simple, direct connection cannot be made, the activity in question is too attenuated and cannot be charged to members. Applying this test, the court found that expenditures of the State Bar in the areas of Bar Relations, Minority Relations, Volunteers in Parole, the Conference of Delegates, the Bar Leaders Conference, 13 of 32 bills lobbied by the Office of Governmental Affairs, and additional lobbying by the Legal Services Section were non-chargeable.

In addition, the *Brosterhous* decision held that activities that may fall within *Keller* can be “tainted by unacceptable non-germane, ideological coloration.” “Where the impermissible and permissible are intertwined beyond separation, the objector should be entitled to a full rebate of the cost of the activity.” Based on this analysis, the court then found the Conference of Delegates to be “non-chargeable in its entirety” so that plaintiffs were entitled to a full refund of all its costs. (*Brosterhous* Decision, at 26-27, citing *Schneider v. Colegio de Abogados de Puerto Rico*, 917 F.2d at 633-634.) The final judgment in *Brosterhous* awarded plaintiffs a total refund from their 1991 dues of \$10.00 plus interest.

### **The Impact of the Bar’s Continued Funding of ‘Gray Area’ Matters Under *Keller***

In the nine years between 1991 and 2000, following the *Keller* decision and during the pendency of the *Brosterhous* litigation, the State Bar adopted a practice of deducting from the annual membership fee an amount that represented the cost to the State Bar of those activities which the Board deemed non-chargeable to mandatory fees.<sup>16</sup> Each year, some members objected to the Bar’s calculation of these so-called *Hudson* deductions, which then required arbitration of the issue. At these yearly arbitrations, essentially mini trials, the Bar supported its chargeability determinations with live witnesses who explained each of the challenged programs. Typically these arbitrations lasted a month and cost the Bar approximately \$70,000 per year in arbitration fees, staff time and expenses.

Although the Bar successfully defended its chargeability determinations in these arbitrations, a group of members continued to challenge the results in subsequent lawsuits, leading to a costly defense in the *Brosterhous* case. Outside counsel fees and costs in *Brosterhous* alone were approximately \$700,000 (a figure likely artificially low because of a flat

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<sup>16</sup> Examples include certain legislative positions of the State Bar, and expenses of the Conference of Delegates and Sections.

fee arrangement negotiated with outside counsel). The Bar's ultimate exposure also included an award of attorney's fees to the Plaintiffs of nearly \$1 million.

In his 1997 veto message of Senate Bill No. 1145, the State Bar's fee bill, Governor Pete Wilson relied on this member dissatisfaction with the State Bar's response to *Keller* and allegations that the State Bar continued to spend bar dues on legislative and political positions offensive to some of its members:

The bar has responded to Keller by conducting business as usual while offering a minuscule rebate to those opposed. Unappeased, several bar members (including one former and one current member of the Legislature) sued this year asserting that the Bar had violated its members' rights by taking positions on legislation with which members disagree.

Cal. Sen. Bill No. 1145 (1997-98 Reg. Sess.) Veto Message Oct. 11, 1997, at p. 1.

Governor Wilson's veto led to an almost complete shutdown of State Bar operations for 18 months. The majority of State Bar staff was laid off in the summer of 1998 after the Bar was unable to obtain passage of a fee bill to restore funding. After unsuccessful attempts to obtain a new fee bill during 1998, the State Bar successfully petitioned the Supreme Court for imposition of a special regulatory fee which allowed the Bar to continue its necessary disciplinary functions during the shut-down and pending a legislative resolution of the fee bill crisis. *See In re Attorney Discipline*, 19 Cal.4th 582, 590 (1998). Ultimately, a new fee bill for the State Bar was passed in 1999, but did not take effect until 2000.

The fee bill which restored the Bar's funding included the following limitations on Bar activities, influenced both by the prior veto and the *Brosterhous* case:

- The Bar was prohibited from expending mandatory dues to support the activities of the Conference of Delegates. (In 2002, the functions of the Conference were moved to the newly created Conference of Delegates of California Bar Associations, an organization wholly independent of the State Bar.)
- The Bar was prohibited from expending mandatory dues to support the activities of the Sections.
- The Bar was required to offer its members a \$5.00 lobbying deduction and restricted to funding lobbying activities which fell outside of *Keller* standards only out of dues raised by those members who voluntarily paid the additional \$5.00. (Bus. & Prof. Code § 6140.05.)

The result of this legislative direction and the 1999 trial court judgment in *Brosterhous* led to the Bar's decision that numerous of its activities should be non-chargeable, including: activities of standing committees to eliminate bias in the legal profession (e.g. the Ethnic Minority Relations Committee, Committee on Women in the Law, Committee on Sexual Orientation Discrimination, and the Committee on Legal Professionals with Disabilities); the bar leaders conference and mid-year meeting; various services to local bars and activities to maintain

relations with other bar associations; and lobbying on specified bills by the Bar and the Legal Services Section.

To comply with the *Brosterhous* judgment, the Bar has in subsequent years provided the legislatively imposed \$5 lobbying deduction and an additional \$5 deduction for bar relations and elimination of bias activities and has limited funding for these activities to either the voluntary fee paid by members not taking the deduction or other voluntary sources. These changes have allowed the State Bar to avoid subsequent challenges to its mandatory membership fees, as well as the economic and political costs of its original response to *Keller*.

## ii. Substantive Limitations: Support for Diversity Under Proposition 209

The California Civil Rights Initiative (Proposition 209) amended the state constitution to provide: “The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.” (Cal. Const., art. I, § 31(a).) This prohibition has been extended to include recruitment and outreach efforts aimed at increasing minority participation in public employment, education and contracting. (*Hi-Voltage v. City of San Jose* (2000) 24 Cal.4th 537.) Proposition 209’s definition of “state” includes “any . . . governmental instrumentality of . . . the state.” As a constitutional agency established in the judicial branch of state government and a public corporation established to perform governmental functions to further the administration of justice, the State Bar qualifies as a governmental instrumentality of the state. (Cal. Const., art. VI, § 9; Bus. & Prof. Code, §§ 6001 *et seq.*)

Although Proposition 209 does not define the phrase “in the operation of public employment, public education, or public contracting,” ballot materials in support of the initiative indicated that it would eliminate “affirmative action programs,” such as “scholarships, tutoring, and outreach targeted toward minority and women students.” (*See Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 182-83 [ballot pamphlet may properly be considered to show the intent of the voters in passing the initiative measure].)

This limitation raises the question of whether generating private money to fund diversity activities would shield the State Bar from the limitations of Proposition 209. However, the source of funding is not the sole decisive factor. Courts also look to the nature and extent of government oversight, regulation, control, and management. (*See Commonwealth of Pennsylvania v. Board of Directors of City Trust of City of Philadelphia* (1957) 353 U.S. 230 [private trust administered by the Philadelphia Board of Directors of City Trusts, wherein trust was left to Board to erect, maintain, and operate a college for white orphan boys, was found to be state action in violation of Equal Protection Clause]; *see also, Brentwood Academy v. Tennessee Secondary School Athletic Association* (2001) 531 U.S. 288, 296-99 [regulatory enforcement action by state interscholastic athletic association was state action for purposes of Fourteenth Amendment, despite association’s nominally private character, in light of pervasive entwinement of public institutions and public officials in its composition and workings].)

### **iii. Substantive Limits: The Equal Protection Clause**

The Equal Protection Clause also limits the State Bar's ability to sponsor diversity or elimination of bias programs. Under equal protection analysis, affirmative action programs that grant preferential treatment to minority applicants are analyzed under a strict scrutiny standard and are only permitted in restricted circumstances. Thus, they must be narrowly tailored to further compelling governmental interests. (*See Adarand Constructors, Inc. v. Pena* (1995) 515 U.S. 200, 227 [applying strict scrutiny].)

In the context of higher education, the United States Supreme Court and California Courts have held that diversity is a compelling government interest and that minority status may be considered in the college recruitment and admissions process, as long as it is not the predominant or decisive factor and individualized consideration is given to every applicant. (*See Grutter v. Bollinger* (2003) 539 U.S. 306; *Gratz v. Bollinger* (2003) 539 U.S. 244; *see also Regents of the University of California v. Bakke* (1978) 438 U.S. 265 [conc. opn. of Powell, J.]; *accord DeRonde v. Regents of the University of California* (1981) 28 Cal.3d 875, and *Smith v. University of Washington Law School* (9th Cir. 2000) 233 F.3d 1188.) Any such recruitment or admissions process will, however, be scrutinized to ensure that it is not merely "a subtle and more sophisticated... means of according racial preference" or merely "a cover for the functional equivalent of a quota system." (*Bakke, supra*, 438 U.S. at p. 318.)

Nonetheless, the developing body of case law which considers the compelling interest standard in the area of education leaves unsettled how diversity would be considered in other contexts, such as public employment or contracting. Even so, the current state of the law would seem to allow the conclusion that it is acceptable to use race or gender among many other factors in such programs, as long as individual consideration of each applicant can be shown. This view has been used to support a variety of Bar activities focused on improving access to justice by California's increasingly diverse population.

### **iv. Spending Limitations: Control Use of Funds by Public Entities**

All State Bar funds are public funds held for essential public and governmental purposes. (Bus. & Prof. Code § 6008; *Herron v. State Bar* (1944) 24 Cal.2d 5, 65; *Hill v. State Bar* (1939) 14 Cal.2d 732, 735.) Any public gift or waste of these funds is prohibited by article XVI, section 6 of the California Constitution and subject to a taxpayer's suit under Code of Civil Procedure section 526a. To determine whether a public expenditure constitutes either a gift or waste of public funds, the primary question is whether the expenditure serves a public purpose. (*See Albright v. City of South San Francisco* (1975) 44 Cal.App.3d 866, 869 [flat sum allowances for expenses incurred by a city councilman and mayor that were neither audited nor verified constitute an illegal gift of public funds].)<sup>17</sup>

So long as there is a reasonable basis to support the determination that the expenditure supports a public purpose, the determination will not be upset by the courts, even if private individuals also benefit. (*Paramount Unified School District v. Teachers Association of Paramount* (1994) 26 Cal.App.4th 1371, 1388; *Kizziah v. Department of Transportation* (1981)

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<sup>17</sup> In fact, this was the reason for action by the State Bar Board of Trustees at its March 11, 2015 meeting to eliminate a long-standing practice of allocating an 'allowance' to the State Bar President.

121 Cal.App.3d 11, 22.) However, if the benefit to private individuals is more than merely incidental to any public purpose, the expenditure is likely unlawful. (75 Ops. Cal. Atty. Gen. 20 (1992).) To be approved as supporting a public purpose, an expenditure's purpose must be associated with, and have a direct connection to, the fulfillment of an officer's own public duties. (87 Ops. Cal. Atty. Gen. 164 (2004) [expenditures of a city councilmember related to the Governor's inauguration must be related to performance of official duties].)

## **II. Functions of the State Bar**

When compared to other state bar organizations, the functions of the State Bar of California are noteworthy for their scope and diversity. Although all are designed and justified as efforts to support public protection, the character of the various State Bar activities might best be described as falling along a continuum which extends from regulation and discipline at one end to support for individual professional competence at the other, with a variety of statutorily mandated activities in between these two poles. The attached "Continuum of Activity Matrix" provides a graphic description of the State Bar's organizations according to their functional role. Some of these functions respond to attorney misconduct which harms public protection; other functions are efforts to prevent such problems.

### **a. Regulatory Functions**

#### **i. The Office of Admissions and the Committee of Bar Examiners**

The Office of Admissions is the "gate-keeper" of the profession and the administrative body within the State Bar which carries out the functions assigned to it by the Committee of Bar Examiners. The Office administers the Bar Examination and the First-Year Law Students' Examination, conducts applicant moral character investigations, accredits and registers law schools, and supports the Committee of Bar Examiners in its meetings and other activities. The Office of Admissions is fully funded by regulatory fees, such as applicant fees, law school accreditation and registration fees, customized admission certificates and interest income.

The Committee of Bar Examiners (Committee) is a standing committee of The State Bar of California and is composed of 19 members: 10 lawyers appointed by the Board of Trustees of The State Bar, three public members appointed by the Governor of California, three public members appointed by the Speaker of the Assembly and three public members appointed by the Senate Rules Committee. (Bus. & Prof. Code § 6046.) The Committee is authorized to examine all applicants, administer the requirements for admission to practice and to certify to the Supreme Court those who fulfill the admission requirements. (Bus. & Prof. Code § 6046.) The Committee generally meets six to eight times a year.<sup>18</sup> While the Committee maintains responsibility for certifying applicants for admission, it is the Supreme Court that exercises inherent and plenary authority to order admission to the practice of law in California. (Bus. & Prof. Code § 6064).<sup>19</sup>

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<sup>18</sup> The State Bar's Office of Admissions provides staff support to the Committee and carries out the daily work of the Committee.

<sup>19</sup> Any person refused certification for admission may have that determination reviewed by the Supreme Court. (Bus. & Prof. Code § 6066.)

In order to practice law in California, applicants must pass the California Bar Examination in addition to meeting the other requirements for admission. The Bar Examination consists of both a General Bar Examination and the Attorneys' Examination for out-of-state attorneys seeking admission in California. To qualify to take the Attorneys' Examination, attorneys must have been admitted to active practice of law in good standing in another United States jurisdiction for four or more years. For many years, the General Bar Examination has been a three-day test consisting of six one-hour essay questions, two three-hour performance tests and the Multistate Bar Examination, a 200 question multiple-choice test administered in two three-hour blocks. The Attorneys' Examination consists of the essay and performance test questions of the General Bar Examination. Beginning in 2017, the General Bar Examination will be shortened to a two-day test consisting of five one-hour essay questions, one 90-minute performance test, and the Multistate Bar Examination. In addition to passing the bar examination and receiving a positive moral character determination, applicants must also pass a separate Multistate Professional Responsibility Examination, which is developed, administered and graded by the National Conference of Bar Examiners, by receiving a scaled score of 86 or greater.

The First-Year Law Students' Examination is a one-day test consisting of four essay questions administered in a four-hour block and 100 multiple-choice questions administered in a three-hour block. The First-Year Law Students' Examination is statutorily required of all students seeking to qualify for the Bar Examination through non-ABA or non-California Accredited law school programs. This examination should be taken by those required to do so following the successful completion of one year of law study. Students required to pass the Examination must pass it within three administrations of becoming eligible to take it in order to receive credit for law study accumulated up to the point of passage. Those who pass it thereafter will receive credit for only one year of law study.

Annually the Office of Admissions processes approximately 7,500 moral character determination applications by applicants seeking admission to practice law in California. The staff of the Office of Admissions, pursuant to Committee policy and directives, and in conjunction with outside contractors and psychometricians, develops, administers and grades the California Bar Examination for approximately 14,000 applicants per year and the First-Year Law Students' Examination for approximately 1,000 applicants per year. Admissions also accredits 19 law schools in California that are not approved by the American Bar Association and has oversight for an additional 21 unaccredited law schools, which include 10 fixed-facility, 6 correspondence and 5 distance learning law schools in California. An additional 21 California law schools are accredited by the American Bar Association without State Bar involvement.

## **ii. Special Admissions Without Bar Membership**

### **1. Multi-Jurisdictional Practice**

Under California Rules of Court and State Bar Rules, non-California attorneys may practice law in California without becoming members of the State Bar for a limited purpose in four categories: legal services attorneys relocating to California to work for a qualified legal services provider; in-house counsel residing in California to work for a qualified institution;

attorneys practicing law temporarily in California as part of litigation; and non-litigating attorneys temporarily in California to provide legal services. According to Rules of Court 9.45 and 9.46, legal services attorneys and in-house counsel who reside in California must satisfy registration requirements and receive positive moral character determinations to perfect their registration status.<sup>20</sup> Registered Legal Services Attorneys and Registered In-House Counsel must pay the annual registration fees, demonstrate continuing good standing in California and their respective licensing jurisdictions and comply with the State Bar's MCLE requirements and other registration requirements. The State Bar administers these multi-jurisdictional practice programs.

## **2. Practice of Foreign Law**

The State Bar administers a program that certifies attorneys from foreign countries as Registered Foreign Legal Consultants ("RFLC") in California.<sup>21</sup> Registration allows the attorney to provide certain legal advice on the law of the foreign country in which the attorney is licensed. The RFLC is prohibited from providing legal advice on the law of California or any United States jurisdiction. RFLCs must file an annual report to demonstrate continuing good standing in their foreign jurisdiction, security for claims coverage and compliance with the governing authorities.

## **3. Admission for Appearance in Specific Matters**

Non-California licensed attorneys who intend to appear in California courts on particular cases must file a copy of a *pro hac vice* ("for this time only") application with the State Bar.<sup>22</sup> The Pro Hac Vice Program permits out-of-state attorneys to appear in a California court, but the State Bar does not actually admit the individual since that is solely within the power of the court. The State Bar merely administers and monitors the process.

The Out-of-State Attorney Arbitration Counsel (OSAAC) Program allows out-of-state attorneys to represent parties in the course of, or in connection with, non-judicial arbitration proceedings in California.<sup>23</sup> Non-California attorneys who intend to appear in a non-judicial California arbitration must file a copy of an application with the State Bar, but once again the State Bar does not admit the individual. Whether or not the attorney may participate in the arbitration is solely within the power of the arbitral panel.

Non-California attorneys serving in the military are also permitted to represent military personnel in California courts on a limited basis under a special procedure similar to *pro hac vice* program.<sup>24</sup>

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<sup>20</sup> These attorneys can practice law and provide services while their moral character applications are pending. (See Cal. Rules of Court, Rule 9.45(c) (3) (B) and Rule 9.46(c) (3) (B).)

<sup>21</sup> See Cal. Rule of Court 9.44; State Bar Rules 3.400 *et seq.*

<sup>22</sup> See Cal. Rule of Court 9.40.

<sup>23</sup> See Cal. Rule of Court 9.43.

<sup>24</sup> See Cal. Rule of Court 9.41.

#### **4. Practical Training of Law Students Program**

Law students can apply to become certified law students by submitting an application to the State Bar’s Practical Training of Law Students program.<sup>25</sup> This program allows supervised law students, certified by the State Bar, to negotiate and appear on behalf of clients in limited circumstances and to provide other limited legal services when under the supervision of an attorney.

##### **iii. Legal Specialization**

The State Bar administers a program under which attorneys can become certified as legal specialists.<sup>26</sup> Specialists, certified by the Board of Legal Specialization or an entity accredited by the State Bar, can advertise as “certified specialists.” Attorneys may be certified to specialize in the following twelve areas of law: admiralty and maritime; appellate; bankruptcy; criminal; estate planning, trust and probate; family; franchise and distribution; immigration and nationality; legal malpractice; taxation; and worker’s compensation. In order to be certified as a specialist, an attorney must pass a written examination, take a heightened level of continuing education in the specialty area, and undergo reviews made by their peers and judges. Certified specialists must recertify every five years. The State Bar accredits five other entities that may also certify attorneys as specialists in the following areas: business bankruptcy, civil trial advocacy, consumer bankruptcy, creditor’s rights, criminal trial advocacy, elder law, family trial advocacy, juvenile law (child welfare), legal malpractice, medical malpractice and social security disability law.

The Legal Specialization program is entirely self-funded through certification, recertification, annual and other fees. Office of Admissions staff supports the Board of Legal Specialization, the advisory commissions and consulting groups. The program produces several publications including a Legal Specialization Digest, consumer pamphlets in English and Spanish, and ads in the California Bar eJournal.

##### **iv. Law School Regulation**

California is unusual in the breadth of opportunities afforded those interested in studying law and gaining entrance to practice. The Office of Admissions is charged with the responsibility for overseeing the accreditation and registration of one group of California-accredited law schools, but an additional group of ABA approved law schools are exempt from this oversight. Admissions staff also oversees the process of registration of unaccredited and correspondence law schools in California.<sup>27</sup> Admissions staff monitors applications, reviews annual reports, conducts law school visitations and reports findings and recommendations to the Committee of Bar Examiners.

##### **v. Membership Registration and Support**

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<sup>25</sup> See Cal. Rule of Court 9.42.

<sup>26</sup> See Cal. Rule of Court 9.35.

<sup>27</sup> In addition to the “traditional” route of attending law school, applicants may also study law “diligently and in good faith” in a law office or judge’s chambers. See Bus. & Prof. Code § 6062(e); State Bar Rule 4.26.

The State Bar maintains, on behalf of the Supreme Court, the official “Roll of Attorneys,” that is, the official list of those attorneys who are licensed to practice law in the State of California. Upon admission to the practice of law in California, an attorney becomes a “member” of the State Bar. That “membership” or license to practice law is a public record accessible to the public by phone request or through the membership page on the State Bar’s website. Included in the public record is the member’s name, status, contact information, discipline record and other license information. Attorneys are statutorily required to keep the State Bar advised of any changes in their public membership information.<sup>28</sup> Member Records and Compliance also provides certificates verifying member status on request. Members may also apply for waivers of membership fees, as provided by rule.

Member Records and Compliance staff answer the dedicated Member Services Center phone line and email box, answering a broad range of member inquiries related to their licensing obligations. Member Records and Compliance also administers the Law Corporation and Limited Liability Partnership registration programs. Professional Corporation and LLPs that practice law in California must comply with applicable statutes and State Bar Rules. The programs monitor compliance with those administrative requirements.

### **1. Billing**

The Member Billing unit invoices and receives payments of the membership and other fees; answers member email inquiries; bills and receives assessed discipline proceeding costs, Client Security Fund reimbursements, Mandatory Fee Arbitration administrative penalties, and MCLE penalty fees. Member Billing processes Section membership fees, processes requests for transfer to active or inactive status, reinstates members suspended for nonpayment of membership fees/costs, processes donations.

### **2. MCLE**

By statute, California attorneys are required to take 25 hours of Minimum Continuing Legal Education (MCLE) every three years. Failure to comply with this requirement results in the attorney’s enrollment on Administrative Inactive status. Where misrepresentation is involved, cases of non-compliance may also be referred for possible discipline by the Office of Chief Trial Counsel. The MCLE unit within the Member Records and Compliance office monitors attorneys’ compliance with MCLE requirements, which includes performing MCLE compliance audits. Detailed information about the Minimum Continuing Legal Education program is available online, along with MCLE Rules, a list of approved providers, application forms, and FAQ’s.

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<sup>28</sup> An attorney’s membership or licensing status can change for a variety of reasons. Addresses change frequently and attorneys can be suspended from the practice of law for a variety of reasons: discipline, failure to pay annual licensing fees, failure to pay court ordered family support, or resignation. They can also transfer to voluntary inactive status, can resign, and their status also changes upon becoming a judge in a court of record.

## **b. Discipline System**

### **i. Attorney Discipline**

The State Bar's attorney discipline system plays a central role in the State Bar's mission of public protection. The Bar's discipline activities are the principal functions supported by the State Bar's annual fee bill. As described above, the system today relies on professional staffing, rather than volunteers as are commonly employed in other state discipline systems. California's discipline system is thus highly regarded and unusual among state lawyer discipline programs. The discipline system relies on complaints, referrals from others involved in the legal system, and "State Bar Initiated (SBI)" complaints based on news stories or other information that attorneys may have violated the professional standards that govern attorney conduct in California.

### **ii. Prosecution (Office of Chief Trial Counsel)**

The Office of Chief Trial Counsel (OCTC) is the prosecutorial arm of the State Bar's attorney discipline system. (*O'Brien v. Jones, supra*, 23 Cal. 4th at 52.) With over 150 employees, including attorneys, investigators, and administrative staff, OCTC processes an enormous number of attorney complaints. In 2014, OCTC received 16,024 new complaints and reportable actions. The Intake Unit processed 15,497 cases, with 3,791 referred to the Enforcement Unit for investigation and prosecuting discipline cases in the State Bar Court. The Enforcement Unit completed 3,648 investigations, with 1,084 of those having sufficient evidence to support a case for discipline against the attorney and resulting in the filing of formal charges in 1,008 cases.

By statute, the Chief Trial Counsel (CTC) is appointed by the State Bar's Board of Trustees, confirmed by the State Senate, and may serve up to two four-year terms. The CTC exercises independent authority in decisions on which cases to prosecute and reports to the Board of Trustees' Regulation Admissions and Discipline Oversight Committee (RAD). The CTC is responsible for the overall structure, goals and management of OCTC, subject to the resources managed and controlled by the Executive Director/Chief Executive Officer in conformity with Board policy.

OCTC's Intake Unit consists of complaint analysts, attorneys, paralegals, and support staff and is the initial contact point for the public to initiate a complaint against an attorney or non-attorney. The Intake Unit also provides public license status information and responds to general questions concerning attorneys and various State Bar programs. The State Bar maintains a toll-free 800 telephone line which incorporates an extensive "voice tree" to assist callers with common questions or problems. Complaints received by the Intake Unit are evaluated to determine if a violation of California's professional standards is involved. If a formal investigation is warranted, the file is transferred to OCTC's Enforcement Unit for Investigation. The Intake Unit also attempts to address, through education and informal mediation, matters which do not rise to the level of a formal investigation. Finally, the Intake Unit processes the information that attorneys must self-disclose under Business and

Professions Code Section 6068(o)<sup>29</sup> or that courts, banks, and professional liability insurers, must report to the State Bar<sup>30</sup> (Reportable Actions).

The Enforcement Unit consists of investigators, attorneys, paralegals and support staff. Investigators investigate matters and consult with Enforcement attorneys throughout the investigation. If a matter is not resolved at the investigation stage, an Enforcement attorney will prepare a formal Notice of Disciplinary Charges (NDC) to be filed in State Bar Court. If the matter is not resolved prior to filing the NDC, formal State Bar Court proceedings commence upon the filing date of the NDC. Only then does a proceeding become public; all records and information not part of the public proceeding remains confidential.

The Enforcement Unit is also responsible for the prosecution of conviction referral matters, probation referral matters, and other regulatory proceedings within OCTC's jurisdiction. The Enforcement Unit also handles proceedings pertaining to reinstatement to the practice of law following disbarment or resignation and moral character proceedings involving applicants for bar admissions. The Unit is also responsible for presenting matters on appeal before the Review Department of the State Bar Court.

OCTC also administers the State Bar's Ethics School, Client Trust Account School, and coordinates efforts to address the disposition of client files abandoned by deceased or missing attorneys under Business and Professions Code Sections 6180 and 6190, as well as by non-attorneys under Business and Professional Code Section 6126.3.

### **iii. State Bar Court Adjudication**

Since 1989, the State Bar Court has been composed of eight full-time judges appointed by the California Supreme Court, legislature and governor. The court is divided into two departments — a Hearing Department and a Review Department, headed by a presiding judge. The State Bar Court serves as the system's independent adjudicative body, a court of special jurisdiction under the California Supreme Court.

In 2000, the State Bar entered its second decade as the nation's first (and only) fully professionalized attorney disciplinary and regulatory court. Other systems rely on volunteer adjudicators. The State Bar Court has authority to impose public and private reprovings on California attorneys who have been found to have violated the governing standards. The State Bar Court may also recommend the imposition of more severe discipline, such as suspension or disbarment, to the California Supreme Court. The Supreme Court may accept the State Bar Court's recommendation, modify it, or return the matter to the State Bar Court for further hearing.

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<sup>29</sup> Attorneys are required to report to the State Bar, within 30 days, certain events, which include, among many others: if they have been subject to three or more lawsuits over a 12-month period for malpractice or other professional misconduct; if judgment was entered against the attorney in a civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity; imposition of judicial sanctions except if the sanction is less than \$1,000; the attorney has been indicted or charged with a felony; the attorney has been convicted of a felony, or a misdemeanor committed in practice of law. (Bus. & Prof. Code § 6068(o).)

<sup>30</sup> Bus. & Prof. Code §§ 6086.7, 6086.8, 6091.1.

The State Bar Court's trial level Hearing Department is comprised of five full-time judges (three in Los Angeles and two in San Francisco). The Supreme Court appoints two judges of the Hearing Department and the Governor, Speaker of the Assembly and Senate Committee on Rules each appoint one hearing judge. In contrast, all three members of the appellate level Review Department (Presiding Judge and two review judges) are appointed by the Supreme Court. The State Bar Court operates as the judicial arm of the discipline system and independently hears and makes its decisions.<sup>31</sup>

#### **iv. Probation Department**

The Probation Department reports to the Chief Administrative Officer of the State Bar Court, but functions separately from the State Bar Court itself. It monitors the probationary compliance of disciplined attorneys pursuant to orders issued by the California Supreme Court and the State Bar Court. If the Probation Department has reasonable cause to believe that a member has violated a condition of probation, it may charge a probation violation in probation revocation proceedings in State Bar Court. The State Bar Court may recommend actual suspension equal to or less than the period of stayed suspension. In the alternative, OCTC may charge a probation violation in an original proceeding based on a member's violation of Business and Professions Code section 6086(k) which states that a member has a duty to comply with all conditions of probation. It also monitors compliance with rule 9.20 of the California Rules of Court and with Agreements in Lieu of Discipline.

#### **v. Client Security Fund**

California's attorney discipline system protects the public by disciplining or removing from practice those lawyers found to have violated the Rules of Professional Conduct. However, it offers no compensation for losses incurred by the individual clients who have been harmed. To address this problem, the Client Security Fund (CSF) was established in 1972 to reimburse clients for losses caused by an attorney's dishonest conduct. (*See* Bus. & Prof. Code § 6140.5.) CSF offers protection for the actual victims of attorney fraud, theft or their equivalent by providing reimbursement of up to \$100,000. CSF is financed by an annual statutory assessment paid by all licensed California attorneys in addition to their annual membership fee. In a typical year CSF processes over 1,000 applications and pays out over \$5,000,000 in reimbursements. In recent years, applications to CSF have increased as a result of the loan modification crisis where attorneys failed to refund unearned fees when the lawyer performed no work. The Board of Trustees appoints the Client Security Fund Commission, an independent seven member volunteer body (four lawyers and three public members), which reviews applications and makes reimbursement recommendations. The program is administered by the Chief Administrative Officer of the State Bar Court.

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<sup>31</sup> Business and Professions Code section 6086.5 required the Board of Trustees to establish the State Bar Court to "act in its place and stead" and to exercise the powers and authority previously vested in the board in attorney disciplinary matters, except as may be limited by rules adopted by the board. The State Bar also provides the State Bar Court with administrative support, along with providing the facilities for the State Bar Court.

#### **vi. Attorney Diversion Program (LAP)**

The Lawyer Assistance Program (LAP) is a statutory program that provides confidential and comprehensive help to current or inactive members of the State Bar whose personal or professional life is affected by substance abuse or mental health issues. It is funded by a mandatory fee assessment paid by California attorneys. (Bus. & Prof. Code § 6140.9.) A twelve-person volunteer committee oversees the LAP which offers individual counseling, referral, consultation, arrangements for treatment, and support groups. Attorneys may self-refer into the Program or may be referred by friends, family, the judiciary, or State Bar discipline. The LAP reports to the Chief Administrative Officer of the State Bar Court.

#### **vii. Fee Arbitration**

Pursuant to Business & Professions Code Sections 6200-6206, and with the assistance of the State Bar's Standing Committee on Mandatory Fee Arbitration, the State Bar administers a statewide program for the arbitration of fee disputes between attorneys and their clients. In addition to processing requests for arbitration through the State Bar's own arbitration program, the State Bar also oversees and provides guidance to over 35 local bar association fee arbitration programs statewide. The office provides information to participating attorneys and clients concerning their respective rights and obligations under the mandatory fee arbitration program.

By statute, the State Bar has exclusive jurisdiction to enforce arbitration awards against attorneys after an award has become binding and final. This is accomplished through assessment of administrative penalties or initiation of a State Bar Court proceeding which may compel the involuntary inactive status of attorneys who fail to respond to a client's enforcement request. The Mandatory Fee Arbitration Program reports to the Chief Administrative Officer of the State Bar Court.

#### **c. Other Preventive Public Protection Programs**

A number of State Bar activities are based on preventative approaches to achieve public protection and are variously designed to support the professional competence of licensed lawyers, to assure the sound functioning of the legal system or to identify and correct problems before they occur.

##### **i. Judicial Nominations: The JNE Commission**

The quality of California's judiciary is critical to the success of its legal system and since 1979 California state law has required that all judicial appointments under consideration by the Governor be evaluated by an agency created by the State Bar (Government Code Section 12011.5). The Board of Trustees has assigned this responsibility to the independent Commission on Judicial Nominees Evaluation (the JNE Commission). By law JNE must include attorneys and public members representing a broad cross-section of California's diverse legal profession and general population. The volunteer commission cannot nominate or appoint judges; it does,

however, thoroughly investigate California’s judicial candidates while maintaining a code of strict confidentiality.

Before the JNE Commission’s creation in 1979, the State Bar’s Board of Trustees itself evaluated judicial candidates as a matter of practice, but not requirement. The commission was formed to help ease the burgeoning load of trial court evaluations. Legislators codified the commission’s role after the then Lieutenant Governor, acting as Governor in the absence of Governor Jerry Brown, made a judicial appointment (later rescinded by the Governor). Government Code Section 12011.5 now requires the Governor to submit the names of all judicial candidates to the JNE Commission for review within ninety days.

To gauge a candidate’s judicial qualifications, the commission considers the following qualities of each candidate in a confidential process:

impartiality, freedom from bias, industry, integrity, honesty, and broadly defined legal experience (*e.g.*, litigation and non-litigation experience, legal work for a business or nonprofit entity, experience as a law professor or other academic position, legal work in any of the three branches of government, and legal work in dispute resolution); professional skills; intellectual capacity; judgment; community respect; commitment to equal justice; judicial temperament; communication skills; and job-related health.

Two commissioners (one of whom is a public member) are assigned to investigate each candidate for a trial court appointment; three commissioners (one of whom is a public member), investigate each candidate under consideration for an appellate or Supreme Court appointment.

The JNE commissioners conduct a comprehensive review of all nominees, which also includes a personal interview by the investigating team.<sup>32</sup> At the conclusion of their review, JNE rates each candidate as either exceptionally well qualified, well qualified, qualified or not qualified. Neither the rating, nor information gathered during the investigation, is public. However, if a candidate is found not qualified, and the Governor then appoints that candidate to a trial court, the State Bar may publicly disclose that fact. Additionally, for nominees to the Court of Appeal or the Supreme Court, the commission makes a report at the public hearing of the Commission on Judicial Appointments for each candidate regardless of the rating.

## **ii. Professional Advice and Ethics Guidance: The Office of Professional Competence**

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<sup>32</sup> JNE verifies information in the candidate’s “Application for Appointment,” and queries hundreds of lawyers and judges with confidential comment forms to gain knowledge about candidates’ qualifications from those who know them, including:

- The candidate’s personal list of 50 to 75 people with knowledge of his or her qualifications;
- A random broad cross-section of lawyers in the counties and areas of the law of a candidate’s practice;
- Judges from the candidate’s county of practice and potential place of appointment; and
- District attorneys and public defenders (if the candidate is in criminal practice).

The commission must receive at least 50 knowing responses from the mailings. If the commissioners have preliminarily found any criticisms of the candidate to be substantial and credible, they are required to notify the candidate not less than four business days before the interview, thus providing a chance to respond.

As noted, the State Bar’s public protection activities go beyond individual responses to attorney misconduct to include broadly available preventative efforts to help lawyers meet their ethical and professional obligations. The Office of Professional Competence (OPC) within the State Bar Office of General Counsel administers a variety of programs and activities to facilitate lawyer compliance with professional conduct standards. It also staffs the Board of Trustees, its Board Committees, special commissions, and task forces in developing amendments to the Rules of Professional Conduct and other laws governing lawyer behavior.

OPC’s main program is the State Bar’s Ethics Hotline, a telephone ethics information and research service for lawyers. On average, about 1,500 calls are handled monthly. The Ethics Hotline data reveals that most inquirers are from firms with ten or less lawyers. While legal advice is not provided, lawyers are equipped to pursue a thorough analysis of the law in order to make their own informed decisions on how to proceed in a professionally responsible manner. The Supreme Court has described the Ethics Hotline as playing “an important role” that “save[s] costs to the overall [discipline] system and reduce[s] delay in the processing of cases by avoiding the filing of additional complaints.” (*In re Attorney Discipline System* (1998) 19 Cal.4th 582, 623.)

The OPC also staffs the volunteer Committee on Professional Responsibility and Conduct (COPRAC), which issues advisory ethics opinions on issues involving attorney conduct. While COPRAC opinions are non-binding, they are highly regarded and have been cited in court decisions. OPC also staffs the Commission on the Revision of the Rules of Professional Conduct that develops proposed revisions to the Rules of Professional Conduct and, as assigned by the Board, staffs other groups that study issues concerning the rules.

OPC administers various educational programs. These include the State Bar’s Annual Statewide Ethics Symposium; local and specialty bar association outreach programs; and several MCLE programs presented at the State Bar Annual Meeting by COPRAC and others, such as the American Inns of Court. Additionally, the office is responsible for several publications aimed at enhancing attorney professional conduct including: The California Rules of Professional Conduct and State Bar Act booklet; the California Compendium on Professional Responsibility; and the Handbook on Client Trust Accounting for California Attorneys. The office also maintains the Ethics Information Online page of the State Bar’s Website which contains a comprehensive collection of professional responsibility resources and information targeted on topics such as ethics and technology, senior lawyer ethics, client trust accounting, and civility/professionalism.

### **iii. Support for the Legal System: The Office of Legal Services**

In 2015 the Board of Trustees passed a resolution affirming that “equal justice and the fair administration of justice are cornerstones of our democracy, core functions of our government, and fundamental components of the State Bar’s mission of public protection.”<sup>33</sup> The Office of Legal Services (OLS) leads this work for the State Bar. Its focus is to expand, support, and improve the delivery of legal services to low and moderate income Californians, which it does through the administration of a variety of grant funds and other programs.

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<sup>33</sup> Resolution In Support of Increased Funding for Legal Services, State Bar of California, May 9, 2015.

OLS has two divisions: the Legal Services Trust Fund Program and the Center on Access to Justice. The Trust Fund Program is the OLS grant making arm, while the Center focuses on public policy initiatives, education and training, and other programs that promote access to justice.

## 1. Legal Services Trust Fund Program

As the OLS grant-making body, the Legal Services Trust Fund Program (LSTFP), is responsible for the administration and management of grant funds of approximately \$25-\$30M annually. The LSTFP distributes these funds to nearly 100 nonprofit legal aid organizations that provide free legal services in civil matters to low-income Californians. The Trust Fund Program staff work with the all-volunteer Legal Services Trust Fund Commission to determine grant applicant eligibility, monitor recipient compliance, and maximize revenue.<sup>34</sup>

The funds administered and distributed by the LSTFP come from a variety of sources. These include Interest on Lawyers Trust Accounts (IOLTA),<sup>35</sup> the Equal Access Fund (EAF) in the annual Court budget;<sup>36</sup> the Justice Gap Fund, a voluntary opt-in provision in the annual lawyer licensing fee;<sup>37</sup> funding from a second voluntary opt-out donation line in the annual licensing fee;<sup>38</sup> *cy pres* awards; and other legal settlements.<sup>39</sup>

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<sup>34</sup>The Legal Services Trust Fund Commission is comprised of 21 volunteer voting members (15 lawyers and six public members who have never been members of the State Bar or admitted to practice before any court in the U.S.) and three non-voting judges. At least two of the 21 voting members must be client members (those eligible for services as “indigent persons” as defined at section 6213(d) of the Business and Professions Code). The State Bar Board of Trustees appoints 14 voting members (10 lawyers and four non-lawyer public members). The remaining seven voting members (five lawyers and two public members) and the three non-voting judges are appointed by the Chair of the Judicial Council.

<sup>35</sup> Under Business & Professions Code Section 6210 *et seq.*, attorneys who handle funds that are either so small or held so briefly that they cannot earn interest for the benefit of the client, must deposit those funds in a pooled Interest on Lawyers Trust Account. Banks remit the revenue from these accounts to the State Bar for distribution, according to a statutory formula, to nearly 100 qualified nonprofit legal aid organizations across the state. Before the recession, interest from IOLTA accounts sometimes exceeded \$20 million per year. Since the recession, it has remained historically low—around \$5 million per year. Since 1984, the Trust Fund Program has distributed nearly \$400 million in IOLTA revenue.

<sup>36</sup> The Equal Access Fund (EAF) is a \$10 million annual general appropriation for legal services that, since 1999, has been included in the California court budget. In 2005, the EAF was supplemented with \$4.80 from initial civil filings, increasing the EAF by approximately \$4-\$6 million annually depending on the number of filings. One of the most innovative aspects of the Equal Access Fund has been the Partnership Grant Program, in which ten percent of the funds are designated for nonprofit legal aid providers to operate self-help projects in collaboration with local courts. These partnerships were designed to help local courts respond to the growing numbers of self-represented litigants in courts throughout the state. A major side benefit of the Partnership Grant Program has been the establishment of close working relationships between many of the projects and the courts that they serve, allowing both courts and legal aid providers to address systemic barriers to access to justice in a more efficient and effective manner.

<sup>37</sup> The Justice Gap Fund authorizes the State Bar to solicit contributions from its members to support free legal services for low-income Californians. Annually, through a suggested donation of \$100 on the member dues bill, the State Bar collects approximately \$850,000- \$1 million in Justice Gap contributions.

<sup>38</sup> Since 2011, in addition to the “opt-in” Justice Gap contribution noted above, a voluntary “opt-out” contribution for legal services has been included on the annual member dues bill. The amount was \$10 in 2011, \$20

In addition to grants management, the Trust Fund Program is responsible for educating and providing assistance to attorneys and banks regarding IOLTA requirements, and monitoring attorney and bank compliance with those requirements. Currently 217 banks participate in the IOLTA program with over 47,000 accounts involved.

The Trust Fund Program also supports efforts to increase revenue by seeking voluntary donations to the Justice Gap Fund; educating banks about legal aid; encouraging banks to increase rates on IOLTA accounts; and staffing the Campaign for Justice to create broad support for legal aid through coordinated communication strategies.

Administration of the Legal Services Trust Fund Program is fully funded by IOLTA revenue and a share of administration fees from the Equal Access Fund.

## **2. Center on Access to Justice**

Within the Office of Legal Services, it is the Center on Access to Justice that bears responsibility for increasing access to justice through public policy initiatives, education and training, and other programs. These efforts include encouraging increased pro bono participation; designing and facilitating free high-quality substantive and skill-based training for legal services lawyers, pro bono counsel, and other advocates on a variety of topics; administering the Lawyer Referral Service (LRS) certification program and bilingual hotline; and providing staff support to two volunteer entities—the California Commission on Access to Justice<sup>40</sup>, and the Standing Committee on the Delivery of Legal Services (SCDLS)<sup>41</sup>.

The training courses that the Center designs and/or facilitates reach thousands of lawyers each year using a variety of platforms, including in-person trainings, webinars, and on demand programs. The Center works closely with the Practicing Law Institute (PLI) to deliver many of these trainings. Recent courses include classes on the following topics: ethics and pro bono, providing legal aid in the aftermath of disaster, advocating for veterans, overview of Proposition 47, introducing social media into evidence, and limited scope representation.

Every three years, the Center hosts the Pathways to Justice conference, in partnership with the Legal Aid Association of California (LAAC) and the Equal Access Project of the Judicial Council (EAP/JC). Pathways to Justice is the only statewide training and networking event for California's access to justice community. The conference is attended by approximately

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in 2012 & 2013, \$30 in 2014, and \$40 in 2015. In 2015, we received over \$6 million in contributions from the \$40 opt-out.

<sup>39</sup> Currently, the State Bar is administering approximately \$50 million in new grants for foreclosure prevention legal assistance and community economic redevelopment legal assistance. These funds are the result of recent settlements between the U.S. Department of Justice and Bank of America and Citigroup.

<sup>40</sup> The Commission consists of 26 members, lawyers, judges, academics, business, labor and community leaders, who serve no more than two three year terms. The State Bar appoints 10 and the remaining members are appointed by various statewide entities. The Commission was established to explore ways to improve access to civil justice for Californians of low and moderate income. It also works closely with the Judicial Council to improve access to the courts.

<sup>41</sup> The Standing Committee on the Delivery of Legal Services is a 20 member committee which works to improve the delivery of legal services to low and moderate income Californians through a variety of educational, training and award recognition programs.

300 legal services lawyers, pro bono attorneys, court staff and judges, law professors, bar leaders, and other justice partners.

Through the Center's Lawyer Referral Service website and bilingual hotline, the State Bar provides legal referral information to thousands of Californians each year. In 2015, over 45,000 people called the hotline which directs individuals to lawyer referral services, legal aid programs, and other legal resources available in the callers' local communities.

As noted above, the Center staffs the California Commission on Access to Justice. The Commission was established in 1997 to pursue long-term structural improvements in California's civil justice system so that it is truly accessible for everyone. Among other things, the Commission has been instrumental in establishing the Equal Access Fund, and creating or promoting other significant access initiatives, such court self-help centers, limited scope representation risk management materials, and seeding modest means incubator projects.

The Center's work with the Access Commission involves developing and steering the Commission's priorities and agenda, providing substantive expertise and research, drafting Commission publications, and managing the volunteer commissioners. The Access Commission is the principal vehicle through which the State Bar advances its access to justice work.

In addition to staffing the Access Commission, the Center staffs the Standing Committee on Delivery of Legal Services (SCDLS), a volunteer, advisory committee that works on increasing access to justice by identifying ways to improve the delivery of legal services to low-and-moderate-income individuals. SCDLS also promotes greater pro bono participation.

The Commission and Standing Committee serve complementary roles. While the Access Commission is a high level policy body of a cross-section of individuals with the ability to leverage other stakeholders, SCDLS is an "on-the-ground" group, well positioned to identify specific ways to improve the justice system on a day to day basis.

Finally, in addition to the activities described above, the Center itself routinely engages in high level collaboration with the Judicial Branch, the legal aid community, and with national access to justice and pro bono efforts. Center staff also lead and/or support Board-initiated access to justice special projects (e.g., Civil Justice Strategies Task Force).

#### **iv. Support for the Legal System: The Office of Governmental Affairs**

The State Bar and its 16 Sections are available to provide technical advice on legislative initiatives to Legislators and the Governor upon request. The Office of Governmental Affairs serves as the liaison between the State Bar and the Legislative and Executive Branches of Government for this purpose and coordinates the provision of technical assistance and information by the State Bar Sections on issues where their practice experience and professional expertise are relevant.

The office also identifies and tracks legislation which affects or may otherwise be of interest to the State Bar itself. It advocates positions of the State Bar's Board of Trustees only on significant non-ideological issues related directly to the Bar's functions, the ethical duties of

attorneys, consumer protection relating to the practice of law by lawyers and non-lawyers, increasing access to legal services for the people of California, maintaining and improving the operation of the state's judicial/dispute resolution system, and related issues dealing with the administration of justice. The office performs similar tasks for the State Bar Sections, promoting non-ideological section-sponsored legislation and positions. All of these activities are funded entirely through voluntary funds.

The Office of Governmental Affairs is also responsible for supporting the State Bar's three following voluntary Standing Committees:

- Administration of Justice,
- Alternative Dispute Resolution,
- Appellate Courts and Federal Courts.

