



January 20, 2023

ANTITRUST DETERMINATION 2023-0001

A. Authority

This determination is made pursuant to California Supreme Court Administrative Order 2017-09-20, which mandates that the State Bar Office of General Counsel provide a determination on issues submitted to it for resolution of potential antitrust concerns.

B. Issue Presented

Request for Antitrust Determination: On December 21, 2022, Todd Hill (“Requestor”) submitted a Request for Antitrust Determination to the State Bar (Request).¹

The instant requests alleges antitrust violations based on the State Bar’s regulation of Peoples College of Law, an unaccredited law school that is registered with the California State Bar. A full copy of the Request is attached to this determination. The Request states, in relevant part:

1. The State Bar, from 2015 to present, has willfully allowed the People’s College of Law (PCL), to recruit and matriculate students without regard to PCL’s duties of student qualification, statute related to student consumer protection, nor State Bar published Rules and mandatory guidelines.

...

2. The State Bar, from 2015 to present, allowed PCL to award 2/3rd of the statutory amount required to be given to students for 30 hours of lecture over a 10-week quarter period, i.e., 2 units were awarded for every 3 earned by the student. Plaintiff alleges that it is a per se violation of the Sherman Act, in that the consequence to the student consumer is that transfer to another institution will at the very least delay their graduation from a different institution that complies with the law and academic standards.

¹ Requestor made a previous request for Antitrust Determination on September 26, 2022, and the State Bar provided that determination on October 20, 2022. That determination and all of the State Bar’s Antitrust Determinations are available at <https://www.calbar.ca.gov/About-Us/Our-Mission/Antitrust-Determinations>

...

Therefore it is clear that PCL, and through inchoate and other culpable acts of its agents under 'color of law' in their capacity as the sole monopoly regulators for law schools operating in the State of California.

3. at a rate o with the foreseeable consequence that the State Bar and PCL the reduction would provide a negative incentive for consumers (law students) in the marketplace.

...

5. Plaintiff has reason to believe that the State Bar, in another apparent grant of special monopoly exemption to PCL, has allowed PCL to engage in interstate commerce with the full knowledge of both the institutions long standing issues as well as the State Bar Rule that Unaccredited Fixed Facility Schools intending to enter into interstate commerce must apply for and give notification of a major change,

Plaintiff asserts that this conduct results in per se illegal consequences because:

- a. It functions as the grant, or attempted grant, of a monopoly power, for any enterprise that is allowed by its horizontal monopoly regulator and market participant to shirk laws that are directly related to the lawful operations of the entity would more probably than not have a tendency to favor the market participant who is not held accountable.
- b. This further appears as a likely per se violation and naked restraint of trade, as the California Legislature enacted the State Bar Act of 1927 with the express intent of protection of the public, no matter the COI.
 - i. There is no rational argument that supports per se unlawful conduct or wanton lawbreaking by the regulated entity as pro-competitive conduct, since the conduct since the conduct allows the regulated to anticipate non-interference and thereby ignore the regulator and its express rules.
 - ii. There is no tenable or reasonable argument supporting a regulator, here the vertical monopoly marketplace participant and regulatory rules maker and enforcement agency in the sphere to ignore because of any such argument relies on the counterfactual that it is somehow in the interest of the Sovereign State of California or its citizens to:
 - a. Allow its Legislated institutions to decide their own purpose, no matter the original intent of the body

responsible for its creation or the plain language reading of the instantiating statute; and,

- b. Allow the entities the Legislature sought to protect the public from to remain uncontrolled and unaccountable, able to bend or break the law at will without fear of reprisal, protected by the 'long shadow' of the State Bar.

...

Preventing students from transfer is likely per se illegal and a naked restraint of trade under The Sherman Act.

...

6. The State Bar and PCL's conduct likely lacks pro-competitive benefit sufficient for justification.

- a. Here, the State Bar and PCL appear to have engaged in per se illegal conduct with no pro-competitive justifications, because the benefit of the proper bargain to the student consumer, i.e., the lawful and timely award of units and good faith performance of the contract by the school, was not supported by the monopoly regulator and market participant the State Bar.

...

- c. Plaintiff asserts that student transfer in the academic marketplace is one of the main approaches used by student consumers to locate the best available resources for their circumstances. To interfere with the timing of a student's right to 'transfer' to any institution that would be a restraint of trade in the 'micro' and is easily foreseeable as having a tendency to restrain trade in the aggregate (macro) as well.

...

The California State Bar inchoate violations include:

1. Failure of the General Counsel to recuse itself, as required by the Judiciary Rule for Antitrust determinations where reasonable;
2. Failure from all members, directors, officers, agents of both the State Bar and PCL to respect legally binding 'Demands of Preservation of Evidence' documents, although the legal basis was provided and the duty attached to take the appropriate steps necessary upon receipt and likely prior.
3. Incorporated by reference, my prior request entitled:
The State Bar of California Request for Antitrust Determination THILL092622."

C. Analysis

1. The State Bar's Authority to Regulate Unaccredited Law Schools.

The State Bar's authority to regulate unaccredited law schools is grounded in statute. California Business and Professions Code section 6060.7(b)(1) provides that the State Bar, through the Committee of Bar Examiners, "shall be responsible for the approval, regulation, and oversight" of California-accredited and unaccredited law schools. Section 6047 provides that subject to the approval of