Additionally the Office maintains a close liaison relationship with the Government Affairs Office of the Judicial Council and its many Advisory Committees on the "administration of justice," rule and procedure revisions, court reforms and related initiatives. These activities, too, are funded entirely through voluntary funds.

#### **d. Support for the Profession: Office of Education**

Believing that preventative public protection also includes service to the individual professional, the State Bar also supports a variety of programs designed to promote responsibility and competence which support its members and are administered by the Office of Education.

##### **i. Sections of the State Bar**

The Office of Education administers The Council of State Bar Sections and its 16 member sections (Antitrust, Unfair Competition Law and Privacy; Business Law, Criminal Law, Environmental Law, Family Law, Intellectual Property Law, International Law, Labor and Employment Law, Law Practice Management and Technology, Litigation, Public Law, Real Property Law, Solo and Small Firm, Taxation, Trusts and Estates, Workers' Compensation), along with the California Young Lawyers Association. The Office supports the sections' volunteers in their work to provide substantive and administrative assistance through educational programs, publications, meetings and related events, in accordance with their voluntary funding requirements. By statute, the Sections are required to be fully self-sustaining, although their annual voluntary membership fee is included as a check off as part of the State Bar's annual licensing fee statement. (Bus. & Prof. Code § 6031.5.)

##### **ii. Other Educational Activities**

The Office of Education staffs and coordinates Section Education programs throughout the year, as well as planning, staffing and administering the State Bar's Annual Meeting each fall and the annual June State Bar Solo and Small Firm Summit. The Office also coordinates the State Bar's own continuing education provider activities—separate and distinct from the MCLE Certification program which certifies MCLE Compliance.

### **iii. Insurance Programs**

To assist members in responsibly managing their own affairs, the State Bar sponsors eight Insurance Programs. These programs are monitored by Standing Committees of the State Bar comprised of volunteer attorney members who work with insurance carriers and underwriters to identify reasonably priced, high quality and competitive products and monitor carrier performance for each.<sup>42</sup>

### **III. Oversight of the State Bar of California**

Although established as an independent governmental agency within the judicial branch of state government, the State Bar is subject to significant oversight. All of its activities are subject to review by the State Supreme Court and, in addition, the annual process of reauthorization of the State Bar's annual licensing fee offers a continuing opportunity on an annual basis for legislative review of State Bar activities. This legislative review has frequently produced significant structural changes; one example is the creation of the position of Discipline Monitor in 1986. More recently, in 2011 the Legislature enacted Business and Professions Code section 6001.2 (Stats. 2011, ch. 417, 2.5, later amended) to create a triennial Task Force on Governance in the Public Interest, beginning in 2014, to review the State Bar's activities to insure their effectiveness in achieving public protection. The Legislature has also required annual fiscal audits, as well as periodic performance audits by the State Auditor. Recommendations made by these periodic audits often are incorporated in subsequent years as statutory mandates. Finally, in 2015 the Legislature made the State Bar subject to both the open meeting requirements of the Bagley-Keene Act and the public records requirements of the California Public Records Act.

### **IV. Conclusion**

The State Bar of California is unusual for its size, complexity, special features and leadership role among state bar organizations nationally. Hopefully this review will provide helpful information to those interested in its successful functioning now and in the future.

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<sup>42</sup>Examples of insurance products offered include workers' compensation, accidental death & dismemberment, disability insurance, long-term care insurance, professional liability insurance, and health care programs.

# Appendix B

## California Business and Professions Code Section 6001.2



California Business and Professions Code Section 6001.2:

(a) On or before February 1, 2013, there shall be created within the State Bar a Governance in the Public Interest Task Force comprised of 7 members, including 6 members appointed as provided herein and the President of the State Bar. Two members shall be elected attorney members of the board of trustees who are selected by the elected attorney members, two members shall be attorney members of the board of trustees appointed by the Supreme Court who are selected by the Supreme Court appointees, and two members shall be public members of the board of trustees selected by the public members. The president shall preside over its meetings, all of which shall be held consistent with Section 6026.5. (b) On or before May 15, 2014, and every three years thereafter, the task force shall prepare and submit a report to the Supreme Court, the Governor, and the Assembly and Senate Committees on Judiciary that includes its recommendations for enhancing the protection of the public and ensuring that protection of the public is the highest priority in the licensing, regulation, and discipline of attorneys, to be reviewed by the Assembly and Senate Committees on Judiciary in their regular consideration of the annual State Bar dues measure. If the task force does not reach a consensus on all of the recommendations in its report, the dissenting members of the task force may prepare and submit a dissenting report to the same entities described in this subdivision, to be reviewed by the committees in the same manner. (c) The task force shall make suggestions to the board of trustees regarding possible additions to, or revisions of, the strategic plan required by Section 6140.12. In addition, the task force shall also make suggestions to the board of trustees regarding other issues requested from time to time by the Legislature. (d) This section shall become operative on January 1, 2013.



# Appendix C

## Task Force Members and Biographies



## **Members, Governance in the Public Interest Task Force**

David Pasternak, Chair – President, Board of Trustees  
Joanna Mendoza, Elected, District 5, Board of Trustees  
Danette Meyers, Elected, District 2, Board of Trustees  
Miriam Krinsky, Supreme Court Appointee, Board of Trustees  
Jason Lee, Supreme Court Appointee, Board of Trustees  
Dennis Mangers, Public Member (Senate), Board of Trustees  
Gwen Moore, Public Member (Assembly), Board of Trustees



### **David Pasternak, Chair – President, Board of Trustees**

David Pasternak was sworn in as the State Bar’s 91st president in October 2015. Pasternak’s work on the Board of Trustees has included serving as an active member of multiple committees and task forces, including the Executive Committee; the Regulation, Admissions and Discipline Oversight Committee; Senior Lawyers Working Group; Planning and Budget Committee; and the Task Force on Admissions Regulation Reform. He also chaired the Stakeholders and Access to Justice Committee and, among other things, co-led the board oversight of the State Bar’s Case Management System and Board Book revision projects.

Pasternak, of Pasternak & Pasternak in Los Angeles, previously served as president of the Los Angeles County Bar Association, president of Bet Tzedek Legal Services and president of the Chancery Club. He also chaired a Los Angeles City Council advisory committee and dozens of committees for an array of bar associations, including the Beverly Hills Bar Association, the Los Angeles County Bar Association, the Association of Business Trial Lawyers and the American Bar Association. He is the first Supreme Court appointee to the board.

Pasternak earned a bachelor’s degree from the University of California at Los Angeles and a law degree from Loyola Law School in Los Angeles.



### **Joanna Mendoza, District 5, Board of Trustees**

Joanna R. Mendoza, of Granite Bay was deemed elected to the State Bar Board of Trustees from District 3 in 2013 and reelected in 2016. She is a sole practitioner who specializes in intellectual property and general and complex business litigation. Ms. Mendoza has volunteered with various State Bar groups for 10 years, including serving as chairwoman of the Intellectual Property Law Section and as co-chairman of the Council of State Bar Sections. Joanna Mendoza earned her bachelor’s degree from the University of California, San Diego and a law degree from UC Berkeley School of Law with the help of grants.



**Danette Meyers, District 2, Board of Trustees**

Danette Elizabeth Meyers is a prosecutor in the Los Angeles County District Attorney's Office. Meyers received her undergraduate degree from the University of California San Diego and her law degree from Howard University School of Law in Washington, D.C. She was president of the Los Angeles County Bar Association in 2008 and has served on the board of directors for the Association of Deputy District Attorneys. She was elected by attorneys in District 2 (Los Angeles, San Luis Obispo, Santa Barbara and Ventura counties) to serve a three-year term.



**Miriam Krinsky, Supreme Court Appointee, Board of Trustees**

Miriam Aroni Krinsky is an educator, a public advocate for juvenile justice and child welfare, and a former federal prosecutor. She teaches child welfare policy and juvenile law to graduate students at the University of California at Los Angeles School of Public Policy and to law students at Loyola Law School in Southern California. She is a member of the Judicial Council's Blue Ribbon Commission on Children in Foster Care and a Policy Consultant to The California Endowment.

She recently served as Executive Director of the Los Angeles County Citizens' Jail Commission and as Executive Director of the Children's Law Center of Los Angeles. Before that, Ms. Krinsky was a federal criminal prosecutor in the Los Angeles U.S. Attorney's Office, where she served as chief of the general crimes and criminal appellate sections, as chair of the solicitor general's national appellate advisory group, and received the Department of Justice John Marshall Award for her appellate work.

In addition, Ms. Krinsky has previously served as president of the Los Angeles County Bar Association and as chair of the California Bench-Bar Coalition. She was appointed as a voting member to the Judicial Council of California in 2009 and served on a number of the council's internal committees. She recently worked with the Administrative Office of the Courts' Center for Families, Children and the Courts as a special consultant on the creation of the statewide Child Welfare Council. She has testified extensively before legislative, governmental, and judicial bodies, authored numerous articles, and lectured nationwide on criminal law, child welfare, and appellate issues.

Ms. Krinsky graduated with a B.A. from University of California, Los Angeles, summa cum laude, and received her J.D., Order of the Coif, also from University of California, Los Angeles.

**Jason Lee, Supreme Court Appointee, Board of Trustees**

Jason Lee is an attorney with the U.S. Securities and Exchange Commission in Los Angeles specializing in securities litigation, regulation and enforcement. Previously, he was in private practice at Shartsis Friese LLP in San Francisco, where he was co-chairman of the securities enforcement defense group.



Lee is the former chair of the Commission on Judicial Nominees Evaluation, which vets candidates who are under consideration for judicial appointment by the governor. He has also been active in bar association and legal aid activities, including the Asian Pacific Bar Association of Southern California, the Asian American Bar Association of the Greater Bay Area and the Asian Law Caucus, where he served on the pro bono lawyer panel as lead counsel on a number of immigration matters.

Lee has a bachelor’s degree in economics from the University of California, Los Angeles and a law degree from Santa Clara University School of Law. He also earned a master of laws, with distinction, in securities and financial regulations from Georgetown University Law Center.



**Dennis Mangers, Public Member (Senate), Board of Trustees**

Dennis Mangers, a one-time teacher with a long history in Sacramento as an Assembly member, political adviser and lobbyist, appointed as a public member of the State Bar Board in August 2010 to fill vacancy; reappointed to a full 3 year term in September 2010; and reappointed to a third 3 year term in September 2013.

Mangers was senior adviser to Senate President Pro Tem Darrell Steinberg, who appointed him. Before working for Steinberg, Mangers served from 1981-2008 as principal lobbyist, senior vice president and then president of the California Cable & Telecommunications Association. A graduate of California State University, Long Beach, with a master’s degree in Educational Administration from the University of Southern California, Mangers began his career as a teacher and principal. He served in the Assembly from 1976 to 1980, representing the 73rd Orange County district as a Democrat.



**Gwen Moore, Public Member (Assembly), Board of Trustees**

Ms. Moore, a former assemblyperson, is a public member appointed in 2009; reappointed in July 2010 to a second 3 year term; and reappointed in October 2013 to a third 3 year term.

Moore was majority whip in the Assembly, where she served for 16 years. She served on such committees as revenue and taxation, finance and insurance, education, governmental organization and higher education. As author of the Moore Universal Telephone Service Act, she secured the availability of telephone service to all Californians.

She is founder and president of the Community Education Organization, a community service foundation that offers after-school programs in Los Angeles, and is the founding chair of ZeroDivide, which awards grants to community-based organizations to increase access to information and communications technology. In addition, she has been an active member and leader of both the National Conference of State Legislators and the National Black Caucus of State Legislators.

Moore has been director of public affairs and director of personnel with a community action agency in Los Angeles and also has taught at the community college level. Her first elected public office was as member of the Los Angeles Community College District Board.

Moore is founder and president of GeM Communications Group in Los Angeles, Moore advises clients on legislative and regulatory issues, and develops public affairs and legislative strategies.

# Appendix D

## Summary of Prior Reports on the State Bar



## **Monterey Committee on The Structure of the State Bar of California (July 10, 1980)**

The *Monterey Committee on The Structure of the State Bar of California* ("The Committee") spent one and a half years in researching, studying and debating the organization and performance of the State Bar. A body independent of the State Bar, it was formed in February 1979 with a resolution of the Conference of Bar Presidents, later augmented by action of the Conference of Delegates in response to resolutions by several of California's large urban voluntary bar organizations. It conducted its work through the efforts of six subcommittees, each with a specific focus on a functional area of the State Bar:

- Right to Practice Law
- Education
- Relations with the Public
- Legislation and Law reform
- Administration of Justice
- Representation of the Board of Governors

A contemporaneous report by the Legislative Analyst, dated March 1, 1980, was sharply critical of the State Bar and complained, as did the Monterey Committee, that it "was not able to assess the effectiveness of the bar's programs because (1) the bar's current and historical program cost and output data is deficient and (2) many of the programs lack measurable goals and objectives which would permit analytic, as opposed to subjective, evaluation." See *Senate Report on the California State Bar*, March 1980 at p. 88.

Purpose: "to investigate the establishment of a voluntary state-wide bar association or such other alternative means to accomplish aggressive representation of the lawyers of the State of California. (p.1)

Findings: "...that the discontent with the State Bar was far-ranging and that much of the dissatisfaction was amorphous, making it difficult to pinpoint the issues."

Many complaints focuses on "whether the State Bar efficiently and effectively implemented its programs that than what, if any, functions could best be carried out by an integrated or unified bar." (p.1)

"...the feelings of some [were] that discipline is not strict enough and proceedings not swift enough." But the "Committee felt that the newly instituted disciplinary procedures should be given the time to prove they could remedy these alleged shortcomings." (p.2)

Recommendations:

- (1) That the State Bar of California be unified.
- (2) That admissions, discipline and continued competence be the central y not only functions of the State Bar.
- (3) That attorneys as a profession have a special obligation to society. Therefore, mandatory membership dues might property be used to finance programs such as improving the

public's access to (by not the actual delivery of) legal services, evaluating candidates for judicial office, providing public relations and engaging in member relations.

(16) Recognizing the problem of communication between the Board and the members of the bar, the Board should take action to remedy this situation [recommending eleven ideas].

Among the concerns discussed:

- Difficulty in attracting interest in board membership and the cost implications of changing the length of terms, even though greater stability might result.
- The inadequate participation of women and minorities.
- The role of the State Bar and Conference of Delegates in sponsoring legislative initiatives.
- The need for greater fiscal oversight of the State Bar

Other noteworthy observations:

“Almost immediately after the Stat Bar was created, problems arose because of rivalries among the unified bar and the local voluntary bars and because of the unified are failed to coordinate its lobby in effort in Sacramento with local associations. In response to these problems the board of Governors created the “Conference of Bar Association Delegates, now called the Conference of Delegates.” (p.9)

“The sections are a more recent development which began as part of a pilot project. ...The rationale behind creating the sections is two-fold: First, to provide more opportunity for all members to be active participants in the State Bar's work and to meet and exchange ideas with other practitioners in their field of interest; second, to make the advisory groups financially self-sufficient and place the onus of financing the interests of these groups on only those attorneys who share these interests.” (p.10) At the time there were 10 sections.

“However, if one subscribe to the view that every lawyer has an obligation to society and recognizes the fact that not all lawyers will fulfill this duty, then the unified bar provides a means of assuring that that duty will be carried out—in payment or in kind.” (p.14) At this time there were 75,000 lawyers in California.

“If one views lawyering primarily as a business, then the association should, a least in part, be a trade association dedicated to advancing the economic interest of its members. Such a bar could be unified; it could carry out those activities of the present State Bar where the perceived good of society coincides with the general economic advancement of all attorneys (e.g. delivery of legal services); it could have more, less or different functions than the present State Bar. But there would be a different guiding force directing its activities and different considerations would govern the making of decisions.

However, if one accepts the premise that the lawyer is a businessperson rather than a professional, the special obligation to society which was discussed earlier become s non-existent and the philosophical basis for having an integrated bar disappears. A totally voluntary bar cold or could not adopt a position of public service as it saw fir; it could sponsor whatever kinds of programs its membership desired; and it could modify the direction of its activities s circumstances changed.” (p.14)

In discussing wide-spread dissatisfaction with the State Bar, the Committee noted that the Board was unable to satisfy its five masters: the Court, the Legislature, the executive, attorneys and the public. (p.22).

Chapter V of the Report addressed “Dissatisfaction with the Bar” and noted familiar concerns.

As to the Board of Governors, many concerns continue to resonate. According to the Committee, it was criticized as:

1. Not responsive to members, particularly in the areas of specialization;
2. Not responsive to minority groups;
3. Not doing enough in the area of malpractice insurance’
4. Not reacting strongly enough to criticism of the legal professions
6. Having too few solo or small firm practitioners;
  
9. Not reflecting the composition of the membership;
  
11. Having lost credibility with the members of the State Bar, the public and the legislature;
12. Opting for the public interest if there is a conflict between the public interest and the interests of lawyers, because of pressures from the Legislature and the Governor;
13. Insufficiently concerned with promoting the economic interests of lawyers;
15. Lacking geographic diversity;
- 18/19. Public members should not be on the Board and should not be involved in making policy affecting attorneys only;
- 20/21. Having a job too large for it to handle, but also having too much power.

The State Bar Staff was described as ‘bloated, arrogant and unwilling to help,’ with too little experience in private practice and Executive staff salaries which are too high.

The discipline system was noted as “not aggressive enough” and ‘should be speeded up.’

The Committees and Sections ‘should be eliminated.’

Admissions was criticized for standards that were ‘not high enough,’ with ‘no way to assure continuing professional competence.’

The Legislature offered its own criticisms which the Committee summarized, noting that the State Bar has ‘lost its credibility in Sacramento,’ and its work ‘merely duplicates that done by other legal and non-legal groups;’ and its ‘dues should not be used to communicate with the public.’

The Committee summarized the situation as follows: “Under attack from all sides, it is suggested that the Board has merely reacted to the situation and has failed to assume a leadership role. Be that as it may, the Committee’s question is whether some other structure of the State Bar would permit it to function more effectively.’ (p.25)

In Chapter VI, Bar Reorganization Alternative, the Committee noted that “the possible organizational structures of the bar lie along a spectrum from completely voluntary to completely unified, with regulatory intersects from the three branches of government....There could be a unified bar whose only activities were licensing and discipline; or there could be a unified bar which undertook more functions than the present State Bar does.” (p.26)

With regard to the advantages of a unified bar, the Committee noted among other advantages, that a “Unified bar means all lawyer are contributing to and supporting programs that benefit the bar and the public.” It cautioned that “control of regulatory bar functions subject voluntary bars to ant-trust and FTC actions.”

- As for advantages of the voluntary bar
- not subject to judicial and legislation domination
- avoids a closed shop as a requirement of practice
- attracts the most enthusiastic and best representatives to carry out the work
- Is equal to a unified bar in carrying out successful programs
- Avoids reticence in criticizing the courts
- Does not decrease member participation in local associations as does the unified bar (p.27)

The Committee noted possible approaches to moving California’s unified bar into a voluntary one:

1. Create a new organization, but lack of funds and law support were noted as possible problems;
2. Create a collation of large local organizations, but those in remote areas might find participation difficult;
3. Create a federation of local bars, copying the structure of the Conference of Delegates (p.27)

The Committee’s outline of eight alternatives included the following:

1. Leave the status quo in place
2. Leave current structure in place, but limit functions “on the basis of cost effectiveness”
3. Continue a unified bar, but “statutorily define the bar’s scope more explicitly,” creating new vehicles to manage activities determined not within the bar’s purview
4. Move the bar completely within the judicial branch
5. Ask the Supreme Court to redefine the bar’s scope and change the manner of implementation of its functions
6. Move the unified bar in the executive branch under the Department of Consumer Affairs, modeled after the medical board
7. Create a totally voluntary statewide bar association, self-governing and self-funding
8. Create a voluntary bar foundation to supplement either unified or voluntary bar in specific areas

The Committee also defined seven broad functional areas in which the State Bar's various programs were engaged:

1. Admissions
2. Discipline
3. Lawyer Competency
4. Legal Services—delivery and access
5. Public Education
6. Member Relations
7. Administration of Justice

The Committee identified ten areas that it judged to directly concern a lawyer's status as an officer of the Court:

1. Admission to practice
2. Discipline
3. Unauthorized practice of law
4. Ethics opinions
5. Client security funds
6. Professional corporations
7. Prepaid legal services plans
8. Regulation of paralegals
9. Regulation of lawyer advertising
10. Mandatory continuing legal education

The Committee spent considerable time discussing the structure of the existing Board of Governors, deemed insufficiently responsive to the membership and still following a structure established in 1933. The description reflects a sharp lack of consensus as to the role of the public members, going so far as to deny them the right to vote for officers.

Three other ideas were more forward looking: (a) creating a foundation to pursue activities voluntarily funded with tax deductible contributions; (b) creation of an Ombudsman to handle complaints and questions from both lawyers and the public; and (c) the periodic creation of an outside panel of experts to serve as an Oversight Committee. (p.31)

Chapter VII contains the Committee's Recommendations. The Committee abandoned its initial approach of building a new bar organization 'from the ground up,' in favor of solving the problems of the existing organization with reorganization. In doing so, it concluded unanimously that the Bar should remain unified and that "the real issue was not the unification of the State Bar but rather disputes over what the functions of a unified Bar should be." (p.33)

For such a unified Bar organization, "the minimum functions of the organization should include admissions, discipline and competence." But the Committee, like the Legislative Analyst's March 1980 report was unable to evaluate these areas for lack of measurable program goals and data.

The Committee concluded that “attorneys as a profession have a special obligation to society” and this obligation serves as the authority for using licensing fees to support a second group of activities: public access to legal service, evaluation of judicial candidates, public education and member relations.

The Committee’s specific recommendations included:

- Eliminating legislative activities, with the exception of the State Bar Act;
- Greater fiscal oversight, yet also a change in the approach to dues assessment, with a recommendation that “a request for dues be submitted to the State Legislature on a one-time basis only...with legislative review every four years.”
- To address a Board seen as neither accessible or accountable, it was recommended that that members of the Board of Governors be reduced from three to two-year terms, with the President elected but entitled to vote only in the case of a tie; recommendations to assist in the funding of elections of members were also made, along with steps to make the work of the Board more transparent.
- Although the Sections and Committees were criticized for having “performed poorly and should be eliminated,” the Committee decided to retain them, but to hold them accountable and funded by the Board of Governors; it also recommended greater attention to achieving greater diversity in appointments to the various committees, commissions and councils. Perhaps most significantly, the Committee explained the rationale behind crating the sections as follows:

First, to provide more opportunity for all member to be active participants in the State Bar’s work and to meet and exchange ideas with other practitioners in their field of interest; second, to make the advisory groups financially self-sufficient and place the onus of financing the interests of these groups on only those attorneys who share these interests.” (p.39)

Continuation of public education efforts, with continued participation in offering educational programs, despite the competitive nature of this field, in order to insure that ‘all attorneys, no matter where they live or how new or esoteric their field of practice, have the opportunity of continuing education.” The Committee reached consensus that the State Bar should also continue to evaluate the cost and quality of such programs, but that the area be identified for future study.

## Internal Memos on Reviews of the State Bar of California (1991-1995)

1. A July 3, 1991 memo from Robert P. Heflin, Chief Trial Counsel, to the Board Committee on Discipline analyzed the performance of California's discipline system against the recommendations of the ABA Commission on Evaluation of Disciplinary Enforcement (the McKay Commission) and reached the following result:

"In conclusion with minor exceptions, I view the Commission's report as an endorsement of what the State Bar of California has already done to enhance our attorney discipline enforcement system. We are "on the cutting edge" in responding to the concerns of both the public and profession". (p.16)

2. An April 28, 1995 memo from Francis P. Bassios, Deputy Chief Trial Counsel on "Comparisons Between California's Attorney Discipline System and Other States' Systems" observed:

A report of Professor Stephen Gillers on Lawyer Discipline submitted to the Supreme Court of New Jersey "concluded that the California system was superior and recommended a similar model to the Supreme Court of New Jersey...Ultimately, New Jersey adopted many, but not all, of the recommendations and authorized a significant increase in lawyer dues to fund the improvements."

Conversations with staff of the Illinois Attorney Registration and Disciplinary Commission "reflect California is significantly more productive...they would prefer a California-style system rather than their existing system, and that they frequently look to California for leadership." (p. 2)

3. Professor Stephen Gillers, *Report on Lawyer Discipline* (December 22, 1993) was prepared at the request of the Supreme Court of New Jersey and included an "analysis of the strengths and weaknesses of California's 'centralized' disciplinary system [regarding] the quality, efficiency, timeliness, and cost effectiveness of the California system." Professor Gillers considered five factors: "accuracy, efficiency, credibility, cost, and value."

The Gillers report made several noteworthy observations:

"Credibility. Fairly or not, however, a profession's disciplinary system invites public suspicion when, as is usually true, members of that very profession control or significantly influence it. For lawyers, this presents a special problem since, unavoidably, lawyers and judges dominate lawyer (and judicial) discipline. Both are members of the legal profession." (p. 6)

“Value. ...Increased public expenditure may improve the system but will it improve it enough to make the increase worthwhile?”

Professor Gillers interviewed Professor Robert Fellmeth, the State Bar Monitor through 1991, and reported him as saying that “since adoption of the centralized system, the amount of public discipline in California has increased 500 percent and the time required before final discipline “drastically reduced.” (p.22)

It is clear that California casts a wider net than New Jersey in investigating lawyer misconduct and, as a result, generates more investigations per capita (lawyer) and produces the relatively greater number of public disciplines...” (p.30)

“Mr. Bassios testified that the average age of an investigation was seven and a half months or 225 days.” (p. 37)

“The one significant redundancy in the California system is the Client Grievance Panel, to which a grievant can go if he or she believes that the Office of Intake/Investigations has disposed of a grievance inappropriately. The New Jersey Ethics Commission does not recommend such a panel and I question its continuing utility. FN 67 It may have had value in the early years, when the system was new and suspicion of the disciplinary apparatus at its peak.” (p.42)

“Although the California system retains discipline under the aegis of the State Bar (which in California is created and regulated by statute and court rule), in truth the State Bar’s disciplinary role is rather limited. It participates in the selection of key disciplinary personnel and provides certain support services.” (p. 43)

“Ultimately, this [decision on fee setting] is a decision about governance, including the degree of confidence we want to have in our prediction. ... A charge of what is essentially one dollar per working day to support improved discipline is not too much to ask.”

### **Report of the Discipline Evaluation Committee to the Board of Governors (August 27, 1994) (excerpts)**

Background: Established in December 1993 by then State Bar President Margaret M. Morrow, the Discipline Evaluation Committee tasked “to evaluate cost and efficiency and effectiveness of the State Bar’s lawyer discipline system.”

The Executive Summary described the goal of the Report as to determine if the discipline system fair, efficient, and economically sound. It offered three initial observations:

- “We have concluded that the system is fair to the lawyers accused of misconduct.”
- “The present system, however, has the appearance of being biased in favor of attorneys in the eyes of persons who complain about unprofessional conduct.”

- Cost could be reduced by eliminating unnecessary positions and redundant make-work practices (such as lengthy opinions by hearing judges) (p.10)

### General Recommendations

One. Reducing costs should be made a major priority

Two. The State Bar discipline system should be managed by a single individual

### Recommendations Regarding Consumer Matters

Six. Improve written communications with complainants and offer the opportunity to respond to an attorney's explanation about misconduct

### Recommendations Regarding Prosecution of Discipline Cases

One. Terminate separation into three units of the prosecution function

Three. Abolish a separate Office of Investigations (p. 13)

### **Report of the Subcommittee on Consumer Matters**

Recommendation No. 3

---Enhance public contacts by using one comprehensive Customer Contact function. Current busy rate was 62% is "totally unacceptable" and has led to frustrations.

"The Subcommittee believes that the efficiency with which public contacts are handled by the state Bar can be enhanced with one comprehensive Customer Contact function." (p.32)

Recommendation No. 5:

Develop a procedure to identify attorneys with a large number of complaints filed against them.

### **General Recommendations and Observations**

Recommendation No. 1 Automation

- Remove complaints from lawyers' files after 'passage of a certain amount of time, say ten years, particularly if improvements in training, early intervention and alternatives to discipline reduce the current rate of recidivism."

Observation No. 3

- Consider- turn-over of certain discipline related matters to the local bar associations...when the ultimate result can be shown to provide the customer with a more expedient and personal response to ...the complaint than is currently available." (p.36)

## **Report of the Subcommittee on Prosecutions**

Recommendation No. 2: All forms should be computerized

Recommendation No. 3

From 1989-1993, 62% of respondents receiving discipline findings returned to the system and received additional admonition. Only 9.1% of attorneys completing Ethics School had complaints against them again.

Recommendation No. 4: The MCLE requirements should be modified to require one hour of the legal ethics requirement to be in attorney discipline/client relations. (p.38) c

- "...most attorneys in this state are not knowledgeable about the disciplinary system, or the recurrent issues that often lead to disciplinary problems.

Recommendation No. 5: Public education programs should be enhanced to educate the public regarding the attorney discipline process.

Recommendation No. 6: OCTC should "explore methods of improving the investigation and prosecution of violations in which there is alleged joint responsibility of multiple attorneys." (p. 39)

Recommendation No. 8: The State Bar should discipline or terminate underperforming staff.

"Managers expressed frustration with inadequate support from top management, OGC and Office of Human Resources...to discipline or discharge underperforming staff. As a consequence, there was a widespread perception that the State Ba provides permanent tenure to its staff and supports a number of nonperforming employees." (p. 40)

## **Recommendations Regarding The Prosecution of Discipline Cases**

Recommendation No. 1: The separation of prosecution function into three units... should be terminated.

"A recurring theme...was the needless complexity that attaches to a case progressing through the system." (p. 40)

"...the level of cooperation and teamwork is poor between departments." (p. 41)

"Our overall recommendation is to limit the number of steps within each department."

Recommendation No. 3: There should be a time limitation of 60 days from the time the inquiry comes into the Prosecutorial Intake unit [until] it is referred to the investigators within the Office of Trial Counsel."

"Presently there is a six or twelve-month time limit for investigation, commencing when the written complaint is received in Intake. We have found that there have been delays of up to four

months within the Intake which severely limits the investigative time period. A sixty-day time limit for a complaint to be held within Prosecutorial Intake, supervised by Office of Trial Counsel, is adequate.” (p. 43)

Recommendation No. 6: Unnecessary management tiers in the Office of Investigations should be eliminated.

Recommendation No. 8: There should be six-month time frame to complete a routine investigation...[and] a twelve-month period of time, for a complex case, from the date the matter is referred to the Office of Trial Counsel to completion of the investigation.”

Finding No. 1: There is no evidence of selective prosecution of solo practitioners as compared to members of firms. (p. 48)

### **Report of the Subcommittee on the State Bar Court**

Recommendation No. 1: Reducing the cost of the discipline system should be made a priority of the Bar’s senior management.

The report noted, “...failure of the Bar’s management to control costs effectively.”

The State Bar Court was unresponsive to requests for suggestions and the noted that “the State Bar Court [has] very high ratios of management and supervisory staff as well as higher than necessary levels of staffing for the judicial officers themselves, [but] the court did not offer to reduce any of those positions.”

“It appears that either the Board of Governors has not clearly communicated that it has a strong desire to reduce costs or that senior management has not taken the Board’s priorities seriously.” (p.51)

“We have concluded that three of the major problems of the bar discipline system are lack of cooperation and coordination between different sections of the discipline system, overstaffing especially in the supervisory and management areas and lack of centralized leadership.” (p. 51)

Recommendation No. 2: The state Bar discipline system should be managed by a single individual based on clear policy direction provided by the Board of Governors.

Among points noted:

1. “individual units...are not working together in pursuit of common, well understood goals.”
2. “There is a significant lack of coordination of functions and activities between the units...”
3. “...poor communication between some of the units ... and open hostility between others”
4. “...a lack of prioritization of resources...little evidence of resources being reallocated”

5. "...very large employee travel costs"
6. No one is in charge

"This is an administrative system which has been allowed to develop into several autonomous systems which are costly and inefficient. All that is required to reform this system s resolve on the part of the Board of Governors and strong leadership from the Executive Director." (p.53)

Recommendation No. 2: The number of hearing department judges should be reduced from six to four..."

"The caseload per State Bar trial judge is significantly lower than the average caseloads of U.S. District judges ...and the Los Angeles and san Diego Superior Courts."

Recommendation No. 3: Management and supervisory levels of the State Bar Court should be reduced and reflect the lower levels of managers and supervisors per employee which prevail in the California trial courts of record.

#### **Report of Special Master for the California State Bar Attorney Discipline Fund, September 25, 1999-March 28, 2000**

As his Final Report as Special Master for the California State Bar Attorney Discipline System, appointed pursuant to *In re Attorney Discipline System; Requests of the Governor and the State Bar of California* (1998) 19 Cal. 4<sup>th</sup> 582, 625, Retired Associate Justice Elwood Lui offered recommendations on the general structure and operations of the State Bar. He noted that more than 80% of the State Bar's activities related to the discipline system, as reflected in the 2000 budget. Thus "any operational aspects necessarily affect the discipline system. Accordingly, matters such as management, financial solvency and technological capabilities are of issue both to the Court and to the public as they will impact both the regulatory and non-regulatory functions of the State Bar." (p.1) At the time of his report, he noted that the average caseload for Los Angeles investigators was 37; for San Francisco it was 60. The backlog as of March 1, 2000 was 1,603.

The recommendations were designed to supplement those made in the earlier 1994 "Report of the Discipline Evaluation Committee to the Board of Governors (the DEC Report)" and fell into four categories: finances, governance and management, technology, and discipline. The Special Master noted that these recommendations "are not independent of one another... [but] often impact and overlap with [other] recommendations." (p.18)

Many of Associate Justice Lui's comments remain relevant.

"Under the present legislative scheme, State Bar finances are placed in a difficult and precarious position. On the one hand, the Legislature holds a strong grip, and in recent history perhaps too strong a grip, on the State Bar's budget and livelihood from year to year. On the other hand, the State Bar Board of Governors exercises control over the allocation of the State Bar's finances. The full-time State Bar executives and administrators are left to carry out the changing demands of the Legislature and Board of

Governors.” Justice Lui then presented and discussed a number of recommendations, set forth in his original italics below

*Board of Governors on policy issues affecting the State Bar and focus the State Bar executives and administrators on the day-to-day management of the State Bar.*

Importantly, he noted:

- “the state Bar Board of Governors ...appears overly to concern itself with the details of the day-to-day management of the State Bar.” “... [W]hen the Board becomes overly involved with such details; both the Board and the State Bar...suffer.” (p.23)
- “...despite its interest, the Board has not affected appreciable improvements in the State Bar’s technology.” (p. 24) “Had the Board limited its involvement to the larger policy issue of whether or not the State Bar required updated technology, the State Bar administrators could have implemented the Board’s policy directives more effectively.” (p.24)
- At FN 10, the Special Master observed: “Although, in 1994, the Board made provisions for \$5M in technology improvements and the after made improvements to the State Bar’s mainframe and purchased now-obsolete computers, by the time of the State Bar’s 1998 financial crisis, there remained \$1.6M of these technology improvements fund.”

The Special Master also was highly critical about the involvement of the Board of Trustees in the format of the annual fee statement, which he described as “overly complex...which has cost the State Bar in time and resources.

As between the resulting tension between Board and staff, the Special Master observed that “the Board should focus its energies on, and make decisions concerning, the overriding policy issues facing the State Bar. The able and full-time State Bar executives and administrators are in a better position to make...day-to-day management decision and to implement the Board’s policy directives.” (p. 27). To this end, he recommended:

*Recruit and hire as the Executive Director of the State Bar a strong management-oriented person with full authority to make day-to-day management and budget decisions.*

*Improve information sharing.*

- “...due to its outdated technology, the State Bar appears to lack effective tools for sharing information and data.” (p.29)
- “In large part, the State Bar exists to accumulate process and provide information for its members and the public....Unfortunately; however, until recently, the Stat Bar had substandard computer hardware and software, which greatly hampered the Stat Bar’s ability to accomplish basic functions.”
- “...the State Bar must continue to conduct an ongoing technology needs analysis to determine which areas would benefit most from additional updated technology as well as routine maintenance.”

*Restructure the information systems and technology department, and create and fill a position for Director of Information Systems and Technology, who will report directly to the Executive Director.*

- “It is clear that the State Bar needs to reorganize and strengthen its computer services department.”
- “...the State Bar should hire a full time Director, who will be responsible for managing the department and who will report directly to the Executive Director and be an equal member of the Senior Executive Team.”
- “For further restructuring, the State Bar should conduct a management audit of the department and implement productive recommendations.” (p. 31)

*Conduct and establish a fund for routine maintenance and updating of computer hardware and software.*

- “...establish and maintain a technology reserve”
- “...hire additional staff

*Utilize contract services as well as State Bar employees to maintain and expand the State Bar’s website and on-line services.*

- “...expand the use of its website. As a public service organization, the State Bar is in the business of providing information to and concerning its members.”
- “...the State Bar should explore and implement the use of the internet for membership billing.”

The Special Master also offered nine specific recommendations for OCTC and the State Bar Court some indicated as already underway, and so not discussed:

*Improve and streamline notice drafting process.*

*Refine procedures for determining appropriate sanctions(s).*

*In conjunction with the State Bar Court, simplify processing of default cases.*

*In conjunction with the State Bar Court, develop and implement minor misconduct program.*

*Develop and implement volunteer attorney specialists program for mediation of low priority cases.*

*Staff separate phone line for judicial inquiries regarding member discipline records.*

*Reduce length of opinions.*

*Improve and formalize effective case management, including procedures for Early Neutral Evaluations.*

*Conduct initial and substantive status conferences in court.*

## **Report and Recommendation of the State Bar of California Governance in the Public Interest Task Force (May 11, 2011)**

Required by the 2011 State Bar Fee Bill, this first Task Force Report was an 11 member body, with five staff as ex officio members. Because of “the expedited timeframe in which to file the initial report, the Task Force focused primarily on the one area essential to the system charged with ensuring public protection—the governance structure of the State Bar of California.”

It thus focused on:

- size of the governing board,
- composition and terms of members, their selection and qualification
- transparency of meetings and
- making public protection the governing board’s highest priority.

The Task Force also surveyed other state boards in California and State Bars nationally.

The Task Force held 12 meetings, receiving input from attorneys bar associations, members of the public, and consumer groups, and a survey was conducted (producing 176 responses to specific questions).

As provided by Statute, a Minority Report was filed, but both groups did agree on:

1. renaming the Board of Governors as “Board of Trustees;”
2. including Supreme Court appointments of the Board (although the number differed between the reports);
3. creation of a Merit Screening Committee to screen, evaluate and recommend attorney applicants to the Court; and
4. Allowing reappointment of Board members.

The Majority Report recommended additionally:

1. A 23 member board, 12 elected from five new districts, three appointed by the Supreme Court, one by the California Young Lawyers Association and 6 public members pursuant to existing statute, and a President;
2. The creation of five new electoral districts paralleling existing District Court of Appeal jurisdictions;
3. A three year phase-in;
4. Creation of a new appointing authority for Supreme Court appointments;
5. Staggered three-year terms, allowing appointed members to be re-appointed and elected member to run for second term only after a one term-hiatus, but eligible for appointment to a successive second term;
7. Adopt minimum qualifications, a new conflict of interest rule and high level of familiarity and interest in the State Bar’s mission and responsibilities;
8. Require Regulation, Admission and Discipline Committee and Member Oversight Committee to include 40% public members and one Supreme Court appointee;
9. Change ‘Board Book Rules’ to create improved strategic continuity and improved communication and responsiveness to public, Legislature, Governor and Supreme Court.

The Minority Report recommended alternatively:

1. A 15 member all-appointed board (to include the President), with nine attorney and six public members;
2. All attorney members appointed by the Supreme Court; public members appointed as under existing law;
3. Attorney member to serve three year terms, subject to Supreme Court reappointment;
4. Non-resident California attorneys eligible for Board service;
5. President appointed by the Supreme Court;
6. A Supreme Court created Merit Screening Committee for attorney applicants;
8. All members required to take an oath, making public protection 'a priority;'
9. Revise the statute to make public protection paramount.
10. Require he Bar to make 25 hours of ethics training available at no charge;
11. Recommend that the Board adopt the Bagley-Keen Open Meeting Act;
12. Recommend that the Legislature direct the Task Force to report on whether a unified bar advances the public protection by May 15, 2013.

# Appendix E

## Analysis of Antitrust Issues



## **Antitrust Legal Background**

The Sherman Act makes unlawful “every contract, combination . . . or conspiracy, in restraint of trade or commerce” (15 U.S.C. § 1) and prohibits monopolization or any agreement to monopolize any market. (15 U.S.C. § 2)

Literally applied, Sherman Act would make common forms of state regulation illegal. In order to avoid such a disruptive result, the U.S. Supreme Court has interpreted the Sherman Act to immunize states acting in their sovereign capacities.

The Parker immunity doctrine is an exemption from liability for engaging in antitrust violations. It applies to the state when it exercises legislative authority in creating a regulation with anticompetitive effects, and to private actors when they act at the direction of the state after it has done so. *Parker v. Brown*, 317 U.S. 341 (1943) (Parker immunity). The rationale behind *Parker* immunity is that Congress, in enacting the Sherman Act, evidenced no intent to restrain state behavior.

A nonsovereign actor controlled by active market participants enjoys *Parker* immunity only if “‘the challenged restraint ... [is] clearly articulated and affirmatively expressed as state policy,’ and ... ‘the policy ... [is] actively supervised by the State.’ ” *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105, 100 S.Ct. 937, 63 L.Ed.2d 233.

## **How Does This Apply To The Issue Of Deunification Of The State Bar Of California?**

### **Actions of the State Supreme Court Do Not Implicate Antitrust Laws**

As explained by the United States Supreme Court in *Hoover v. Ronwin*, 466 U.S. 558, 568-69 (1984): “When the conduct is that of the sovereign itself . . . the danger of unauthorized restraint of trade does not arise. Where the conduct at issue is that of the state legislature or supreme court, we need not address the issues of clear articulation and active supervision.”

In *Hoover v. Ronwin*, a challenge was brought to the Arizona State Bar’s admissions function. The Supreme Court stated: “. . . we conclude that although the Arizona Supreme Court necessarily delegated the administration of the admissions process to the Committee, the court itself approved the particular grading formula and retained the sole authority to determine who should be admitted to the practice of law in Arizona.”

“Thus, the conduct that Ronwin challenges was in reality that of the Arizona Supreme Court. (Citation omitted.) It is therefore exempt from Sherman Act liability under the state action doctrine of *Parker v. Brown*.” 466 U.S. at 572-573.

*Bates v. State Bar of Arizona*, 433 U.S. 350 (1977):

Attorneys charged with violating the state supreme court’s restrictions on attorney advertising, which the bar enforced, claimed that the rule restricting advertising violated Sections 1 and 2 of the Sherman Act by limiting competition. *Id.* at 365.

The U.S. Supreme Court held that the restriction on advertising was not subject to attack under the Sherman Act because the rule reflected an activity of the state acting as sovereign. *Id.* at 360-363. However, it struck down the advertising restrictions on First Amendment grounds. *Id.* at 383.

“Here the appellant’s claims are against the State. The Arizona Supreme Court is the real party in interest; it adopted the rules, and it is the ultimate trier of fact and law in the enforcement process. . . . Although the State Bar plays a part in the enforcement of the rules, its role is completely defined by the courts; the appellee acts as the agent of the court under its continuous supervision.”

The California State Bar’s regulatory functions include examining applicants for admission, formulating rules of professional conduct, disciplining members for misconduct, and preventing the unlawful practice of law. *Keller v. State Bar of California*, 496 U.S. 1, 4-5 (1990).

In California, the authority to admit, discipline, and regulate who may practice law resides in the judiciary and not the legislative or executive branches of government. *In re Attorney Discipline System*, 19 Cal. 4<sup>th</sup> 582, 592 (1988).

The Legislature made clear that in creating the State Bar, the Supreme Court retained its inherent constitutional authority over admissions and discipline. *Id.* at 599-600.

The State Bar is *sui generis* and is not in the same class as those state agencies that have been placed within the executive branch to which final decisions in licensing matters may be vested. *In re Attorney Discipline System*, at 599-600. In disciplinary matters, any decision or determination of the State Bar “is merely recommendatory in character and has no other or further finality in effecting the disbarment, suspension or discipline.” *Id.* at 600.

Similarly, the actions of the State Bar’s Committee of Bar Examiners are only recommendations. *Id.* at 601; *see also, In re Rose*, 22 Cal. 4<sup>th</sup> 430, 442, 444 (describing the State Bar’s role in admissions and discipline as advisory).

The State Bar serves as an administrative arm of the Supreme Court, and the court retains power and control over all aspects of admissions and discipline. *In re Attorney Discipline System*, at 600; *In re Rose*, at 439.

In *Keller*, 496 U.S. at 11, the U.S. Supreme Court explained, “The State Bar does not admit anyone to the practice of law, it does not finally disbar or suspend anyone, and it does not ultimately establish ethical codes of conduct. All of those functions are reserved by California law to the State Supreme Court.”

The U.S. Supreme Court noted, “The State Bar of California was created, not to participate in the general government of the State, but to provide specialized professional advice to those with the ultimate responsibility of governing the legal profession.” *Id.* at 13.



# Appendix F

## Summary of Governance in the Public Interest Task Force Testimony



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## **APPENDIX B:**

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1. George Brown, Executive Director, Wisconsin State Bar
2. Yvonne Choong, Vice President of the Center for Health Policy at the California Medical Association
3. Victoria Henley, Commission on Judicial Performance
4. Dave Jones, California Insurance Commissioner
5. Paula Littlewood, Executive Director, Washington State Bar
6. Ellen Miller-Sharp, Executive Director, San Diego Bar Association

#### **George Brown, Executive Director, Wisconsin State Bar**

“We're a relative late comer in Wisconsin. We're made mandatory by our Supreme Court in 1956 on a trial basis; made permanent in 1958. Interestingly in 1943 our state legislature passed a law requiring mandatory membership in the State Bar of Wisconsin -- what was then the Wisconsin Bar Association. Our Supreme Court said that that was an unconstitutional law, because under the Wisconsin Constitution it is their responsibility -- they have the responsibility for managing the courts, and lawyers are officers of the Court so, therefore, they declared the law unconstitutional. It was a decade later before that law became -- or those rules were passed by the Supreme Court.

We were the first State Bar challenged as a mandatory Bar within two years, and the case went up to the U.S. Supreme Court. It's called -- I just blanked on it. Lathrop versus Donohue. Trayton Lathrop was an attorney in Madison. Joe Donohue was the treasurer. He sued over his dues. And at that point the U.S. Supreme Court opined for the first time that a mandatory membership organization for lawyer was in fact constitutional.”

“There are 33 mandatory Bar Associations across the country. There are 21 voluntary Bar Associations on a statewide basis. You'll notice that's more than 50. That's because one, we include the District of Columbia, which is a mandatory membership organization, and there are three states that have voluntary Bar Associations and mandatory membership organizations.

North Carolina, Virginia and West Virginia all have a mandatory Bar Association that is -- essentially functions much like a law society does. They do all the discipline, they do the admissions. The voluntary Bar does the trade association work in those states. And the quality of those programs and the success of those programs varies dramatically. North Carolina has a very active, very high populated membership of North Carolina Bars in their voluntary association. West Virginia less so and Virginia far less so. So that varies dramatically. Hawaii is the most recent Bar Association to become mandatory. That was in 1989. And since then nobody has become mandatory, and nobody technically has gone voluntary, although we had a period, which is often referred to as the "voluntary period." And then you have the special case currently that Nebraska is facing, which is, in my mind, an untenable position.

There is one mandatory county Bar, believe it or not. North Carolina many years ago gave the opportunity to their county Bars to become mandatory, and one of them did, Mecklenburg, which is around Charlottesville, is a mandatory county Bar. It's the only one in the country.”

“...Nebraska is a different situation... [he] brought an action against them, before the Nebraska Supreme Court. The Nebraska Supreme Court, they made some, I think, arguments that were problematic in that, first of all, they could not prove that they were not violating Keller because they kept no records. They simply said they weren't doing it. My argument always when people do that is to say, "Prove it." We can. And then secondly, they made the argument that the process that Wisconsin went through was too onerous and they shouldn't have to do that. The result was the Court said, "Well, you're still a mandatory membership organization, but nobody has to pay dues." And so they have all the responsibilities of a mandatory membership organization, but they have none of the -- not nearly the amount of money.”

“Puerto Rico is another situation you may have heard of. It recently went voluntary. But that's a very special case. Because in Puerto Rico the mandatory Bar people and the voluntary Bar people have aligned themselves with the political parties that favor or oppose statehood. And so when one comes into power, they're mandatory and when the other comes into power they're voluntary.”

“There are a number of models of Bar associations around the country. You've heard of some of them. You have one. There's the law society models as I've talked about a little bit. The law societies that were talked about really are Canadian, England and Wales and Scotland.”

“...Kentucky is a voluntary membership organization that does do discipline. They're Board of Governors actually reviews the cases. They are brought to them by their Ethics Committee. Their Ethics Committee makes the presentation to the Board.”

“In Wisconsin, we do not do discipline... There are two separate agencies that do discipline. They are agencies of the Supreme Court. They are the Office of Lawyer Regulation, which does discipline, and the Board of Bar Examiner, which does admissions and does CLE evaluations... We collect the dues and assessments. Our dues \$254. The assessments total up to the remainder of the \$490 that lawyers pay for that. There's a \$50 mandatory fee for civil legal services for the poor. There's a \$20 fee for our client protection fund, which we manage... not only those dollars, but we also staff the committee ... that does the evaluations. And then there is the Board of Bar Examiner fee, which is about 12 or \$13, and the remainder of those dollars go to the Office of Lawyer Regulation for discipline.”

“The impact of being voluntary. We lost about 8% of our membership right away. The folks that we lost were government lawyers, the folks that we lost were nonresident lawyers, and especially nonresident lawyers who had been inactive, and we lost corporation counsel. Those were the three major groups we lost.”

“Over four years we ended up with about 88% membership, which is in contrast to the national average which is between 70 and 75% of the membership. And as it's been known, there's a wide range, but it also depends on how you define members, whether they're simply active lawyers or inactive lawyers, or in one state I'm aware of, they don't count government lawyers at all as potential members because they know they'll never join.”

### **Yvonne Choong, Vice President of the Center for Health Policy at the California Medical Association**

“The California Medical Association, we are a professional organization. We represent the physicians in California. We have approximately 41,000 members. also includes medical students and residents. And you can see, we do not represent all practicing physicians in California, although we believe that we do represent a good cross-section in terms of most practices and specialties.

And our primary functions include legislative, legal, regulatory, economic and social advocacy on issues related to health care and medical practice.”

“ [I] would say on average your average CMA physician is probably paying in the neighborhood of a thousand dollars a year with membership with CMA. Physicians also join other membership organizations. Many are members of the American Medical Association, which again is a separate organization. They have their own dues. Most physicians are also members of their specialty societies as well. And this is an interesting struggle that we have in terms of recruiting physicians for membership. Anecdotally, many physicians feel that their first priority with regard to joining professional associations is their specialty society. That's where a lot of their board certification information comes from, that's where they get a lot of specialty specific continuing medical education.

So specialty societies in large part don't have much of an issue in terms of recruiting members, because it's almost automatic that a physician will join their specialty society. But what that does do is put pressure on other associations, such as CMA and the AMA in terms of being able to fight for a physician's professional dues dollars.”

### **Victoria Henley, Director and Chief Counsel, Commission on Judicial Performance**

“The Commission today is comprised of 11 members who serve four-year terms. This includes three judges, two lawyers and six citizens. Members can serve up to two four-year terms or a total of ten years if filling a vacancy.”

“When the Commission was first established, the majority of its members were judges, as it was believed important that judges be responsible for passing judgment on their own. After 35 years, the membership was changed dramatically with the passage of Proposition 190 in 1994.

“With 64% voter approval of the Constitutional Amendment, it's fair to say that the public had lost confidence in the judicial discipline system. It was almost totally confidential, and it was governed by a majority of judges. Proposition 190 had made at least a dozen significant changes to the judicial disciplinary system. Without anticipating the outcome of any antitrust challenges to mandatory bar associations or the benefits of de-unification, I would like to voice support for the State Bar maximizing the participation of non-lawyers however it can.

The services of an attorney are not affordable to a large segment of our society, which in my view threatens public confidence in our court system and public respect for the importance of a system of laws and the rule of law.”

### **Dave Jones, California Insurance Commissioner**

“Our principal mission is that of the Consumer Protection & Regulatory Agency. We regulate the largest insurance market in the United States and the sixth largest insurance market in the world. Whereas President Pasternak said, insurers collect \$259 billion in premiums and have collectively \$7.5 trillion in assets under management.

We have broad regulatory authority conferred upon us by the legislature through the Insurance Code. That authority includes the regulation of rates for property and casualty insurance, the regulation of the financial condition of insurers, all insurers regardless of product line as well.

We have a law enforcement function, a piece of which I'll get to in a moment. But I have 300 law enforcement personnel who work under my leadership who investigate fraud against insurance and criminal violations of code by the agents and brokers that we license.

We have the authority to take over insurance companies when they face financial distress. We receive about 120,000 calls to our Consumer Hotline a year, and we go to bat for consumers in their dispute with insurance companies. We also have the ability to bring enforcement actions against insurance companies that violate our code and meet out various sanctions.

What I thought I would focus on and what's of most relevance, I believe, to this Task Force is our work licensing 360,000 agents and brokers who transact insurance in the State of California. We currently issue more than 30 types of licenses, certifications and registrations to individual and entities, such as accident and health agents, life agents,

property and casualty broker agents, insurance adjusters, third-party administrators, bail agents and title marketing representatives.”

**Paula Littlewood, Executive Director, Washington State Bar Association**

“I am the Executive Director of the Washington State Bar. We are a fully integrated Bar. So when I say "fully integrated," because we are similar to California, we perform all regulatory functions under the authority of the Supreme Court.

So as you look across the country, not all of the unified Bars are what I would call “fully integrated” because they aren't necessarily doing all of the regulatory functions. For example, in Oregon, admissions is actually under the Court, but then the Bar does the rest. So when I say "fully integrated," it's because we do from the beginning to the end all of the regulations. We are about 37,000 members, which I know compared to California doesn't seem that large, but in the western region, from about Arizona west, we are by far the largest Bar. So we have 37,000 members, and about 18% of our membership is out of state.

We have been around for 125 years. We just had our 125th anniversary. We became an integrated bar in 1933 under the State Bar Act. But I will say that our Supreme Court has spent the last 40 to 50 years pretty much eviscerating the State Bar Act and making it very clear that they have sole and exclusive authority over the regulation of the practice of law. So the State Bar Act still exists in statute, but it doesn't really guide us.”

“The last thing I would say is there are three words that we do not use at the Washington State Bar. So you'll see me flinch a little bit today if I hear them, I'll just set out what they are: We do not use the word "dues." Dues are voluntary and what you pay to a country club. We only talk about license fees. We are a regulatory agency, we are a licensing agency. The people who are members of the Washington State Bar pay license fees.

We don't use the word "lawyer." We talk about legal professionals. The Washington State Bar now issues three licenses: We have a limited practice officer, we have a limited license legal technician, and then we have lawyers. So we've changed all our language at the State Bar to talk about legal professionals.

And just one amplification. We're now getting the LLLT started. We actually have licensed LLLTs in the field giving legal advice now. So we're well down the road on the Limited License Legal Technician Program.

The last word we don't use is "non-lawyer." We are the only profession that says "non." There are not non-dentists, there are not non-doctors, there are not non-psychologists. So we do not use the word "non-lawyer." We talk about our public members, we talk about our community members and we talk about other professionals.”

“So as to the separation of powers--let me just start by saying that for many of us looking at the California system, it's kind of mind-boggling in the sense of the violation of the separation of powers is so stark. And I refer specifically to the fact that your chief disciplinary counsel is confirmed by the State Senate, and that your State Legislature sets the license fee. Our Court would never allow that. And so the way we're set up, I hire and fire chief disciplinary counsel. So I am hired by the Board of Governors. I report to the Board of Governors, but I have a dual report to the Supreme Court. So if you look at our org chart--which I brought a copy of, if you want me to leave it -- it's got me, and then it's got the Board of Governors, and then it's got the Supreme Court. But I have a dotted line that goes from the Executive Director straight to the Supreme Court. And the reason for that is because our Board of Governors has no regulatory authority.

And post North Carolina, that's going to be really huge, right? You're not going to want any of your Board of Governors doing anything that could be construed as regulatory. “

“No. We haven't done an annual meeting for decades. [Why?] “...It precedes me when they did away with the annual meeting it. When I was Assistant Dean at the University of Washington, the President of the Bar at the time tried to do a big revival of the annual meeting in 2000, and it was just an absolute flop.

I think a couple of things. It's very hard. You know, practice has become so much more specialized in this day and age, and so trying to put on programming that appeals to that many people--you know, you have so many tracks, I think was part of it. I think they just weren't getting the numbers [of attendees].”

“The way the Canadian system works is there's the Canadian Bar Association, so sort of similar to the American Bar Association. And then within each province there's a branch. So in British Columbia, there is actually the Canadian Bar Association, British Columbia Branch, if that makes sense. That's all voluntary. The regulation is all handled through law societies. So each province has a law society. So [there is a ] Law Society of British Columbia. You know, Ontario actually has a different name. So that's where the regulation happens. They have a very strict [approach]-- you keep them separate.”

One big difference between us and Canada--so when I say "self-regulated," I put it in quotes because all of us ultimately report to our Supreme Courts. In Canada, the law societies are truly *self*-regulated. So for example, if we do a disbarment case and we recommend disbarment, it's only a recommendation to the Supreme Court, right. And then the Supreme Court has to ultimately 'pull the ticket.' In Canada, the Law Society actually 'pulls the ticket.' So they are truly self-regulated.”

“There are some advantages to our system, and let me give you one really clear example of that, which is the LLLT, the Limited License Legal Technician in Washington State. I want to be really clear. Our Bar Association fought the LLLT. Our Board of Governors hated the idea, and they fought it until the end. But because we're not truly self-regulated like a Law Society, our Supreme Court could step over the din and say, 'enough is enough.' We need to serve the public. And they created the APR Rule 28 creating the Limited License Legal Technician.”

“So the last thing I would say about separation of powers and a system based on the rule of law and why it is so important that we are a self-regulated profession, which again is why we are so--I'd look at California and I just see such issues, because of your legislature being so involved.”

If you go back hundreds of years to the development of our profession, lawyers were given two things: one was self-regulation and one was a lawyer-client privilege that was inviolate. And you remember that from law school, and you learned about the four privileges in the United States. Ours is the one that cannot be pierced.

And there was a reason lawyers were given those two things. It was because our role in society was to be separate from the legislature and separate from the executive, because our role in a society based on the rule of law is to guard against the over-reaching and the under-reaching of the government vis-a-vis the individual. And the only way you can do that is for the courts and, therefore, the lawyers, to be independent of the legislature and the executive.”

### **Ellen Miller, Executive Director, San Diego Bar Association**

“Well, considering we know that so many--we have a situation right now where so many Lawyer Referral & Information Service (LRIS) programs, not just in California, but nationally, are struggling because they can't compete with these very well-funded legal business products. So as a result, we have two environments. We have the LRIS environment that is quite regulated, and then we have all of these other businesses that are trying to attach and provide very simple legal information to consumers. And those seem to be extraordinarily well-funded and dipping into the market, perhaps serving a segment of the market that none of us effectively serve. There's a huge opportunity in that, because at least those of us who work in voluntary Bars, we're very committed, as you are, to serving the public. You know, we have -- at least in San Diego, we have an LRIS program for that reason because we want to be able to help the public find qualified lawyers. And that's our 'value proposition,' because we qualify them through the LRIS program. But I think there's tremendous opportunity to think about what other ways can we serve the public, whether that's through making modifications to our existing LRIS rules and structure, or whether that's adding other options to the mix or, you know, creating different kinds of programs, even at our Bar associations to do that.”

#### **April 4, 2016 Presenters**

1. James J. Brosnahan, Senior Counsel, Morrison and Foerster
2. Tiela Chalmers, Chief Executive Officer and General Counsel, Alameda County Bar Association
3. Carole D'Elia, Executive Director, Little Hoover Commission
4. Hon. Judy Johnson, Contra Costa County Superior Court, and former Executive Director, State Bar of California
5. Dennis Mangers and Joanna Mendoza, members, State Bar of California Board of Trustees
6. Donna Parkinson, Co-Chair Business Law Section, Voluntary Bar Task Force
7. Alan Rotem, General Counsel, Rocket Lawyer

#### **James J. Brosnahan, Senior Counsel, Morrison and Foerster**

“I think it's relevant to my position today, which is, the time has come for a voluntary Bar. It's been coming for a long time. And it's here. And if the leadership of the State Bar does the right thing, they will accelerate that process. If the Legislature does the right thing, they will allow it. And what I'm speaking of specifically is the division between discipline, licensing and admissions on the one hand, and all of the rest of it on the other, which should be a voluntary Bar.”

“But the problem with the present set-up is, because it's impossible to communicate with 220,000 people, all this takes on a kind of ‘inside baseball’ atmosphere. And I know I'm pretending to be a man of the people, and I'm out there, and all this kind of stuff, which is not totally accurate. But how much does the State Bar care about those 220,000 people, and how much does it care, more importantly, about the clients they represent?”

“My last point. And everybody knows this. When you're a lawyer and someone else controls your money, not your client, you have a conflict. I had a case years ago, I won't go into it, but the company wanted certain things to happen, but the client didn't. But the company was paying my fee and I couldn't do it. I couldn't continue. The Legislature controls the money of the State Bar, and that gives this--as an organization, gives a conflict between what lawyers by themselves want to do and what the Legislature will allow them to do. And that's been there. It's been growing, but it's been there a long time. Thank you.

#### **Tiela Chalmers, Chief Executive Officer and General Counsel Alameda County Bar Association**

“I would like to offer my opinion that--or my plea that you consider continuing to have a unified Bar for two separate reasons. The first relates to access to justice issues. Part of why California is as far ahead as it is in the nation in terms of access to justice issues has to do with the power of our unified Bar. Access to justice issues are supported by every attorney in the state, and I know from sad experience that there are many states in the country where that is not the case. We--the State Bar here has been able to make some amazing [progress]. Whether access issues would be in a unified Bar handled on the discipline side or on the voluntary side, in either way, I think we lose a lot of support and a lot of coordination. I chair the State Bar's Standing Committee on the Delivery of Legal Services, fondly known as SCDLS, and we coordinate activities with the Office of Legal Services, Legal Services Trust Fund Commission, the California Young Lawyers Association, and many of the sections.

That level of coordination was really helped by the fact that there was a chaired staff. It's tough for volunteers to put together coordination like that, and typically, things fall through the cracks. So it was a very powerful coordination. Things happen on the access to justice front. “

“So I think these kinds of powerful programs really require a unified Bar. I'm old enough to remember when the State Bar was dramatically downsized in the aftermath of the *Keller* decision, and many of the access to justice programs were kept alive only by volunteers. We really do not want to go back to that place. “

#### **Carole D'Elia, Executive Director, Little Hoover Commission**

The Little Hoover Commission is beginning a review of occupational licensing in California.

The number of individuals who must meet government-established criteria to practice a given occupation has grown rapidly in the last half century. In the 1950's, fewer than five percent of workers nationwide were required to hold licenses to practice their professions; by 2008, that number had increased to 29 percent of workers nationwide, according to economists Morris Kleiner and Alan Kreuger. Approximately 21 percent of California's 19 million member workforce is licensed. Proponents of occupational licensing advocate that these regulations are necessary to protect the health and safety of consumers. Critics contend that these regulations at times go beyond consumer protection and unjustifiably restrict competition.

The focus of the Commission's review is on the impact of occupational licensing on upward mobility and opportunities for entrepreneurship and innovation for Californians, particularly those of modest means. The Commission also will examine the result of occupational licensing on the cost and availability of services provided by licensed practitioners to consumers. The Commission also will assess the connection between occupational licensing regulations and the underground economy. The Commission will explore the balance between protecting consumers and enabling Californians to enter the occupation of their choice.

#### Past Reports The Little Hoover Commission:

Boards and Commissions: California's Hidden Government

<http://www.lhc.ca.gov/studies/097/report97.PDF>

(Report #97, July 1989)

Comments and Recommendations Regarding Professional and Business Licensing

<http://www.lhc.ca.gov/studies/035/report35.PDF>

(Report #35, January 1979)

#### **Hon. Judy Johnson, Contra Costa County Superior Court and former Executive Director State Bar of California**

“But I think what was telling in that experience was something that then former Senate Pro Tem, attorney Bill Lockyer said, ‘There is going to be a lawyer discipline system, and the lawyers are going to pay for it. And so if lawyers are going to pay for it, why shouldn't they get the best, which is a unified Bar that is able to bring together all the different perspectives of the legal profession, and harmonize those interests with the public interest?’”

“So in essence, my experience has been that the Board of Governors does support the public interest. And that de-unifying the Bar would simply create chaos where none exists now.”

“So many of the things, diversity, legal services, it helps when the organization speaks with one unified voice in support of those activities. And I fear that if the Bar were to de-unify, we would not only lose that singular voice, but again, it would be the state's larger local Bars that would dominate. And as has been said, the--one of the problems with the local Bars is that they do tend to be lawyer-interest focused, and they often would be--speak against some of the heightened regulation that the Bar itself has supported.”

“You know, there are some issues that are just--they just go round and round and round. And I've heard them for decades. This is--many local Bars have a leadership track system, where you have a president-elect who is elected and serves along with the current president, and is sort of groomed into that leadership role. It's been looked at by the Bar, as I mentioned, any number of times. I don't really have a strong view on that. I think the board can do what it wants with what issue. In all candor, my experience has been that it is difficult [enough] for an executive director to deal with one president at a time, and to have two people with the title can often lead to conflict. Bar presidents tend to have big personalities, and it is often difficult just dealing with one person in that position. And to have someone waiting in the wings with almost equal stature may be more problematic than helpful.”

**Dennis Mangers and Joanna Mendoza, members, State Bar of California Board of Trustees**

**Mangers**

“The board meets less frequently than any regulatory body in the state, and when it does, its agendas are almost exclusively devoted to trade association activity. Regulation and discipline are lucky to get an hour and a half of meeting time, often at the end of a long day when it’s the only issue between the board and cocktails and dinner. The time most members of this board actually attend to regulation and discipline is minuscule in comparison to the time spent in closed sessions dealing with lawsuits and personnel intrigue. And quite frankly, way less time than is spent by any other regulatory body in this state or any other state, I suspect, with regard to their professions.”

“Every time a new president is elected, he or she seems bound to announce some new initiative as to be their signature leadership objective, and over the years I’ve been here, those have ranged everywhere from autism to civic education, to who knows what--Access to justice. But never to a regulation or discipline related objective. Never once have those unilateral issues related to a regulatory or disciplinary objective. They just don’t seem to get that they have been elected to head a regulatory body, so they distract their colleagues and staff from the only reason they really exist.”

“In the coming weeks, several current and former board members will submit to the chief of the Supreme Court and the chairs of the Senate and Assembly judiciary committees, a proposal calling for legislation to require the State Bar to prepare a plan for separating its regulatory and trade association functions on a timeline we propose to be completed by January of 2019. Our plan will be prescriptive only in terms of what functions must be placed under a regulatory body, and which are most likely to remain under a trade association. And it will be directive in terms of the composition of the new agency to ensure sufficient public participation.”

“[W]e will propose to keep all of the regulatory functions of the legal profession firmly under continuing supervision of the Supreme Court. In fact, in our draft, we will expand, to some degree, the oversight capability of the chief justice to see to it that she and her court are better informed, with regard to the reports that often have gone exclusively to the Legislature. “

“In our judgment, we have come to believe that separation of the functions is inevitable, and as other states cascade in this direction, we believe it is only a matter of time until the California Bar’s cyclical drama and dysfunction result in a similar path. It seems to us you have a choice to continue to fight such an outcome, as the last task force was quite prepared to do, and risk a more traumatic top-down solution, or take this opportunity to be a partner in developing an elegant win-win for the public and the profession. “

**Mendoza**

“Never before has the ongoing survival of the sections been so threatened. Since the *Keller* and *Brosterhaus* cases, the overhead allocation charged to the section has grown from 25 percent of their budget to nearly 67 percent, and sometimes more, as I mentioned earlier today. Because we are a government agency, essentially, and since the sections are a part of that agency, we are required to charge their share of the overhead of that agency. This charge includes such costs as the audit by the state auditors, which the State Bar must pay for, and which is roughly a half a million dollars each time there is an audit. By statute, that audit happens every other year, although this year, we are fortunate enough to be audited in between the biannual audits. Lucky us.

If the sections were not affiliated with the regulatory agency, they could be paying fair-market rent, instead of the much higher cost associated with a building they will actually never own. Such is the price the sections pay for being affiliated with the regulatory agency. These charges are not overhead costs the sections would ever have to pay if they were liberated, and instead were part of a separate voluntary trade association.”

“The imposition of Bagley Keene, effective as of April 1st, has a new and significant impact on the sections, as you all are very well aware at this point. I welcome the combined application of Bagley Keene and the Public Records Act, and the new transparency that I hope it brings to the State Bar. The State Bar, however, is essentially a regulatory agency, and unless specifically accepted, all parts associated with the State Bar are required to comply with the laws applicable to it. We cannot

make an exception for one part of our agency because of inconvenience, when the entire agency needs to adopt and embrace transparency.”

**Donna Parkinson, Co-Chair Business Law Section, Voluntary Bar Task Force**

“The real question is whether the sections can actually survive in the current situation. And the answer that the voluntary task force and the business law section came to was no, we cannot survive. We provided a recommendation letter to the business law section chair and to the executive committee and the business law section you've got the letter, it says the Bagley Keene and the current economic structure are not compatible with what the sections do.”

**Alan Rotem, General Counsel, Rocket Lawyer**

“So as many of you know, last year, the American Bar Association reached out to partner with us. The pilot project used Rocket Lawyer's platform to connect ABA lawyers with small businesses looking for affordable legal services. In Charlie Moore's words, the fact is, a majority of American individuals and small businesses are priced out of legal representation. At the same time, many lawyers are under-utilized. ABA Law Connect came about as a way for the American Bar Association to experiment with modern technology as a way to resolve this paradox. The ABA thought it was a win-win. Good for lawyers, good for consumers. Ultimately, the pilot was successful and we generated some very useful data. However, the reaction from all corners of the legal profession was rather illuminating.

The mandatory unified Bars -- now you can see we are going to transition into the topic at hand. The mandatory unified Bars like the State Bar of California cheered on the project. As a steward of the public interest, unified Bars have an easier time recognizing the importance of solving the justice gap and appreciate the -- that technology can offer. The opportunity, that is, that technology can offer.

The loudest critics, however, were the local Bars and the voluntary Bars. The trade associations that depend on their own lawyer referral services for income. Instead of recognizing the partnership and pilot program as an opportunity for attorneys to attract new clients, they focused solely on price protection and fear of competition.”

“So what does this mean for the organizational structure of a State Bar? Well, without casting any aspersions on the voluntary private association Bars, of which I've been a member, we can appreciate that unified mandatory Bars are much better able to balance the interests of lawyers with the best interests of the public, and we think Bars should be cognizant of the potential conflict of interest that exists when issues such as restraint of trade and monopoly power are present. Anti-competitive behavior stifles innovation and runs counter to the public's interest in accessing affordable legal services.”

### **April 25, 2016 Presenters**

1. Chuck Crouch, California Lawyers Guild
2. Tore Dahlin, Californians for Attorney Regulation Reform
3. Professor Robert C. Fellmeth, Executive Director & Bridget Gramme, Assistant Administrative Director  
Center for Public Interest Law, University of San Diego School of Law
4. Mike Feuer, Los Angeles City Attorney
5. Rob Harris, Chair, State Bar Business Law Section
6. Paul R. Kiesel, Open Courts Coalition
7. Mark Britton, Chief Executive Officer, Avvo, Inc.
8. Liz Neeley, Executive Director, Nebraska State Bar Association
9. Jack Osborn, Chair, Conference of California Bar Associations
10. Professor Theodore Schneyer, Milton O. Riepe Professor Emeritus, University of Arizona
11. Perry Segal, Co-Chair of the California State Bar Council of Sections
12. Justice Laurie Zelon, Associate Justice, California's Court of Appeal, 2nd District, Division Seven

### **Chuck Crouch, California Lawyers Guild**

“... [T]here's the overreliance on bar staff in setting meetings and controlling communications under Bagley-Keene. And this is by no means an indictment of staff, it's just they're placed in an unenviable position of having to set up meetings, set up the communications and that creates the potential for logjam and it will also be, I think in the end, more expensive because the staff is [necessary] --you're going to have to have dedicated staff to comply.

[I]t was in appreciation of these increasing impediments to the sections meeting their traditional performance standards and the impact on the Business Law Section in particular, the business law sections, that 14 former business law section chairs and vice chairs, as well as former chairs of the counsel of state bar sections, with collective experience stemming all the way back to the initial creation of the sections decided to create a statewide voluntary bar association called the California Lawyers Guild.

The Guild is a 501(C) (6) nonprofit mutual benefit corporation which has been structured to accommodate volunteers ranging from small working groups to an entire section to all of the sections, if and when that might be appropriate.

The organizational structure would be similar to what the sections experience under the current bar structure, only without the burdensome restrictions imposed on a governmental agency.”

### **Tore Dahlin, Californians for Attorney Regulation Reform**

“The legislatures had to repeatedly step in--sorry, I don't have time to give you the history because I can give you each time the legislature has had to step in where the bar judges should have kept some wall, where the bar judges should have made sure that the rights of the accused lawyers were being followed weren't being followed and then you have legislatures introducing legislation to make up for that lack. And then this was about a two-decade process that showed that the bar court was not functioning well after that.

And so as you know, we are still advocating that as part of this divorce process--if that's where it's going to go--you have a--you know, you have the two parties who are going to break up. You decide who's going to get custody of the kids, which means all the little parts of the bar. The bar court is--we're suggesting should go over to the Superior Court to meet the objection of the Supreme Court at the time that we're too busy to have it. Of course the--making them into departments of the Superior Court will overcome that problem.”

**Professor Robert C. Fellmeth, Executive Director & Bridget Gramme, Assistant Administrative Director  
Center for Public Interest Law, University of San Diego School of Law**

**Fellmeth**

“It's not appropriate to have a posture of a court that is relatively passive that may shoot back rules of professional conduct and does certainly review those. Does it review them for restraints of trade? Does it amend them? Does it actually say, This is what you're going to do? Or does it say, as it usually does, We're passive. We're used to a system of adversary of eclecticism, we're used to that and we'll kind of remand or we'll whatever. This is not--active state supervision is not that kind of exercise. It is an active inquiry, proactive inquiry into the effects of a restraint.”

“And I'm not speaking here politically. I'm talking as an attorney very familiar with antitrust law and very familiar with this area of antitrust law. You are in jeopardy. You need to get out of jeopardy. How are you going to do that? Well, there are a number of ways you can do it. One is the Mangers /Mendoza / Corcoran / Rosen proposal. That will create a board controlled by non-active participants. There are some caveats there. You're going to have to have a situation here if a vote occurs -- because you've got a 7/6 arrangement with a one vote margin for public members. If you're going to have a vote that's--with a quorum of 9, and 5 of votes and they're all attorneys, you're going to have a problem. So you're going to have to have a caveat there. But the idea of having a public controlled board is a good one and I endorse it.”

**Gramme**

“[W]e think based on the *Keller* case, that [access to justice] is something that can be funded with mandatory bar dues and should remain within the regulatory entity when you de-unify the bar. We see no reason that that would have to go away. And so I think a lot of this fear that Access to Justice would suffer is really unfounded. You're really in a position right now to be able to recommend to the legislature whatever you think--you're in a good position. You can say, Look, this is what we think should happen. We think we should de-unify. These are the things that we want to maintain within our regulatory function and our public protection mission and these are the things that can go off to the side as things that are better for the profession. And I think you should ask the legislature to specifically write it into your statute that you believe Access to Justice is something that is part of your core mission as part of the bar. And that's something that other regulatory agencies do already and they do it very well.”

“We believe that de-unification means separating off all trade association functions. And I don't have an exhaustive list of what that means. A few off the top of my head: for sure the insurance services and the type of things we were discussing earlier. I think the legal referral service is another example. And we can definitely go back. I don't remember them off the top of my head... But we really advocate--I think another thing that's a little challenging is there are a lot different terms for what we are talking about. So there's a voluntary bar, there's a mandatory bar, there's unified, integrated. They all--and it's kind of hard to know what everyone's talking about.”

**Mike Feuer, Los Angeles City Attorney**

“...I wanted very much to be here to say that both symbolically and intrinsically the idea that there is something that isn't at the core function of what it is to be a lawyer and therefore what the organization of lawyers ought to stand for is something less than core about the pro bono and legal services commitment and Access to Justice that has been such a deep, profound aspect of my career is very troubling to me. They are the same thing. To be a member of the bar is to promote Access to Justice, otherwise we are being inadequate in our roles as leaders of the bar association, even members of it, participants in it.

To fail to actively promote Access to Justice as a central role of the state bar association is to abdicate responsibility for the central issue in our society today when it comes to the justice system. And I would very much oppose the idea that this bar associate itself with that abdication of responsibility, with that devolution of authority to somebody else.”

“...[T]o separate it from the bar is to convey to the public that the idea that that's not part of the basic day-to-day bread and butter of what it is to be a lawyer and a bar association. And that message is corrosive to the very foundations of who we are not only as lawyers, but as a part of a democracy.”

**Rob Harris, Chair, Business Law Section Executive Committee**

“But make no mistake, the sections are in peril at this point. There are huge problems facing us. This is not for me about politics. This is not for me about a particular form of organization. This is about the survival of the sections. That's why I'm here today. I'm going to give you a few of the reasons why we think the sections are in peril. The first and biggest problem we think is the revenue and expense problem. The sections require by law to be self-sustaining and they must not take public money. But what we have seen in recent years is the assessment has gone from \$37 a year per member in 2007 and 2008 to \$64 in 2016. At the same time, annual dues have only risen from 75 to \$95, so a much larger bite is being taken out.”

“We have intentional interference by outside forces with the ability of the sections to do our work. Bagley-Keene is what I'm specifically referring to. I might be the eye of the storm when it comes to Bagley-Keene in the business law section. Bagley-Keene compliance is a compromise. This Board knows the burdens of Bagley-Keene. You can't communicate by e-mail. You can't get anything done outside of a public meeting. Efficiency is not the goal, yet we are talking about sections whose primary purpose, one of which – the primarily purpose of which is to get instantaneous word of legal developments out and to be able to work from moment to moment on legal developments.”

“We have another ongoing problem that may well drive us out and it is the historical and ingrained lack of control of the sections phase. Sections have no control over staff, over how they're deployed, over who does work for which section, over how many hours are spent. This is tremendously difficult and this is accepted within the bar as something that the sections just have to deal with.”

“The business law section supports the de-unification of the sections and other appropriate [separation of] non-regulatory functions from the regulatory part of the bar. The business law section supports the following general principles in connection with de-unification: That all sections be included in the de-unification, that we not have, in effect, two wounded entities that can't survive without each other; that all sections' surpluses be transferred to the new entity to implement the successful standup of a new entity; that the bar cooperate and assist with the transition in good faith; that all IP and other property attributable to the sections be transferred to the new entity; that a dues checkoff remain on attorneys' fees statements for as long as the sections wish; that the new entity be allowed to use the state bar logos and marks in its name in official communications so it would effectively be a transparent transition; that the new entity be given access to existing e-mail and contact information for the members who exist now and new admittees; and the bar would be required to provide services to the new entity for a period of not less than three years at the option of the new entity so we wouldn't find ourselves on day one arguing about, I think as Vanessa put it, coffee pots and who was going to make it.”

**Paul R. Kiesel, Open Courts Coalition**

“I am concerned if there's going to be an attempt for de-unification, that the bar itself begins to lose its effectiveness in the voice that it has in Sacramento. Arguably, the trade associations could band together as we've got a lot of trade associations that do work together within the Open Courts Coalition. But the fact that there is one voice, that's the state bar, that speaks for everybody and we get the engagement of everybody, is very powerful as a resource for individuals to ensure adequate funding for our courts.”

“President Pasternak raised this issue just a few moments ago. I think the engagement you have from the legal community in the state bar is not engagement because it's a regulatory agency, but it's an engagement because it is in fact the place that lawyers can go to get educated, can deal with from a disciplinary perspective and can work for Access to Justice. Because it's such a multiform group, I think it provides a lot more power organizationally than if you were to try to strip it down.”

“I think there's a great risk in de-unifying the bar from what it has been for 90 years. And that's not to suggest that there can't be good constructive discussions and maybe some change needs to happen. I think change is good and I think discussion is important for the health of an organization. But I--my own view of it is that currently, it comes to mind that ‘if it ain't broke, don't break it.’ And because I've seen what happens when you start to reconstruct something and it's not so simple. And not to suggest that what you have is perfect, but reconstruction can be dangerous.”

**Mark Britton, Chief Executive Officer, President & Chairman Avvo, Inc.**

But the basket that I see around the evolution of the future of the legal profession is this big technology basket where when we look at how technology is influencing the practice of law and we start looking at things like contract review automation or we look at new types of marketplaces in advertising or we look at--you have paralegals who are relying on software to process documents for companies like LegalZoom, or in Washington you have the triple LT, the limited legal license--let's see, the limited legal license technician. And there's a big discussion that revolves around that with a lot of lawyers being concerned that this is going to undermine the practice of law both ethically and how—whether--it's going to hurt lawyers in the pocketbook.”

“We're the worst as lawyers--lawyers, we're the worst at actually understanding what consumers, those people that we're trying to reach, what they want and need. And as a consequence, just to give you some data here--this comes out of the World Justice Project, but it also comes from Rebecca Sandefur's work with the American Bar Foundation, it comes out of Avvo's data. And by the way, at Avvo, we do--we talk to over 25,000 consumers personally a year. And then you have those 100 million that come through, but we pluck a lot of them out and we do research with them on our products. The number one thing that they tell us is that they don't really know what lawyers do, but they know one thing and that's that lawyers are way too expensive. And so as a consequence, the utilization rates in the United States--let's start with people with money because when we start talking about the access issue, all the lawyers throw up their hands and just say we're talking about the poor people and they just turn it off. And that's the saddest part of all of this, so I'm going to start with--if you take people of substantial means, \$84,000 and up, less than half of them, right around 54 percent-- don't use lawyers. They don't use lawyers. If you add on low income, it's 82 percent. 82 percent of the US population is not using lawyers. And they're either going down the pro se path themselves -- and any of you that spend a lot of time in the court, our courts are bursting from a pro se perspective. Last year was the largest number of pro se bankruptcy filings ever.”

“So there's actually out of the California Courts Commission, there's some pretty interesting data, also the American Bar Foundation. Rebecca Sandefur from the American Bar Foundation did a broad-based survey, I think it was two years ago in 2014, where she asked people in civil justice situations to describe their situation and help them understand -- or help her understand their perception of how lawyers and the courts can help them. In her research, 9 percent of people with a civil justice situation described their situation as legal. 56 percent of them described their situation as bad luck or part of God's

plan. 24 percent of them said that hiring a lawyer wouldn't matter. And then in California--and this comes out of the California Court Commission study, when people take things into their own hands, 60 percent of pro se litigants, [those who had] failed to actually complete their pro se task and the California Courts Commission followed up with them, they didn't realize that they had anything left to do. So they knew that they wanted to do it themselves because they weren't sure a lawyer could help them, but then they just weren't even able to accomplish the simplest tasks. So whatever we do as an industry, as a state, we need to get on one knee and start talking to the consumer and asking them what they need of this profession and we need to start building products and regulations that serve them."

**Liz Neeley, Executive Director, Nebraska State Bar Association**

"By way of background, in December of 2013, the Nebraska Supreme Court issued an opinion and the court stated that mandatory dues can only be used for purposes of regulating the legal profession and all other functions, programs and services of the Nebraska State Bar Association are then--are now voluntary. And so to accomplish this, the Nebraska Supreme Court created its own attorneys services division and all of the regulatory functions were moved from the NSBA to the court. And the court, in their opinion, defined regulatory functions to include five things: Bar admissions, council for discipline, the commission on the unauthorized practice of law, regulating mandatory continuing legal education and annual licensure or the roster of licensed attorneys. The lawyers in Nebraska now pay a mandatory fee of \$98 directly to the Nebraska Supreme Court for regulation. And dues to the Nebraska State Bar Association are now voluntary. This had a dramatic impact on our budget and the services we provide. Nationally, the membership rate for voluntary state bar associations is 65 percent. Bar associations present their membership numbers very differently. Some include attorneys with inactive law licenses, others do not. But based on Nebraska's experience, if you make the California State Bar voluntary, you can expect to lose anywhere from 25 to 35 percent of the dues revenues from attorneys with active law licenses. Nebraska's rate of retention for attorneys with active law licenses is currently 75 percent. We'd like it to be higher, but we're pretty thrilled with that. Our biggest loss of membership is from government practice attorneys. Some government agencies cut voluntary dues as a cost savings measure, others cut payment of voluntary dues because they felt that they could not use--politically that they couldn't use taxpayer money for something, quote, voluntary. And when government attorneys are forced to decide for themselves whether or not to pay voluntary dues, results are mixed."

"You can also expect to lose membership from attorneys with inactive law licenses. Rather than lose 17 percent inactive in one fell swoop, however, in Nebraska, we have seen a significant --we lose a significant chunk every year. The majority of attorneys with inactive law licenses lives out of state and so they have an active law license in another state and they don't need our benefits. To date, we have lost 40 percent of our inactive members and we expect this trend to continue."

"Initially our section membership declined by 25 percent the first year, which was what we lost -- comparable to what we lost in membership. The following year, however, we went back up to 83 percent of where we were. And this year, we're at over 90 percent of where we were. So our section membership has actually been growing and, hopefully, we'll get back and surpass where we were when we were a mandatory bar. And I think that's because we're now more focused on providing values through our sections."

"I guess in a nutshell, what I'd like to say is the beauty of a mandatory bar association is that it can look outside itself. It can serve its membership, but it can also serve the public and it can serve the court system. Voluntary bar associations for their own survival must be inward looking. They must focus primarily on the value to their membership so that dues revenue will continue to come in and service to the courts and the public becomes secondary. I think it's unrealistic to think that you can take a revenue reduction like this and maintain the same level of service and functions. In making cuts, voluntary bar associations will look at all they currently do and ask themselves which of these provides value to our membership? How can we strengthen our value proposition?"

“What's left in the voluntary bar will face budget cuts. What advice would I give you if you're looking at de-unification? Obviously, California needs to determine what's most appropriate for itself. I guess I would share that if you ultimately decide to de-unify, you need to give time to make a successful transition.”

**Jack Osborn, Chair, Conference of California Bar Associations**

“...while our mission is limited, our mission is limited to legislation. We believe that there can be and should be an independent voice for attorneys in California such as a voluntary state bar. And you know, we've talked a lot about this [de-unification] at our organization in the past few months as you've all embarked on that discussion. And you know, for us, it was not an easy path. It was mentioned earlier that we used to have 700- 800 people attend our conference of delegates session. Now we have a strong 300, but our organization is much stronger now. We have much more participation at the local bar level. We have a much more vibrant presence in Sacramento. And our success -- and our measured success at passing greater legislation is greater than any other organization in California. There is no other organization, whether be lawyers or any other group, that is as successful in having an impact on the presence of law and in creating laws that really benefit the public.”

“...when we left the state bar, we did not have any staff that came with us, but we did hire somebody who was full time who worked with us, plus an assistant, and she was with us for a number of years. About six years ago, we changed that model and we now just have part-time staff. And much of the work is done actually by volunteers, volunteer attorneys. We do have somebody who helps us with our books, somebody who helps us with our marketing; we have a staff that helps us during the conference in planning, but we do not have any full-time staff at this point.”

“I think the fear is founded, but I think--it is clear to me that there is such an important role for the state bar sections to have a statewide presence. And as we've been able to maintain that and continue to work with the local bar associations and be their voice, when it comes to Sacramento in many ways, I think the same can be true for the sections.”

**Professor Ted Schneyer, Milton O. Riepe Professor Emeritus, University of Arizona**

“Albert Hirschman, an economist, [wrote a book] called "Exit, Voice and Loyalty." And it was about the problems that plague organizations and make them fail. And with one type of organization, people who were displeased with what it was doing, how it was doing it, could vote with their feet and just leave and they were exiting. And for Hirschman, he hoped that they wouldn't necessarily leave and instead would exercise voice and try to bring about the changes, reforms in the organization. In the unified bar, if you're upset about things, you can't leave, but you sure can exercise your voice and that meant that there were going to be a lot of hot disagreements among the members of those organizations.

I found that by the time I was looking into it, that there were not great programmatic differences between what the voluntary state bars and the unified state bars were doing or could accomplish. It was widely thought that the unified bar could have more resources because they have 100 percent [participation], but there was a lot of exercise of voice to try to compel the unified bars to keep dues low and that meant that the voluntary state bars often were able to raise more revenue through dues and other means compared with the others. So one problem, when people try to compare unified bars and voluntary bars with respect to their advantages and disadvantages, is that people often talk about it this way: Oh, we have a unified bar and we have a lawyer assistance program that helps people who have addiction problems, helps lawyers to try to get through those problems. And we also have a law office management program that provides lawyers, often solo practitioners or small-firm lawyers, with advice about how to run their office or their firm. And that will be stated as if it was a demonstration on superiority of the unified bar. But where was the comparison? There are plenty of voluntary state bars that have just those same programs and I haven't seen any evidence that those programs in the unified bars are superior and constantly encounter that sort of thing.”

“ In the 1970s, courts, and legislators especially, began to infer from the unified bar's public status that the public should have more of a role in governance, thus the California legislature added public positions to the state bar's board--it was then the board of governors--to be appointed by the governor. And predictably, some California lawyers viewed this new development with consternation, especially after Governor Jerry Brown filled all of the positions with individuals described by California legal newspaper as literal democrats. There's a history of tensions between public and lawyer members of the board and block voting lawyers on one side, public members on the other. And when some liberal bar leader suggested that the conference of delegates could serve as a model for a new voluntary statewide bar association, which would take over some state bar functions and provide, quote, aggressive representation of lawyers, public members of the board were appalled.”

“There are always complaints about effective regulatory programs or ineffective ones, especially discipline. And that has led to a branch of government like the legislature, separating regular functions from the bar association activities, non-regulatory activities. The supreme court took--the Wisconsin Supreme Court took discipline away from the state bar and set up a regulatory agency under the court and yet it still retained the unified bar. Just because you separate out those regulatory functions does not necessarily mean you are also going to go from having a unified bar to having a voluntary state bar. But one begins to wonder just how strong the justification would be for unification in that circumstance.

This is actually a global phenomena. The reforms in Australia and the UK have done this. The act that was passed in 2007, the Legal Services Act, with respect to the law society, the solicitors organization separated out a--the SRA, the Solicitors Regulatory Authority, from the law society itself. Now it didn't take discipline completely away from the law society, but only serious, very serious matters that might result in disbarment were sent to the law society to process and decide. And lesser things were not sent to them because it was thought that they had great backlogs for years and that had to stop. And the way it would be stopped would be to have the SRA take it off.”

“I see a big -- I don't know whether to call it philosophic or pragmatic -- debate brewing, two different images of where things are going to go from here. One expressed by the executive director of the Washington State Bar when she testified last month is stepping towards expanding openings for non-lawyer legal services providers such as their LLLTs versus a vision of continued resistance to any liberalization in the field that would bring people who weren't lawyers, but were doing law related things, out into the sunshine. And I think there's going to be a lot more of this. The enforcement of laws against the unauthorized practice of law has dwindled. There are a number of state supreme courts that have compiled rather substantial lists of exemptions for various kinds of non-lawyer actions, doing things that lawyers traditionally might have regarded as the practice of law. And I think that's going to continue to be the direction in which things are going to go. What implication that has for whether there should be unified state bars or voluntary state bars is another question.”

### **Justice Laurie Zelon, Associate Justice, California's Court of Appeal, 2nd District, Division Seven**

“The court, the US Supreme Court in *Keller* talked about why it was necessary and why it was important to have a unified bar. And the Supreme Court said, "The compelled association and integrated bar are justified by the state's interest in regulating the legal profession and improving the quality of legal services." And the court went on, "These principles are useful guidelines for determining permissible expenditures. The guiding standard must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of the legal service available to the people of the state."

That was the line, if you will, that the Supreme Court drew between what was mandatory and what was subject to the political 'opt out' provisions which were the outcome of the decision. Public protection, to be effective, requires a certain stability and consistency of membership and a stability of resources in order to make sure that programs that are adopted for the protection of the public are able to be continued and are not subject to the vicissitudes of the economy and the willingness of members to join.”

So what do I mean when I say that the public protection is broader than admissions and discipline? I specifically include the bar's work in ensuring access to the courts; in making sure that procedures are fair for litigants; that adequate representation is provided to those who are in need of representation; and that the ability of people to solve their legal problems is protected and preserved.

What aspects of the bar do that now? Let's start with the trust fund program. The trust fund program administers approximately \$30 million every year, money that is critical to those organizations in California that provide legal services to those among us with the least access to legal services otherwise. Nearly 100 non-profit legal aid organizations receive these funds. They help low-income Californians all across the state. They work to determine that quality is ensured and that the work is done. The other things that get administered are the state funding for legal services in the form of the Equal Access Fund. That money is administered through the trust fund program and it's vital, again, especially in these times of very low interest rates when the IOLTA funds have diminished substantially as interest goes down. They also administer the Justice Gap Fund which is voluntary contributions by lawyers for this, and they administer *cy pres* awards and other settlements."

"I would say this: That the work that both make sure that lawyers understand how to do their job well so that they are not harming their clients and that it inculcates in the lawyers an understanding of the obligation that we have because we have a privileged and protected profession to make sure that the public is served, clearly are part of public protection; making sure that lawyers have the connections and the ability to serve those who would remain unserved otherwise; the partnerships that have been created, the pro bono programs that have been created."

"What I am saying is if you are serious about public protection--and I think everyone in this room is indeed very serious about public protection--that if a determination is made that the California Bar should not be unified, on which I am not taking a position, what I am saying is that we owe it to our public to find a way that is most stable and most protected and not relying on vicissitudes. And my work with other Access to Justice Commissions has taught me that that stability is critical to providing the Access to Justice Piece. That is why I differ with the professor where I think that public protection must include Access to Justice and must be part of the stable part of the bar from which plans can be made and programs can be carried out."

### May 26, 2016 Presenters

1. Ruthe Ashley, the chair of the California Law Academy
2. Robin Pearson, Vice Chair, Council on Access & Fairness
3. Patricia Lee, Special Assistant for Diversity & Bar Relations

#### Ruthe Ashley, the chair of the California Law Academy

“But I just wanted to let you know about the good things that we are doing. And so the question becomes to all of you, if you think about what you are going to do as a committee, what are the three main reasons for the bar? I see it as public protection, diversity and legal aid. And when we talk about public protection, diversity and legal aid, you cannot separate those three. They all work together. You're talking about public protection; you're talking about legal aid lawyers. When somebody from domestic violence shows up in court, who represents them? A California lawyer. Diversity matters. Because that domestic violence victim could be, and almost in many, many instances, will be a woman and a person of color. When you've got somebody who can't afford a lawyer, who has to have a public defender, who represents that person? A California lawyer. And I can tell you the time that we were in court that I took DeAnza High School students to the courtroom, and they sat in the courtroom. And when we were talking about it afterwards, I said, okay, kids, what did that courtroom look like? The judge, oh, Mrs. Ashley, he was white and he was a male. Who was the public defender? Oh, he was white, and he was a man, too. Who was the DA? The DA was white and a man also. And who was the cop, the bailiff? They all happened to be white men that day. And I said. Who were those people coming in those orange suits through that side door next to the judge? They said, oh, they were the ones that were coming in and they were the defendants. And I said, what did they look like? And one of the kids in the class said, he looked like me. And he was an African-American high school law academy student. And I said, so which side of the law do you want to be on? And why do you think the State Bar of California is doing all these law academies? Because we need you. We need you to be sitting on that bench. We need you to be sitting in the DA's seat. You we need you to be in the public defender's seat. We need you to know that when a black defendant walks in or when a domestic violence victim walks in, that the person who is representing them or sitting on the bench understands their culture, understands where they came from. Public protection, diversity, legal aid; you cannot take those apart.”

#### Robin Pearson, Vice Chair, Council on Access & Fairness

“Let me start with the State Bar's role in public protection. We strongly believe that it is much more than regulation and discipline and as Ruthe so eloquently stated, it is about public protection and the need for diversity in the State. I speak on behalf of the Council and as a woman of color who came into the profession 26, 27 years ago, into a profession that wasn't overly welcome -- welcoming to a woman of color in the majority of law firms. And the importance of what the State Bar does in diversity truly makes a difference.”

“Diversity does not just mean black, Hispanic, Asian; it includes the disabled, it includes LGBTQ, it includes everything. This is something that we look at. And I think that this is something that county bar associations cannot adequately do. So that's why -- that's part of why it's really important to have a unified Bar, to keep this kind of think tank and oversight issues that are this important to lawyers in the State of California – and not only lawyers, but the communities that they represent and individuals. It is about eliminating bias and protecting the public.”

“If the Bar ignores or consigns to another entity the diversity issue, then it's failing to recognize the necessity of preventing discipline by training the Bar and the bench to act fairly to all and increase the public perception of fairness in the judicial system. The Bar must maintain its leadership role in the administration of justice.”

“The second point is that the California State Bar has a fiduciary responsibility to make the unified Bar work and to understand its mission. There are problems that have been identified with the State Bar. Address the problems, don't dismantle the Bar. We believe it's fiscally irresponsible to create two separate entities. The current plan proposed, as we understand it, is to separate the Bar, and that does not provide any specific details about this new entity that's to be formed. How is it going to be created? What is the structure? Where is it going to be located? What is going to happen with employees? What about the expense? None of these questions have one of these questions have been addressed. The majority of the State Bar budget, as we understand it now, seems to go to discipline. But a very important charge, as we have been stating, is access to justice, protecting the public, eliminating bias. We don't get a lot of money, but we make it work. Without being under the umbrella of the State Bar, if we are to be carved off, there is no way that we could support the funding -- or get the funding that we need to support all the programming and all the excellent work that is being done...”

And finally, how would a voluntary trade association provide? Where is the money for this diversity work going to come from? The simple answer is, eventually, it's not going to happen and these programs would die and go away. This is not the charge of the State Bar. In fact, as I said, attorneys do not want to be billed twice for their Bar Association.”

Patricia Lee, Special Assistant for Diversity & Bar Relations

As this discussion goes forward in terms of de-unifying the Bar, it's pretty apparent to us that the main focus in terms of public protection is still on the regulatory side. The failure of the Bar to address the issues and criticisms of the discipline systems, and then also ongoing issues relating to financial administration and so forth, those issues continue. Those issues continued before the Bar began focusing on the regulatory portion of public protection. They obviously continue now. The message that the Council brings to you is that those issues are structural; they could be governance, but that the Bar should not be dismantled to solve those issues. Dismantling the Bar in the way that's being proposed at this time does not solve those issues. The Board of Trustees is the fiduciary -- has the fiduciary responsibility of seeing that the State Bar of California, as a unified entity, moves forward and performs all the functions that are necessary in its public protection role. If it can't do it at this point, it needs to step back and look to see how it can do that. It's the Board of Trustees' responsibility to address those issues. And by de-unifying and separating out those portions that appear to be distracting the Bar is not going to solve the problem. Also, in terms of the -- fiscal side that Robin referred to, quite a few members of the Council sat back and listened to the proposals, and their feedback was that the proposal to de-unify the Bar and separate it into two entities, a mandatory side and a voluntary trade association side was fiscally irresponsible. It would result in two bureaucracies and there was no discussion or detail as to what the costs would be. We anticipate the costs would be even greater. There was no discussion as to where the cost would come from. There was no discussion in terms of the structural, organizational or any other aspects that it would take to create a separate entity, and that information is missing. And given the time line that is now proposed in terms of de-unifying the Bar over a two-year period, even if that happened, that would be very unrealistic in terms of trying to come up with the two separate entities, the voluntary and mandatory side. So the bottom line for the Council is that the issues that are being presented fall within public protection, the public protection mission of the Bar. But that's a broader mission than is being focused on at this point in time, that those issues and those problems and those criticisms should be responded to and addressed by the current Board of Trustees without the side -- the side focus on trying to de-unify the Bar to begin the focus even greater on those issues. And that the public protection role needs to be taken seriously.”



# Appendix G

## Summary of Governance in the Public Interest Task Force Written Submissions



**1. Proposal for De-Unification/Reform of the California State Bar - Trustees Dennis Mangers and Joanna Mendoza (March 31, 2016)**

Proposed Amendments to the State Bar Act:

**Reform Process & Organizational Structure of Regulatory Agency:**

The Legislature is asked to enact legislation, effective January 1, 2017, requiring the State Bar to propose a division of funding sources, other assets, staff, and programs such that the trade association functions of the State Bar shall be separated from the regulatory functions of the Bar by forming a private, non-profit corporation to function as the trade association for the legal profession for the State of California and establishing the California Legal Services Regulatory Board.

The State Bar shall allow at least 60 days for public comment and hold at least two public hearings before adopting and proposing the plan to the Governor, the Chief Justice, the Judicial Council and the Judiciary Committees of the Assembly and Senate.

The functions the plan assigns to the trade association shall be those appropriate for a private, non-profit association with a voluntary membership, comparable to those performed by the California Medical Association, including the Sections and all committees, commissions and State Bar departments that perform trade association functions.

The plan shall propose to transfer to the trade association the Sections' reserve funds , other funds legally restricted to activities to be transferred to the trade association, intellectual property rights and content generated by the Sections, the right to use the historic seal of the California State Bar and to use the name "California State Bar Association." Public communications on behalf of the State Bar shall use the name "California Legal Services Regulatory Board" to avoid confusion between the State Bar Association and the regulatory agency. The trade association shall be obligated by statute to use those resources consistently with the purposes for which they were accrued until those resources are fully expended.

Those functions appropriately performed by a state regulatory agency shall remain with the State Bar. Those include admissions (including the Committee of Bar Examiners), law school accreditation and registration, discipline (including the Office of Chief Trial Counsel and the State Bar Court), the Lawyer's Assistance Program, Client Security Fund, Member Records/Compliance, and the Judicial Nominees Evaluation Commission. While the CLSRB shall regulate mandated Continuing Legal Education (CLE) and may use education as a means to achieve the public protection for which the State Bar exists, it shall not itself be an education provider in competition with the trade association, other for-profit and non-profit providers of CLE.

There shall be no net loss of State Bar employment as a result of the proposal.

The legislation shall require the final State Bar plan to be submitted to the Governor, the Chief Justice, the Judicial Council and the Judiciary Committees of the Assembly and Senate by April 1, 2018. It is anticipated the plan will inform legislation adopted in 2018 to be effective January 1, 2019.

### **CLSRB Structure**

We propose 2016 legislation to amend the State Bar Act to terminate the Board of Trustees and to establish the California Legal Services Regulatory Board effective January 1, 2019, as follows:

The CLSRB shall have 13 members appointed as follows:

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To achieve appropriate geographic diversity and recognizing the great diversity of California, each appointing authority's appointees at any given time shall include at least one person whose residence or place of business is located in:

- i. The counties included in the 1st and 3rd District Courts of Appeal
- ii. The counties included in the 5th and 6th District Courts of Appeal; and
- iii. The counties included in the 2nd and 4th District Courts of Appeal.

Board members shall serve four-year, overlapping terms expiring on December 31<sup>st</sup> of the appropriate year and may be reappointed to one or more successive terms. In the absence of direction by the appointing authority to classify his, her or its appointees, initial appointees of each appointing authority shall be classified by lot so that one appointee serves for two years, one for three years and the third for four years. Two Supreme Court appointees shall serve for four years. Those appointed on completion of these initial terms shall be appointed to four-year terms.

Board shall elect from its members, at least annually and not later than December 31st, a Chair and a Vice Chair to serve in the absence of the Chair. There shall be no bar to reelection of a Chair or Vice Chair to one or more successive terms.

Existing Trustees shall continue in office during the terms to which they were elected or appointed, except as follows:

Elections of attorney members of the California State Bar Board of Trustees shall cease as of January 1, 2017.

Appointed members may be reappointed to serve through December 31, 2018. Thereafter, the Board of Trustees shall sunset, to be succeeded by the CLRSB.

### **Annual Meeting**

The statutory requirement for an annual meeting of the State Bar shall sunset as of January 1, 2019.

### **Additional Business & Professions Code Changes**

The language of the Business & Professions Code shall be revised to eliminate references to “members” and “dues,” replacing them with references to “licensees” or “attorneys” and to “fees.”

Business and Professions Code Section 6031.5 shall be amended to require the CLSRB to collect voluntary dues for the trade association and its sections in conjunction with the collection of the annual licensing fee as the State Bar currently collects such moneys on behalf of the Conference of Delegates of California Bar Associations.

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6140.1 – amend this requirement that the budget be provided to the two Judiciary Committees to require it to be provided to the Chief Justice as well

6177 – amend requirement for the Annual Discipline Report to require it to be provided to the Chief Justice as well as to the Legislature

6238 – amend requirement for annual report on the Lawyers’ Assistant Program to require it to be provided to the Chief Justice as well as to the Legislature

The Bar shall propose a program to use a portion of licensing fee revenues to fund a loan forgiveness fund for newly licensed attorneys who agree to provide legal services in

counties under-served by the legal profession in public or private service, subject to a voluntary check-off comparable to that provided by B&PC 2436.5, which provides a similar program for physicians.

The CLSRB shall be prohibited from creating specialty law sections or committees that collect voluntary dues or compete with the state-wide trade association created by this act.

Section 6201.2 re Governance in the Public Interest Task Force shall be amended to make Senate and Assembly attorney appointees to the Board eligible to serve on the Task Force.

Section 6086.16 shall be repealed (provision requiring a report in 2005 on abuse of BPC 17200 (unfair business practices statute)) as expired.

**2. Perry Segal, Former Chair, Law Practice Management and Technology (LPMT) Section Executive Committee: LPMT Memorandum to State Bar Board of Trustees re: Governance in the Public Interest Task Force, April 22, 2016**

The LPMT Section recently unanimously voted in favor of Unification, citing its belief that its continued affiliation with the State Bar is beneficial and that deunification poses serious risks to it and other small Sections. Although Bagley-Keene poses a challenge to its operations, LPMT nonetheless wishes to find solutions to this and other issues within the existing State Bar structure. LPMT urges those in favor of deunification to consider the costs and benefits of such a decision.

**3. Tore Dahlin, Californians for Attorney Regulation Reform (C.F.A.R.R.): Statement to Task Force on Governance in the Public Interest, April 25, 2016**

Tore Dahlin's statement to the Task Force on behalf of the Californians for Attorney Regulation Reform advocates moving the State Bar Court to the state court system. In particular, CFARR proposes moving the Hearing Department to the Superior Court and the Review Department to the Appellate Court. CFARR cites the following benefits of this proposal: First, under this proposal, State Bar dues will reimburse the state for the costs of operating the attorney discipline courts. Second, judges who hear attorney discipline cases will be accountable to the public through the ballot upon the expiration of their terms. Next, this transition will more closely align the California attorney discipline system with that in federal courts, other states that use regular judges for attorney discipline and other professional boards that separate discipline from hearing officers. Finally, Former Senator Quentin Kopp responded favorably to this proposal.

**4. Responsive Law: Comments on: Consumer Protection in the Wake of the Dental Examiners Decision, April 22, 2016.**

Responsive Law, a national nonprofit organization and consumer advocacy organization, prepared its comments on the *Dental Examiners* decision to the Governance in the Public Interest Task Force. Responsive Law believes the State Bar's system of governance and oversight is insufficient to guarantee that the public's interest takes precedence over the business interests of lawyers and leaves the State Bar open to antitrust action. According to Responsive Law, the oversight of the State Bar by the Supreme Court is insufficient to establish state action immunity under the *Dental Examiners* decision because the Supreme Court Justices are active market participants. Responsive Law believes it may be appropriate to separate regulation of the practice of law, which does not have anticompetitive ramifications, from the business of law, which often does. Responsive Law is agnostic at this time about what state body should review State Bar regulatory actions governing the business of law, but believes further discussion may illuminate whether an existing state agency is appropriate or whether a new agency is required, either within the executive branch or independent of it.

Attachment A: selected comments from lawyers in response to State Bar consideration of LLLT licensure.

Attachment B: a chart indicating the activity of recent California Supreme Court Justices after leaving the Court.

**5. Paul Riehle, Chair, Antitrust, Unfair Competition Law and Privacy Section of the State Bar: Letter to David Pasternak re: Governance in the Public Interest Task Force—Unification of the State Bar Sections, April 22, 2016**

The AUCLPS Section voted unanimously in favor of unification. Affiliation with the State Bar, as an administrative arm of the California Supreme Court, draws the involvement of many of the committee members with this Section. AUCLPS also believes their connection to the State Bar helps them maintain current members and obtain new members. As a result of the quality of their Section Executive Committee and advisors, and their affiliation with the State Bar, AUCLPS is able to attract the highest quality speakers at their legal education program. Although Bagley Keene imposes inefficiencies on the Section, and the costs imposed on the Sections are too high, and that State Bar staff could be more responsive to the needs of the Sections, AUCLPS wants to solve those problems by working with the Bar. Separating the Sections is not a panacea. AUCLPS believes that comments that the Sections' activities are those of a trade association betray a misunderstanding of what they do, which is sponsor educational programs and publish expert legal materials. AUCLPS conducts no lobbying activity.

**6. Jennifer King, President, Board of Directors, Supreme Court Historical Society: Letter to Governance in the Public Interest Task Force, April 21, 2016**

The California Supreme Court Historical Society asks the GTF to consider the potential negative impact that could stem from the proposed structural changes to the State Bar and recommends against any changes that would threaten the ability of the Society to carry out its

mission. Over two-thirds of the Historical Society's \$150,000 annual budget comes from the voluntary \$25.00 "check off" paid by members on their State Bar annual dues statement. The Historical Society's existence is dependent on this funding from the State Bar dues.

**7. Council of State Bar Sections Letter to State Bar Board of Trustees re: Organizational Structure of the Bar, April 22, 2016**

The Sections acknowledged their concern about the allocation costs and their impact on Sections' reserves, as well as the impact of Bagley-Keene on their ability to carry on their work for the members and to promote the public interest. Despite those concerns, the Sections have considered the prospect of de-unification. The following Sections have voted against de-unification: Law Practice Management & Technology, Real Property, Trusts & Estates, Family Law, and Anti-Trust. Another 5 Sections, including Workers' Compensation, have discussed de-unification, but have not voted because no formal de-unification plan has been presented. Each of the Sections (except BLS) have grave concerns about the impact of a de-unified structure on their individual viability and financial stability, including whether their reserves would go with the, and the increased time of volunteers to coordinate contract for events, education, publications, and meetings. The costs of such coordination, they believe, would cost each Section more than it does under a unified bar because of the buying power of the State Bar in contract negotiations. Finally, they are concerned that the three-year appointment structure for membership to a Section Executive Committee in a de-unified bar would have to change because of the need to build the "institutional memory" already built under the unified bar. There are at least 3 Sections that have not met on the subject of de-unification since hearings on the subject began in March 2016. The Council believes those Sections must be contacted and given a voice in this process.

**8. Center For Public Interest Law Letter to GTF: re: Testimony of the Center for Public Interest Law (April 25, 2016)**

CPIL urges this Task Force to recommend reforms in four key areas in its report to the legislature: (1) deunification; (2) compliance with the U.S. Supreme Court's February 2015 decision in *North Carolina State Board of Dental Examiners v. FTC*; (3) Board of Trustees restructuring; and (4) independent discipline system reform.

**a. The Unified Bar Must Deunify into a Regulatory Agency With Public Protection as its Highest Priority.**

The State Bar must sever off its trade association functions and engage only in regulatory agency activities which may be funded with compulsory Bar dues (which should be called "licensing fees") under *Keller v. State Bar of California*, 496 U.S. 1 (1990). Imagine if the California Medical Association — a trade organization representing and promoting the interests of the medical profession — also were designated as the agency with the public protection task of the Medical Board of California. The resulting conflict of interest would be obvious and

unacceptable. However, that is the very conflict of interest that has existed with the California Bar's regulation of attorneys for over 80 years. The "integrated" structure that combines a private trade association entity with the exercise of police power that properly emanates from the People raises profound ethical issues. The most fundamental check in our system is not legislative/executive/judicial; rather, it is the overriding separation between public and private. The Bar's current "integrated" structure violates that check.

CPIL believes that the following regulatory agency functions may properly stay with the State Bar (which can continue to be housed in the judicial branch of state government) and may be lawfully funded with compulsory licensing fees: (1) licensing of attorneys; (2) its legal specialization program; (3) adoption of ethical standards for the legal profession; (4) attorney discipline; (5) administration of the Client Security Fund; and (6) access to justice activities, including IOLTA funding of legal services for the poor through the Legal Services Trust Fund, the Center on Access to Justice, and the Commission on Access to Justice. The following "trade association" activities should be severed off: (1) the sections; (2) lobbying and legislative activity on issues unrelated to the regulation of the legal profession and/or improving access to the justice system; (3) the annual meeting; (4) insurance programs and services; (5) the regulation of legal referral services; and (6) continuing legal education.

To ensure that access to justice maintains its rightful place as a key mission of the Bar, the Task Force should recommend to the Legislature that it amend Business and Professions Code section 6001.1 to expressly include "access to justice" as a priority for the State Bar and the Board of Trustees. A Bar less distracted by trade association functions and more dedicated to pursuing public protection can certainly, like its counterpart in the medical community, maintain a robust mission of pursuing access to justice for all Californians.

**b. The Board of Trustees Must Be Restructured to Comply With *North Carolina***

In its current form, the State Bar of California is at risk of significant antitrust liability because it is unquestionably controlled by lawyers — the Board of Trustees consists of a supermajority of lawyers, six of whom are elected to the Board by their peers. The following recommendations will bring the Bar into compliance with this decision:

**(i) The Board of Trustees Must Be Restructured**

The simplest way to avoid antitrust liability (and ensure the interest of the public is properly considered and protected) in light of North Carolina is recommend that the Legislature convert the Board composition to a supermajority of public members, with the added provision that no vote may be taken where those voting are not public members in the majority. At minimum, the Legislature must eliminate the remaining six elected attorney positions on the Board of Trustees.

(ii) The Legislature must establish an “active state supervision” mechanism which reviews the Bar’s rulemaking and other actions for anticompetitive activity

Unless the Bar recommends that the legislature restructure the Board of Trustees into a public member supermajority, it needs to establish some kind of “active supervision” mechanism to review its decisions for anticompetitive activity. Currently, the State Bar — which often initiates the rulemaking process to adopt changes to its many sets of rules and regulations — is not subject to the Administrative Procedure Act (APA), so its changes to its many compilations of rules and regulations are not reviewed by the Office of Administrative Law (OAL). Although changes to the Bar’s Rules of Professional Conduct are reviewed and must be approved by the California Supreme Court, the Court is not required to review them for anticompetitive effect or “modify” them as active state supervision requires.

One option would be for the Bar to become subject to the rulemaking provisions of the Administrative Procedure Act, Government Code section 11340 et seq., including Office of Administrative Law review, for all rule changes other than the Rules of Professional Conduct. Alternatively, a “competition review body” could be established within the California Supreme Court to oversee supply, group boycott, and other restraints that naturally occur within regulatory agencies. That entity must not be under the control of actively practicing attorneys, and it must not perform in a pro forma fashion; instead, it must “actively” review any decision with an eye towards the anticompetitive impact of these decisions. Per *North Carolina*, this entity must also have the clear power to “modify or veto particular decisions to ensure they accord with state policy.” 135 S. Ct. at 1116.

At present, neither the California Supreme Court, nor any other entity, provides the requisite independent and “active” supervision for anticompetitive effect as required by North Carolina. This Task Force should recommend that the Legislature require the California Supreme Court to engage in “active state supervision” of the Bar, and any part of it controlled by “active market participants” in the profession, as commanded by the U.S. Supreme Court. That mandate should include the power and resources to fashion, in its own manner, a system for filtering decisions to focus on those with anticompetitive effect; and, for those, to examine their substantive anticompetitive effect and alternatives, using relevant economic, antitrust, and other expertise separate from practicing attorneys.

(iii) The Office of the Chief Trial Counsel should be moved to the Attorney General’s Office

In order to assure that attorney discipline does not become a group boycott offense, it is best not controlled in any way by the Board of Trustees — particularly if that Board continues to be under the control of practicing attorneys. The decisions about who to prosecute are within the province of the Office of the Chief Trial Counsel (OCTC) – in turn controlled in theory by competitors of those accused. Hence, the OCTC and the Bar’s Office of Investigations should be removed from the Bar. They are best housed in the Office of the Attorney General. That is the office that prosecutes disciplinary matters for every other occupational licensing board in the state.

**c. Elections Must Be Eliminated: The Board of Trustees Should Be Selected by Public Officials, Not By Professional Colleagues.**

Six of the Board of Trustees' attorney members are elected by those they regulate—practicing attorneys. These six attorney positions should be converted to public members, with three appointed by the California Supreme Court, and one each by the Governor, Senate, and Assembly. Even if the attorney-controlled format is continued, these positions should be appointed by public officials and not elected by persons the Bar is supposed to regulate in the public interest.

**d. The Bar Should Request an Independent Discipline Monitor.**

It is in the best interest of the Bar — and the public — to hire an independent expert (outside of the politics, lawsuits, union votes, and finger-pointing) who can study the discipline system as it exists today, and make recommendations to strengthen it, make it more efficient, ensure public protection, and ensure accurate reporting to the Legislature.

This concept is not new to the Bar or the Legislature. In 1986, the legislature created a State Bar Discipline Monitor position in SB 1543 (Presley) (Chapter 1114, Statutes of 1986), and — as stated above — the undersigned and CPIL staff served in this role for five years. The Legislature has created independent “enforcement monitors” for several Department of Consumer Affairs agencies, including the Dental Board of California, the Contractors' State License Board, the Medical Board of California, and the Bureau for Private Postsecondary Education. This mechanism has proven valuable to the Legislature, the affected agencies, and the public — because an independent expert can evaluate the system as a whole and make recommendations for reform.



# Appendix H

## Mangers/Mendoza De-unification Proposal



Proposal for De-Unification/Reform of the California State Bar

(March 31, 2016)

Proposed Amendments to the State Bar Act:

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April 18, 2016

Assemblymember Mark Stone  
Chair, Judiciary Committee  
Members, Judiciary Committee  
California State Assembly  
1020 N Street, Room 104  
Sacramento, CA 95814-5624

**Re: A.B. 2878 (State Bar Fee Bill): Support if Amended**

Honorable Chair and Committee Members:

**INTRODUCTION.** As past and present leaders of the California State Bar, and as others with an interest in the Bar's success, we write to express support for the annual fee bill, but to suggest substantial amendments to address systemic weaknesses in Bar governance.

**THE NEED FOR REFORM.** Reform of the State Bar is urgently needed for many reasons. Most fundamentally, the Bar has a long history of cyclical crisis, reform, neglect, and renewed crisis. The Legislature's many efforts to address Bar governance are evidenced in detailed oversight provisions in the State Bar Act and in the substantial energy this Committee and its Senate peer commit to the effort.

You know of the current controversies concerning the 2014 termination of the Bar's Executive Director, the termination of many of his associates and the welter of lawsuits that followed. Headlines disclose his allegations against the Bar, the leak and then release of the Munger, Tolles & Olson investigation of whistleblower allegations. These controversies have leveled criticism at the Bar, its management, its Trustees and its past two Presidents. Pending controversies include a vote of no confidence in the current Chief Trial Counsel, critical audits by the State Auditor, and serial revelations about neglected complaints of unauthorized practice of law (UPL). Crises at the Bar are revealed nearly daily in the press.

These latest controversies are part of a larger pattern. Nearly every Executive Director of the State Bar over the past few decades has ended his or her service in controversy. Each is replaced by a new leader, charged to be "a new sheriff in town." A show of effort at change is made; the attention of the press, bar and public turn elsewhere; and the Bar slides back into mismanagement, failure to protect Californians, and general dysfunction until a new controversy soon restarts the cycle. This systemic dysfunction derives from the dual mission of the Bar and its short-term, diffuse, volunteer leadership. With respect, we conclude the time has come for a systemic solution to a systemic problem.

**THE FAILED CASE FOR A UNIFIED STATE BAR.** Unlike every other profession in our State and unlike an apparent trend in sister states of comparable size and diversity toward decoupling legal regulatory and professional organizations, California attorneys have been granted the privilege of self-regulation. Two justifications are offered for this. First, that protection of lawyers from legislative over-reaching is necessary to ensure an independent judiciary, which can only resolve disputes that lawyers bring to it. We, of course, share our national commitment to a strong and

independent judiciary. However, we fail to see how the changes we propose affect this principle. Eliminating lawyers elected by lawyers from a multi-member board, in the Judicial Branch, with a greater percentage of judicial appointees than is now the case, enhances the judicial branch's partnership with the Legislature in overseeing the Bar. That shared oversight, of course, dates from the adoption the State Bar Act in 1927 and court cases upholding the statute. Moreover, our proposal makes other enhancements to Supreme Court oversight of the Bar.

The second justification for lawyer self-regulation has been that lawyers will be more demanding of lawyers and therefore more effective regulators than non-lawyers. Facts defeat the claim. The Bar has never managed its discipline backlog well over sustained periods. Every victory over the backlog is followed by backsliding and new controversy. When its past Executive Director and present Chief Trial Counsel did manage to greatly reduce the backlog for a time, they abandoned reviews to ensure complaining witnesses that cases had been handled properly. That predictably led to a rise in *Walker* petitions to the Supreme Court and an unprecedented grant of dozens of those petitions. The Bar's current failures to credibly pursue UPL are painfully clear. Allegations the Bar more vigorously prosecutes attorneys with less money and influence than others have never been seriously addressed. These tend to be solo practitioners, small-town lawyers, and lawyers of color. The Bar can and should assure Californians that the justice it dispenses is even-handed as well as efficient.

A DISTRACTED REGULATOR. More fundamentally, our years of service to the Bar show us a very different reality. The Board of Trustees is a distracted regulator. It spends much of its energy on professional association matters such as appointments of attorneys to positions of prestige, providing continuing legal education in competition with voluntary bars and for-profit providers while also regulating those providers, conducting an annual conference that draws fewer attendees and requires greater subsidy each year, publishing legal content, selling insurance, etc. For example, the most recent Board of Trustees meeting allowed its Regulation and Discipline Committee (RAD) just one and a half hours at the end of a very long day, while association business dominated much of the remaining time. RAD is just one committee of seven. Many other committees of late have had essentially no agenda items generated by Trustees — only routine items generated by staff. The Bar's most recent annual planning meeting, in the midst of the crises noted above, was rescheduled to allow social interactions with the Chief Justices of California and New York, and allowed for little meaningful planning to effectively regulate legal services. Last year's ambitious strategic planning effort was largely abandoned this year. This institution simply cannot sustain a focus on regulation from year to year. Over the past two years, the Board has spent far more time in closed session addressing personnel, litigation and real estate issues than it has devoted in open session to regulation.

Bar Trustees serve three-year terms and just three lawyer members have sought re-election or reappointment since 2012's SB 163 allowed them to do so. Thus, nearly a third of the Board turns over each year, always including the President and typically including all committee chairs. When two effective committee chairs tried to address this turn-over by detailing provisional work inventories for their successors this year, their inventories were quickly dismissed — one without public discussion. Rather, the Board turned its focus to this year's President's signature project — an annual habit modelled on the work on voluntary Bars

— an effort to persuade the Legislature to invest \$50 million annually to fund legal services to poor Californians. A laudable goal, no doubt, but one that need not preclude attention to the Bar’s regulatory mission.

Moreover, the aspirations of attorney Trustees to attain the coveted title of President of the California State Bar have very destructive consequences. Would-be Presidents often identify themselves from the moment they are seated and begin to compete for an election to be held three years later. The election season is perpetual, with a kick-off resolution in March, nominations in May, elections in July, and transition from one President to the next in the fall.

Then Presidents commonly try to influence the selection of the next and, for decades, the seat has typically been traded off between former presidents of the San Francisco and Los Angeles County Bar Associations. The last President from elsewhere left office a decade ago. Indeed, the Los Angeles County Bar Association regularly trumpets its association with the Bar’s elected leaders to market itself. Bar Presidents appoint all committee chairs, make committee assignments, approve committee agendas, and establish Board agendas. These decisions are often influenced by desire to advance the prospects of would-be Presidents. Time devoted to a committee’s work reflects how much “air time” a President wishes to grant a would-be President as much as needs of the Committee’s work. Thus, the RAD chair becomes a platform from which to run for President rather than an opportunity to lead governance of the Bar’s regulatory function. The annual planning session, conducted by the Vice President, is a de facto campaign event and topic selections and moderator assignments are used to build and maintain a faction and to groom candidates. The fate of an idea is as often determined by its proponent as by its merit — which may explain current leaders’ abandonment of the 2015 strategic plan and committee work plans. Presidential politics produce divisiveness and factionalism that distract from the Bar’s regulatory mission. While voluntary Bar associations sometimes exhibit these behaviors, we do not think they are typical of other regulatory boards, which operate by consensus and seek to develop leaders and to ensure continuity of leadership. Factionalism reached a particularly high point last July when an outgoing President led a faction to win all three offices of the Board and his successor broke with precedent to exclude from committee leadership (and hence the Executive Committee) every trustee who had voted for his competitor. This winner-takes-all ethos that can only intensify factionalism on the Board.

AN END TO LAWYER SELF-REGULATION IS INEVITABLE. Moreover, the national trend away from lawyer self-regulation, distracted by trade association functions, is clear, with several of the largest states having preceded California on this path, including New York (166,000 attorneys in 2013, larger than California’s 163,000), Illinois (62,000), Pennsylvania (50,000), New Jersey (41,000), and Ohio (34,000). Twenty-three states separate judicial branch regulation of attorneys from thriving voluntary State Bar Associations.

Even in States which couple regulation and professional association activities, lawyer self-regulation is under attack. The Arizona Bar has faced legislation to end lawyer self-regulation in each of the last two years. The Nebraska Supreme Court recently separated regulation from professional association activities. Reasons for this trend include not only issues like those noted above, but also antitrust concerns that arise from allowing active market

participants to police admission to the marketplace. The recent U.S. Supreme Court ruling against the North Carolina Board of Dental Examiners' effort to preserve the teeth-whitening market for licensed dentists sparked voices in California who assert an end to lawyer self-regulation is required by antitrust laws. Whether or not they are right, litigation can be expected if California does not voluntarily end lawyer self-regulation. We see no reason to fight the trend and many reasons to join it.

A BETTER PROFESSIONAL ASSOCIATION. Nor is the Bar effective as a professional association, despite the attention its Board pays to those subjects. Its voluntary Sections — which produce valuable intellectual content to educate the profession and the public, to assist this Legislature, and to ennoble the profession — are in crisis. They can no longer afford the Bar's very high overhead and find the demands of the Bagley-Keene Open Meeting Act an obstacle to volunteerism. We cannot support allowing a government agency to operate outside public view, but also see no need for a voluntary professional association to bear such burdens. Legal restrictions on the Bar rooted in the First Amendment and expressed in the *Keller* and *Brosterhous* cases have emasculated the Bar as an advocate for the profession. To cite but one recent example, when the Legislature debated extending sales taxes to services last year, CPAs and other professionals came out in force to express their views, defend their professions and advocate for their clients. Lawyers were silent. The existence of the Bar as a mandatory state-wide professional association silences other voices and the First Amendment silences it.

The lack of an effective state-wide professional association has consequences for California. It means less effective advocacy for a well-funded judiciary and legal services. It serves to undermine — not protect — judicial independence. A private professional association would be a better champion of these values than a state agency hemmed in by the most conservative perspective on what and how it can advocate. For example, workers compensation judges and lawyers associated with the Workers Compensation Section of the Bar do excellent work in identifying appellate decisions which should be published to guide future cases. They cannot file requests for publication in the name of the Bar because the time required for Board review (to ensure the decisions neither are, nor appear to be, pro-labor or pro-management) means they cannot meet short court deadlines for such requests. Thus, they must forego their official connection with the Bar to do their work.

Similarly, Prop. 209's prohibition on state-funded affirmative action has hampered the Bar's ability to advocate for diversity in the profession and for full and fair access to justice for communities of color. Indeed, the Bar recently ended its legal relationship with the California State Bar Foundation under a threat of suit for precisely this reason.

Still further, the Political Reform Act of 1974, Government Code section 1090 and other conflict of interest laws silence important voices a professional association should empower. For example, leaders of legal aid organizations like Public Counsel and Bet Tzedek who serve on the Bar Board are obliged to leave the room when issues affecting such organizations are discussed. A private association can give a seat at the table to such vital contributors to the legal profession.

PROPOSAL FOR REFORM. So, what specifically do we propose to address these problems? First, we do not recommend haste or a failure to solicit input from the Legislature's partners in

regulating the State Bar — the Chief Justice and Supreme Court, and the Governor. We recommend a three-year process, led by the Bar itself, with input from five Trustees appointed by the Supreme Court and as many as four appointed by the Governor, to design and achieve separation. We also recommend that the Bar's Governance in the Public Interest Task Force, which the Legislature first required in 2011, be continued through 2018 to allow input from the Court, the Governor, the Legislature, the profession and the public. Which functions belong in government and which can more effectively performed by a private entity are questions worthy of thorough discussion. Let the Bar study this in 2017 and makes recommendations for legislation in 2018. Moreover, these ideas have been debated since before the 1927 adoption of the State Bar Act and legislation has been proposed repeatedly over the years, including a 1996 proposal of then-Senator (and subsequently Judge) Quentin Kopp from which our proposal draws.

The Legislature should mandate some points. First, no job losses should result from separation of the Bar's two missions. While we expect this to achieve efficiencies and to lower the cost of professional association activities, the Bar's regulatory functions are understaffed. Second, there should be an explicit commitment to a larger role for the Supreme Court in Bar oversight. This means a larger share of seats (4 of 13 as compared to the present 5 of 20), a separation plan prepared with involvement of the Court's five appointees, and more express obligations that the Bar report to the Supreme Court.

Our proposal invites input from the Governor, too. There is a role for his current appointees to the Board and for those he might appoint to two vacant seats.

We recommend changes to achieve a more stable board with less turnover and more ability to sustain focus on regulation. We call for longer terms, opportunity for multiple terms, a smaller, more collegial board and an end to signature projects of each new President. We seek a more potent professional association on the model of the California Medical Association, which has thrived since the Legislature de-coupled regulation from advocacy for that profession. Our proposal requires the Bar to collect the private association's dues via its annual invoices from those who do not opt out; forbids the Bar to compete with the education functions of the Sections; transfers intellectual property, reserve funds, and other assets; and empowers the association to enhance the image of the profession. Our proposal also requires the Bar to establish a voluntarily funded loan forgiveness program to encourage new lawyers to practice in underserved communities.

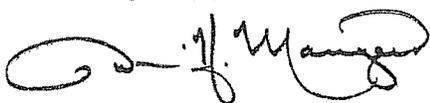
**CONCLUSION.** We respect the voices for the status quo. Change is always difficult and demands justification. However, failure to change will not help a Bar mired in crisis, the legal profession or California. Some for-profit entities may prefer the status quo to a more effective regulator and a more potent professional association. Neither bodes well for those who seek profit in the legal services sector at the expense of attorneys and without watchful regulatory oversight. Suffice it to say, we find those voices less persuasive than others.

We are not content with the status quo. We foresee a more effective regulator of legal services to Californians and a more potent and less costly professional association for lawyers.

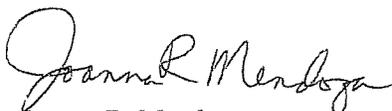
We look forward to working with you and other leaders of good faith and common will to achieve those ends.

Thank you for your consideration.

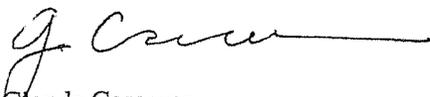
Very truly yours,



Dennis Mangers  
Trustee  
Senate Appointed, Public Non-Attorney Member  
State Bar of California



Joanna R. Mendoza  
Trustee  
Elected Member, 3rd District  
State Bar of California



Glenda Corcoran  
Trustee  
State Appointed Member  
State Bar of California



Heather Linn Rosing  
Former Vice-President, Trustee  
State Bar of California

- c: Senator Hannah Beth Jackson, Chair, Senate Judiciary Committee  
Governor Jerry Brown  
Chief Justice Tani Cantil-Sakauye and Members of the Supreme Court  
President Pasternak and Trustees of the California State Bar  
Elizabeth Parker, Executive Director, California State Bar

May 30, 2016

Assemblymember Mark Stone  
Chair, Judiciary Committee  
Members, Judiciary Committee  
1020 N Street, Room 104  
Sacramento, CA 95814

Re: **FLOOR ALERT**  
**A.B. 2878 (State Bar Fee Bill): Additional Amendments Required**

Honorable Chair and Committee Members:

**INTRODUCTION.** We have reviewed the amendments to the State Bar's annual fee bill made in the Assembly on May 27, 2016, and which are expected to be presented during a Floor Session this week. With respect, we think they fall short of what is needed. Accordingly, we write to again encourage you to achieve meaningful reform of the Bar in this year's fee bill by either making additional amendments to decouple the State Bar and adopt the reforms we have proposed or making it clear that you will not accept any legislation that does not contain such language.

**INSUFFICIENT REFORM OF A BROKEN STRUCTURE.** While the amendments proposed pursue some governance reform by eliminating elected Board members, reflecting one of our earlier recommendations, they will not lead to any significant change in the operation of this increasingly dysfunctional organization. The bipolar nature of the current State Bar structure prevents the organization from serving either the people of California or its attorneys well. The discipline system that is supposed to serve the public has not received the oversight it needs for years (as evidenced by multiple State Audits), and the attorneys of this State question what value they receive from the dues they pay to the State Bar. Everyone is dissatisfied. The Board, preoccupied with local bar association-type politics and duties, and unable to provide sufficient oversight over the years (again evidenced by State Audits and scandal), cannot focus on either job well enough to satisfy anyone.

By failing to include any of our more significant reform recommendations, the Assembly would simply reduce the size of the Board and not reduce the significant breadth of its oversight responsibilities — contributing to further dysfunction. While the elected positions should be eliminated, that reform must be made together with the structural change of decoupling the Bar's regulatory and professional association functions to allow meaningful oversight of the State Bar.

We have provided the Chair of the Assembly Judiciary Committee with language that would, at last, require the State Bar leadership to return to the Legislature in a year with a plan to decouple its regulatory and professional association functions. We fear that if these amendments are not adopted in the Assembly now, the momentum for badly needed change will be lost.

**RECENT EXAMPLE OF DYSFUNCTION.** If the many State Audits and news stories were not enough, and should you need yet a further example of how badly the State Bar has lost its focus on public protection, consider this. Earlier this month, at its regularly scheduled Board meeting, all of the Trustees not assigned to the Regulation and Discipline Committee (half the Board) were dismissed from the dais and forced to sit in the audience for the entirety of the meeting. Although all elected and appointed members of the Board are regulators sworn to protect the public, half remained disengaged throughout the only two hours of a two-day Board meeting at which regulation and discipline were discussed. When a non-attorney Trustee protested, the President claimed that Bagley-Keene required non-committee member Trustees be excluded from the meeting. When asked, the General Counsel opined there were means to allow all Trustees to participate in the regulatory functions of the Bar without violating Bagley-Keene, but the President did not direct her to make such a recommendation. Worse yet, when the non-attorney Trustee moved to direct Counsel to make such a recommendation, both the President and Counsel pronounced the motion out of order. The non-attorney Trustee could not even move to have it placed on the agenda for the next meeting, and the President did not direct General Counsel to take any action on the matter.

**RESTRUCTURE, REFOCUS AND REFORM THE BAR.** There is only one way to ensure a focus on public protection is restored — to finally decouple the regulatory and professional association functions of the State Bar. This will leave serving the attorneys of California to the professional trade association and eliminate the Bar’s bipolar nature. The proposed reforms should also eliminate the bar association-style politics of a Board overly focused on presidential elections and the powers of the President. Attorneys have been given the opportunity to regulate themselves in California for nearly 90 years and repeatedly let down the people of this State by falling deeper into cyclical dysfunction and scandal, all the while saying they are somehow different from every other profession and more worthy of self-regulation.

Moreover, as currently amended, the bill does what the Legislature has historically done when confronted with the cyclical crises at the Bar: it treats selected, identified concerns but is not ambitious enough to address the core problem of the Bar. Indeed, in isolation these solutions:

- micromanage the Bar;
- make the Legislature ever more politically responsible for an agency it is not in a position to run,
- disempower the Bar Board,
- give Bar management an excuse for underperformance (“our hands are tied,” “give us more time”), and
- assign too little responsibility to the Judicial Branch in managing the Bar’s recurrent failures.

With respect, it is time to stop reacting to symptoms of a problem and to address the problem itself.

**CONCLUSION.** We urge you to stand on the floor and say “enough is enough!” Demand amendments that set the Bar on a course toward separating the discipline of attorneys who have

Assemblymember Mark Stone

May 30, 2016

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violated the public trust from the petty politics and palace intrigue of the professional association.

Thank you for your consideration.

Very truly yours,

/s/ Dennis Mangers

Dennis Mangers

Trustee

Senate Appointed, Public Non-Attorney Member

State Bar of California

/s/ Joanna R. Mendoza

Joanna R. Mendoza

Trustee

Elected Member, 3<sup>rd</sup> District

State Bar of California

/s/ Glenda Corcoran

Glenda Corcoran

Trustee

Senate Appointed, Attorney Member

State Bar of California

/s/ Heather Linn Rosing

Heather Linn Rosing

Former Trustee/Vice-President/Treasurer

State Bar of California

cc: Speaker Rendon and All Assemblymembers  
Senator Hannah-Beth Jackson, Chair, Senate Judiciary Committee  
Governor Jerry Brown  
Chief Justice Tani Cantil-Sakauye and Members of the Supreme Court  
President Pasternak and Trustees of the California State Bar  
Elizabeth Parker, Executive Director, California State Bar



# Appendix I

## Continuum of Activity Matrix



	Regulatory and Discipline				Mandatory						Voluntary			
Program Area	Admissions	Discipline	Member Records and Compliance	Professional Competence	Client Security Fund	Mandatory Continuing Legal Education	Legal Specialization	Judicial Nominees Evaluation	Mandatory Fee Arbitration	Legal Services	Diversity & Bar Relations	Lawyer Assistance Program	Legislative Activities	Sections & California Young Lawyers Association
Funding	S	M	M	M	M	M	S	M	M	G/V	V	M	V	S
Principal Functions	Bar Exam Development	Chief Trial Counsel	Maintain Attorney Records	Rules of Professional Conduct	Investigation and Payment of Claims	Compliance Tracking	Certification of Legal Specialists	Evaluation of Nominees	Arbitration of Fee Disputes	Access to Justice	Elimination of Bias	Monitored LAP	Legislative Advocacy	Education
	Bar Exam Grading	Probation		Ethics Hotline		Accreditation of Providers				Program Development	Bar Relations	Support LAP	Town Hall Meetings	
	Moral Character Determination	State Bar Court (Independent)		Ethics Opinions						Legal Services Trust Fund	Council on Access and Fairness			
	Law School Regulation			Education										
	Special Admissions													
Staff Size	54.0	267.8	15.7	12.0	11.0	5.3	8.0	4.0	5.0	17.0	4.0	7.0	2.0	16.2
Direct Cost	15,952	36,193	1,855	1,706	7,040	665	1,117	647	637	27,675* 3,922	1,014	1,158	527	7,085
Indirect Cost	3,958	15,354	753	654	702	122	426	145	190	1,081	277	433	98	1,440
Total Cost	19,910	51,547	2,608	2,360	7,742	787	1,543	792	827	27,675* 5,003	1,291	1,591	625	8,525
Infra-structure	Executive Director's Office, Finance, General Counsel, General Services, Human Resources, Information Technology													

**Regulatory and Discipline:** governing the licensing, discipline and competence of lawyers

**Mandatory:** other programs and activities required by statute or court rule which contribute to the public protection mission of the State Bar

**Voluntary support for the association:** activities which contribute to the broader mission of the State Bar of educating the public, supporting the professional development of members of the Bar, and improving the administration of the legal system

**Funding Sources:** G = Grant Funding; M = Mandatory Membership Fees; V = Voluntary Contributions; S = Self-Funded by User Fees

\*Legal Services grant funding pass-through

\$ thousands



# Appendix J

## State Bar, Regulatory and Trade Association Functions Charts



Large Bars Program Areas

Column 1	CA	DC	FL	GA	IL	MI	NJ	NY	OH	PA	TX	VA
<b>Voluntary or Unified</b>	Unified	Unified	Unified	Unified	Voluntary	Unified	Voluntary	Voluntary	Voluntary	Voluntary	Unified	Unified
<b>Management of Client Security Fund</b>	Bar: \$40 of annual membership fee	Bar: Budget appropriation, no annual assessment	Bar: \$25 of annual membership fee	Bar: one-time assessment of \$100 per attorney; if fund falls below \$1M, Bar can assess additional fees.	Court: \$25 of annual registration fee	Bar: \$15 of annual membership fee	Court: annual assessment	Court: \$60 of biennial registration fee	Court: budget appropriation, no annual assessment	Court: \$45 annual assessment	Bar: budget appropriation, no annual assessment	Bar: \$25 of annual membership fee
<b>Mandatory Fee Arbitration</b>	Bar	Bar	Bar has fee arbitration program; not mandatory	Bar has fee arbitration program; not mandatory	Bar has fee arbitration program; not mandatory	Court, through Attorney Grievance Commission; not mandatory.	Supreme Court, through the Office of Attorney Ethics. Mandatory	Supreme Court manages statewide mandatory program	No fee arbitration program at State Bar; some local bars have programs, but mandatory status has been challenged and is unresolved.	None	None	None
<b>MCLE Enforcement</b>	Bar	None	Bar	Bar	Court	None	Court	Court	Court	Court	Bar	Bar
<b>CLE Programming</b>	Bar offers CLE programs and certifies providers	Bar offers CLE programs	Bar offers CLE programs and certifies providers	Bar certifies providers	Court certifies providers	Bar provides link to ICLE	Court certifies providers	Court certifies providers	Court certifies providers	Court certifies providers	Bar offers CLE programs and certifies providers	Bar certifies providers
<b>Maximum Mandatory Annual Fee</b>	430	280	265	261	382	285	212	187.5	175	200	235	275
<b>Opt-Out Fees</b>	Legal Services (\$40) Lobbying (\$5) Diversity (\$5)	None	None	None	N/A	None	N/A	N/A	N/A	N/A	None	None
<b>How are Mandatory Fees Established?</b>	Bar proposes, but Legislature sets fee annually by statute	Bar; cap set by Court	Bar; must be approved by Court	Bar; must be approved by Court	Court	Court	Court	Court	Court	Court	Bar; must be approved by Court	Court
<b>Malpractice Insurance Required?</b>	No; required to provide written notice to clients if not insured.	No	No	No	No; required to report whether insured to Attorney Registration and Disciplinary Commission	No; required to report whether insured to Bar	No	No	No; required to inform clients if not insured	No; required to report whether insured; information is public on Disciplinary Board website.	No	No; required to report whether insured; information is public on Bar website.
<b>Legal Specialization</b>	Bar certifies specialists and accredits other organizations to provide certification	None	Bar certifies specialists and accredits other organizations to provide certification	None	None	None	Court certifies specialists, and works with CLE providers and law schools to develop certification	None	Court has accredited three national organizations and the Ohio State Bar to provide certification	Court has accredited two national organizations and the State Bar's Worker's Comp Section to provide certification.	Texas Board of Legal Specialization certifies specialists	None
<b>Pro Hac Vice</b>	Bar; registration required	Court; registration required	Court; registration required	Court; registration required	Court; registration required	Bar; registration required	Court; registration required	Court; registration required	Court; registration required	Court; registration required	Court; registration required	Court; registration required
<b>Foreign Legal Consultants</b>	Bar certifies	Court certifies	Bar certifies	Court certifies	Court certifies	Court certifies	Court certifies	Court certifies	Court certifies	Court certifies	Court certifies	Court certifies

Large Bars Program Areas

Column1	CA	DC	FL	GA	IL	MI	NJ	NY	OH	PA	TX	VA
<b>Multi-Jurisdictional Practice</b>	Bar; registration required	None	Bar; registration required	Rule 5.5 of Rules of Professional Conduct; no registration	Court; registration required	Rule 5.5 of Rules of Professional Conduct; no registration	Court; registration required	Court; registration required	Court; registration required	Court; registration required for in-house counsel	Not authorized	Bar certifies
<b>Training Law Students</b>	Bar certifies	Court certifies	Court certifies	Court certifies	Court certifies	None	Court certifies	Court certifies	Court certifies	Court certifies	Bar certifies	Bar certifies
<b>Regulation of Advertising</b>	Bar; Rule 1-400	Rule 7.1 of Rules of Professional Conduct	Required to file advertisements with Bar for review in advance of publication	Rule 7.2 of Rules of Professional Conduct	Rule 7.2 of Rules of Professional Conduct	Rule 7.2 of Rules of Professional Conduct	Rule 7.2 of Rules of Professional Conduct; Supreme Court Committee on Attorney Advertising enforces rules	Rule 7.1 of Rules of Professional Conduct	Rule 7.2 of Rules of Professional Conduct	Rule 7.2 of Rules of Professional Conduct	Required to file advertisements for review with Bar's Advertising Review Department in advance of publication	Rule 7.1 of Rules of Professional Conduct; Bar's Legal Ethics Dept monitors legal advertising, alerts lawyers of violations, and offers prescreening of advertising.
<b>IOLTA</b>	Bar: Legal Services Trust Fund Commission manages IOLTA	Bar Foundation administers the IOLTA program	Bar Foundation administers IOTA program	Bar Foundation administers IOLTA program	Lawyers Trust Fund of Illinois administers IOLTA program	Bar Foundation administers IOLTA program	Court-created IOLTA Fund of the Bar of NJ manages IOLTA program	IOLA Fund administers IOLA program	Ohio Legal Assistance Foundation manages IOLTA program	Court's IOLTA Board manages IOLTA program	Texas Access to Justice Foundation manages IOLTA program	Legal Services Corporation of VA administers IOLTA program
<b>Lawyer Assistance Program</b>	Bar; \$10 of annual membership fee	Bar	Independent non-profit	Bar	Independent non-profit funded from annual registration fee	Bar	Independent non-profit funded by assessment of attorneys	Bar	Independent non-profit funded by Supreme Court and Bar.	Independent nonprofit.	Bar	Independent non-stock corporation funded by Bar and other contributors.
<b>Judicial Nominees Evaluation</b>	Bar Judicial Nominees Evaluation Commission	Bar: Judicial Evaluation Committee	Bar: Judicial Administration and Evaluation	Bar: Statewide Judicial Evaluation Committee	Bar conducts judicial advisory poll of members, as well as interviews of candidates	Bar: Judicial Qualifications Committee	Bar: Judicial and Prosecutorial Appointments Committee	Bar: Committee to Review Judicial Nominations	Bar: Commission on Judicial Candidates rates Supreme Court candidates	Bar Judicial Evaluation Commission rates appellate judicial candidates	Bar conducts poll of members for appellate and supreme court judicial races.	Bar: Judicial Candidate Evaluation Committee
<b>Supervision of Probation</b>	Bar Probation Department	Disciplinary Board may appoint monitor to supervise probation	Probation is monitored by Bar	Discipline rules do not provide for probation	Supervision provided by Administrator of Disciplinary Commission	Supervision not specified	Supervision not specified	Discipline rules do not provide for probation	Office of Disciplinary Council appoints attorneys to monitor and report on probation	Supervision provided by Disciplinary Board	Supervision provided by Chief Disciplinary Counsel	Supervision not specified
<b>Ethics Hotline</b>	Bar	Bar	Bar	Bar	Bar	Bar	Court	Bar	Court	Bar	Bar	Bar
<b>Maintenance of Member Records</b>	Bar	Bar	Bar	Bar	Court	Bar	Court	Court	Court	Court	Bar	Bar
<b>Reciprocity</b>	No reciprocity; attorney exam required	Admission on motion from any jurisdiction	No reciprocity; no attorney exam	Admission on motion based on reciprocity	Admission on motion from any jurisdiction	Admission on motion from any jurisdiction	No reciprocity; no attorney exam	Admission on motion based on reciprocity	Admission on motion from any jurisdiction	Admission on motion based on reciprocity	Admission on motion from any jurisdiction	Admission on motion based on reciprocity
<b>Law School Accreditation</b>	Bar accredits non-ABA-accredited law schools	Bar does not accredit law schools	Bar does not accredit law schools	Bar does not accredit law schools	Court does not accredit law schools	Court may approve non-ABA accredited schools as reputable and qualified.	Court does not accredit law schools	Court does not accredit law schools	Court does not accredit law schools	Court does not accredit law schools	Court does not accredit law schools	Court does not accredit law schools

Mandatory State Bars - Officers

Column 1	AL	AK	AZ	CA	DC	FL
<b>List of Officers</b>	President Immediate Past-President President-Elect Vice President Secretary/Executive Director	President President-Elect Vice President Secretary Treasurer	President President-Elect 2 Vice Presidents Secretary/Treasurer	President Vice President Treasurer	President President-Elect Secretary Treasurer	President President-Elect Executive Director
<b>Rules of Succession</b>	President succeeds Immediate Past President; President-Elect succeeds President	President-Elect succeeds President	President-Elect succeeds President; First Vice President succeeds President-Elect	None	President-Elect succeeds President	President-Elect succeeds President
<b>How Selected</b>	Elected by members; nomination by petition of at least 25 members in good standing, except for Vice President, who is elected by Board from among its members	Elected by all active members in attendance at annual meeting; candidates limited to Board members	Elected by Board from among its members	Elected by Board from among its members	Elected from candidates nominated by Committee on Nominations, which is elected by Board	Elected by members; nomination by petition of at least 1% of members in good standing
<b>Length of Term</b>	One Year	One Year	One Year	One Year	One Year	One Year
<b>Additional Terms Permitted?</b>	Not specified	Not specified	Not specified	President may be reelected to a second one-year term as President	Not specified	Not specified

Mandatory State Bars - Officers

Column 1	GA	HI	ID	KY	LA	MI
<b>List of Officers</b>	President President-Elect Immediate Past President Secretary Treasurer	President President-Elect Vice President Secretary Treasurer	President President-Elect	President President-Elect Vice President Executive Director Registrar/Deputy Registrar Treasurer/Assistant Treasurer	President President-Elect Secretary Treasurer Immediate Past President	President President-Elect Vice President Secretary Treasurer
<b>Rules of Succession</b>	President succeeds Immediate Past President; President-Elect succeeds President	President-Elect succeeds President; Vice President succeeds President-Elect	Not stated	President-Elect succeeds President	President succeeds Immediate Past President; President-Elect succeeds President	President-Elect succeeds President; Vice President succeeds President-Elect
<b>How Selected</b>	Elected by members from among candidates nominated by Board	Elected by members; nominations made by Nominating Committee appointed by President; nomination may also be made by petition of 20 members	Elected by members; each Commissioner serves as President during his or her term of office	Executive Director and Treasurers appointed by Board; Registrars appointed by Chief Justice; President-Elect and Vice President elected by members; nominations by petition of at least 100 members	Elected by members from candidates nominated by Nominating Committee, which includes representatives elected from each District; nominees rotate annually by district	Elected by Board from among its members
<b>Length of Term</b>	One Year	One Year	Six Months or One Year	One Year	President, President-Elect and Immediate Past President - One Year; Secretary and Treasurer - Two Years	One Year
<b>Additional Terms Permitted?</b>	Not specified	Not specified	Not specified	Not permitted	Not specified	A person may serve as president only once

Mandatory State Bars - Officers

Column 1	MS	MO	MT	NE	NV
<b>List of Officers</b>	President First Vice- President/President- Elect Second Vice President	President President-Elect Vice President Treasurer Secretary	President President-Elect Board Chair Secretary-Treasurer Immediate Past President	President President-Elect President-Elect Designate Past President Chair of House of Delegates Chair-Elect of HOD	President President-Elect Vice President
<b>Rules of Succession</b>	First Vice- President/President- Elect succeeds President	None	President succeeds Immediate Past President; President- Elect succeeds President	President succeeds Past President; President-Elect succeeds President; Chair- Elect of HOD succeeds Chair of HOD	President-Elect succeeds President
<b>How Selected</b>	Elected by members from candidates nominated by Nominating Committee appointed by Board; office of VP/PE rotates among three statewide districts	President, Vice President and President-Elect elected by Board from among its members; Treasurer and Secretary serve ex officio (Clerk of the Court and Bar Executive Director, respectively)	Elected by members, except Board Chair, who is elected by Board from among its members; nomination for all other officers by petition of at least 25 members	Nominating Committee puts forward a candidate; nomination can also be by petition of at least 25 members; if election is contested, statewide election by members; nominees rotate annually by district	Elected by Board from among its members
<b>Length of Term</b>	One Year	One Year	President, President- Elect and Board Chair - One Year; Secretary- Treasurer - Two Years	Four Years	One Year
<b>Additional Terms Permitted?</b>	Not specified	Not specified	Not specified	Not specified	Not specified

Mandatory State Bars - Officers

Column 1	NH	NM	NC	ND	OK
<b>List of Officers</b>	President President-Elect Vice President Secretary Treasurer Immediate Past President	President President-Elect Vice President Secretary-Treasurer Immediate Past President	President President-Elect Vice President Immediate Past President	President President-Elect Past-President Secretary-Treasurer	President President-Elect Vice President Executive Director/Treasurer
<b>Rules of Succession</b>	President succeeds Immediate Past President; President-Elect succeeds President	President succeeds Immediate Past President; President-Elect succeeds President	President succeeds Immediate Past President; President-Elect succeeds President	President succeeds Past President; President-Elect succeeds President	President-Elect succeeds President
<b>How Selected</b>	Elected by members; nomination by petition of at least 25 active members, except President-Elect, who is nominated by Board	Elected by Board from among its members	Elected by Council from candidates nominated by Nominating Committee, which includes the Immediate Past President and five most recent living Presidents	Elected by members; nomination by petition of at least 5 members	President-Elect and Vice President elected by House of Delegates; office of President-Elect rotates among Oklahoma County, Tulsa County and all other counties; vice-President cannot be from the same county as incoming President. Executive Director elected by Board
<b>Length of Term</b>	President, President-Elect, Immediate Past President and Vice President - One Year; Secretary and Treasurer - Three Years	One Year	One Year	President and President-Elect - One Year; Secretary-Treasurer - Two Years	One Year, except for Executive Director, whose term is not specified
<b>Additional Terms Permitted?</b>	Immediate Past President, President, President-Elect and Vice President can seek election again after ten years; Secretary and Treasurer can serve two consecutive three-year terms.	Not specified	Not specified	Not specified	Not specified

Mandatory State Bars - Officers

Column 1	OR	RI	SC	SD	TX
<b>List of Officers</b>	President President-Elect Immediate Past President	President President-Elect Treasurer Secretary	President President-Elect Chair of House of Delegates Secretary Treasurer	President President-Elect Secretary-Treasurer	President President-Elect Immediate Past President
<b>Rules of Succession</b>	President succeeds Immediate Past President; President-Elect succeeds President	President-Elect succeeds President	President-Elect succeeds President	President-Elect succeeds President	President succeeds Immediate Past President; President-Elect succeeds President
<b>How Selected</b>	Selected by Nominating Committee consisting of Board members in their fourth (last) year on the Board, as well as current President-Elect; if additional candidates are nominated by at least six other Board members, the Board holds a formal election	Elected by members from candidates nominated by Nominating Committee, which is appointed by President; candidates may also be nominated by at least 50 members from a district	Elected by members; nominations by Nominating Committee, which includes Immediate Past President and delegates from each judicial region; nominations may also be made by petition of at least 25 members	Elected by members present and voting at annual meeting; candidates may self nominate in advance of meeting, or be nominated from the floor	Elected by members from candidates nominated by Board; nominations can also be made by petition of at least 5% of members; eligibility for office rotates between metropolitan and non-metropolitan counties
<b>Length of Term</b>	One Year	One Year	One Year, except for the HOD Chair, which is Two Years	One Year	One Year
<b>Additional Terms Permitted?</b>	Not specified	Not specified	May not serve more than one term	Not specified	Not specified

Mandatory State Bars - Officers

Column 1	UT	VA	WA	WV	WI	WY
<b>List of Officers</b>	President President-Elect	President President-Elect Immediate Past President Secretary-Treasurer	President President-Elect Immediate Past President Treasurer Executive Director	President President-Elect Vice President Executive Director	President President-Elect Immediate Past President Board Chair Secretary Treasurer	President President-Elect Vice President Treasurer
<b>Rules of Succession</b>	President-Elect succeeds President	President succeeds Immediate Past President; President-Elect succeeds President	President succeeds Immediate Past President; President-Elect succeeds President	None	President succeeds Immediate Past President; President-Elect succeeds President	President-Elect succeeds President
<b>How Selected</b>	Elected by members from candidates nominated by Board	Elected by members; nomination by petition of at least 50 members	President-Elect elected by Board from among active members of Bar; eligibility for office is limited every fourth year to members located in Eastern Washington. Treasurer elected by Board from among its members	Elected by Board from candidates nominated by Nominating Committee, which is selected by Board from its members; candidates may also be nominated from the floor	Except for Board Chair, Officers are elected by members from candidates nominated by Nominating Committee, which consists of 5 Board members appointed by President with approval of Board; nominations by petition of at least 100 members; Board elects Chair from among its members.	Elected by members from candidates nominated by petition of at least two active members
<b>Length of Term</b>	One Year	One Year	One Year, except for Executive Director	One Year, except for Executive Director	One Year, except for Secretary and Treasurer - Two Years	One Year
<b>Additional Terms Permitted?</b>	Not specified	Not specified	No additional terms allowed	President not permitted to serve successive terms.	President and Board Chair may only serve one term. Secretary and Treasurer may serve more than one term.	Not specified

Unified State Bars

Column1	AL	AK	AZ	CA	DC	FL	GA
<b>Licensed Attorneys*</b>	17,599	4,254	23,485	254,455	102,210	98,595	46,229
<b>Res. Active Attorneys**</b>	14,630	2,456	16,155	165,952	52,089	74,258	31,340
<b>Governing Board Size</b>	74	12	30	19	23	52	160
<b>Public Board Members</b>	0	3	4	6	3	2	0
<b>Attorney Board Members Selection</b>	Elected; Selected by Board	Elected	Elected; Appointed by Supreme Court; Ex officio	Elected; Appointed by Supreme Court, Senate Committee on Rules & Assembly	Elected	Elected	Elected; Appointed by President-elect
<b>Public Board Member Selection</b>	N/A	Appointed by governor	Appointed by Board	Appointed by Governor, Senate Committee on Rules & Assembly Speaker	Appointed by Board of Governors as nonvoting	Appointed by Supreme Court	N/A
<b>Non-Lawyers involved in Discipline?</b>	Yes	No	Yes	Yes	Yes	Yes	Yes
<b>Discipline Conducted by Bar or Court?</b>	Bar	Bar	Bar	Bar	Bar	Bar	Bar
<b>Admissions Conducted by Bar or Court?</b>	Bar	Bar	Court	Bar	Court	Court	Court
<b>Established</b>	1879	1896	1895	1927	1972	1907	1883
<b>Unified</b>	1923	1955	1933	1927	1972	1950	1963

\*2015 International Survey of Attorney Licensing Fees, New Jersey Office of Attorney Ethics

\*\*ABA 2015 National Lawyer Population Survey

Unified State Bars

Column 1	HI	ID	KY	LA	MI	MS	MO	MT	NE
<b>Licensed Attorneys*</b>	7,765	6,031	17,922	22,000	44,400	11,135	30,393	3,823	9,651
<b>Res. Active Attorneys**</b>	4,193	3,736	13,448	18,775	34,739	7,059	25,337	3,126	5,361
<b>Governing Board Size</b>	21	5	19	22	33	35	45	20	15
<b>Public Board Members</b>	0	0	0	0	0	0	0	0	0
<b>Attorney Board Members Selection</b>	Elected; Ex officio	Elected	Elected	Elected	Elected	Elected	Elected	Elected; Ex officio	Elected; Ex officio
<b>Public Board Member Selection</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>Non-Lawyers involved in Discipline?</b>	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
<b>Discipline Conducted by Bar or Court?</b>	Court	Bar	Bar	Court	Court	Bar	Court	Court	Court
<b>Admissions Conducted by Bar or Court?</b>	Court	Bar	Court	Court	Court	Court	Court	Bar	Court
<b>Established</b>	1889	1871	1871	1929	1935	1906	1944	1885	1900
<b>Unified</b>	1989	1923	1934	1941	1935	1932	1944	1974	1937

\*2015 International Survey of Attorney Licensing Fees, New Jersey Office of Attorney Ethics

\*\*ABA 2015 National Lawyer Population Survey

Unified State Bars

Column1	NV	NH	NM	NC	ND	OK	OR	RI	SC
<b>Licensed Attorneys*</b>	11,668	6,700	8,800	35,202	2,700	17,607	20,863	6,488	15,504
<b>Res. Active Attorneys**</b>	6,858	3,521	5,547	23,136	1,665	13,465	12,464	4,224	10,031
<b>Governing Board Size</b>	15	24	21	68	16	17	18	12	19
<b>Public Board Members</b>	0	0	0	3	0	0	4	0	0
<b>Attorney Board Members Selection</b>	Elected; Ex officio	Elected	Elected	Elected	Elected	Elected	Elected	Elected; Ex officio	Elected; Ex officio
<b>Public Board Member Selection</b>	N/A	N/A	N/A	Appointed by Governor and other elected officials	N/A	N/A	Appointed by Board	N/A	N/A
<b>Non-Lawyers involved in Discipline?</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Discipline Conducted by Bar or Court?</b>	Bar	Court	Court	Bar	Court	Bar	Bar	Court	Court
<b>Admissions Conducted by Bar or Court?</b>	Bar	Court	Court	Court	Court	Court	Bar	Court	Court
<b>Established</b>	1911	1873	1886	1933	1899	1904	1890	1898	1884
<b>Unified</b>	1928	1968	1925	1933	1899	1939	1935	1973	1968

\*2015 International Survey of Attorney Licensing Fees, New Jersey Office of Attorney Ethics

\*\*ABA 2015 National Lawyer Population Survey

Unified State Bars

Column1	SD	TX	UT	VA	WA	WV	WI	WY
<b>Licensed Attorneys*</b>	3,199	112,270	11,838	44,941	35,975	9,712	25,112	3,658
<b>Res. Active Attorneys**</b>	1,939	86,494	8,413	24,062	24,844	4,918	15,481	1,778
<b>Governing Board Size</b>	13	46	15	79	17	25	52	14
<b>Public Board Members</b>	0	6	2	0	0	0	3	0
<b>Attorney Board Members Selection</b>	Elected	Elected; Ex officio	Elected	Elected; Ex officio; Appointed	Elected	Elected	Elected; Ex officio	Elected; Ex officio
<b>Public Board Member Selection</b>	N/A	Appointed by President and confirmed by Board	Appointed by Supreme Court	N/A	N/A	N/A	Appointed by Supreme Court	N/A
<b>Non-Lawyers involved in Discipline?</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yrd
<b>Discipline Conducted by Bar or Court?</b>	Bar	Bar	Bar	Bar	Bar	Bar	Court	Bar
<b>Admissions Conducted by Bar or Court?</b>	Court	Court	Bar	Court	Bar	Court	Court	Bar
<b>Established</b>	1931	1939	1931	1888	1888	1947	1878	1915
<b>Unified</b>	1931	1939	1931	1938	1933	1947	1957	1939

\*2015 International Survey of Attorney Licensing Fees, New Jersey Office of Attorney Ethics

\*\*ABA 2015 National Lawyer Population Survey

### Voluntary State Bars

Column1	AR	CO	CT	DE	IL	IN	IA	KS	ME
<b>Licensed Attorneys*</b>	8,734	38,523	38,500	4,206	96,250	18,124	16,524	14,119	5,239
<b>Resident Active Attorneys**</b>	5,970	21,761	18,655	2,921	63,211	15,883	7,526	8,266	3,944
<b>Bar Association Members***</b>	5,500	18,250	9,694	4,000	30,000	12,500	8,154	7,200	3,154
<b>% Licensed Attys who are Bar Members</b>	63%	47%	25%	95%	31%	69%	49%	51%	60%
<b>Governing Board Size</b>	38	151	78	25	27	25	46	30	21
<b>Non-Lawyers involved in Discipline?</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
<b>Established</b>	1898	1897	1875	1923	1877	1896	1874	1882	1891

Column1	MD	MA	MN	NJ	NY	OH	PA	TN	VT
<b>Licensed Attorneys*</b>	37,266	70,072	28,700	95,807	297,570	63,918	74,966	26,436	3,450
<b>Resident Active Attorneys**</b>	23,902	43,974	24,522	41,569	172,630	38,849	48,992	17,965	2,272
<b>Bar Association Members***</b>	25,284	11,000	15,000	18,200	74,000	22,524	28,000	13,000	2,150
<b>% Licensed Attys who are Bar Members</b>	68%	16%	52%	19%	25%	35%	37%	49%	62%
<b>Governing Board Size</b>	45	80	16	49	30	24	26	27	16
<b>Non-Lawyers involved in Discipline?</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Established</b>	1896	1910	1883	1899	1876	1880	1895	1881	1878

\*2015 International Survey of Attorney Licensing Fees, New Jersey Office of Attorney Ethics

\*\*ABA 2015 National Lawyer Population Survey

\*\*\*ABA 2015 State and Local Bar Membership, Administration & Finance Survey







**STATE BAR OF CALIFORNIA COMMITTEES, BOARDS AND COMMISSIONS**

Revised: July 7, 2016

STANDING COMMITTEE	CHARGE	COMPOSITION / MEETINGS PER YEAR	2015-2016 GOALS
<b>Administration of Justice</b>	<p>Established in 1933, the Committee on Administration of Justice is a diverse group of attorneys concerned with aspects of civil procedure, court rules and administration, rules of evidence, and other matters having an impact on the administration of justice in the civil courts. The charge of the committee is as follows:</p> <ul style="list-style-type: none"> <li>(a) Analyze, report to the Board of Trustees and comment as authorized by the Board of Trustees on proposed court rules, legislation and other proposals affecting the committee's subject area.</li> <li>(b) Draft proposals relating to its area of concern for consideration by the Board of Trustees.</li> <li>(c) Perform such other functions relevant to the committee's subject area as the Board of Trustees may from time to time assign.</li> </ul>	<p><b>Composition:</b> Composed of up to thirty-six (36) members appointed by the Board of Trustees.</p> <p><b>Meetings/Year:</b> 4-6 (one or two in-person and others by conference call)</p>	<p>The Committee on Administration of Justice (CAJ) will continue to provide subject matter expertise and input in areas relating to civil practice and procedure, and other matters having an impact on the administration of justice in the civil courts. This activity generally falls into two categories.</p> <ul style="list-style-type: none"> <li>1. Review, analyze, comment or provide other input, as appropriate, on proposals that relate to civil practice and procedure. These proposals come from various sources, primarily the following: <ul style="list-style-type: none"> <li>A. <b>Judicial Council</b> – Proposed changes to rules of court, forms, and court procedures.</li> <li>B. <b>Legislature</b> – Proposed statutory amendments.</li> <li>C. <b>California Law Revision Commission (CLRC)</b> – CLRC studies and proposals that may ultimately result in proposed legislation.</li> <li>D. <b>Conference of California Bar Associations (CCBA)</b> – CCBA Resolutions that may ultimately result in proposed legislation or rules of court.</li> </ul> </li> <li>2. Propose changes to statutes, rules, or forms – CAJ may draft proposed CAJ sponsored legislation for potential inclusion in the annual Section and Committee legislative program. CAJ may also consider and make proposals for changes to rules of court and forms, for ultimate consideration by the Judicial Council.</li> </ul>
<b>Alternative Dispute Resolution</b>	<p>Established in May 1997, the Committee on Alternative Dispute Resolution (ADR) is a diverse group of attorneys and public members with expertise or an interest in ADR, including ADR neutrals, consumers of ADR services and those who reflect the experience and expertise of State Bar sections. The charge of the committee is as follows:</p> <ul style="list-style-type: none"> <li>(a) Analyze, report to the Board of Trustees and comment as authorized by the Board of Trustees on proposed court rules, legislation and other proposals affecting the committee's subject area.</li> <li>(b) Draft proposals relating to alternative dispute resolution for consideration by the Board of Trustees.</li> <li>(c) Identify issues concerning the relationship of ADR to the practice of law, the administration of justice and improving access to justice.</li> <li>(d) Plan and administer educational programs relating to alternative dispute resolution.</li> <li>(e) Encourage attorneys involved in alternative dispute resolution to become active participants in the State Bar.</li> <li>(f) Perform such other functions relevant to the committee's subject area as the Board of Trustees may from time to time assign.</li> </ul>	<p><b>Composition:</b> Composed of twenty-one (21) persons appointed by the Board of Trustees.</p> <p><b>Meetings/Year:</b> 6-8 (two in-person and others by videoconference or conference call)</p>	<p>The Committee on Alternative Dispute Resolution (ADR Committee) will continue to provide subject matter expertise and input in the areas of mediation, arbitration, and other forms of alternative dispute resolution. This activity generally falls into three categories.</p> <ul style="list-style-type: none"> <li>1. Review, analyze, comment or provide other input, as appropriate, on proposals that relate to ADR. These proposals come from various sources, primarily the following: <ul style="list-style-type: none"> <li>A. <b>Judicial Council</b> – Proposed changes to rules of court, forms, and court procedures.</li> <li>B. <b>Legislature</b> – Proposed statutory amendments.</li> <li>C. <b>California Law Revision Commission (CLRC)</b> – CLRC studies and proposals that may ultimately result in proposed legislation.</li> <li>D. <b>Conference of California Bar Associations (CCBA)</b> – CCBA Resolutions that may ultimately result in proposed legislation or rules of court.</li> </ul> </li> <li>2. Prepare and present educational programs – The ADR Committee's educational efforts are ongoing. The Committee has historically presented four or five MCLE programs at the State Bar Annual Meeting, and plans to continue doing so. The Committee plans to explore an expansion of its educational program to add Webinars and stand-alone programs.</li> <li>3. Propose changes to statutes, rules, or forms – The ADR Committee may draft proposed ADR Committee sponsored legislation for potential inclusion in the annual Section and Committee legislative program. The Committee may also consider and make proposals for changes to rules of court and forms, for ultimate consideration by the Judicial Council.</li> </ul>

STANDING COMMITTEE	CHARGE	COMPOSITION / MEETINGS PER YEAR	2015-2016 GOALS
<b>Appellate Courts</b>	<p>Established in 1970 and made a standing committee in 1973, the Committee on Appellate Courts is a diverse group of attorneys drawn from such sources as law firms, solo practitioners, defense and prosecution offices handling criminal appeals, appellate court research staff, and law school faculty. The subject area of the committee concerns appellate court operation and appellate practice. In furtherance of the administration of justice, the charge of the committee is as follows:</p> <p>(a) Analyze, report to the Board of Trustees and comment as authorized by the Board of Trustees on proposed court rules, legislation and other proposals affecting the committee's subject area.</p> <p>(b) Draft proposals relating to its area of concern for consideration by the Board of Trustees.</p> <p>(c) Plan and administer educational programs designed to foster improvement in appellate practice and awareness of issues affecting the committee's subject area.</p> <p>(d) Perform such other functions relevant to the committee's subject area as the Board of Trustees may from time to time assign.</p>	<p><b>Composition:</b> Composed of sixteen (16) attorneys appointed by the Board of Trustees.</p> <p><b>Meetings/Year:</b> 4 (one or two in-person and others by conference call)</p>	<p>The Committee on Appellate Courts will continue to provide subject matter expertise and input in the areas of appellate practice and procedure. This activity generally falls into three categories.</p> <ol style="list-style-type: none"> <li>Review, analyze, comment or provide other input, as appropriate, on proposals that relate to appellate practice and procedure. These proposals come from various sources, primarily the following: <ol style="list-style-type: none"> <li><b>Judicial Council</b> – Proposed changes to rules of court, forms, and court procedures.</li> <li><b>Legislature</b> – Proposed statutory amendments.</li> <li><b>California Law Revision Commission (CLRC)</b> – CLRC studies and proposals that may ultimately result in proposed legislation.</li> <li><b>Conference of California Bar Associations (CCBA)</b> – CCBA Resolutions that may ultimately result in proposed legislation or rules of court.</li> </ol> </li> <li>Prepare and present educational programs – The Committee's educational efforts are ongoing. The Committee has historically presented four or five MCLE programs at the State Bar Annual Meeting, and plans to continue doing so. The Committee has also presented Webinars, in co-sponsorship with the Litigation Section.</li> <li>Propose changes to statutes, rules, or forms - The Committee may draft proposed Committee sponsored legislation for potential inclusion in the annual Section and Committee legislative program. The Committee may also consider and make proposals for changes to rules of court and forms, for ultimate consideration by the Judicial Council.</li> </ol>
<b>Bar Examiners</b>	<p>The Committee of Bar Examiners was established in 1927. The committee is authorized by statute to:</p> <p>(a) Examine all applicants for admission to practice law.</p> <p>(b) Administer the requirements for admission to practice law.</p> <p>(c) Certify to the Supreme Court for admission those applicants who fulfill the requirements.</p> <p>Inherent in the administration of the requirements of admission is the responsibility for determining the pre-legal and legal education eligibility of applicants and whether an applicant possesses the requisite good moral character to practice law. The committee also is empowered to accredit law schools and register unaccredited and correspondence law schools, in accordance with Rule 9.30 of the California Rules of Court, in California.</p>	<p><b>Composition:</b> Pursuant to B&amp;P Code §6046, the committee is composed of nineteen (19) members. Ten (10) lawyer members are appointed by the Board of Trustees, one of whom must not have been admitted to practice for more than three years at the time of appointment, nine (9) public members appointed, three each, by the Governor, the Senate Rules Committee and the Speaker of the Assembly.</p> <p><b>Meetings/Year:</b> 7 meetings (one-two days per meeting), plus an equal number of meetings for examination research, structure and grading, and additional time for subcommittees, meeting preparation, moral character applicant</p>	<ol style="list-style-type: none"> <li>Oversee the development, administration and grading of the June and October First-Year Law Students' Examination and the February and July 2016 California Bar Examination.</li> <li>Oversee the transition to administration of the modified California Bar Examination in July 2017 and make additional decisions that may be needed to successfully meet this goal.</li> <li>Consider possible changes to the method by which the First-Year Law Students' Examination is graded.</li> <li>Further investigate whether the time period for grading of the California Bar Examination could be shortened and review the entire bar examination process, including the scope of the examination, to determine whether additional changes should be explored.</li> <li>Continue to identify possible cost savings, review the costs associated with the law school regulation program and monitor the Admissions' Fund budget, expenses and revenues.</li> <li>Consider additional amendments to the Rules and Guidelines to better define the elements needed to implement proposed amendments to the Rules, Statutes, and Guidelines to require the accreditation of unaccredited law schools and permit the accreditation of online law schools.</li> <li>Consider: 1) proposed amendments to Guidelines 15.1–15.4 (Opening and Operating a Branch or Satellite Campus) of the <i>Guidelines for Accredited Law School Rules</i>; 2) proposed technical amendments to the <i>Unaccredited Law School Rules</i> and <i>Guidelines for Unaccredited Law School Rules</i> to clarify and amend various administrative and operational policies and procedures required of all California-registered law schools, and 3) proposed amendments to Guideline 13.1 of the <i>Guidelines for Accredited Law School Rules</i> and Guideline 1.2 of the <i>Guidelines for Implementation of Chapter 2, Rule 4.30 of the Admission Rules</i>, related to granting "acquiescence" to law schools that permit the schools to issue LLM. Degrees and that permit such degrees to qualify foreign-educated applicants to qualify to take the California Bar Examination.</li> <li>Consider proposed guidelines for the <i>Admissions Rules</i> in the areas of eligibility determinations, administration of examinations, testing accommodations, statistics and any other rules where</li> </ol>

STANDING COMMITTEE	CHARGE	COMPOSITION / MEETINGS PER YEAR	2015-2016 GOALS
		interviews and law school visitations.	<p>guidelines may be of assistance.</p> <p>9. In connection with regularly scheduled meetings, consider moral character determination application reports, consider petitions for waivers of rules and policies submitted by applicants, consider appeals filed by applicants with disabilities seeking to change the determination of the Senior Director, Admissions, with regard to their requests for testing accommodations, which may have been partially granted or denied, review reports regarding law schools registered or accredited by the Committee, conduct hearings with law schools that have been issued Notices of Noncompliance, and receive presentations related to the duties of the Committee.</p> <p>10. Conduct several days of informal conferences with applicants seeking positive moral character determinations.</p> <p>11. Participate in law school inspections as required.</p> <p>12. Receive updates on progress of the Task Force on Admissions Regulation Reform proposals that are currently pending and respond as needed if it appears the Committee's input is required or needed.</p>
<b>Delivery of Legal Services</b>	<p>The Committee on the Delivery of Legal Services' area of concern is the delivery of legal services to poor and middle-income individuals in California. The charge of the committee is as follows:</p> <p>(a) Identify, develop and support improvements in the delivery of legal services to poor and middle-income individuals.</p> <p>(b) Serve as a resource to the Board of Trustees in legal services issues of importance to the State Bar.</p> <p>(c) Develop and disseminate educational materials to improve the delivery of legal services to poor and middle-income individuals.</p> <p>(d) Develop liaison relationships with other State Bar entities concerning legal services issues of importance to the State Bar.</p> <p>(e) Analyze, report to the Board of Trustees, and comment where requested by the Board of Trustees or the Executive Director, on proposed court rules or legislation directly relating to or impacting the delivery of legal services to poor and middle-income individuals in California.</p>	<p><b>Composition:</b> Composed of twenty (20) persons appointed by the Board of Trustees.</p> <p><b>Meetings/Year:</b> 5-6, plus working group conference calls</p>	<p><b>Comments</b></p> <ol style="list-style-type: none"> <li>1. Submit comments on Judicial Council proposals (both winter and spring cycles) that are within the committee's charge.</li> <li>2. Submit comments on relevant State Bar proposals.</li> <li>3. Reach out to external groups as appropriate about commenting on proposals of interest.</li> </ol> <p><b>Moderate Income</b></p> <ol style="list-style-type: none"> <li>1. Finalize <i>updates to "Successful Business Planning: Representing the Moderate Income Client"</i> publication and give technical assistance to lawyer referral services (LRSs) that want to create a modest means panel.</li> <li>2. Encourage unbundling in civil areas outside of family law and promote to LRSs, attorney incubator projects, solo and small firm attorneys.</li> </ol> <p><b>Recruitment/Appointments</b></p> <ol style="list-style-type: none"> <li>1. Develop outreach plan to diversify applicant pool and recruit applicants based on committee priorities for 2016-2017.</li> <li>2. Vet applications and make recommendations to the Board of Trustees.</li> </ol> <p><b>Recognition/Awards</b></p> <ol style="list-style-type: none"> <li>1. Expand outreach efforts to diversify nomination pool for the President's Pro Bono Service Awards and Loren Miller Legal Services Award.</li> <li>2. Vet nominations and make recommendations to the Board of Trustees.</li> <li>3. Expand efforts to highlight awards recipients in various media outlets.</li> </ol> <p><b>Pro Bono</b></p> <ol style="list-style-type: none"> <li>1. Finalize revisions to the pro bono opportunities web page on the State Bar's website.</li> <li>2. Develop SoCal version of the Bay Area Resilience Collaborative to plan in advance for the coordination of legal services in the aftermath of a disaster and create a best practices guide for disaster legal services coordination.</li> <li>3. Advocate for improvements to CAProBono.org, the statewide website that provides information on pro bono opportunities by county and region.</li> </ol>

STANDING COMMITTEE	CHARGE	COMPOSITION / MEETINGS PER YEAR	2015-2016 GOALS
			<p>4. Suggest changes to the State Bar's Pro Bono Practice Program that may increase pro bono participation and to the Practical Training of Law Students Program that may reduce barriers for law students who are hosted by a legal services provider.</p> <p><b>Training</b></p> <ol style="list-style-type: none"> <li>1. In coordination with external entities such as the Legal Aid Association of California (LAAC), Practising Law Institute (PLI) and the CA Pro Bono Training Institute, conduct needs assessment to determine what training topics and styles of training legal services organizations and pro bono attorneys want, and to determine if trainings result in more pro bono participation.</li> <li>2. Develop substantive, skills-based trainings for PLI, Annual Meeting, etc.</li> <li>3. Host the 2-day Training of Trainers program in San Francisco.</li> </ol>
<b>Federal Courts</b>	<p>Established in 1949, the Committee on Federal Courts' charge is as follows:</p> <ol style="list-style-type: none"> <li>(a) Generally enhance the lines of communication between the Federal Bench in California and the State Bar, including the attorney discipline system.</li> <li>(b) Bring to the attention of the Federal Bench in California, State Bar issues that have an impact on Federal Court practice in California.</li> <li>(c) Make the State Bar Board aware of Federal Court issues that may have an impact on the State Bar.</li> <li>(d) Review and make recommendations on proposals that affect California Federal Court practice and the Federal Courts in California.</li> <li>(e) Make recommendations to improve legal services in California's Federal Courts.</li> <li>(f) Organize and sponsor educational programs on Federal Court practice.</li> <li>(g) Perform such other functions relevant to the committee's subject area as the Board of Trustees may from time to time to assign.</li> </ol>	<p><b>Composition:</b> Composed of fifteen (15) members appointed by the Board of Trustees. A representative of the Circuit Executive of the United States Court of Appeals for the Ninth Circuit participates ex officio.</p> <p><b>Meetings/Year:</b> 6-8 (two in-person and others by conference call)</p>	<p>The Committee on Federal Courts will continue to provide subject matter expertise and input in the areas of federal practice and procedure, and other matters having an impact on the administration of justice in the federal courts. This activity generally falls into three categories.</p> <ol style="list-style-type: none"> <li>1. Review, analyze, and comment on proposed amendments to the federal rules and other proposals that relate to federal court practice in California.</li> <li>2. Prepare and present educational programs – The Committee's educational efforts are ongoing. The Committee has historically presented an MCLE program at the State Bar Annual Meeting aimed specifically at issues in the federal courts, and plans to continue doing so.</li> <li>3. Coordination with the federal district courts – The Committee will continue to work on issues of mutual interest, primarily through meetings with judges in the different districts in California.</li> </ol>
<b>Group Insurance Programs</b>	<p>The Committee on Group Insurance Programs acts as a counselor and advisor to the Board Committee on Planning Program Development and Budget and the Board of Trustees. Currently, State Bar sponsored group insurance programs monitored by the committee include: Accidental Death and Dismemberment, Health Care, Life, Disability Income, Long Term Care Insurance and Worker Compensation.</p> <p>The charge of the committee is as follows:</p> <ol style="list-style-type: none"> <li>(a) Study and make recommendations on new member group insurance programs to be sponsored by the State Bar. Propose changes in existing programs, recommend actuarial and other consulting studies as needed.</li> <li>(b) Make recommendations, consider premium rates, benefits, limitations, exclusions and other contract provisions in relation to the needs of the members of the State Bar generally and provisions designed to achieve program stability.</li> <li>(c) Work with the administrator/broker, insurance carrier, General Counsel's office and designated State Bar staff to prepare contracts for new programs and revisions to existing contracts.</li> </ol>	<p><b>Composition:</b> Composed of fifteen (15) attorney members</p> <p><b>Meetings/Year:</b> 4</p>	<p><b>Market Access: Maintain Access to Group Insurance Market for California Attorneys</b></p> <ul style="list-style-type: none"> <li>• Ongoing analysis of group insurance market; competition and carrier financial strength.</li> <li>• Perform annual audit of identified programs working jointly with contracted actuary.</li> <li>• Work jointly with CYLA on initiatives to assist young lawyers granting access to group insurance coverage as they start their career.</li> </ul> <p><b>Education</b></p> <ul style="list-style-type: none"> <li>• Conduct online webinars on the benefits of coverage; including ergonomics education and safety in the workplace as it pertains to Workers Compensation.</li> <li>• Conduct panel presentations at Solo Summit, Annual Meeting, CYLA Symposium as well participate in CYLA's 10 Minute Mentor Program.</li> <li>• Identify opportunities for increased education, working jointly with the various Standing Committees and State Bar Sections.</li> </ul> <p><b>Marketing</b></p> <ul style="list-style-type: none"> <li>• Work jointly with CalBar Connect to maintain visibility on CalBar Site, onsite conferences and new-admittee swearing-in ceremonies.</li> <li>• Work jointly with managing broker to create, distribute and ensure accurate representation of policy for each group insurance program.</li> </ul>

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	<p>(d) Monitor ongoing approved programs and review sales literature for all approved programs on an ongoing basis.</p> <p>(e) Provide legal advice to the Board Committee and the Board of Trustees concerning insurance law aspects of its recommendations.</p> <p>(f) The Board of Trustees designates the State Bar's Committee on Group Insurance Programs as a Safety Committee to administer group workers' compensation insurance programs for the State Bar of California, in accordance with California Insurance Code section 11656.6.</p>		
<b>Mandatory Fee Arbitration</b>	<p>Established January 1, 1985, the Committee on Mandatory Fee Arbitration's charge is as follows:</p> <p>(a) Make recommendations on policies affecting the State Bar mandatory fee arbitration program.</p> <p>(b) Review policies, procedures, guidelines and the law relating to mandatory fee arbitration, attorney's fees and fee agreements and recommending appropriate amendment, change or modification.</p> <p>(c) Provide advice and assistance to the twenty-nine (29) local bar fee arbitration programs, including formulating and presenting educational programs. The Committee also reviews and recommends to the Board amendments to the local bar rules of procedure, which must be approved by the Board in order for the local bars to offer approved mandatory fee arbitration programs. Approved local bar MFA programs are entitled to claim statutory immunity.</p> <p>(d) Review, evaluate and propose legislation affecting the statewide fee arbitration program.</p> <p>(e) Issue arbitration advisories on various topics of law to assist arbitrators with their cases and to develop a uniform approach to resolving fee disputes among the various MFA programs.</p>	<p><b>Composition:</b> Composed of sixteen (16) members. Members consisting of attorneys, one Presiding Arbitrator, and 3-5 non-lawyer members are appointed by the Board of Trustees.</p> <p><b>Meetings/Year:</b> 6-8, plus special projects</p>	<ol style="list-style-type: none"> <li>1. Seek modification to B&amp;P 6200 to address private arbitration after MFA in light of <i>Schatz v. Allen Matkins Leck Gamble &amp; Mallory LLP, 45 Cal.4th 557 (2009)</i> and <i>Rosenson v. Greenberg Glusker et al. 203 Cal.App.4th 688 (2012)</i>.</li> <li>2.</li> <li>3. Present 6-12 Arbitrator Trainings throughout the year.</li> <li>4. Present 3-4 MCLE programs at the State Bar Annual Meeting.</li> <li>5. Seek to de-publish <i>Baxter v. Bock</i> in light of the DCAs language re: arbitrator disclosure requirements</li> </ol>
<b>Professional Liability Insurance</b>	<p>Established by Board resolution in July 1990, the committee's purpose is to:</p> <p>Oversee a professional liability program that has congruent goals of providing attorneys with insurance coverage and clients with recourse for malpractice. COPLI should also explore and pursue programs and strategies consistent with the economic viability of the program, to make professional liability insurance available to as many California attorneys as possible. COPLI oversees and reports to the Board of Trustees and/or its designated board standing committee on all aspects of the State Bar approved Professional Liability Insurance Program including, but not limited to, the following:</p> <p>(a) Interact with the Program Administrator and the Underwriter. Make recommendations, consider premium rates, benefits, limitations, exclusions and other contract provisions in relation to needs of the members of the State Bar generally as well as those provisions necessary to maintain the economic viability and stability of the program;</p> <p>(b) Oversee and interact with the Program Administrator to ensure the</p>	<p><b>Composition:</b> Composed of fifteen (15) members appointed by the Board of Trustees.</p> <p><b>Meetings/Year:</b> 4</p>	<p><b>Market Access: <u>Maintain Access to Professional Liability Market for California Attorneys</u></b></p> <ul style="list-style-type: none"> <li>• Ongoing analysis of Professional Liability Market; competition and underwriter solvency.</li> <li>• Maintain product filing with California State Department of Insurance.</li> <li>• Perform annual audit of program; working jointly with program actuary.</li> <li>• Work jointly with CYLA on initiatives to assist young lawyers granting access to Professional Liability coverage as they start career.</li> </ul> <p><b>Education</b></p> <ul style="list-style-type: none"> <li>• Maintain contract with underwriter to provide access to no cost CLE for all policyholders.</li> <li>• Conduct at least 8 online webinars in ethics and malpractice prevention.</li> <li>• Conduct panel presentations at Solo Summit, Annual Meeting, CYLA Symposium as well participate in CYLA's 10 Minute Mentor Program.</li> <li>• Publish white papers and contribute to CalBar Journal as needed.</li> <li>• Work jointly with the Office of Professional Competence on ways to educate attorney on new State Bar Rule releases in 2016.</li> </ul> <p><b>Marketing</b></p>

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	<p>broadest dissemination of information regarding the program, the ease of members in applying for the program and other such steps as may be necessary or appropriate to precipitate program growth consistent with economic stability of the program;</p> <p>(c) Interact with both the Program Administrator and the Underwriter to anticipate and implement program changes, coverages, specialty policies, and such matters as may respond to the needs of California's practicing attorneys and otherwise precipitate additional programs growth;</p> <p>(d) Undertake such activities as maybe necessary or appropriate to advocate with the underwriter on behalf of attorneys desiring to be included in the endorsed program and/or those who may be declined etc.;</p> <p>(e) Conduct such studies as may be necessary or appropriate to identify causes, frequency, and severity of legal malpractice claims; interact with the carrier to both precipitate and assess satisfaction levels of program members following initiation of legal malpractice claims;</p> <p>(f) Design, schedule, and conduct malpractice avoidance education programs available to attorneys throughout the state which qualify for MCLE credit for program members, develop and update materials on malpractice prevention.</p> <p>(g) Engage in audits and reviews necessary to ensure both the economic viability of the program and the availability thereof to the broadest range of California attorneys propose such changes in the program structure, etc., as may be necessary or appropriate to accomplish such goals;</p> <p>(h) Take steps to identify those aspects of the Professional Liability Insurance Program that may generate additional non-dues revenue.</p> <p>(i) Assist the Office of General Counsel in providing legal advice to the Board of Trustees with respect to all of the foregoing items.</p> <p>(j) Conduct an annual orientation session for new members of the Committee, Board members, State Bar staff, and the Executive Director on all of the above listed aspects of Committee oversight of the State Bar sponsored professional liability program.</p> <p>(k) Comply with all reporting and planning requirements of the Board of Trustees approved Strategic and Operational plans. Comply with the annual work plan requirement for all Board of Trustees' committees.</p> <p>(l) Ensure that all the above listed advisory responsibilities are conducted in consultation with State Bar of California staff designated by the Executive Director.</p>		<ul style="list-style-type: none"> <li>• Work jointly with CalBar Connect to maintain visibility on CalBar Site, onsite conferences and new-admittee swearing in ceremonies.</li> <li>• Work jointly with managing broker to create, distribute and ensure accurate representation of policy for each program.</li> </ul>
<b>Professional Responsibility and Conduct</b>	<p>Established in 1964, the Standing Committee on Professional Responsibility and Conduct assists lawyers in their desire to appreciate and adhere to ethical and professional responsibility standards of conduct. This assistance includes, but is not limited to:</p> <p>(a) Issuing formal advisory ethics opinions on the ethical propriety of hypothetical attorney conduct at the request of an attorney or on its own initiative;</p> <p>(b) Assisting the Board of Trustees by studying and recommending additions,</p>	<p>Composed of fifteen (15) attorney members and one (1) advisor.</p> <p><b>Meetings/Year:</b> 8-10</p>	<ol style="list-style-type: none"> <li>1. Conduct 8-10 day-long, in-person, meetings.</li> <li>2. Issue 3-5 formal ethics opinions.</li> <li>3. Present Annual Statewide Ethics Symposium in Southern California–this is a day-long educational program offering high level discussion of important professional responsibility issues.</li> <li>4. Conduct 3-5 CLE programs during the State Bar Annual Meeting in San Diego.</li> <li>5. Publish 10-12 self-study MCLE articles for the California Bar Journal relating to ethics.</li> <li>6. Outreach to local and specialty bar associations to present CLE programs tailored to local/specialty interests.</li> <li>7. Continue to monitor the Rules Revision Commission work and provide input at Commission</li> </ol>

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	<p>amendments to, or repeal of Rules of Professional Conduct of the State Bar or other laws governing the conduct of attorneys, and performing other functions as may be assigned to the committee by the Board of Trustees;</p> <p>(c) Encouraging the establishment of and providing assistance to local bar association ethics committees; and</p> <p>(d) Assisting the public, including lawyers and judges, to understand the professional obligations of members of the State Bar, or lawyers authorized to practice in California, including sponsoring education programs and conferences.</p>		<p>meetings and during public comment period, as appropriate.</p>
<p><b>California Commission on Access to Justice</b></p>	<p>The California Commission on Access to Justice was established in 1997 to pursue long-term fundamental improvements in our civil justice system so that it is truly accessible for all.</p> <p>The Access Commission is a collaborative effort involving all three branches of government as well as judges, lawyers, professors, and business, labor, and other civic leaders. The Access Commission is dedicated to finding long-term solutions to the chronic lack of legal assistance available for low-income, vulnerable Californians. It works closely with the State Bar, Judicial Council, and other agencies to implement its far-reaching recommendations.</p> <p>Establishment of the Access Commission was recommended in the 1996 report of the State Bar, <i>And Justice for All: Fulfilling the Promise of Equal Access to Justice in California</i>.</p>	<p><b>Composition:</b>          Composed of twenty-six (26) members. The appointing entities and number of appointments made by each entity are:</p> <p>State Bar of California:          Judicial Council:          California Judges Association:          Office of the Governor:          President Pro Tem of the Senate:          Speaker of the Assembly:          Supreme Court of California:          California Attorney General:          California Chamber of Commerce:          California League of Women Voters:          California Labor Federation:          California Council of Churches:          Consumer Attorneys of California:          Council of California County Law Librarians:          Legal Aid Association of California:</p> <p>Ex-officio members and non-members also participate in the work of the Commission.</p> <p><b>Meetings/Year:</b>          5-6 (one to two in-person, and four via</p>	<p><b>Funding</b></p> <ol style="list-style-type: none"> <li>Increase funding for the Equal Access Fund and other state funding mechanisms that support legal services.</li> </ol> <p><b>Language Access</b></p> <ol style="list-style-type: none"> <li>Provide input and support in the implementation of the statewide Language Access Plan.</li> <li>Expand language access in administrative agencies.</li> <li>Focus on language access needs in systems ancillary to the court system and administrative agencies.</li> </ol> <p><b>Rural Access to Justice</b></p> <ol style="list-style-type: none"> <li>Identify funding for rural programs that is not subject to current IOLTA distribution rules.</li> <li>Create/identify data to help figure out the legal needs in different rural parts of the state.</li> </ol> <p><b>Technology</b></p> <ol style="list-style-type: none"> <li>Identify innovative ways to bridge the rural access divide.</li> <li>Make sure that new technologies are accessible to all.</li> </ol> <p><b>Other Access to Justice</b></p> <ol style="list-style-type: none"> <li>Work with other stakeholders to develop a strategic action plan for achieving 100% access to justice in California (Justice for All project).</li> <li>Advocate for general fund support for courts and legal services instead of fees and fines, and evaluate and ameliorate negative impact of fees and fines on low and moderate income individuals, families, and communities.</li> </ol> <p><i>In addition to the above goals, current Commission projects include continued support and promotion of modest means incubators; designing a pilot court navigator program; and publishing best practices for assisting self-represented parties in administrative agency proceedings.</i></p>

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		videoconference/teleconference between San Francisco and Los Angeles locations) plus regular and ad hoc committee conference calls (the Commission currently has over a dozen committees)	
<b>California Young Lawyers Association (CYLA) Board of Directors</b>	<p>A California young lawyer is defined as a member in good standing of the State Bar of California who is in his or her first five (5) years of practice in California or who is age 36 or under.</p> <p>The charge of CYLA is to:</p> <ul style="list-style-type: none"> <li>(a) Advise the Board of Trustees on strategies to make the State Bar and CYLA continually relevant and beneficial to young lawyers in California.</li> <li>(b) Promote the interests of young lawyers in California.</li> <li>(c) Be responsible for programs, services, professional development and trend analysis, to assist young lawyers in becoming respected and successful members of the State Bar, keeping both CYLA and the State Bar ahead of the curve.</li> <li>(d) Develop communication strategies that engage young lawyers in California.</li> <li>(e) Create and continually strengthen outreach efforts to the barristers' organizations throughout the State and across the country.</li> <li>(f) Assist the State Bar in the administration and implementation of its programs and responsibilities.</li> <li>(g) Develop and implement regular public service projects that utilize the skills of the state's young lawyers and that would measurably benefit the public.</li> <li>(h) Encourage and promote pro bono work.</li> <li>(i) Identify and encourage young attorneys to become active participants in the administration and governance of the State Bar and make specific recommendations to the Board of Trustees for increasing their participation.</li> <li>(j) Comment and advise on issues of relevance and importance to young lawyers in California.</li> <li>(k) Screen applicants and make recommendations to the Board of Trustees for recipients of the Annual Jack Berman Award of Achievement.</li> <li>(l) CYLA will provide regular reports to the Board of Trustees. There will be a permanent place on the board committee agenda for CYLA reports and updates.</li> <li>(m) Function as State Bar MCLE Activity Auditors to conduct an audit of a particular MCLE program or class on behalf of the State Bar.</li> </ul>	<p><b>Composition:</b> Composed of twenty (20) members appointed by the Board of Trustees. Six (6) of the appointed seats shall be designated for representatives of each of the six court of appeal districts, one member per district. The remaining 14 seats shall be filled by at-large appointments.</p> <p>The CYLA Board will also be composed of one to three special advisors who have previously served on the CYLA Board.</p> <p><b>Meetings/Year:</b> 4 in-person meetings and monthly subcommittee project-based conference calls</p>	<p><b>Regulatory Function</b></p> <ul style="list-style-type: none"> <li>• Establish CYLA's identified regulatory function as MCLE Activity Auditors, adopting the process currently used by the Board of Legal Specialization.</li> <li>• Create and implement process, parameters and goals to effectively audit MCLE courses at a state-wide level.</li> </ul> <p><b>Education</b></p> <ul style="list-style-type: none"> <li>• Host Second Annual CYLA Practical Skills Symposium, providing new practitioners with the fundamentals for a successful career.</li> <li>• Build upon the existing CYLA 10 Minute Mentor Program catalog, providing mentoring on foundational topics.</li> <li>• Continued participation and creation of in-person MCLE programming at State Bar Annual Solo &amp; Small Firm Summit and the State Bar Annual Meeting.</li> <li>• Increased participation in webinars, working jointly with the various State Bar Sections.</li> </ul> <p><b>Legal Services</b></p> <ul style="list-style-type: none"> <li>• Work jointly with the Office of Legal Services to establish a pipeline for young lawyers to participate in pro bono, utilizing existing outlets including CYLA's 10 Minute Mentor Program and Annual Practical Skills Symposium.</li> </ul> <p><b>Special Projects</b></p> <ul style="list-style-type: none"> <li>• Work jointly with CalBar Journal Staff to establish a designated Young Lawyer Corner within monthly e-news.</li> <li>• Work jointly with LAP to build the "Early Career Guidance Program".</li> <li>• Adopt the initiatives and recommendations of the State Bar Board of Trustees Mentorship Task Force.</li> </ul>
<b>Client Security Fund Commission</b>	<p>Established in 1972, by Bar-sponsored legislation, the Client Security Fund reimburses victims who have lost money or property due to an act of dishonest conduct committed by a lawyer acting in a professional capacity. The</p>	<p><b>Composition:</b> The Commission, created by the Board in 1986, is composed of</p>	<p>It is the goal of the Commission to assist the public by reimbursing qualifying losses caused by attorney dishonest conduct in a fair, timely and consumer-oriented manner, which promotes public confidence in the legal profession.</p>

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	<p>Commission is charged with the administration of the Client Security Fund and implementation of the Client Security Fund rules. The Fund is financed by \$40.00 (active members) and \$10.00 (inactive members) of the annual dues assessment which can only be used for the purposes of the Fund.</p>	<p>seven (7) volunteers of whom no more than four (4) can be lawyers.</p> <p><b>Meetings/Year:</b> 6</p>	<p>The Commission is working towards this goal by:</p> <ul style="list-style-type: none"> <li>(a) Working with State Bar staff and the Board to ensure that there is adequate funding for the program.</li> <li>(b) Supporting requests of the Director of the Client Security Fund for adequate and appropriate staffing.</li> <li>(c) Seeking changes or additions to the Client Security Fund rules, policies and procedures which will expedite the processing of applications without jeopardizing the purpose of the program and the rights of applicants and respondent attorneys to due process, fairness and consistency.</li> </ul>
<p><b>Council on Access and Fairness</b></p>	<p>Established in November 2006, the Council on Access &amp; Fairness' charge is as follows:</p> <ul style="list-style-type: none"> <li>(a) Advise the Board on strategies to develop collaborative activities and efforts along the diversity pipeline to raise interest in the legal profession.</li> <li>(b) Serve as liaison between the State Bar and the diverse stakeholders and constituencies in the legal profession.</li> <li>(c) Identify and encourage individuals from diverse backgrounds to enter the legal profession.</li> <li>(d) Encourage full and equal opportunity for individuals from diverse backgrounds to remain and advance in the legal profession.</li> <li>(e) Identify and encourage attorneys from diverse backgrounds to become active participants in the administration and governance of the State Bar and make specific recommendations to the Board of Trustees for increasing that participation.</li> <li>(f) Promote and ensure collaborative efforts to generate and provide support and to increase the numbers of attorneys from diverse backgrounds entering and advancing in the legal profession.</li> <li>(g) Study and report on the status of attorneys from diverse backgrounds in the legal profession and in State Bar activities.</li> <li>(h) Produce on an ongoing basis programs and materials designed to maximize opportunities for individuals from diverse backgrounds in the legal profession and in the administration and governance of the State Bar's programs and activities.</li> <li>(i) Comment, when requested by the Board of Trustees or the Executive Director, on barriers directly related to access opportunities within the profession for attorneys from diverse backgrounds.</li> <li>(j) Screen applicants and make recommendations to the Board of Trustees for recipients of the Annual Diversity Awards.</li> <li>(k) Educate all attorneys of State Bar policy within the authority of this charge.</li> </ul>	<p><b>Composition:</b> Composed of twenty-five (25) attorney and public members appointed by the Board of Trustees.</p> <p><b>Meetings/Year:</b> 4 in-person plus monthly committee conference calls, and other calls as needed.</p>	<p><b>Mission</b> The Council on Access and Fairness provides leadership and guidance for the State Bar of California to ensure the legal profession reflects the rich diversity of the people of California in a way that is equally accessible and free of bias.</p> <p><b>Strategic Goals and 2015-2016 Initiatives from COAF Long Range Plan</b></p> <p><b>Goal 1. Produce Institutional and Attitudinal Changes.</b> Produce institutional and attitudinal changes to create a culture of inclusion within the legal profession and judiciary that fosters diversity.</p> <p><b>Initiative A: Implicit Bias/Stereotype Threat Curriculum for Faculty and Students:</b></p> <ul style="list-style-type: none"> <li>• Train the Trainer Professional Development for 2+2+3 Faculty Champions/ seek funding to adapt curriculum for Law Academy HS Faculty</li> <li>• Seek funding to adapt 2+2+3 Faculty Training for High School Law Academy Teachers</li> <li>• Assess Judicial Council/CJER curriculum to ensure judges receiving effective training to reduce bias in the courts</li> </ul> <p><b>Initiative B: Increase Diversity &amp; Inclusion in CA Judiciary:</b></p> <ul style="list-style-type: none"> <li>• Hold Judicial Appointments Workshops</li> <li>• Update Judicial Data PowerPoint Slides as needed</li> <li>• Hold Judicial Mentoring Workshops</li> <li>• Present Annual JNE EOB Training</li> <li>• Convene 2016 Judicial Diversity Summit</li> <li>• Advise Governor's Appointments Secretary re status of judicial recruitment</li> </ul> <p><b>Initiative C: Disseminate Legal Employer Focus Group Report</b></p> <ul style="list-style-type: none"> <li>• Create current distribution List (local and diversity bars law firms legal employers)</li> <li>• Incorporate key data into COAF Road Show Slides</li> <li>• Write Self Study MCLE Article for legal employers re hiring, retention and promotion of diverse attorneys</li> <li>• Meetings with Corporate Counsel re hiring and retention in corporate setting</li> </ul> <p><b>Initiative D: Include Diversity Factors in US News Rankings or "Plan B"</b></p> <ul style="list-style-type: none"> <li>• Approach Legislature to disseminate California Law School diversity data for use by students deciding re: law school applications</li> <li>• Create law school diversity metrics re diversity programming to share with law schools and other rankings stakeholders</li> <li>• Expand research re other law school ranking systems and make available to potential law students</li> </ul> <p><b>Initiative E: Increase bar passage among students from diverse backgrounds</b></p> <ul style="list-style-type: none"> <li>• Implement MLER program in CA as a pilot for July 2016 Bar Exam</li> </ul> <p><b>Goal 2. Communicate to Inspire and Engage Diversity.</b> Serve as a catalyst for change by framing and communicating ways to respond to diversity challenges to inspire and empower potential lawyers from diverse communities.</p> <p><b>Initiative A: Update and Present Master Road Show Slides as MCLE Program</b></p> <p><b>Initiative B: Present Annual Stakeholder Forum at Annual Meeting</b></p>

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			<p><b>Initiative C: Convene and dialogue with stakeholders through quarterly Diversity Dialogues (group conference calls) with stakeholders and constituents</b>  <b>Initiative D: Develop and Present EOB MCLE Programs at Annual Meeting and during year through COAF and other co-sponsoring entities</b>  <b>Initiative E: Disseminate quarterly COAF e-newsletter</b></p>
<p><b>Council on Access and Fairness (cont'd)</b></p>			<p><b>Goal 3. Partner, Collaborate and Coordinate to Achieve Diversity.</b> Partner, collaborate and coordinate with existing entities and individuals already working toward the goal of diversity within the justice system to achieve that goal.</p> <p><b>Initiative A: Community College 2+2+3 Pathway to Law School</b></p> <ul style="list-style-type: none"> <li>• Ongoing annual implementation tasks including outreach and recruitment for bar association and legal profession support and involvement</li> <li>• Work with program administrators to consider addition of community college and law school partners</li> <li>• Outline creation of Tool Kit to assist with program replication</li> <li>• Outline future elements of longitudinal study re program effectiveness</li> </ul> <p><b>Initiative B: Convene Annual Faculty Champion and Student Law Day</b></p> <ul style="list-style-type: none"> <li>• Conference scheduled for February 20, 2016 (No. Cal. Site)</li> <li>• Faculty Champion Professional Development</li> <li>• Identify Faculty Champion at each Community College participant</li> <li>• Develop and collect evaluation forms as feedback from faculty champions and students</li> </ul> <p><b>Initiative C: California Partnership Law Academy Support</b></p> <ul style="list-style-type: none"> <li>• Create Media Kits for law academies to promote work and to recruit volunteers and community support</li> <li>• Annual Law Academy student essay contest – Miranda Rights Theme</li> </ul> <p><b>Initiative D: Conduct Education and Outreach to increase Diversity in State Bar Applicant Pool</b></p> <ul style="list-style-type: none"> <li>• Expand outreach and recruitment among diverse attorneys for appointment to State Bar and other entities</li> </ul> <p><b>Initiative E: Leadership Development among diverse attorneys</b></p> <ul style="list-style-type: none"> <li>• Develop Follow-up plan to Leadership Development Summit to increase leadership pipeline</li> </ul> <p><b>Initiative F: Convene Law School Dean Meetings re: diversity best practices</b></p> <ul style="list-style-type: none"> <li>• Identify 2-4 newer deans for dialogues</li> </ul> <p><b>Initiative G: Cultivate network and partnership with ABA and other Bar Associations re: diversity pipeline initiatives</b></p> <ul style="list-style-type: none"> <li>• Coordination with ABA Diversity Center and Pipeline Council and other diversity entities</li> <li>• Coordination with NABE and NCBP re diversity initiatives</li> </ul> <p><b>Initiative H: Reduce Truancy Rates and Disciplinary Actions for minority students</b></p> <ul style="list-style-type: none"> <li>• Identify model programs for addressing School to Prison Pipeline/Pathway to Prosperity</li> <li>• Promote programming among California Partnership Law Academy network</li> <li>• Promote programming and create network of minority bar associations to address school discipline and truancy issues at local level</li> <li>• Conduct elementary school cartoon contest with Truancy Theme</li> </ul> <p><b>Goal 4. Measure Change.</b> Create mechanisms to measure change in the diversity of the legal profession over time.</p> <ul style="list-style-type: none"> <li>• Conduct Annual Long Range Planning Session—next session 11/21/15</li> <li>• Review, update and implement Long Range Plan</li> <li>• Convene stakeholders and constituents to dialogue re COAF Strategic Plan and key issues</li> </ul>
<p><b>Judicial Nominees Evaluation (JNE) Commission</b></p>	<p>The JNE Commission, established pursuant to Government Code Section 12011.5, evaluates all candidates who are under consideration for a judicial appointment by the governor. The 38-member commission is composed of lawyers in active practice, one or more retired judges, and non-lawyers.</p>	<p><b>Composition:</b> The JNE Commission is to consist of at least twenty-seven (27) and no more than thirty-eight (38) members. It is the stated intent of the Legislature</p>	<ol style="list-style-type: none"> <li>1. Provide independent, comprehensive, accurate and fair evaluations of candidates for judicial appointment and nomination and to submit those reports to the Governor's Office within 90 days after receiving the names.</li> <li>2. Recruit JNE commissioner candidates with diverse backgrounds.</li> <li>3. Improve the geographical diversity of the commissioner candidate pool with a focus on outreach to candidates in less populated counties.</li> </ol>

STANDING COMMITTEE	CHARGE	COMPOSITION / MEETINGS PER YEAR	2015-2016 GOALS
		<p>that the JNE membership shall be "broadly representative of the ethnic, gender, and racial diversity" of the population of California.</p> <p><b>Meetings/Year:</b> Mandatory two-day Orientation Meeting for new Commissioners.</p> <p>12-14 meeting days/year. The meetings are two days and take place every other month.</p> <p>Commissioners must be able to commit at least 40 hours each month.</p>	<ol style="list-style-type: none"> <li>4. Test, implement, and fully launch the web-based JNE application that is under current development for the Confidential Comment Forms (CCFs). This web-based application will allow commissioners to log into one portal to review the candidate applications and materials, choose the Bar members and judges to which they wish to send electronic confidential comment forms to, and electronically send confidential comment forms to those groups via this portal.</li> <li>5. Fully automate the way data is counted for certain demographic reports that are released on March 1st.</li> <li>6. Determine if a demographic table can be programmed which reports on the number of candidates evaluated, as well as on their ethnic backgrounds, gender and gender identity. (Note: The Governor's Office and the Coalition of Access and Fairness have expressed an interest in this type of table, if at all technically feasible.)</li> </ol>
<p><b>Judicial Nominees Evaluation Review Committee (RJNE)</b></p>	<p>The Review Committee (RJNE), established pursuant to Article 6, Rule 7.66 of the Rules and Procedures of the Judicial Nominees Evaluation Commission (JNE Commission), is charged with reviewing requests from those candidates who are seeking reconsideration of the JNE Commission's "not qualified" rating. RJNE evaluates information pertaining to the investigation of the candidate and focuses on possible violations of rules or procedure.</p>	<p><b>Composition:</b> RJNE is composed of five (5) members: two (2) members of the Board of Trustees (one lawyer member and one public member), one (1) past member of the JNE Commission, and two (2) at-large members.</p> <p><b>Meetings/Year:</b> 4-5 via conference call</p>	<ol style="list-style-type: none"> <li>1. Coordinate with the RJNE committee members and the commissioners so that review of the candidate's request for reconsideration is completed no later than 90 days after the State Bar receives the request.</li> <li>2. Provide to the Commission a short explanation as to why RJNE rescinded a "Not Qualified" rating. The RJNE Committee relies upon the grounds set out in JNE Rule 7.66 (B)(1-5) in deciding whether to <b>uphold or rescind a "not qualified rating"</b>. With approval of the Office of General Counsel, JNE staff may summarize for the commission why the RJNE committee rescinded the rating and which ground in Rule 7.66 it relied upon in doing so.</li> </ol>
<p><b>Lawyer Assistance Program (LAP) Oversight Committee</b></p>	<p>The Lawyer Assistance Program (LAP) is a statutory program that provides confidential and comprehensive help to members or former members of the State Bar whose personal or professional life is affected by substance abuse or mental health issues. The mission of the LAP is to support recovering attorneys in their rehabilitation and competent practice of law, enhance public protection, and maintain the integrity of the legal profession.</p>	<p><b>Composition:</b> Composed of twelve (12) members: six (6) are appointed by the Board of Trustees, four (4) by the Governor (two attorneys and two public members), one (1) by the President pro tem Senate, and one (1) by the Speaker of the Assembly.</p> <p>The six State Bar members include:</p> <p>(a) Two members who are licensed mental health</p>	<ol style="list-style-type: none"> <li>1. Ensure that funding dedicated for the LAP is effectively deployed in support of the mission of the program.</li> <li>2. Continuously evaluate the effectiveness and cost-effectiveness of LAP services.</li> <li>3. Develop and promote currently relevant MCLE courses and material for members, bar associations, and law firms.</li> <li>4. Develop multiple forms of effective program promotional material targeting members of and candidates for the State Bar.</li> <li>5. Develop and maintain a robust and effective online and social media presence.</li> </ol>

STANDING COMMITTEE	CHARGE	COMPOSITION / MEETINGS PER YEAR	2015-2016 GOALS
		<p>professionals with knowledge and expertise in the identification and treatment of substance abuse and mental illness.</p> <p>(b) One member who is a physician with knowledge and expertise in the identification and treatment of alcoholism and substance abuse.</p> <p>(c) One member of the board of directors of a statewide nonprofit organization established for the purpose of assisting lawyers with alcohol or substance abuse problems, which has been in continuous operation for a minimum of five years.</p> <p>(d) Two members who are attorneys, at least one of which is in recovery and has at least five years of continuous sobriety.</p> <p><b>Meetings/Year:</b> 4 (two in San Francisco and two in Los Angeles; the time commitment between meetings is one to two hours—a combination of conference calls and reading materials to prepare for meeting.)</p>	
<p><b>Legal Services Trust Fund Commission</b></p>	<p>Established in September 1982 to manage the Interest on Lawyers' Trust Account (IOLTA) program, the Legal Services Trust Fund Commission in 2016 will be responsible for grant distribution to 94 nonprofit legal aid organizations serving every county in California. We anticipate that number will increase in 2017.</p> <p>(1) "IOLTA grants" include IOLTA revenue and voluntary contributions to the State Bar through the dues bill, and other State Bar contributions. In 2016, \$11,107,919 will be distributed to 75 legal services program and 21 statewide support centers pursuant to B&amp;P Code 6210 et seq.</p>	<p><b>Composition:</b> The Commission consists of twenty-one (21) voting members, and three (3) nonvoting judicial advisors. The Board of Trustees appoints fourteen (14) of the voting members, ten (10) whom must be members of the State Bar and four (4) of whom must be</p>	<p>The goal is to enhance the availability and improve the effectiveness of organizations to provide civil legal aid to indigent persons. Strategies for 2016 include:</p> <ol style="list-style-type: none"> <li>1. Determine eligibility, approve budgets and allocations, oversee onsite monitoring and compliance</li> <li>2. Selection and monitoring of the discretionary EAF Partnership grants</li> <li>3. Selection and monitoring of the new Bank Settlement Grants</li> <li>3. Oversee and facilitate statewide discussions in several substantive areas regarding effective allocation of \$44 million in new grant funds to create high impact community redevelopment and foreclosure prevention work</li> <li>4. Continue to streamline grant-making, including through the development of an online grant</li> </ol>

STANDING COMMITTEE	CHARGE	COMPOSITION / MEETINGS PER YEAR	2015-2016 GOALS
	<p>(2) "Equal Access Fund (EAF) grants" are State Appropriations in the Court budget for legal aid, managed by the Trust Fund Program under State Bar contract with the Courts. In 2016, \$12,773,000 will be distributed according to statutory IOLTA formula, and \$1,419,000 will be distributed to selected programs in discretionary grants to fund legal aid partnerships with court self-help programs.</p> <p>(3) In 2015, Bank of America and Citi Group provided a total of \$6,085,197 to fund grants for (a) foreclosure prevention legal services or (b) community redevelopment legal services pursuant to their separate settlements with the DOJ. The Commission released a Request for Proposals (RFP), and in 2016 distributed \$4,132,790 through that RFP process.</p> <p>(4) In 2016, the Bank of America settlement resulted in an additional \$44,728,659 for administration of grants for community redevelopment and foreclosure prevention services. The commission is overseeing substantial community process to identify need and determine distribution, including facilitation of planning grants to foster widespread participation in the assessment and planning.</p> <p>The Board of Trustees has delegated to the Commission oversight of the grant-making process, including application, budget and allocation review and approval; ensuring compliance; and termination of grants when necessary. The Board approves the Commission's recommendation for IOLTA distribution each year.</p> <p>In addition to the above, the Commission has taken responsibility for increasing IOLTA yield, and with the Access to Justice Commission, managing outreach, education and administration of the Justice Gap Fund and the Campaign for Justice.</p>	<p>public members. The Chief Justice of the State of California, as Chair of the Judicial Council of California, appoints seven (7) of the voting members, five (5) of whom must be members if the State Bar and two (2) of whom must be public members, as well as three (3) non-voting judges, one of whom must be an appellate justice.</p> <p><b>Meetings/Year:</b> 6, generally by video conference between San Francisco and Los Angeles.</p>	<p>platform</p> <p>5. Complete the "reboot process" to develop better data to improve the ability to measure and evaluate success and communicate the importance of legal aid</p> <p>6. Education and outreach to key constituencies to increase revenue for legal aid organizations through the Campaign for Justice, including the Cy Pres campaign, and (assuming the Federal Reserve increases rates) IOLTA yield increase efforts.</p>
<b>Sections</b>	<p>State Bar sections address the concerns and interests of a specific segment of the profession. The section executive committee directs the policies and affairs of the section, subject to and in accordance with the section's bylaws, the policies of the board, and the Rules of the State Bar. The executive committee assists the board in matters relating to the section and supervises the section's activities, such as its educational programs, membership communications, publications, and standing or substantive committees.</p>	<p><b>Composition:</b> The section executive committees consist of 15-17 members who previously have served on the section's standing/substantive committees or otherwise been active in section activities.</p>	
<b>Antitrust, UCL &amp; Privacy</b>	<p>The Antitrust, UCL &amp; Privacy Section focuses on developments under the Cartwright, the Unfair Practices Act, and the Unfair Competition Law (UCL), section 17200, et seq., of the B&amp;P Code. The section deals with both private and government (federal, state and local) enforcement actions, civil and criminal, and government criminal procedures. It offers MCLE-accredited section programs throughout the year, an annual UCL Conference, an annual Golden State Antitrust and Unfair Competition Law Institute, and an Antitrust Lawyer of the Year Award. The section publishes <i>Competition Journal</i> periodically and updates its two-volume treatise as appropriate.</p>	<p><b>Composition:</b> The section executive committees consist of 15-17 members who previously have served on the section's standing/substantive committees or otherwise been active in section activities.</p> <p><b>Meetings/Year:</b></p>	<p>The goal of the Antitrust, UCL &amp; Privacy Section is to provide public protection by keeping its membership up-to-date on all aspects of the law. The Section offers a high quality education program in the Fall of each year, The Golden State Institute, as well as online programming providing its membership with up-to-date changes in the law. They also offer a scholarly newsletter 3-times per year and a monthly E-news.</p>

STANDING COMMITTEE	CHARGE	COMPOSITION / MEETINGS PER YEAR	2015-2016 GOALS
		<p>Monthly Conference Call 3 In-Person (January Leadership Conference/ SB Annual Meeting)</p>	
<b>Business Law</b>	<p>The Business Law Section Executive Committee oversees the section's educational, legislative, and publishing activities. The section has 15 standing committees plus the <i>Business Law News</i> Editorial Board. The standing committees are actively involved in providing member services and educational activities as well as initiating, developing, and proposing California legislation, commenting upon state and federal legislation, and participating in regulatory reform in California. The section focuses on providing services to its members electronically and through the section's website. The section sponsors educational programs and publishes a monthly e-newsletter, the quarterly <i>Business Law News</i>, opinion reports, and other written materials.</p>	<p><b>Composition:</b> Composed of fifteen (15) attorneys appointed by the Board of Trustees. And may consist of up to two additional members for a maximum of 17.</p> <p><b>Meetings/Year:</b> 5 in-person, 7 conference calls</p>	<p>The goal of the Business Law Section is to provide public protection by keeping its membership up-to-date on all aspects of the law. The Section offers high quality online education programs through its "How To" and "Hot Topics" series each year as well as live programs at the Solo Summit and Annual Meetings. They also offer a scholarly newsletter on a quarterly basis and a monthly E-news. The BLS has 16 standing committees and produces several e-Bulletins annually to further the knowledge of the members of the section in the law affecting businesses, including such areas as corporations, partnerships, bankruptcy, agri-business, insurance, franchises, and litigation practice.</p> <p>The BLS 2016 goal is to update its CALIFORNIA OPINIONS REPORT. This comprehensive compendium contains a collection of opinions that are current and highly relevant to California practitioners in the area of business and real property law.</p>
<b>Criminal Law</b>	<p>The Criminal Law Section Executive Committee engages in a wide range of activities including authoring opinions on criminal justice legislation, presenting educational programs for criminal law practitioners, and fostering communication with law students interested in career opportunities in criminal law. The executive committee publishes a journal on a quarterly basis, and sponsors an annual writing competition for law students. The committee is balanced geographically and by nature of the practice with state and federal prosecutors and defense lawyers. Advisors consist of former committee members, including lawyers, judges, and members of the board.</p>	<p><b>Composition:</b> Composed of up to seventeen (17) attorneys and judges (including officers). Approx. 5 new members are selected each year by the voting members of the Executive Committee and approved by the Board of Trustees.</p> <p><b>Meetings/Year:</b> 3 in-person, 2 conference calls</p>	<p>The goal of the Criminal Law Section is to provide public protection by keeping its membership up-to-date on all aspects of the law. The Section offers high quality education programs throughout the State both in-person and online, providing its membership with up-to-date changes in the law. They also offer a scholarly newsletter on a quarterly basis and a monthly E-news. The section also tries to reach out to law students and new attorneys through their annual Student Writing Competition.</p>
<b>Environmental Law</b>	<p>The Environmental Law Section provides a statewide forum for the exchange of ideas and knowledge among California environmental lawyers and other professionals in the environmental field. The section engages a broad range of substantive areas of environmental law, including water quality, water supply, air quality, land use, natural resources, solid waste, hazardous waste, toxic substances, endangered species, wetlands, coastal protection, environmental justice, and energy. The executive committee includes lawyers from private firms, regulatory agencies, state and local governments, public interest groups, business, and academia. The executive committee sponsors numerous MCLE programs, conducts outreach programs, furnishes technical comments concerning proposed legislation, and publishes periodic updates and insights on the practice of environmental law in California. The executive committee implements the section's goal of preventing pollution and conserving and supporting the sustainable use of natural resources.</p>	<p><b>Composition:</b> The section executive committees consist of 15-17 members who previously have served on the section's standing/substantive committees or otherwise been active in section activities.</p> <p><b>Meetings/Year:</b> 8 (4 in-person and 4 conference calls)</p>	<p>The goal of the Environmental Law Section is to provide public protection by keeping its membership up-to-date on all aspects of the law. The Section offers high quality education programs throughout the State both in-person and online providing its membership with up-to-date changes in the law. In addition, the Section offers educational outreach programs to local communities focusing on areas of environmental concern. The Section also has an annual Student Negotiations Competition for students who are in their second and third year of law school. They also offer a scholarly newsletter on a semimonthly basis.</p>
<b>Family Law</b>	<p>The purpose of the Family Law Section is to further the knowledge of its members in all areas of family law such as dissolution of marriage, legal</p>	<p><b>Composition:</b> The section executive</p>	<p>The goal of the Family Law Section is to provide public protection by keeping its membership up-to-date on all aspects of the law. The Section offers a high quality education programs in the Spring of</p>

STANDING COMMITTEE	CHARGE	COMPOSITION / MEETINGS PER YEAR	2015-2016 GOALS
	separation, annulment, registered domestic partnerships, child custody, child and spousal support, community property, adoption, and dependency. The section produces continuing legal education programs, the <i>Family Law News</i> , and an electronic newsletter. The executive committee reviews all proposed family law legislation, assists the State Bar in working with the Legislature to develop family law legislation, drafts affirmative family law legislation, and lends its family law expertise by providing comments and testimony to the Legislature.	committees consist of 15-17 members who previously have served on the section's standing/substantive committees or otherwise been active in section activities.  <b>Meetings/Year:</b> 5 In-person 1 Conference Call in December	each year throughout the State as well as online programming providing its membership with up-to-date changes in the law. They also offer a scholarly newsletter on a quarterly basis and a monthly E-news.
<b>Intellectual Property Law</b>	The Intellectual Property Law Section's areas of interest encompass all aspects of intellectual property (IP) law, including patent; trademarks; copyright; trade secret; licensing; IP litigation; entertainment and sports; technology, Internet and privacy; international IP, in-house counsel; and legislation. The section sponsors seminars regarding intellectual property law issues and works on other projects related to intellectual property law. The section also publishes a newsletter, <i>New Matter</i> , approximately four times per year and meets in executive sessions four or five times per year.	<b>Composition:</b> The section executive committees consist of 15-17 members who previously have served on the section's standing/substantive committees or otherwise been active in section activities.  <b>Meetings/Year:</b> 4 in-person	The goal of the Intellectual Property Law Section is to provide public protection and enhances the knowledge of its members in the law of patents, trademarks, trade secrets, entertainment law, internet law, copyrights, and licensing. The IP Section also covers matters of technology, privacy law, unfair business practices, antitrust, employer trade secrets, and litigation practice as it relates to intellectual property. The section produces a quarterly newsletter as well as an e-news twice a month. The section just finished the Third Edition of Trade Secret Litigation and Protection in California book.
<b>International Law</b>	The International Law Section Executive Committee communicates recent developments and current issues in international law and practice to its section membership and facilitates interaction among its members and foreign lawyers. The section presents MCLE-accredited programs throughout the year, holds long ranger planning sessions and networking receptions, and publishes the <i>California International Law Journal</i> , among other exciting activities.	<b>Composition:</b> The section executive committees consist of 15-17 members who previously have served on the section's standing/substantive committees or otherwise been active in section activities.  <b>Meetings/Year:</b> 11 (including conference calls)	The goal of the International Law Section is to educate practitioners from all fields of law and to provide public protection by keeping its membership up-to-date on all aspects of the law. The Section offers high quality education programs throughout the State both in-person and online. The Section is also coordinating international relations among foreign and domestic bar associations to share developments in law and diplomacy and to expand a network of resources for particular fields of law for use and access by California members of the Bar and the public. The Section also actively participates in career forums at law schools. They also offer a scholarly journal twice a year and a bi-monthly e-news, collection of practical articles on various aspects of international practice.
<b>Labor &amp; Employment Law</b>	The Labor & Employment Law Section provides a forum for individuals with an interest in labor relations and employment issues. Section members include specialists and generalists from across the labor and employment law spectrum, individual practitioners, law firms, government agencies, labor unions, corporate representatives, and neutrals. The executive committee presents MCLE-accredited section programs throughout the year, including conferences focused on both public sector and private sector employment and labor laws, and advanced courses on wage and hour laws. The executive committee also publishes six issues of the <i>Labor and Employment Law Review</i> . Executive committee members are expected to be actively involved in organizing and leading these programs/publications.	<b>Composition:</b> Composed of up to seventeen (17) attorneys and judges (including officers). Approx. 5 new members are selected each year by the voting members of the Executive Committee and approved by the Board of Trustees.  <b>Meetings/Year:</b> 4 in-person, 2 conference calls	The goal of the Labor and Employment Law Section is to provide public protection by keeping its membership up-to-date on all aspects of the law. The Section offers high quality education programs throughout the State both in-person and online, providing its membership with up-to-date changes in the law. They also offer a scholarly newsletter issued 6-times a year and a monthly E-news. The section annually updates two publications/reference books (Public Sector Employment Law and Public Sector Labor Relations), distributes Case Law Alerts electronically, funds an annual Diversity Grants Program, and provides speakers/content for 9 programs annually of the Your Legal Rights Radio Show. One of the goals for 2016 is to further develop the new Cooperative Law subcommittee. The purpose of the subcommittee is to evaluate the practice and to propose improvements that promote attorney civility, professionalism, efficiency, legal access and satisfaction.

STANDING COMMITTEE	CHARGE	COMPOSITION / MEETINGS PER YEAR	2015-2016 GOALS
<b>Law Practice Management &amp; Technology</b>	The Law Practice Management & Technology Section's mission is to help lawyers practice ethically and profitably. The section works to improve the quality of law practice through effective management techniques and technology. Areas of focus include administration, financial management, time management, marketing a law practice, systems and procedures, information security, computer software and hardware, and effective use of internal web platforms as well as external public presence on the Internet. The section's work includes conducting MCLE webinars and live programs on these topics as well as interfacing with local bar associations, law librarians, legal secretaries, paralegals, and other law-related associations. The section publishes an electronic newsletter as well as a bi-monthly magazine, <i>The Bottom Line</i> . <i>The Bottom Line</i> , celebrating 37 years in publication, is one of the oldest and most respected publications devoted to law practice management and technology issues. Each issue includes in-depth articles including one article that qualifies for CLE credit.	<p><b>Composition:</b> The section executive committees consist of 15-17 members who previously have served on the section's standing/substantive committees or otherwise been active in section activities.</p> <p><b>Meetings/Year:</b> 3 in-person, 7 conference calls</p>	The goal of the Law Practice & Technology Law Section is to provide public protection and enhances the knowledge of its members in the areas of Law Office Systems and Procedures, Financial Management, Marketing Legal Services, Technology and Legal Ethics. LPMT's flagship publication, <i>The Bottom Line</i> , a bi-monthly journal focused on practice management and the use of technology. On alternate months, members receive the LPMT eNews. The Section has also launched the LPMT App for members to get up-to-the-minute information on their smart phones.
<b>Litigation</b>	The purpose of the Litigation Section is to promote excellence in all areas affecting dispute resolution, including protection of the rights of all litigants, pre-trial discovery, the expeditious trial of lawsuits, alternative dispute resolution, effective judicial administration, uniform rules of court, and the protection and preservation of the independence of a judiciary of high quality.	<p><b>Composition:</b> The section executive committees consist of 15-17 members who previously have served on the section's standing/substantive committees or otherwise been active in section activities.</p> <p><b>Meetings/Year:</b> 2 in-person, 3 conference calls 1 Long Range Planning Meeting in the Fall</p>	The goal of the Litigation Section is to provide public protection by keeping its membership up-to-date on all aspects of the law. The Section offers a high quality education programs throughout the year, as well as online programming providing its membership with up-to-date changes in the law. They are particularly involved in serving the State's new lawyers through their "Coaching for the New Practitioner" program in Los Angeles and San Francisco. They also offer a scholarly newsletter on a quarterly basis and a monthly E-news.
<b>Public Law</b>	The Public Law Section's mission is to ensure that the laws relating to the function and operation of public agencies are clear, effective and serve the public interest; to advance public service through public law practice; and to enhance the effectiveness of public law practitioners. The section is focused on public sector practice, which encompasses many areas of law: administrative law, municipal law, open meeting laws, political law, education law, state and federal legislation, environmental and natural resources law, public safety and law enforcement, public employment, government contracts, tort liability and regulations, land use/environment issues, and public lawyer ethics. The section provides topical educational programs, seminars and resource materials; works to enhance the recognition of, and participation by, public sector lawyers in the State Bar; presents its annual Ronald M. George Public Lawyer of the Year award to public lawyers who have made significant and continuous contributions to the profession; and publishes the quarterly <i>Public Law Journal</i> . The section also sponsors an annual Student Writing Competition, awarding the winning student a cash prize and publishing his or her article in the <i>Public Law Journal</i> .	<p><b>Composition:</b> The section executive committees consist of 15-17 members who previously have served on the section's standing/substantive committees or otherwise been active in section activities.</p> <p><b>Meetings/Year:</b> 4 in-person</p>	The goal of the Public Law Section is to provide public protection and enhances the knowledge of its members. The Public Law Section provides education programs, webinars and an annual Ronald M. George Public Lawyer of the Year award to public law practitioners who have made significant and continuous contributions to the profession, we also have a quarterly Public Law Journal and eNews. We also conduct 4 law school receptions to reach out to the Law Students.

STANDING COMMITTEE	CHARGE	COMPOSITION / MEETINGS PER YEAR	2015-2016 GOALS
<b>Real Property Law</b>	The Real Property Law Section Executive Committee creates and administers programs and activities for over 7,000 section members, including the quarterly <i>California Real Property Journal</i> , an annual professional long range planning session, substantive and geographic subsections (e.g., real estate finance, commercial leasing, litigation, zoning and land use, environmental law), legislative initiatives, a website containing a wide range of resources, and periodic educational seminars. The executive committee is focused on providing services of value to its members and expanding its membership of the diverse population of real property practitioners in the state.	<p><b>Composition:</b> The section executive committees consist of 15-17 members who previously have served on the section's standing/substantive committees or otherwise been active in section activities.</p> <p><b>Meetings/Year:</b> 8 (six are in-person meetings)</p>	The goal of the Real Property Law Section is to provide education programs and literature for California's diverse real estate attorneys and serves as a forum for communicating information to its members on current developments and trends in real property. The Section offers high quality education programs through its seventeen sub-sections throughout the State both in-person and online. They also offer a scholarly journal quarterly and a monthly e-bulletin. They are in their second year of having a student writing competition.
<b>Solo and Small Firm</b>	The Solo and Small Firm Section provides a forum for solo and small firm practitioners, both specialists and those in general practice. The section presents educational programs and publishes a quarterly newsletter on technology and practice management for solo/small firm lawyers and on substantive law topics. The section publishes a Mentor Directory listing lawyers statewide who offer to section members free consultations in their listed areas of expertise. The section is compiling and will publish a list of "hot topics" of special concern to solo and small firm practitioners in the management of their practices.	<p><b>Composition:</b> Composed of fifteen (15) attorneys appointed by the Board of Trustees.</p> <p><b>Meetings/Year:</b> 4 in-person, 6 conference calls</p>	The goal of the Solo and Small Firm Section is to further the knowledge of the members of the section in all matters relating to the general practice of law, and to address the needs and concerns of all lawyers in general practice interested in the issues and trends facing the legal profession and in the delivery of legal service; provide public protection by keeping its membership up-to-date on all aspects of the law. The Section offers high quality online education programs, as well as live programs at the annual Solo Summit and Annual Meeting. They also offer a scholarly newsletter on a quarterly basis and a monthly E-news. The Solo and Small Firm Section's 2016 goal is to provide much needed outreach to underserved rural local bars and districts of the state of California.
<b>Taxation</b>	The Taxation Section Executive Committee has responsibility for a wide variety of activities, including the quarterly publication of <i>California Tax Lawyer</i> and presentations and programs at the Tax Section Annual Meeting and California Tax Policy Conference, the State Bar Annual Meeting, the Annual Income Tax Seminar, the Annual Estate and Gift Tax Seminar, the Eagles Lodge West conference and the Washington D.C. and Sacramento Delegations, where academic papers are presented to high-level officials of tax agencies and legislative staff. The executive committee also oversees several sub-committees including: compensation and benefits; corporate and pass-through entities; estate and gift tax; exempt organizations; income/other tax; international tax; practice and legislation; state and local tax; tax policy; tax procedure and litigation; and young tax lawyers.	<p><b>Composition:</b> Composed of up to seventeen (17) attorneys (including officers). 5 new members are selected each year by the voting members of the Executive Committee and approved by the Board of Trustees.</p> <p><b>Meetings/Year:</b> 4-5 in-person, 2 conference calls</p>	The goal of the Taxation Section is to provide public protection by keeping its membership up-to-date on all aspects of the law. The Section offers high quality education programs throughout the State both in-person and online, providing its membership with up-to-date changes in the law. They also offer a scholarly newsletter on a quarterly basis and a monthly E-news. One of the goals this year is to increase membership in the Section's 15 subcommittees and the involvement of the subcommittees in the education provided by the Section through more active participation in the delegations, conferences, publications, and annual meeting.
<b>Trusts &amp; Estates</b>	The substantive issues of the Trusts and Estates Section include: incompetency (including conservatorship, guardianship and elder law); estate planning and tax; ethics and professional responsibility; legislation; litigation; trust and estate administration; and trusts. The executive committee is active in developing programs to serve both members of the Bar and the public in general, and produces the highly regarded <i>California Trusts and Estates Quarterly</i> . The committee has developed a series of brochures on the topics of wills, estate plans and trusts (in both English and Spanish); produced a video tape designed to prevent estate planning "scams" on senior citizens statewide; and developed a speakers bureau of California lawyers who are engaged in active outreach to senior and public service organizations throughout the state.	<p><b>Composition:</b> Composed of fifteen (15) attorneys appointed by the Board of Trustees.</p> <p><b>Meetings/Year:</b> 5 in-person</p>	The goal of the Trusts and Estates Section is to further the knowledge of the members of the section in all matters relating to the law of probate and trusts and in estate planning, in administration, distribution, accounting and accountability of trusts and estates in drafting of wills and trusts and durable powers of attorney for property management and for health care, in guardianships and conservatorships ad probate reform , and in elder law. The Section offers high quality online education, three live programs in addition to participating in the Solo Summit and Annual Meeting.

STANDING COMMITTEE	CHARGE	COMPOSITION / MEETINGS PER YEAR	2015-2016 GOALS
<b>Workers' Compensation</b>	The Workers' Compensation Section focuses on the practice of workers' compensation law and is comprised of workers' compensation specialists, practitioners from the applicant and defense bar, and workers' compensation judges. The section presents MCLE and legal specialization accredited programs throughout the year, publishes the <i>Workers' Compensation Quarterly</i> and a monthly E-News, and has five active committees on which members are encouraged to participate (Awards and Recognition, Education, Legislation, Practice and Ethics, and Publications).	<b>Composition:</b> The Workers' Compensation Section is comprised of 15 members balanced between applicant and defense attorneys and judges.  <b>Meetings/Year: 5</b>	The goal of the Workers' Compensation Section is to provide public protection by keeping its membership up-to-date on all aspects of the law. The Section offers high quality education programs throughout the State both in-person and online providing its membership with up-to-date changes in the law. They also offer a scholarly newsletter on a quarterly basis and a monthly E-news. The section is also working on providing an ethics guide to its membership in 2016.
<b>California Board of Legal Specialization (CBLS)</b>	The California Board of Legal Specialization (CBLS) administers the State Bar of California Program for Certifying Legal Specialists in eleven areas of law, with the assistance of specialty advisory commissions. This program was created by the California Supreme Court under CRC 9.35 to provide consumer protection and encourage attorney competence. The CBLS recommends program rules and provides policies and guidelines for certification of specialists; develops testing and legal education criteria for specialists; develops outreach efforts to increase awareness of the program and advises the Board of Trustees on establishment of specialty fields and appointment of advisory commissions.	<b>Composition:</b> The CBLS consists of 15 members: 12 lawyers, at least 10 of whom must be certified specialists, and three non-lawyer public members.  <b>Meetings/Year: 6</b>	<ol style="list-style-type: none"> <li>1. Administer a successful Legal Specialist Examination and release timely results.</li> <li>2. Propose updated program rules for individual specialty areas to conform to the changes made to the Legal Specialization Program rules and State Bar Court rules implemented in 2014-2015 to improve client protection.</li> <li>3. Evaluate options for outreach to consumers and attorneys via social media.</li> <li>4. Work with new lawyers to demonstrate how pursuing certification accelerates career development and builds a strong base of practice experience grounded in best practices identified by successful certified specialists, reinforcing the role of this program as an early pipeline prevention program.</li> <li>5. Evaluate legal specialization certification fee and determine if what is being charged is appropriate, or should it be reduced.</li> <li>6. Invest reserve consistent with State Bar reserve policy.</li> </ol>
<b>Advisory Commission to the California Board of Legal Specialization:</b> <ul style="list-style-type: none"> <li>• Admiralty &amp; Maritime</li> <li>• Appellate</li> <li>• Bankruptcy</li> <li>• Criminal</li> <li>• Estate Planning, Trust &amp; Probate</li> <li>• Family</li> <li>• Franchise &amp; Distribution</li> <li>• Immig. &amp; Nationality</li> <li>• Legal Malpractice</li> <li>• Taxation</li> <li>• Workers' Comp.</li> </ul>	The Advisory Commissions to the California Board of Legal Specialization provide subject matter expertise in each area of law. There is one such commission for each of the eleven areas in which the State Bar of California certifies specialists. On an ongoing basis, they provide the first review of applications for certification in a given specialty, evaluate potential providers of specialty education and recruit new ones, and draft and grade the examinations with the help of professional consultants. On an ad hoc basis, the commissions provide feedback as to how potential initiatives can assist or affect individual specialties.	<b>Composition:</b> Each advisory commission consists of nine (9) members: eight (8) lawyer members, at least seven (7) of whom must be certified specialists, and one (1) non-lawyer member.  <b>Meetings/Year: 6</b>	<ol style="list-style-type: none"> <li>1. Grade legal specialist examination in a fair and timely manner.</li> <li>2. Complete drafting training for new advisory commissioners and begin drafting next examination.</li> <li>3. Recruit high quality providers of legal specialist education.</li> <li>4. Continue to develop an examination question bank to increase efficiency in exam development and delivery.</li> <li>5. Review and propose recommendations to the CBLS on all applications for certification and recertification received.</li> <li>6. Assist the CBLS in reviewing current standards for specialty certification to ensure development of the skills most needed for client protection.</li> </ol>

## **Minority Report List of Appendices**

<b>K</b>	Proposal to Reform California State Bar Structure and Governing Board – Includes 2-page Summary and 51-page Draft Legislation for Reform Proposal
<b>L</b>	One-page List of State Audits with links 2001-2016
<b>M</b>	Election Turn Out in State Bar Board Elections 2005-2016 (per email dated May 24, 2016, and attachment from 2011 Governance in Public Interest Task Force) (9 pages)
<b>N</b>	3-page Q&A re Decoupling Bar’s Regulatory and Professional Association Functions and Advocacy for Access to Justice and Diversity in the Profession, prepared by current and former Trustees Dennis Mangers, Joanna Mendoza, Glenda Corcoran and Heather Rosing on June 1, 2016.
<b>O</b>	3-page Letter dated May 10, 2016, from Bridget Fogarty Gramme, Esq., Assistant Administrative Director of the Center for Public Interest Law, to Elizabeth Rindskopf Parker, Executive Director of State Bar of California re: “Center for Public Interest Law’s Proposal for Deunification.”



# Appendix K

## Proposal to Reform California State Bar Structure and Governing Board



**Summary of Proposal for De-Unification/Reform of the California State Bar April 2016**

**Reform Timeline**

Apr-Oct, 2016	Oct 1, 2016	Oct 1-Dec 31 2016	Jan 1, 2017- March 31, 2018	April 1, 2018, to Dec. 31, 2018	Jan. 1, 2019
GTF continues	Fee Bill Passed setting forth proposal parameters & timelines	State Bar may begin work to prepare proposal in anticipation of law	Study/minimum 60 day comment period/draft proposal for Gov., Chief Justice, and Senate/Assembly Judiciary Cttees.	State Bar implementation proposal submitted and to proceed through legislative process	New structures take effect

**Division of Functions/Assets**

<b>California Legal Services Regulatory Board (CLSRB)</b>	<b>New California State Bar Association</b>
Admissions & Committee of Bar Examiners	16 Sections & CYLA
Law School Accreditation & Registration	Committees that do professional ass'n functions
Discipline (OCTC and State Bar Court)	Commissions that do professional ass'n functions
Lawyers' Assistance Program (LAP)	Other State Bar Depts doing prof. ass'n. functions
Client Security Fund	Reserve funds of Sections
Member Records & Compliance	Other funds restricted to prof. ass'n functions
Judicial Nominees Evaluation Commission	IP Rights of sections and prof. ass'n comm/depts
Continuing Legal Education Regulation	Continuing Education Program education
Non-professional association functions TBD	Use of seal and name "Calif State Bar Association"
Use of name "California Legal Services Regulatory Board"	

Other features:

- No net loss of State Bar employment as result of proposal.
- Statutory annual meeting requirement ends January 1, 2019.
- CLSRB to be mandated to collect voluntary dues for the professional association on the annual fee statement sent to all California licensed attorneys.

**Governing Board Structure**

- BOT terminates and California Legal Services Regulatory Board effective on January 1, 2019.
- No attorney members elected to the California State Bar Board of Trustees after January 1, 2017.
- Current BOT appointed members may be reappointed through December 31, 2018.

	<b>California Legal Services Regulatory Board (CLSRB)</b>	<b>New California Bar Association</b>
Number (13)	13 members	TBD by professional association
Attorneys ( 6)	6 (1 each by Gov., SCT. and 2 each by S. Rules and Ass. Rules)	
Non-Attorneys (7)	7 (2 by Gov., 3 by SCT., 1 by S. Rules and Ass. Rules)	

**Additional details of Board restructuring:**

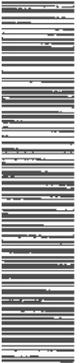
- Members serve 4-year overlapping terms; eligible to successive terms; initial appointees shall receive staggered terms by lot (2, 3 and 4 years).
- Geographic diversity will be required so that each appointing authority includes one person from the 1<sup>st</sup>/3<sup>rd</sup> DCA; one from 5<sup>th</sup>/6<sup>th</sup> DCA; and one from the 2<sup>nd</sup>/4<sup>th</sup> DCA.
- A Chair and Vice Chair shall be elected annually and be eligible for successive terms.

**Separate Provisions**

- B&P Code shall be revised to add Chief Justice to the following State Bar legislative reports:
  - Felonies by attorneys
  - Report on *notario* fraud violations
  - Budget
  - Annual Discipline Report
  - Annual report on the Lawyer’s Assistance Program
- State Bar shall propose a program to use licensing fee revenues to fund loan forgiveness for those who agree to provide legal services in under-served counties, subject to voluntary check-off, similar to physicians program described under B&P Code 2436.5.
- B&P Code to be revised to eliminate references to “members” and “dues” and replacing them with “licensees” or “attorneys” and “fees.”
- CLSRB shall be prohibited from creating specialty law sections or committees that collect voluntary dues or compete with the state-wide professional association.
- B&P Code shall be amended to make legislative Board attorney appointees eligible to serve on Governance Task Force.

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An act to amend Sections 6095, 6140.05, and 6177 of, to amend and repeal Sections 6001.2, 6013.1, 6013.2, 6013.3, 6013.5, 6016, 6018, 6019, 6020, 6021, 6022, 6023, 6024, and 6026 of, to amend, repeal, and add Sections 6001.1, 6008.1, 6008.4, 6010, 6011, 6012, 6013.6, 6025, 6031.5, 6036, 6046.7, 6086, 6086.5, 6086.14, 6126.7, 6140.1, 6169, 6222, 6225, 6226, and 6238 of, to add Sections 6009.6, 6010.5, 6013, and 6140.04 to, and to repeal Sections 6009.7, 6042, and 6086.16 of, the Business and Professions Code, relating to the State Bar.



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

SECTION 1. Section 6001.1 of the Business and Professions Code is amended to read:

6001.1. Protection of the public 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.

This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 2. Section 6001.1 is added to the Business and Professions Code, to read:

6001.1. Protection of the public shall be the highest priority for the State Bar of California and the California Legal Services Regulatory Board 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.

This section shall become operative on January 1, 2019.

SEC. 3. Section 6001.2 of the Business and Professions Code is amended to read:

6001.2. (a) On or before February 1, 2013, there shall be created within the State Bar a Governance in the Public Interest Task Force comprised of 7 members, including 6 members appointed as provided herein and the President of the State Bar. Two members shall be elected attorney members of the board of trustees who are selected by the elected attorney members, two members shall be attorney members of



the board of trustees appointed by the ~~Supreme Court Court~~, the Senate Committee on Rules, or the Speaker of the Assembly who are selected by the ~~Supreme Court Court~~, the Senate Committee on Rules, and the Speaker of the Assembly appointees, and two members shall be public members of the board of trustees selected by the public members. The president shall preside over its meetings, all of which shall be held consistent with Section 6026.5.

(b) On or before May 15, 2014, and every three years thereafter, the task force shall prepare and submit a report to the Supreme Court, the Governor, and the Assembly and Senate Committees on Judiciary that includes its recommendations for enhancing the protection of the public and ensuring that protection of the public is the highest priority in the licensing, regulation, and discipline of attorneys, to be reviewed by the Assembly and Senate Committees on Judiciary in their regular consideration of the annual State Bar dues measure. If the task force does not reach a consensus on all of the recommendations in its report, the dissenting members of the task force may prepare and submit a dissenting report to the same entities described in this subdivision, to be reviewed by the committees in the same manner.

(c) The task force shall make suggestions to the board of trustees regarding possible additions to, or revisions of, the strategic plan required by Section 6140.12. In addition, the task force shall also make suggestions to the board of trustees regarding other issues requested from time to time by the Legislature.

(d) This section shall become operative on January 1, 2013.

(e) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.



SEC. 4. Section 6008.1 of the Business and Professions Code is amended to read:

6008.1. No bond, note, debenture, evidence of indebtedness, mortgage, deed of trust, assignment, pledge, contract, lease, agreement, or other contractual obligation of the State Bar shall:

(a) Create a debt or other liability of the state nor of any entity other than the State Bar (or any successor public corporation).

(b) Create any personal liability on the part of the members of the State Bar or the members of the board of trustees or any person executing the same, by reason of the issuance or execution thereof.

(c) Be required to be approved or authorized under the provisions of any other law or regulation of this state.

This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 5. Section 6008.1 is added to the Business and Professions Code, to read:

6008.1. (a) A bond, note, debenture, evidence of indebtedness, mortgage, deed of trust, assignment, pledge, contract, lease, agreement, or other contractual obligation of the State Bar shall not:

(1) Create a debt or other liability of the state nor of any entity other than the State Bar (or any successor public corporation).

(2) Create any personal liability on the part of the members of the State Bar or the members of the board or any person executing the same, by reason of the issuance or execution thereof.



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(3) Be required to be approved or authorized under the provisions of any other law or regulation of this state.

(b) This section shall become operative on January 1, 2019.

SEC. 6. Section 6008.4 of the Business and Professions Code is amended to read:

6008.4. (a) All powers granted to the State Bar by Sections 6001 and 6008.3 may be exercised and carried out by action of its board of trustees. In any resolution, indenture, contract, agreement, or other instrument providing for, creating, or otherwise relating to, any obligation of the State Bar, the board may make, fix, and provide such terms, conditions, covenants, restrictions, and other provisions as the board deems necessary or desirable to facilitate the creation, issuance, or sale of such obligation or to provide for the payment or security of such obligation and any interest thereon, including, but not limited to, covenants and agreements relating to fixing and maintaining membership fees.

(b) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 7. Section 6008.4 is added to the Business and Professions Code, to read:

6008.4. (a) All powers granted to the State Bar by Sections 6001 and 6008.3 may be exercised and carried out by action of the board. In any resolution, indenture, contract, agreement, or other instrument providing for, creating, or otherwise relating to, any obligation of the State Bar, the board may make, fix, and provide such terms, conditions, covenants, restrictions, and other provisions as the board deems necessary or desirable to facilitate the creation, issuance, or sale of such obligation or to provide



for the payment or security of such obligation and any interest thereon, including, but not limited to, covenants and agreements relating to fixing and maintaining membership fees.

(b) This section shall become operative on January 1, 2019.

SEC. 8. Section 6009.6 is added to the Business and Professions Code, to read:

6009.6. (a) The State Bar shall develop a plan to separate the regulatory duties of the State Bar from the professional association functions of the State Bar consistent with the requirements of this section. The plan shall be drafted with an expected implementation date of January 1, 2019.

(b) The regulatory duties of the State Bar shall remain with the State Bar.

(1) The regulatory duties of the State Bar shall be the functions appropriately performed by a state regulatory agency when licensing and regulating a profession in the state.

(2) The regulatory duties shall include, but not be limited to, all of the following:

(A) Admission to the practice of law, including any examinations required for admission.

(B) Regulation and oversight of law schools, including accreditation and registration by the Committee of Bar Examiners.

(C) Discipline of licensees, including the Office of the Chief Trial Counsel of the State Bar and the State Bar Court established pursuant to Section 6086.5.

(D) The Lawyer Assistance Program established pursuant to Article 15 (commencing with Section 6230).

(E) The Client Security Fund established pursuant to Section 6140.5.



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(F) Compliance by licensees with laws that relate to the practice of law in the state, including compliance with laws relating to the maintenance of records.

(3) The State Bar shall continue to regulate any mandated continuing legal education for licensees and may use continuing legal education as a means to achieve consumer protection. The State Bar shall not be a provider of continuing legal education after January 1, 2019.

(c) The professional association functions of the State Bar shall be assigned to a private, nonprofit corporation that shall function as a professional association for the legal profession in the state, which shall be known as the California State Bar Association.

(1) The functions that the State Bar assigns to the California State Bar Association in the plan shall be those functions appropriate for a private, nonprofit professional association composed of voluntary members and comparable to those functions performed by the California Medical Association, including, but not limited to, the sections, committees, commissions, and State Bar departments that perform professional association functions.

(2) The plan shall include a proposal for the division and assignment of funding sources, other assets, staff, and programs that are associated with the professional association functions of the State Bar to the California State Bar Association.

(3) The plan shall include a proposal to transfer to the California State Bar Association the State Bar sections' reserve funds, other funds legally restricted to activities to be transferred to the California State Bar Association, intellectual property rights and content generated by the State Bar sections, and the right to use the historic



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seal of the California State Bar and to use the name of the California State Bar Association. The California State Bar Association shall be required to use resources transferred to it consistently with the purposes for which the resources were accrued until those resources are fully expended.

(d) On and after January 1, 2019, the board of trustees of the State Bar shall be renamed the California Legal Services Regulatory Board.

(e) The State Bar shall ensure that there will be no net loss of employment at the State Bar as a result of the plan required by this section.

(f) The State Bar shall review the State Bar Act, including Article 3 (commencing with Section 6040), and shall provide advice and guidance to the Legislature regarding any changes or code maintenance that should be made to the act.

(g) The State Bar shall allow at least 60 days for public comment on the plan and shall hold at least two public hearings regarding the plan before adopting and submitting the plan pursuant to subdivision (h).

(h) By April 1, 2018, the State Bar shall submit the plan required by this section to the Governor, the Chief Justice of California, the Judicial Council, and the Assembly and Senate Committees on Judiciary. It is the intent of the Legislature that the plan submitted pursuant to this subdivision will inform legislation that will be adopted in 2018 to be effective on January 1, 2019.

SEC. 9. Section 6009.7 of the Business and Professions Code is repealed.

~~6009.7. (a) (1) The State Bar shall determine the manner by which to reduce the board of trustees from 23 members to 19 members, as described in Section 6011,~~



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6010. (a) The State Bar is governed by a board known as the California Legal Services Regulatory Board. The board has the powers and duties conferred by this chapter.

(b) As used in this chapter or any other provision of law, "board of governors" shall be deemed to refer to the California Legal Services Regulatory Board.

(c) As used in this chapter or any other provision of law, "board of trustees" or "board of trustees of the State Bar" shall be deemed to refer to the California Legal Services Regulatory Board.

(d) As used in this chapter, "board" means the California Legal Services Regulatory Board.

(e) This section shall become operative on January 1, 2019.

SEC. 12. Section 6010.5 is added to the Business and Professions Code, to read:

6010.5. On and after January 1, 2019, all public communications on behalf of the State Bar shall use the name California Legal Service Regulatory Board in order to avoid any confusion between the State Bar and the California State Bar Association.

SEC. 13. Section 6011 of the Business and Professions Code is amended to read:

6011. (a) The board shall consist of no more than ~~23~~ 20 members and no less than 19 members.

(b) ~~It is the intent of the Legislature that the board consist of no more than 23 members and no less than 19 members during the period of transition from a 23-member board to a 19-member board, as described in Section 6009.7. It is the intent of the~~



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~~Legislature that the board, pursuant to the plan developed by the State Bar as described in Section 6009.7, gradually decrease its size without shortening, lengthening, or abolishing terms commencing prior to December 31, 2011, with the ultimate goal of instituting a 19-member board no later than October 31, 2014, pursuant to Section 6009.7.~~

(b) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 14. Section 6011 is added to the Business and Professions Code, to read:

6011. (a) The board shall consist of 13 members.

(b) Six members shall be licensed attorneys in the state appointed as follows:

(1) One attorney member shall be appointed by the Governor.

(2) One attorney member shall be appointed by the Supreme Court.

(3) Two attorney members shall be appointed by the Senate Committee on Rules.

(4) Two attorney members shall be appointed by the Speaker of the Assembly.

(c) Seven members shall be public members who have never been members of the State Bar or admitted to practice before any court in the United States and shall be appointed as follows:

(1) Two public members shall be appointed by the Governor.

(2) Three public members shall be appointed by the Supreme Court.

(3) One public member shall be appointed by the Senate Committee on Rules.

(4) One public member shall be appointed by the Speaker of the Assembly.

(d) In order to achieve appropriate geographic diversity and in recognition of the great diversity of California, each appointing authority's appointees shall, at any



given time, include at least one person whose residence or place of business is located in each of the following:

(1) The counties included in the 1st and 3rd District Courts of Appeal.

(2) The counties included in the 5th and 6th District Courts of Appeal.

(3) The counties included in the 2nd and 4th District Courts of Appeal.

(e) Board members shall serve four-year, overlapping terms that expire on December 31 of the fourth year after appointment. Board members may be reappointed to one or more successive terms.

(f) Notwithstanding subdivision (e), for the initial appointment of board members the appointees shall serve staggered terms, one appointee of each appointing authority shall serve for two years, one appointee of each appointing authority shall serve for three years, and one appointee of each appointing authority shall serve for four years, except that two appointees of the Supreme Court shall serve for four years.

(1) The appointing authority may specify which of its appointees will serve under which staggered term.

(2) If the appointing authority does not elect to specify which appointee will serve under which staggered term, then the appointees shall be assigned to one of the staggered terms either by agreement or by casting lots.

(3) Members appointed to the board after the completion of the initial staggered terms shall be appointed for four years pursuant to subdivision (e).

(g) This section shall become operative on January 1, 2019.

SEC. 15. Section 6012 of the Business and Professions Code is amended to read:



6012. ~~(a) State Bar Districts, as they existed on December 31, 2011, pursuant to Section 6012.5, as added by Chapter 1223 of the Statutes of 1989, shall cease, pursuant to the act that added this section, for purposes of the election of attorney members of the board. However, attorney members who were elected in 2009, 2010, or 2011 to serve for a three-year term commencing at the conclusion of the annual meeting held in those years shall be eligible to serve their full three-year terms.~~

~~(b)~~

(a) Commencing on January 1, 2012, State Bar Districts shall be based on the six court of appeal districts as constituted pursuant to Section 69100 of the Government Code, as they existed on December 31, 2011. The board shall provide for the election of six attorney members of the board from these six State Bar Districts as specified in Section 6013.2.

(b) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 16. Section 6012 is added to the Business and Professions Code, to read:

6012. (a) The board shall elect from its members, at least annually and not later than December 31, a chair and a vice chair to serve in the absence of the chair. There shall be no bar to reelection of a chair or vice chair to one or more successive terms.

(b) This section shall become operative on January 1, 2019.

SEC. 17. Section 6013 is added to the Business and Professions Code, to read:

6013. (a) The State Bar shall not be a provider of continuing legal education.



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(b) The State Bar may require continuing legal education as a condition of renewal of licensure under this chapter as a means to achieve consumer protection consistent with its duty under Section 6001.1.

(c) This section shall become operative on January 1, 2019.

SEC. 18. Section 6013.1 of the Business and Professions Code is amended to read:

6013.1. (a) The Supreme Court shall appoint five attorney members of the board pursuant to a process that the Supreme Court may prescribe. These attorney members shall serve for a term of three years and may be reappointed by the Supreme Court for one additional term only.

(b) An attorney member elected pursuant to Section 6013.2 may be appointed by the Supreme Court pursuant to this section to a term as an appointed attorney member.

(c) The Supreme Court shall fill any vacancy in the term of, and make any reappointment of, any appointed attorney member.

(d) When making appointments to the board, the Supreme Court should consider appointing attorneys that represent the following categories: legal services; small firm or solo practitioners; historically underrepresented groups, including consideration of race, ethnicity, gender, and sexual orientation; and legal academics. In making appointments to the board, the Supreme Court should also consider geographic distribution, years of practice, particularly attorneys who are within the first five years of practice or 36 years of age and under, and participation in voluntary local or state bar activities.



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(c) The State Bar shall be responsible for carrying out the administrative responsibilities related to the appointment process described in subdivision (a).

(f) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 19. Section 6013.2 of the Business and Professions Code is amended to read:

6013.2. (a) Six members of the board shall be attorneys elected from the State Bar Districts created by the board pursuant to Section 6012.

(b) An attorney member elected pursuant to this section shall serve for a term of three years. An elected attorney member may run for reelection, but may be reelected to only serve one additional term.

(c) As of January 1, 2017, no new attorney members shall be elected to the board of trustees pursuant to subdivision (a). Any member elected pursuant to subdivision (a) prior to January 1, 2017, shall be entitled to serve out his or her term until December 31, 2018.

(d) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 20. Section 6013.3 of the Business and Professions Code is amended to read:

6013.3. (a) One attorney member of the board shall be appointed by the Senate Committee on Rules and one attorney member shall be appointed by the Speaker of the Assembly.



(b) An attorney member appointed pursuant to this section shall serve for a term of three years. An appointed attorney member may be reappointed pursuant to this section.

(c) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 21. Section 6013.5 of the Business and Professions Code is amended to read:

6013.5. ~~(a)~~ Notwithstanding any other ~~provision~~ of law, six members of the board shall be members of the public who have never been members of the State Bar or admitted to practice before any court in the United States. They shall be appointed through 1982 by the Governor, subject to the confirmation of the Senate.

~~Each~~

(b) Each of such members shall serve for a term of three years, commencing at the conclusion of the annual meeting next succeeding his appointment, except that for the initial term after enactment of this section, two shall serve for one year, two for two years, and the other two for three years, as determined by lot.

In 1983 one public member shall be appointed by the Senate Committee on Rules and one public member shall be appointed by the Speaker of the Assembly.

For each of the years, 1984 and 1985, two public members shall be appointed by the Governor, subject to the confirmation of the Senate.

~~Each~~

(c) Each respective appointing authority shall fill any vacancy in and make any reappointment to each respective office.



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(d) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 22. Section 6013.6 of the Business and Professions Code is amended to read:

6013.6. (a) Except as provided in subdivision (b), any full-time employee of any public agency who serves as a member of the Board of Trustees of the State Bar of California shall not suffer any loss of rights, promotions, salary increases, retirement benefits, tenure, or other job-related benefits, which he or she would otherwise have been entitled to receive.

(b) Notwithstanding the provisions of subdivision (a), any public agency which employs a person who serves as a member of the Board of Trustees of the State Bar of California may reduce the employee's salary, but no other right or job-related benefit, pro rata to the extent that the employee does not work the number of hours required by statute or written regulation to be worked by other employees of the same grade in any particular pay period and the employee does not claim available leave time. The employee shall be afforded the opportunity to perform job duties during other than regular working hours if such a work arrangement is practical and would not be a burden to the public agency.

(c) The Legislature finds that service as a member of the Board of Trustees of the State Bar of California by a person employed by a public agency is in the public interest.

(d) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.



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SEC. 23. Section 6013.6 is added to the Business and Professions Code, to read:

6013.6. (a) Except as provided in subdivision (b), any full-time employee of any public agency who serves as a member of the board shall not suffer any loss of rights, promotions, salary increases, retirement benefits, tenure, or other job-related benefits, which he or she would otherwise have been entitled to receive.

(b) Notwithstanding the provisions of subdivision (a), any public agency which employs a person who serves as a member of the board may reduce the employee's salary, but no other right or job-related benefit, pro rata to the extent that the employee does not work the number of hours required by statute or written regulation to be worked by other employees of the same grade in any particular pay period and the employee does not claim available leave time. The employee shall be afforded the opportunity to perform job duties during other than regular working hours if such a work arrangement is practical and would not be a burden to the public agency.

(c) The Legislature finds that service as a member of the board by a person employed by a public agency is in the public interest.

(d) This section shall become operative on January 1, 2019.

SEC. 24. Section 6016 of the Business and Professions Code is amended to read:

6016. (a) The term of office of each attorney member of the board shall commence at the conclusion of the annual meeting next succeeding his or her election or appointment, and he or she shall hold office until his or her successor is elected or



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6019. (a) Each place upon the board for which a member is to be elected or appointed shall for the purposes of the election or appointment be deemed a separate office.

~~If~~

(b) If only one member seeks election to an office, the member is deemed elected. If two or more members seek election to the same office, the election shall be by ballot. The ballots shall be distributed to those entitled to vote at least twenty days prior to the date of canvassing the ballots and shall be returned to a site or sites designated by the State Bar, where they shall be canvassed at least five days prior to the ensuing annual meeting. At the annual meeting, the count shall be certified and the result officially declared.

~~In~~

(c) In all other respects the elections shall be as the board may by rule direct.

(d) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 27. Section 6020 of the Business and Professions Code is amended to read:

6020. (a) The officers of the State Bar are a president, a vice president, a secretary, and a treasurer.

(b) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 28. Section 6021 of the Business and Professions Code is amended to read:



6021. (a) (1) Within the period of 90 days next preceding the annual meeting, the board, at a meeting called for that purpose, shall elect the president, vice president, and treasurer for the ensuing year. The president, the vice president, and the treasurer shall be elected from among all members of the board.

(2) The newly elected president, vice president, and treasurer shall assume the duties of their respective offices at the conclusion of the annual meeting following their election.

(b) The term of the board president shall be one year, except that he or she may be reelected to a second one-year term as the board president.

(c) Notwithstanding the provisions of Sections 6009.7 and 6011 regarding a 19-member board, if the president is elected from among those members of the board whose terms on the board expire that year and has not been reelected or reappointed to another term under Section 6013.1, 6013.2, 6013.3, or 6013.5, the president shall serve as a 20th member of the board during his or her one-year term, and he or she may vote.

(d) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 29. Section 6022 of the Business and Professions Code is amended to read:

6022. (a) The secretary shall be selected annually by the board and need not be a member of the State Bar.

(b) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.



SEC. 30. Section 6023 of the Business and Professions Code is amended to read:

6023. (a) The officers of the State Bar shall continue in office until their successors are elected and qualify.

(b) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 31. Section 6024 of the Business and Professions Code is amended to read:

6024. (a) The president shall preside at all meetings of the State Bar and of the board, and in the event of his or her absence or inability to act, the vice president shall preside.

~~Other~~

(b) Other duties of the president and the vice president, and the duties of the secretary and the treasurer, shall be such as the board may prescribe.

(c) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 32. Section 6025 of the Business and Professions Code is amended to read:

6025. (a) Subject to the laws of this ~~State,~~ state, the board may formulate and declare rules and regulations necessary or expedient for the carrying out of this chapter.

~~The~~



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6031.5. (a) State Bar sections, as established under and pursuant to Article 13 of the Rules and Regulations of the State Bar, and their activities shall not be funded with mandatory fees collected pursuant to subdivision (a) of Section 6140.

The State Bar may provide an individual section, or two or more sections collectively, with administrative and support services, provided the State Bar shall be reimbursed for the full cost of those services out of funds collected pursuant to subdivision (b), funds raised by or through the activities of the sections, or other funds collected from voluntary sources. The financial audit specified in Section 6145 shall confirm that the amount assessed by the State Bar for providing the services reimburses the costs of providing them, and shall verify that mandatory dues are not used to fund the sections.

(b) Notwithstanding the other provisions of this section, the State Bar is expressly authorized to collect voluntary fees to fund the State Bar sections on behalf of those organizations in conjunction with the State Bar's collection of its annual membership dues. Funds collected pursuant to this subdivision, and other funds raised by or through the activities of the sections, or collected from voluntary sources, for their support or operation, shall not be subject to the expenditure limitations of subdivision (b) of Section 6140.05.

(c) Notwithstanding any other ~~provision~~ of law, the State Bar is expressly authorized to collect, in conjunction with the State Bar's collection of its annual membership dues, voluntary fees or donations on behalf of the Conference of Delegates of California Bar Associations, the independent nonprofit successor entity to the former Conference of Delegates of the State Bar which has been incorporated for the purposes



of aiding in matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, and to convey any unexpended voluntary fees or donations previously made to the Conference of Delegates of the State Bar pursuant to this section to the Conference of Delegates of California Bar Associations. The Conference of Delegates of California Bar Associations shall pay for the cost of the collection. The State Bar and the Conference of Delegates of California Bar Associations may also contract for other services. The financial audit specified in Section 6145 shall confirm that the amount of any contract shall fully cover the costs of providing the services, and shall verify that mandatory dues are not used to fund any successor entity.

(d) The Conference of Delegates of California Bar Associations, which is the independent nonprofit successor entity to the former Conference of Delegates of the State Bar as referenced in subdivision (c), is a voluntary association, is not a part of the State Bar of California, and shall not be funded in any way through mandatory dues collected by the State Bar of California. Any contribution or membership option included with a State Bar of California mandatory dues billing statement shall include a statement that the Conference of Delegates of California Bar Associations is not a part of the State Bar of California and that membership in that organization is voluntary.

(e) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 36. Section 6031.5 is added to the Business and Professions Code, to read:



6031.5. (a) (1) Notwithstanding any other law, the State Bar is expressly authorized to collect, in conjunction with the State Bar's collection of its annual membership dues, voluntary fees or donations on behalf of the California State Bar Association, an independent, nonprofit professional association, and sections of the California State Bar Association. The California State Bar Association shall pay for the cost of the collection. The State Bar and the California State Bar Association may also contract for other services. The financial audit specified in Section 6145 shall confirm that the amount of any contract shall fully cover the costs of providing the services and shall verify that mandatory dues are not used to fund any successor entity.

(2) The California State Bar Association, which is an independent, nonprofit corporation, is a voluntary association, is not a part of the State Bar of California, and shall not be funded in any way through mandatory dues collected by the State Bar of California. Any contribution or membership option included with a State Bar of California mandatory dues billing statement shall include a statement that the California State Bar Association is not a part of the State Bar of California and that membership in that organization is voluntary.

(b) (1) Notwithstanding any other law, the State Bar is expressly authorized to collect, in conjunction with the State Bar's collection of its annual membership dues, voluntary fees, or donations on behalf of the Conference of Delegates of California Bar Associations, the independent nonprofit successor entity to the former Conference of Delegates of the State Bar that has been incorporated for the purposes of aiding in matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, and to convey any unexpended voluntary



fees or donations previously made to the Conference of Delegates of the State Bar pursuant to this section to the Conference of Delegates of California Bar Associations. The Conference of Delegates of California Bar Associations shall pay for the cost of the collection. The State Bar and the Conference of Delegates of California Bar Associations may also contract for other services. The financial audit specified in Section 6145 shall confirm that the amount of any contract shall fully cover the costs of providing the services, and shall verify that mandatory dues are not used to fund any successor entity.

(2) The Conference of Delegates of California Bar Associations, which is the independent nonprofit successor entity to the former Conference of Delegates of the State Bar as referenced in paragraph (1), is a voluntary association, is not a part of the State Bar of California, and shall not be funded in any way through mandatory dues collected by the State Bar of California. Any contribution or membership option included with a State Bar of California mandatory dues billing statement shall include a statement that the Conference of Delegates of California Bar Associations is not a part of the State Bar of California and that membership in that organization is voluntary.

(c) The board shall not create any specialty law sections or committees that collect voluntary dues or that would be in competition with the California State Bar Association or any sections of the California State Bar Association.

(d) This section shall become operative on January 1, 2019.

SEC. 37. Section 6036 of the Business and Professions Code is amended to read:



6036. (a) Any member of the board of trustees shall disqualify himself or herself from making, participating in the making of, or attempting to influence any decisions of the board or a committee of the board in which he or she has a financial interest, as that term is defined in Section 87103 of the Government Code, that it is reasonably foreseeable may be affected materially by the decision.

(b) Any member of the board of trustees shall likewise disqualify himself or herself when there exists a personal nonfinancial interest that will prevent the member from applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions.

(c) Notwithstanding subdivisions (a) and (b), no member shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the action or decision to be made. The fact that a member's vote is needed to break a tie does not make his or her participation legally required for the purposes of this section.

(d) A member required to disqualify himself or herself because of a conflict of interest shall (1) immediately disclose the interest, (2) withdraw from any participation in the matter, (3) refrain from attempting to influence another member, and (4) refrain from voting. It is sufficient for the purpose of this section that the member indicate only that he or she has a disqualifying financial or personal interest.

(e) For purposes of this article and unless otherwise specified, "member" means any appointed or elected member of the board of trustees.

(f) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.



SEC. 38. Section 6036 is added to the Business and Professions Code, to read:

6036. (a) Any member of the board shall disqualify himself or herself from making, participating in the making of, or attempting to influence any decisions of the board or a committee of the board in which he or she has a financial interest, as that term is defined in Section 87103 of the Government Code, that it is reasonably foreseeable may be affected materially by the decision.

(b) Any member of the board shall likewise disqualify himself or herself when there exists a personal nonfinancial interest that will prevent the member from applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions.

(c) Notwithstanding subdivisions (a) and (b), no member shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the action or decision to be made. The fact that a member's vote is needed to break a tie does not make his or her participation legally required for the purposes of this section.

(d) A member required to disqualify himself or herself because of a conflict of interest shall (1) immediately disclose the interest, (2) withdraw from any participation in the matter, (3) refrain from attempting to influence another member, and (4) refrain from voting. It is sufficient for the purpose of this section that the member indicate only that he or she has a disqualifying financial or personal interest.

(e) For purposes of this article and unless otherwise specified, "member" means any appointed or elected member of the board.

(f) This section shall become operative on January 1, 2019.



SEC. 39. Section 6042 of the Business and Professions Code is repealed.

~~6042. The members of local administrative committees, except ex officio members of the board of trustees, shall hold office at the pleasure of the board.~~

SEC. 40. Section 6046.7 of the Business and Professions Code is amended to read:

6046.7. (a) (1) Notwithstanding any other provision of law, the Committee of Bar Examiners shall adopt rules that shall be effective on and after January 1, 2008, for the regulation and oversight of unaccredited law schools that are required to be authorized to operate as a business in California and to have an administrative office in California, including correspondence schools, that are not accredited by the American Bar Association or the Committee of Bar Examiners, with the goal of ensuring consumer protection and a legal education at an affordable cost.

(2) Notwithstanding any other provision of law, the committee shall adopt rules that shall be effective on and after January 1, 2008, for the regulation and oversight of nonlaw school legal programs leading to a juris doctor (J.D.) degree, bachelor of laws (LL.B.) degree, or other law study degree.

(b) Commencing January 1, 2008, the committee shall assess and collect a fee from unaccredited law schools and legal programs in nonlaw schools in an amount sufficient to fund the regulatory and oversight responsibilities imposed by this section. Nothing in this subdivision precludes the board of trustees from using other funds or fees collected by the State Bar or by the committee to supplement the funding of the regulatory and oversight responsibilities imposed by this section with other funds, if that supplemental funding is deemed necessary and appropriate to mitigate some of



the additional costs of the regulation and oversight to facilitate the provision of a legal education at an affordable cost.

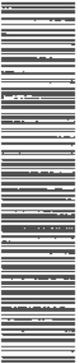
(c) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 41. Section 6046.7 is added to the Business and Professions Code, to read:

6046.7. (a) (1) Notwithstanding any other law, the Committee of Bar Examiners shall adopt rules that shall be effective on and after January 1, 2008, for the regulation and oversight of unaccredited law schools that are required to be authorized to operate as a business in California and to have an administrative office in California, including correspondence schools, that are not accredited by the American Bar Association or the Committee of Bar Examiners, with the goal of ensuring consumer protection and a legal education at an affordable cost.

(2) Notwithstanding any other law, the committee shall adopt rules that shall be effective on and after January 1, 2008, for the regulation and oversight of nonlaw school legal programs leading to a juris doctor (J.D.) degree, bachelor of laws (LL.B.) degree, or other law study degree.

(b) Commencing January 1, 2008, the committee shall assess and collect a fee from unaccredited law schools and legal programs in nonlaw schools in an amount sufficient to fund the regulatory and oversight responsibilities imposed by this section. Nothing in this subdivision precludes the board from using other funds or fees collected by the State Bar or by the committee to supplement the funding of the regulatory and oversight responsibilities imposed by this section with other funds, if that supplemental



funding is deemed necessary and appropriate to mitigate some of the additional costs of the regulation and oversight to facilitate the provision of a legal education at an affordable cost.

(c) This section shall become operative on January 1, 2019.

SEC. 42. Section 6086 of the Business and Professions Code is amended to read:

6086. The board of trustees, subject to the provisions of this chapter, may by rule provide the mode of procedure in all cases of complaints against members.

This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 43. Section 6086 is added to the Business and Professions Code, to read:

6086. (a) The board, subject to the provisions of this chapter, may by rule provide the mode of procedure in all cases of complaints against members.

(b) This section shall become operative on January 1, 2019.

SEC. 44. Section 6086.5 of the Business and Professions Code is amended to read:

6086.5. The board of trustees shall establish a State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivisions (b) and (c) of Section 6007 to the extent provided by rules adopted by the board of trustees pursuant to this chapter. In these proceedings the State Bar Court may exercise the powers and authority vested in the board of trustees by this chapter, including those powers and that authority vested in committees of, or



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established by, the board, except as limited by rules of the board of trustees within the scope of this chapter.

For the purposes of Sections 6007, 6043, 6049, 6049.2, 6050, 6051, 6052, 6077 (excluding the first sentence), 6078, 6080, 6081, and 6082, "board" includes the State Bar Court.

Nothing in this section shall authorize the State Bar Court to adopt rules of professional conduct or rules of procedure.

The Executive Committee of the State Bar Court may adopt rules of practice for the conduct of all proceedings within its jurisdiction. These rules may not conflict with the rules of procedure adopted by the board, unless approved by the Supreme Court.

This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 45. Section 6086.5 is added to the Business and Professions Code, to read:

6086.5. (a) The board shall establish a State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivisions (b) and (c) of Section 6007 to the extent provided by rules adopted by the board pursuant to this chapter. In these proceedings the State Bar Court may exercise the powers and authority vested in the board by this chapter, including those powers and that authority vested in committees of, or established by, the board, except as limited by rules of the board within the scope of this chapter.



(b) For the purposes of Sections 6007, 6043, 6049, 6049.2, 6050, 6051, 6052, 6077 (excluding the first sentence), 6078, 6080, 6081, and 6082, "board" includes the State Bar Court.

(c) Nothing in this section shall authorize the State Bar Court to adopt rules of professional conduct or rules of procedure.

(d) The Executive Committee of the State Bar Court may adopt rules of practice for the conduct of all proceedings within its jurisdiction. These rules may not conflict with the rules of procedure adopted by the board, unless approved by the Supreme Court.

(e) This section shall become operative on January 1, 2019.

SEC. 46. Section 6086.14 of the Business and Professions Code is amended to read:

6086.14. (a) The Board of Trustees of the State Bar is authorized to formulate and adopt rules and regulations necessary to establish an alternative dispute resolution discipline mediation program to resolve complaints against attorneys that do not warrant the institution of formal investigation or prosecution. The program should identify sources of client dissatisfaction and provide a mediation process to resolve those complaints or disputes unless the client objects to mediation. The refusal of an attorney to participate in the State Bar's alternative dispute resolution discipline mediation program established pursuant to this section, or the failure of an attorney to comply with any agreement reached in the State Bar's alternative dispute resolution discipline mediation program may subject that attorney to discipline. The rules may authorize discipline mediation under this article to proceed under discipline mediation programs



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sponsored by local bar associations in this state. The rules shall authorize a local bar association to charge a reasonable administrative fee for the purpose of offsetting the costs of maintaining the discipline mediation programs.

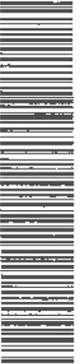
(b) The board of trustees shall have the authority to formulate and adopt standards and guidelines to implement the alternative dispute resolution discipline mediation program. The standards and guidelines formulated and adopted by the board, as from time to time amended, shall be effective and binding on all members, and may encompass any discipline mediation programs sponsored by local bar associations.

(c) It is the intent of the Legislature that the authorization of an alternative dispute resolution discipline mediation program not be construed as limiting or altering the powers of the Supreme Court of this state or the State Bar to disbar or discipline members of the State Bar. The records relating to the alternative dispute resolution discipline mediation program may be made available in any subsequent disciplinary action pursuant to any rule, standard, or guideline adopted by the Board of Trustees of the State Bar.

(d) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 47. Section 6086.14 is added to the Business and Professions Code, to read:

6086.14. (a) The board is authorized to formulate and adopt rules and regulations necessary to establish an alternative dispute resolution discipline mediation program to resolve complaints against attorneys that do not warrant the institution of formal investigation or prosecution. The program should identify sources of client



dissatisfaction and provide a mediation process to resolve those complaints or disputes unless the client objects to mediation. The refusal of an attorney to participate in the State Bar's alternative dispute resolution discipline mediation program established pursuant to this section, or the failure of an attorney to comply with any agreement reached in the State Bar's alternative dispute resolution discipline mediation program may subject that attorney to discipline. The rules may authorize discipline mediation under this article to proceed under discipline mediation programs sponsored by local bar associations in this state. The rules shall authorize a local bar association to charge a reasonable administrative fee for the purpose of offsetting the costs of maintaining the discipline mediation programs.

(b) The board shall have the authority to formulate and adopt standards and guidelines to implement the alternative dispute resolution discipline mediation program. The standards and guidelines formulated and adopted by the board, as from time to time amended, shall be effective and binding on all members, and may encompass any discipline mediation programs sponsored by local bar associations.

(c) It is the intent of the Legislature that the authorization of an alternative dispute resolution discipline mediation program not be construed as limiting or altering the powers of the Supreme Court of this state or the State Bar to disbar or discipline members of the State Bar. The records relating to the alternative dispute resolution discipline mediation program may be made available in any subsequent disciplinary action pursuant to any rule, standard, or guideline adopted by the board.

(d) This section shall become operative on January 1, 2019.

SEC. 48. Section 6086.16 of the Business and Professions Code is repealed.



~~6086.16. The State Bar shall report to the Assembly and Senate Committees on Judiciary by January 1, 2005, on the status of its regulatory and disciplinary efforts concerning alleged abuses by private actions brought on behalf of the general public pursuant to Section 17204 of the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Division 6).~~

SEC. 49. Section 6095 of the Business and Professions Code is amended to read:

6095. (a) The disciplinary agency shall annually hold at least two public hearings, one in southern California and one in northern California, to hear proposals on bar disciplinary procedures, attorney competency, and admissions procedures.

(b) To the extent the information is known to the disciplinary agency, it shall report annually to the Assembly and Senate Judiciary Committees and to the Chief Justice of California concerning the judicial or disciplinary disposition of all criminal or disciplinary proceedings involving the allegation of the commission of a felony by an attorney.

SEC. 50. Section 6126.7 of the Business and Professions Code is amended to read:

6126.7. (a) It is a violation of subdivision (a) of Section 6126 for any person who is not an attorney to literally translate from English into another language, in any document, including an advertisement, stationery, letterhead, business card, or other comparable written material, any words or titles, including, but not limited to, "notary public," "notary," "licensed," "attorney," or "lawyer," that imply that the person is an



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attorney. As provided in this subdivision, the literal translation of the phrase “notary public” into Spanish as “notario publico” or “notario,” is expressly prohibited.

(b) For purposes of this section, “literal translation of” or “to literally translate” a word, title, or phrase from one language means the translation of a word, title, or phrase without regard to the true meaning of the word or phrase in the language that is being translated.

(c) (1) In addition to any other remedies and penalties prescribed in this article, a person who violates this section shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000) per day for each violation, to be assessed and collected in a civil action brought by the State Bar.

(2) In assessing the amount of the civil penalty, the court may consider relevant circumstances presented by the parties to the case, including, but not limited to, the following:

- (A) The nature and severity of the misconduct.
- (B) The number of violations.
- (C) The length of time over which the misconduct occurred, and the persistence of the misconduct.
- (D) The wilfulness of the misconduct.
- (E) The defendant’s assets, liabilities, and net worth.

(3) The court shall grant a prevailing plaintiff reasonable attorneys’ fees and costs.

(4) A civil action brought under this section shall be commenced within four years after the cause of action accrues.



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phrase without regard to the true meaning of the word or phrase in the language that is being translated.

(c) (1) In addition to any other remedies and penalties prescribed in this article, a person who violates this section shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000) per day for each violation, to be assessed and collected in a civil action brought by the State Bar.

(2) In assessing the amount of the civil penalty, the court may consider relevant circumstances presented by the parties to the case, including, but not limited to, the following:

(A) The nature and severity of the misconduct.

(B) The number of violations.

(C) The length of time over which the misconduct occurred, and the persistence of the misconduct.

(D) The wilfulness of the misconduct.

(E) The defendant's assets, liabilities, and net worth.

(3) The court shall grant a prevailing plaintiff reasonable attorneys' fees and costs.

(4) A civil action brought under this section shall be commenced within four years after the cause of action accrues.

(5) In a civil action brought by the State Bar under this section, the civil penalty collected shall be paid to the State Bar and allocated to the fund established pursuant to Section 6033 to provide free legal services related to immigration reform act services to clients of limited means or to a fund for the purposes of mitigating unpaid claims



of injured immigrant clients under Section 22447, as directed by the board. The board shall annually report any collection and expenditure of funds for the preceding calendar year, as authorized by this section, to the Assembly and Senate Committees on Judiciary and to the Chief Justice of California. The report required by this section may be included in the report described in Section 6086.15.

(d) This section shall become operative on January 1, 2019.

SEC. 52. Section 6140.04 is added to the Business and Professions Code, to read:

6140.04. (a) The State Bar shall establish a loan forgiveness fund for newly licensed attorneys who agree to provide legal services in counties that are underserved by the legal profession in either public or private service. The program shall be funded by voluntary contributions collected through annual membership dues billing statements.

(b) The State Bar shall include an item on its annual membership dues form for a voluntary contribution to fund the program created by this section.

SEC. 53. Section 6140.05 of the Business and Professions Code is amended to read:

6140.05. (a) The invoice provided to members for payment of the annual membership fee shall provide each member the option of deducting five dollars (\$5) from the annual fee if the member elects not to support lobbying and related activities by the State Bar outside of the parameters established by the United States Supreme Court in *Keller v. State Bar of California* (1990) 496 U.S. 1.

(b) For the support or defense of lobbying and related activities conducted by the State Bar on or after January 1, 2000, outside of the parameters of *Keller v. State*



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Bar of California, and in support or defense of any litigation arising therefrom, the ~~Board of Trustees of the~~ State Bar shall not expend a sum exceeding the following: the product of the number of members paying their annual dues who did not elect the optional deduction multiplied by five dollars (\$5).

Moneys collected pursuant to this section shall not be deemed voluntary fees or funds for the purpose of subdivision (c) of Section 6031.5.

(c) As used in this section, "lobbying and related activities by the State Bar" includes the consideration of measures by the ~~Board of Trustees of the~~ State Bar that are deemed outside the parameters established in *Keller v. State Bar*, the purview determination, lobbying and the preparation for lobbying of the measures, and any litigation in support or defense of that lobbying. The determination of these costs shall include, but not be limited to, overhead and administrative costs.

SEC. 54. Section 6140.1 of the Business and Professions Code is amended to read:

6140.1. The State Bar annually shall submit its proposed baseline budget for the following fiscal year to the ~~Legislature~~ board of trustees, the Legislature, and the Chief Justice of California by November 15, and its proposed final budget by February 15, so that the budget can be reviewed and approved in conjunction with any bill that would authorize the imposition of membership dues. Each proposed budget shall include the estimated revenues, expenditures, and staffing levels for all of the programs and funds administered by the State Bar. Any bill that authorizes the imposition of membership dues shall be a fiscal bill and shall be referred to the appropriate fiscal committees; provided, however, that the bill may be approved by a majority vote.



The State Bar shall submit the budget documents in a form comparable to the documents prepared by state departments for inclusion in the Governor's Budget and the salaries and wages supplement. In addition, the bar shall provide supplementary schedules detailing operating expenses and equipment, all revenue sources, any reimbursements or interfund transfers, fund balances, and other related supporting documentation. The bar shall submit budget change proposals with its final budget, explaining the need for any differences between the current and proposed budgets.

This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 55. Section 6140.1 is added to the Business and Professions Code, to read:

6140.1. (a) The State Bar annually shall submit its proposed baseline budget for the following fiscal year to the board, the Legislature, and the Chief Justice of California by November 15, and its proposed final budget by February 15, so that the budget can be reviewed and approved in conjunction with any bill that would authorize the imposition of membership dues. Each proposed budget shall include the estimated revenues, expenditures, and staffing levels for all of the programs and funds administered by the State Bar. Any bill that authorizes the imposition of membership dues shall be a fiscal bill and shall be referred to the appropriate fiscal committees; provided, however, that the bill may be approved by a majority vote.

(b) The State Bar shall submit the budget documents in a form comparable to the documents prepared by state departments for inclusion in the Governor's Budget and the salaries and wages supplement. In addition, the bar shall provide supplementary



schedules detailing operating expenses and equipment, all revenue sources, any reimbursements or interfund transfers, fund balances, and other related supporting documentation. The bar shall submit budget change proposals with its final budget, explaining the need for any differences between the current and proposed budgets.

(c) This section shall become operative on January 1, 2019.

SEC. 56. Section 6169 of the Business and Professions Code is amended to read:

6169. (a) When there is reason to believe that a law corporation has violated or is about to violate any of the provisions of this article or the Professional Corporation Act or of any other pertinent statute, rule, or regulation, the State Bar may issue a notice directing the corporation to show cause why it should not be ordered to cease and desist from specified acts or conduct or its certificate of registration should not be suspended or revoked. A copy of the notice shall be served upon the corporation in the manner provided for service of summons upon a California corporation.

(b) A hearing upon the notice to show cause shall be held before the State Bar Court or a standing or special committee appointed by the board of trustees. Upon the hearing, the State Bar and the corporation shall be entitled to the issue of subpoenas, to be represented by counsel, to present evidence, and examine and cross-examine witnesses.

(c) The hearing committee shall make findings in writing and shall either recommend that the proceeding be dismissed or that a cease and desist order be issued or that the certificate of registration of the corporation be suspended or revoked. The determination may be reviewed by the board of trustees or by a committee authorized



by the Board of Trustees to act in its stead, upon written petition for review, filed with the State Bar by the corporation or the State Bar within 20 days after service of the findings and recommendation. Upon review, the board of trustees or the committee may take additional evidence, may adopt new or amended findings, and make such order as may be just, as to the notice to show cause.

(d) Subdivisions (a), (b), and (c) shall not apply to the suspension or revocation of the certificate of registration of a corporation in either of the following cases:

(1) The death of a sole shareholder, as provided in Section 6171.1.

(2) Failure to file the annual report and renew the certificate of registration, as provided in Sections 6161.1 and 6163.

(e) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 57. Section 6169 is added to the Business and Professions Code, to read:

6169. (a) When there is reason to believe that a law corporation has violated or is about to violate any of the provisions of this article or the Professional Corporation Act or of any other pertinent statute, rule, or regulation, the State Bar may issue a notice directing the corporation to show cause why it should not be ordered to cease and desist from specified acts or conduct or its certificate of registration should not be suspended or revoked. A copy of the notice shall be served upon the corporation in the manner provided for service of summons upon a California corporation.

(b) A hearing upon the notice to show cause shall be held before the State Bar Court or a standing or special committee appointed by the board. Upon the hearing,



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the State Bar and the corporation shall be entitled to the issue of subpoenas, to be represented by counsel, to present evidence, and examine and cross-examine witnesses.

(c) The hearing committee shall make findings in writing and shall either recommend that the proceeding be dismissed or that a cease and desist order be issued or that the certificate of registration of the corporation be suspended or revoked. The determination may be reviewed by the board or by a committee authorized by the board to act in its stead, upon written petition for review, filed with the State Bar by the corporation or the State Bar within 20 days after service of the findings and recommendation. Upon review, the board or the committee may take additional evidence, may adopt new or amended findings, and make such order as may be just, as to the notice to show cause.

(d) Subdivisions (a), (b), and (c) shall not apply to the suspension or revocation of the certificate of registration of a corporation in either of the following cases:

(1) The death of a sole shareholder, as provided in Section 6171.1.

(2) Failure to file the annual report and renew the certificate of registration, as provided in Sections 6161.1 and 6163.

(e) This section shall become operative on January 1, 2019.

SEC. 58. Section 6177 of the Business and Professions Code is amended to read:

6177. The State Bar by December 31 of each year shall report to the Legislature and the Chief Justice of California on the number of complaints filed against California attorneys alleging a violation of this article. The report shall also include the type of charges made in each complaint, the number of resulting investigations initiated, and



the number and nature of any disciplinary actions take by the State Bar for violations of this article.

SEC. 59. Section 6222 of the Business and Professions Code is amended to read:

6222. A recipient of funds allocated pursuant to this article annually shall submit a financial statement to the State Bar, including an audit of the funds by a certified public accountant or a fiscal review approved by the State Bar, a report demonstrating the programs on which they were expended, a report on the recipient's compliance with the requirements of Section 6217, and progress in meeting the service expansion requirements of Section 6221.

The Board of Trustees of the State Bar 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 State Bar receipts and expenditures required pursuant to Section 6145.

This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 60. Section 6222 is added to the Business and Professions Code, to read:

6222. (a) A recipient of funds allocated pursuant to this article annually shall submit a financial statement to the State Bar, including an audit of the funds by a certified public accountant or a fiscal review approved by the State Bar, a report demonstrating the programs on which they were expended, a report on the recipient's compliance with the requirements of Section 6217, and progress in meeting the service expansion requirements of Section 6221.



(b) The board 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 State Bar receipts and expenditures required pursuant to Section 6145.

(c) This section shall become operative on January 1, 2019.

SEC. 61. Section 6225 of the Business and Professions Code is amended to read:

6225. The Board of Trustees of the State Bar shall adopt the regulations and procedures necessary to implement this article and to ensure that the funds allocated herein are utilized to provide civil legal services to indigent persons, especially underserved client groups such as but not limited to the elderly, the disabled, juveniles, and non-English-speaking persons.

In adopting the regulations the Board of Trustees shall comply with the following procedures:

(a) The board shall publish a preliminary draft of the regulations and procedures, which shall be distributed, together with notice of the hearings required by subdivision (b), to commercial banking institutions, to members of the State Bar, and to potential recipients of funds.

(b) The board shall hold at least two public hearings, one in southern California and one in northern California where affected and interested parties shall be afforded an opportunity to present oral and written testimony regarding the proposed regulations and procedures.



This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 62. Section 6225 is added to the Business and Professions Code, to read:

6225. (a) The board shall adopt the regulations and procedures necessary to implement this article and to ensure that the funds allocated herein are utilized to provide civil legal services to indigent persons, especially underserved client groups such as but not limited to the elderly, the disabled, juveniles, and non-English-speaking persons.

(b) In adopting the regulations the board shall comply with both of the following procedures:

(1) The board shall publish a preliminary draft of the regulations and procedures, which shall be distributed, together with notice of the hearings required by paragraph (2), to commercial banking institutions, to members of the State Bar, and to potential recipients of funds.

(2) The board shall hold at least two public hearings, one in southern California and one in northern California where affected and interested parties shall be afforded an opportunity to present oral and written testimony regarding the proposed regulations and procedures.

(c) This section shall become operative on January 1, 2019.

SEC. 63. Section 6226 of the Business and Professions Code is amended to read:

6226. The program authorized by this article shall become operative only upon the adoption of a resolution by the Board of Trustees of the State Bar stating that



regulations have been adopted pursuant to Section 6225 which conform the program to all applicable tax and banking statutes, regulations, and rulings.

This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 64. Section 6226 is added to the Business and Professions Code, to read:

6226. (a) The program authorized by this article shall become operative only upon the adoption of a resolution by the board stating that regulations have been adopted pursuant to Section 6225 which conform the program to all applicable tax and banking statutes, regulations, and rulings.

(b) This section shall become operative on January 1, 2019.

SEC. 65. Section 6238 of the Business and Professions Code is amended to read:

6238. (a) ~~The committee shall report to the Board of Trustees and Trustees, to the Legislature Legislature, and to the Chief Justice of California~~ not later than March 1, 2003, and annually thereafter, on the implementation and operation of the program. The report shall include, but is not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance, and annual expenditures related to the program.

(b) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 66. Section 6238 is added to the Business and Professions Code, to read:

6238. (a) The committee shall report to the board, the Legislature, and the Chief Justice of California not later than March 1, 2003, and annually thereafter, on the



implementation and operation of the program. The report shall include, but is not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance, and annual expenditures related to the program.

(b) This section shall become operative on January 1, 2019.





# Appendix L

One–page List of State Audits  
with links 2001-2016



## Audits by the State Auditor

May 12, 2016 (2015-047): “The State Bar of California: Its Lack of Transparency Has Undermined Its Communications With Decision Makers and Stakeholders” (Link to summary: <https://www.auditor.ca.gov/reports/summary/2015-047>)

June 18, 2015 (2015-030): “State Bar of California: It Has Not Consistently Protected the Public Through Its Attorney Discipline Process and Lacks Accountability” (Link to summary: <https://www.auditor.ca.gov/reports/2015-030/summary.html>)

July 2, 2013 (2013-030): “State Bar of California: It Complies With Contracting Requirements, but It Could Improve Certain Practices to Ensure It Receives Best Value” (Link to full report – no summary available: <https://www.auditor.ca.gov/pdfs/reports/2013-030.pdf><https://www.auditor.ca.gov/pdfs/reports/2013-030.pdf>)

May 26, 2011 (2011-030): “State Bar of California: Its Lawyer Assistance Program Lacks Adequate Controls for Reporting on Participating Attorneys” (Link to summary: <https://www.auditor.ca.gov/reports/summary/2011-030>)

July 21, 2009 (2009-030): “State Bar of California: It Can Do More to Manage Its Disciplinary System and Probation Processes Effectively and to Control Costs” (Link to summary: <https://www.auditor.ca.gov/reports/summary/2009-030>)

April 26, 2007 (2007-030): “State Bar of California: With Strategic Planning Not Yet Completed, It Projects General Fund Deficits and Needs Continued Improvement in Program Administration” (Link to summary: <https://www.auditor.ca.gov/reports/summary/2007-030>)

April 28, 2005 (2005-030): “State Bar of California: It Should Continue Strengthening Its Monitoring of Disciplinary Case Processing and Assess the Financial Benefits of Its New Collection Enforcement Authority” (Link to summary: <https://www.auditor.ca.gov/reports/summary/2005-030>)

April 24, 2003 (2002-030): “State Bar of California: Although It Reasonably Sets and Manages Mandatory Fees, It Faces Potential Deficits in the Future and Needs to More Strictly Enforce Disciplinary Policies and Procedures” (Link to summary: <https://www.auditor.ca.gov/reports/summary/2002-030>)

April 25, 2001 (99030): “State Bar of California: It Has Improved Its Disciplinary Process, Stewardship of Members' Fees, and Administrative Practices, but Its Cost Recovery and Controls Over Expenses Need Strengthening” (Link to summary: <https://www.auditor.ca.gov/reports/summary/99030>)



## Appendix M

Election Turn Out in State Bar Board  
Elections 2005-2016 (per email dated  
May 24, 2016, and attachment from  
2011 Governance in Public  
Interest Task Force)



## Joanna Mendoza

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**From:** Gomez, Francisco <Francisco.Gomez@calbar.ca.gov>  
**Sent:** Tuesday, May 24, 2016 8:32 AM  
**To:** Joanna Mendoza  
**Cc:** Pierce, Michelle  
**Subject:** FW: Election results  
**Attachments:** 12-Board\_of\_Governors\_Election\_Costs\_and\_Participation.pdf

Joanna,

See below the numbers for elections 2012 to present. Also attached is document that was prepared for the 2011 Governance in the Public Interest Task Force which summarizes 2015-2010 election information that predates the SB 163 changes.

Francisco

Year	Districts	Eligible Voters	Voters	Total Turnout %	Average %
2016	1, 3	52,486	5973	11.38	12.48
2015	4	38,459	5811	15.11	---
2014	2, 4, 6	107,256	12282	11.45	11.35
2013	1	37,709	3627	9.62	---
2012	4, 5	40,410	5949	14.72	17.69

Francisco Gomez | Director, Executive Office Programs  
Office of the Executive Director  
State Bar of California | 180 Howard Street | San Francisco, CA 94105  
Tel No. 415.538.2170 | [francisco.gomez@calbar.ca.gov](mailto:francisco.gomez@calbar.ca.gov)

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# State Bar Board of Governors Elections

## I. INTRODUCTION

The State Bar, created in 1927 by the Legislature and adopted into the California Constitution in 1960, is a public corporation within the judicial branch of state government. The State Bar is a unified, or integrated bar, and membership is mandatory for all attorneys who are licensed to practice law in the state. In addition to its mandated licensing and disciplinary and certification functions, the State Bar offers a number of other programs designed to assist, educate and protect its members and the public.

The 23rd member of the Board of Governors is the State Bar president, who is elected by the other board members to serve a fourth year as the bar's chief officer.

The State Bar is required by Business and Professions Code section, 6010 et seq. and by Title 6, Division 1, Chapter 1 of the Rules of the State Bar of California, as amended May 16, 2008 ("Rules") to hold an annual election among its active membership. Voting is by district. As of November 2010, the State Bar had 150,169 active members eligible to vote in California as indicated on the chart below.

Pursuant to Section 6125.5 of the Business and Professions Code, the State Bar of California (Bar) in 2010 adjusted its district boundaries and adopted Rule 6.30 to implement the new composition effective July 1, 2010.

The composition of State Bar Districts and the number of elected seats on the Board of Governors in each District are as follows:

- (a) District 1 has one seat and consists of the nineteen counties of Butte, Colusa, Del Norte, Glenn, Humboldt, Lake, Lassen, Mendocino, Modoc, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, and Yuba.
- (b) District 2 has one seat and consists of the five counties of Napa, Sacramento, Solano, Sonoma, and Yolo.
- (c) District 3 has one seat and consists of the two counties of Alameda and Contra Costa.
- (d) District 4 has two seats and consists of the three counties of Marin, San Francisco, and San Mateo.
- (e) District 5 has one seat and consists of the twenty counties of: Alpine, Amador, Calaveras, El Dorado, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Joaquin, San Luis Obispo, Santa Cruz, Stanislaus, Tulare, and Tuolumne.
- (f) District 6 has one seat and consists of the county of Santa Clara.

- (g) District 7 has four seats and consists of the county of Los Angeles.
- (h) District 8 has two seats and consists of the three counties of Orange, Santa Barbara and Ventura.
- (i) District 9 has two seats and consists of the four counties of Imperial, Riverside, San Bernardino, and San Diego.

**ACTIVE MEMBERS** \*

District 1	3,018
District 2	10,638
District 3	10,395
District 4	22,718
District 5	7,892
District 6	8,987
District 7	49,850
District 8	19,086
District 9	17,585



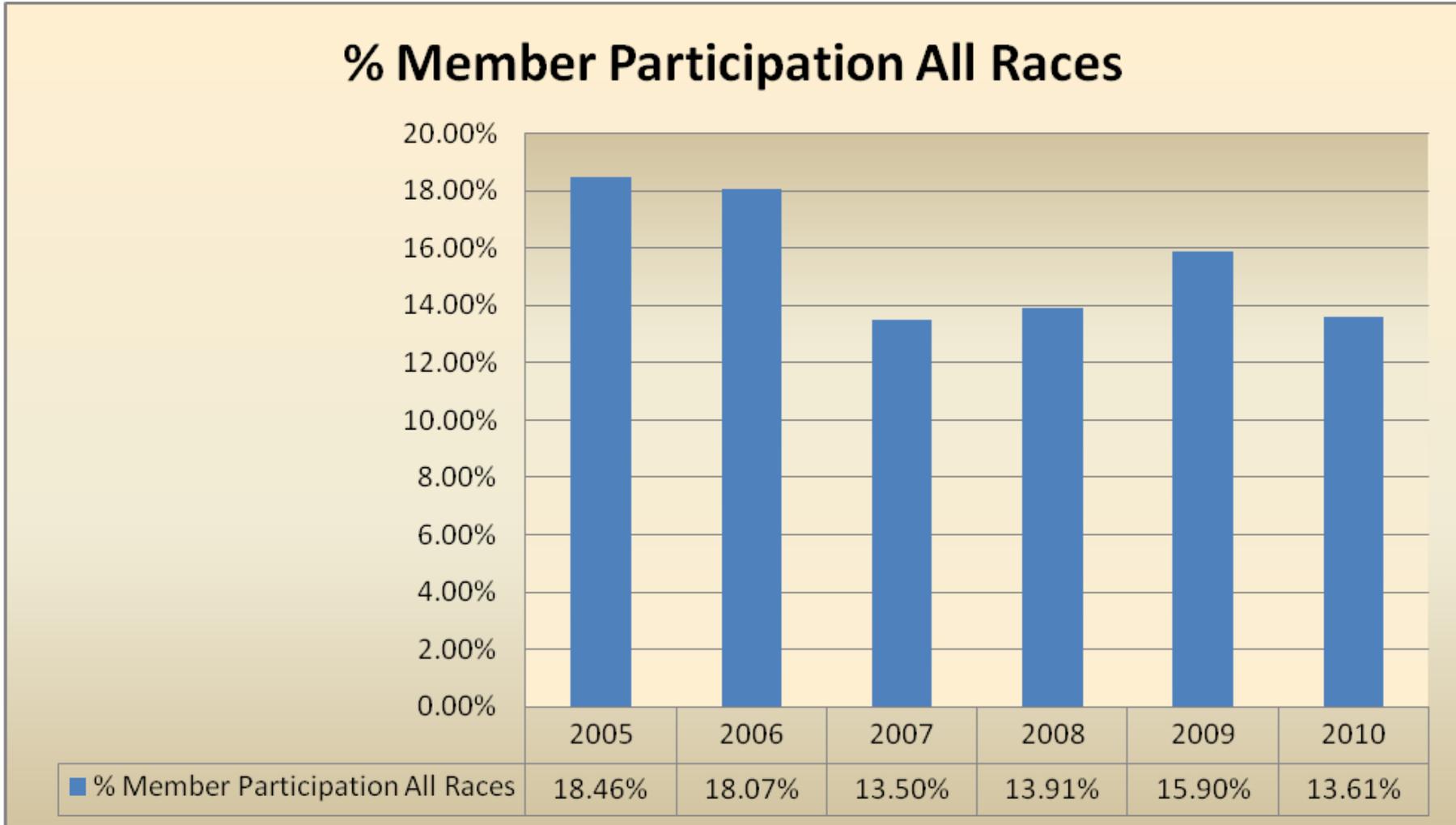
\* Numbers based on Nov. 5 statistics

Pursuant to Rule 6.32, effective July 1, 2010, the sequence of election of members after the district adjustments Members of the board will be elected for terms of three years as follows:

- (a) In 2011 and every three years thereafter, one member from State Bar Districts 4, 6, 7, 8 and 9.
- (b) In 2012 and every three years thereafter, one member from State Bar Districts 1, 5, 7, 8 and 9.
- (c) In 2013 and every three years thereafter, one member from State Bar Districts 2, 3 and 4 and two members from State Bar District 7.

The number of ballots to be mailed depends on the number of active members at that time. In general, the State Bar has approximately 5,000 new admittees every year; however, not all of those new admittees are eligible to vote. Statistics show that in any given year, voter return has been approximately thirteen and nineteen percent (13% - 19% - See Figure 1)

Figure 1



**STATE BAR OF CALIFORNIA**  
**BOARD OF GOVERNOR'S DISTRICT ELECTIONS**  
2005 – 2010

**2005**

District	# Candidates	# Eligible	# Voted	% of Eligible
4	3	16838	3094	18.36 %
6	2	8670	2440	28.14 %
7 (BOG Office #1)	4	45488	7193	15.81 %
8	3	13277	2828	21.30 %
<b>ALL</b>	<b>12</b>	<b>84,273</b>	<b>15,555</b>	<b>18.46 %</b>

**2006**

District	# Candidates	# Eligible	# Voted	% of Eligible
1	2	2,814	617	21.93 %
5	2	6,374	1,375	21.57 %
7	3	46,408	6,426	13.85 %
9	3	13,134	4,003	30.48 %
<b>ALL</b>	<b>10</b>	<b>68,730</b>	<b>12,421</b>	<b>18.07 %</b>

**2007**

District	# Candidates	# Eligible	# Voted	% of Eligible
2	2	10,458	1,759	16.82 %
3	2	21,319	2,958	13.87 %
7 (BOG Office #1)	3	47,219	5,945	12.59 %
<b>ALL</b>	<b>7</b>	<b>78,996</b>	<b>10,662</b>	<b>13.50 %</b>

**2008**

District	# Candidates	# Eligible	# Voted	% of Eligible
4	4	18,113	2,958	16.33 %
6	3	9,442	1,851	19.60 %
7 (BOG Office #1)	3	47,824	5,677	11.87 %
<b>ALL</b>	<b>10</b>	<b>75,379</b>	<b>10,486</b>	<b>13.91 %</b>

**2009**

District	# Candidates	# Eligible	# Voted	% of Eligible
1	2	2,951	510	17.28 %
3	4	22,711	3,088	13.60 %
5	3	6,648	1,816	27.32 %
7	3	48,951	7,209	14.73 %
9	6	14,127	2,547	18.03 %
<b>ALL</b>	<b>18</b>	<b>95,388</b>	<b>15,170</b>	<b>15.90 %</b>

**2010**

District	# Candidates	# Eligible	# Voted	% of Eligible
2	2	11,105	2,115	19.05 %
3	2	23,199	2,996	12.91 %
4	3	18,780	2,699	14.37 %
7 (BOG Office #1)	3	49,731	6,188	12.44 %
<b>ALL</b>	<b>10</b>	<b>102,815</b>	<b>13,998</b>	<b>13.61 %</b>

## II. ELECTION PACKET/BALLOTS

Vendors develop both an Internet and a paper ballot system following general procedures for conducting an election in accordance with the deadlines and specifications set forth in the Rules. Vendor mail ballot packets to all eligible voters and in 2010 the ballot packets included instructions for the voter to access an electronic ballot in lieu of completing the paper ballot, if the voter so desired (“Hybrid Election”)<sup>1</sup>. As the above chart shows, even though attorneys were presented in 2010 with the option of voting on-line, voting participation rates fell by over 2% from 2009 and remained about the same as in the prior three years.

## III. SAMPLE ELECTION SCHEDULES

<b>Schedule of Dates &amp; Deadlines</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Nominating petitions available	2/2/2009	2/1/2010	2/1/2011
Last day to file nominating petitions	4/1/2009	4/1/2010	4/1/2011
Last day to withdraw nomination	4/13/2009	4/12/2010	4/11/2011
Eligibility list closes	4/20/2009	4/20/2010	4/20/2011
Ballots mailed	4/30/2009	4/30/2010	5/2/2011
Last day for voting	6/30/2009	6/30/2010	6/30/2011
Canvass of ballots	7/6-9/2009	7/6-9/2010	7/6-11/2011
Annual Meeting	9/23-26/2009	8/18-21/2010	9/15-18/2011

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<sup>1</sup> The “Hybrid” Election uses a combination of voting by mail ballot and by the Internet. A ballot packet is mailed to all members of record. The ballot packet is similar to the one currently used by the State Bar and includes a ballot, instructions, candidate statements, a unique voter PIN number printed on the ballot, and a return mail ballot envelope.

#### IV. 2010 ELECTION COSTS

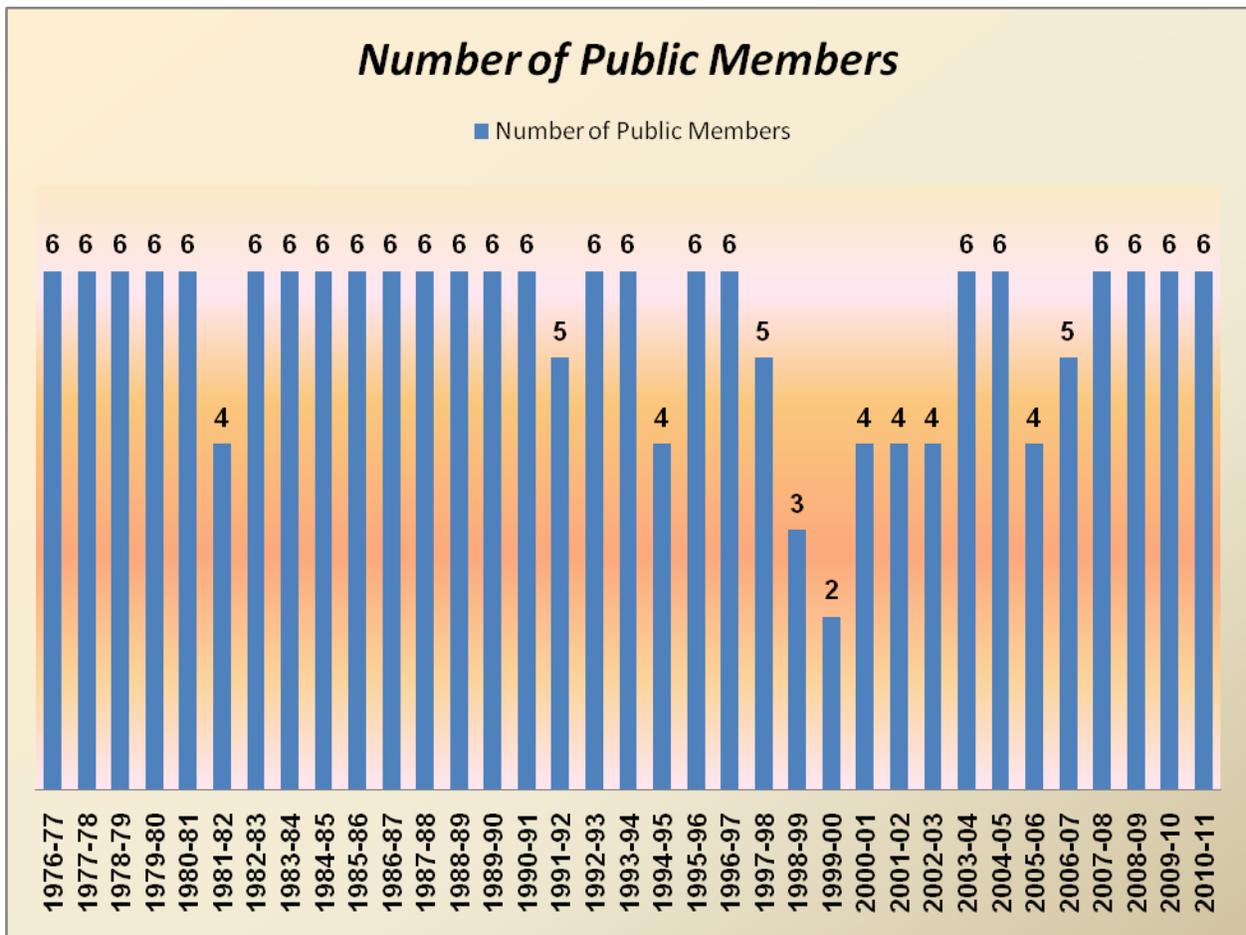
The cost of elections is comprised of Printing /Standard Mail Postage / Shipping Logistics / Address Corrections and the Vendor cost (See Figure 2 below).



Figure 2 - In the 2008 election two members deemed elected -- no ballots sent to District 8. 2010 includes an internet voting cost.

V. PUBLIC MEMBERS ON THE STATE BAR BOARD OF GOVERNORS

In 1975, the public member statute was enacted, allowing six public, non-attorney members to be appointed and serve on the Board of Governors. (Bus. & Prof. Code, § 6013.5, State Bar Act: Stats. 1975, Ch. 874.) For the first time, the concept of board membership and bar membership took on distinct forms. Members of the board were now comprised of both attorney members and non-attorney public members. For the 1976-77 Board-year "public" or non-lawyer members were appointed to the Board of Governors - four by California's governor, one by the state Senate Committee on Rules and one by the Speaker of the Assembly.



## Appendix N

Q&A re Decoupling Bar's Regulatory &  
Professional Association Functions and  
Advocacy for Access to Justice  
and Diversity in the Profession



## **Q&A re Decoupling Bar's Regulatory & Professional Association Functions and Advocacy for Access to Justice and Diversity in the Profession**

Will de-coupling the Bar's regulatory and professional association functions require diversity and access to justice programs to be assigned only to the professional association?

No, the Trustees' decoupling proposal does not detail what programs go to which successor agency; it requires the Bar to study the division for a year and to make a recommendation as to what programs should go to which agency. These programs could stay with the mandatory regulatory agency or, better yet, be assigned to **both** agencies.

Does Prop. 209 prevent a mandatory regulatory agency from advocating for people of color in the profession?

Not entirely, but it does impose significant restraints with respect to taking affirmative measures with respect to diversity programs. Two years ago the California State Bar legally severed its ties with the California State Bar Foundation, its non-profit research, education and advocacy arm, under threat of suit under the Constitutional amendment created by Prop. 209 because of the Foundation's Diversity Scholars program, which affirmatively helps young people of color enter the profession.

Would a private professional association be subject to Prop. 209?

No. It could advocate for a diverse profession unhampered by the anti-affirmative-action mandate of Prop. 209 since that mandate applies only to governmental agencies.

Do First Amendment restrictions developed in the *Keller* and *Brosterhous* cases decided during the Pete Wilson administration limit the Bar's ability to advocate for diversity and access to justice?

Yes. Those cases and the First Amendment prevent the use of mandatory dues to advocate for any politically charged position on issues as to which people in our society disagree. Indeed, Pete Wilson's 1997 message accompanying his veto of the fee bill criticized the Bar for advocating for marriage equality,

discrimination protections for transgendered people, and reduction in harsh criminal penalties — the same reductions Governor Brown is now seeking at the ballot box. Wilson also criticized the State Bar for resisting application of Prop. 209 to California law schools, excoriating it as a “social critic” rather than a regulatory agency. The Bar has lived in the shadow of those events since and carefully limits its advocacy to avoid criticism.

Could a private trade association advocate for diversity in the legal profession, access to justice for all communities, and for meaningful justice in our State without restriction by the First Amendment as interpreted in *Keller* and *Brosterhous*?

Yes, just as the Conference of California Bar Associations — a private professional association which by statute collects its dues via the Bar’s fee invoices — has done since the Wilson veto. The Trustees’ proposal seeks the same form of dues collection for the voluntary state-wide bar association to result from decoupling, allowing the existing voluntary, dues-paying, self-supporting statewide Bar — the State Bar’s specialty law sections — to remain on the Bar’s annual invoice as they are today but to enjoy greater freedom of advocacy freedoms and control over their own costs and governance.

Is there benefit to allowing both successors to a decoupled Bar to pursue these issues?

Yes. The private professional association would be free to advocate unrestrained by Prop. 209 and the First Amendment. The regulatory body would have the force of government and secure funding and staff and fewer restraints on the involvement of sitting judges than a private association. Burden sharing by these two organizations with their different strengths will be the best way to advance these goals. This is far superior to the status quo in which a state-wide, unified Bar is shackled by Wilson-era conceptions of appropriate advocacy and the existence of that Bar prevents the development of a private state-wide association that could fill the gap in advocating for these policies.

Will decoupling the bar’s regulatory and professional association roles impair our democracy by stripping it of a well-placed advocate for the rule of law, an independent judiciary, and a vibrant legal culture.

No. Nearly half the states have de-coupled Bars. New York's judiciary is no less independent than California's and its legal culture not less vibrant. Both the new entities to proceed from de-coupling will contribute to our democracy.



## Appendix O

Letter dated May 10, 2016, from Bridget Fogarty Gramme, Esq., Assistant Administrative Director of the Center for Public Interest Law, to Elizabeth Rindskopf Parker, Executive Director of State Bar of California re: “Center for Public Interest Law’s Proposal for Deunification.”





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May 10, 2016

Ms. Elizabeth Rindskopf Parker  
 Executive Director  
 State Bar of California  
 180 Howard Street  
 San Francisco, CA 94105

*Via email and Hand Delivery*

Dear Ms. Parker,

***Re: Center for Public Interest Law’s Proposal for Deunification***

Per your request during my testimony at the April 25, 2016 Governance in the Public Interest Task Force public hearing, I write to provide a more specific breakdown of CPIL’s proposal for “deunifying” the bar by severing its trade association functions the private sector, and retaining its regulatory functions as a state agency. We appreciate the opportunity to collaborate with you on this important endeavor, and are heartened that you are so thoughtfully considering our proposal.

The chart below divides the offices contained in your “continuum chart” as well as the work of the Bar’s various standing committees, and its special boards, committees, and commissions, as currently reflected in the August 2015 revision to the Board Book, Tab 19. Ultimately, CPIL believes that to the extent the committees are slated to remain with the regulatory agency, the Board of Trustees – and not external committees – should assume the responsibility for the work of these committees. For purposes of clarifying which “side” of the chart the committees would fall, however, they are included here.

<b><i>State Bar Regulatory Agency</i></b>	<b><i>Voluntary Bar Association(s)</i></b>
<b>Admissions/ Licensing/ Member Records</b> <ul style="list-style-type: none"> <li>- Committee of Bar Examiners (CBE)</li> <li>- Bar exam development</li> <li>- Bar exam grading</li> <li>- Moral character determination</li> <li>- Special Admissions</li> <li>- Member Records and Compliance</li> <li>- Law School Regulation</li> </ul>	<b>Lawyer Assistance Program<sup>1</sup></b> <ul style="list-style-type: none"> <li>- Lawyer Assistance Program Oversight Committee</li> </ul>
<b>Professional Conduct/ Ethics</b> <ul style="list-style-type: none"> <li>- Committee on Professional Responsibility and Ethics (COPRAC)</li> <li>- Rules of Professional Conduct</li> </ul>	<b>Education</b> <ul style="list-style-type: none"> <li>- CLE providers</li> <li>- Professional Competence Education</li> <li>- CEB Governing committee</li> </ul>

<sup>1</sup> This will require an amendment to Business and Professions Code Sections 6230, *et seq.*, but in our view this is not properly part of the regulatory function.

<ul style="list-style-type: none"> <li>- Ethics hotline</li> <li>- Ethics opinions</li> <li>- Rules Commission</li> <li>- Attorney Civility and Professionalism</li> </ul>	
<p><b>Attorney Discipline</b></p> <ul style="list-style-type: none"> <li>- Chief Trial Counsel<sup>2</sup></li> <li>- Probation</li> </ul>	<p><b>Mandatory Fee Arbitration</b></p> <ul style="list-style-type: none"> <li>- Arbitration of Fee Disputes (this can be done through local bar associations or the greater state association)</li> </ul>
<p><b>State Bar Court</b></p>	<p><b>Judicial Nominees Evaluation</b></p> <ul style="list-style-type: none"> <li>- Commission on Judicial Nominees Evaluation (JNE Commission)</li> <li>- Review Committee of the Judicial Nominees Evaluation (RJNE)</li> </ul>
<p><b>Client Security Fund</b></p> <ul style="list-style-type: none"> <li>- Client Security Fund Commission</li> <li>- Investigation and Payment of Claims</li> </ul>	<p><b>Bar Relations</b></p> <ul style="list-style-type: none"> <li>- Lobbying &amp; legislative activity (unrelated to regulation of the profession and access to justice)</li> <li>- Program development</li> <li>- Town Hall meetings</li> <li>- Annual meeting</li> <li>- Spring summit</li> <li>- Bar leadership conference</li> </ul>
<p><b>MCLE</b></p> <ul style="list-style-type: none"> <li>- Compliance tracking</li> <li>- Accreditation of providers</li> <li>- CLE standards and requirements (including potential requirement that MCLE relate to the field of practice)</li> </ul>	<p><b>Sections</b></p> <ul style="list-style-type: none"> <li>- Section specific CLE programs and conferences</li> <li>- Sections Education Institute</li> <li>- Council on State Bar Sections</li> <li>- CYLA Board</li> <li>- Section Executive Committees</li> </ul>
<p><b>Legal Specialization</b></p> <ul style="list-style-type: none"> <li>- Certification of Legal Specialists</li> <li>- California Board of Legal Specialization and Advisory Commissions</li> </ul>	<p><b>Insurance Programs and services</b></p> <ul style="list-style-type: none"> <li>- Professional Liability Insurance (COPLI)</li> <li>- Committee on Group Insurance Programs (COGIP)</li> <li>- Other “revenue generating” services offered to bar members (ie Hertz discounts, etc.)</li> </ul>

<sup>2</sup> CPIL believes this office should be moved into the Attorney General’s office but for these purposes it is a regulatory function.

<b>Legal Services/ Access to Justice</b> <ul style="list-style-type: none"><li>- IOLTA</li><li>- Center for Access to Justice</li><li>- California Commission on Access to Justice (CCAJ)</li><li>- Legal Services Trust Fund Commission</li><li>- Delivery of Legal Services committee</li><li>- Loan repayment assistance program for attorneys practicing in underserved areas</li></ul>	<b>Regulation of Legal Referral Services</b>
<b>Diversity<sup>3</sup></b> <ul style="list-style-type: none"><li>- Council on Access and Fairness (COAF)</li><li>- Elimination of bias</li></ul>	<b>Additional Committees</b> <ul style="list-style-type: none"><li>- Administration of Justice (CAJ)</li><li>- Alternative Dispute Resolution (ADR)</li><li>- Appellate Courts</li><li>- Federal Courts</li><li>- California Judges Association (CJA)</li></ul>
<b>Bar Wide Services</b> <ul style="list-style-type: none"><li>- Executive Director</li><li>- Finance</li><li>- General Counsel</li><li>- General Services</li><li>- Human Resources</li><li>- Information Technology</li></ul>	<b>Appointments to ABA House of Delegates</b>
<b>Appointments to Judicial Council</b>	<b>Publications</b> <ul style="list-style-type: none"><li>- Cal Bar Journal</li></ul>

I hope this will be of some assistance to you and the Task Force as you prepare your recommendation to the Legislature. Please let us know if we can provide additional details or answer any questions relating to our proposal.

Sincerely,



Bridget Fogarty Gramme, Esq.  
Assistant Administrative Director  
Center for Public Interest Law

cc. Members, Governance in the Public Interest Task Force

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<sup>3</sup> May require legislative fix to overcome *Brosterhous* preclusion on mandatory bar dues for diversity programming

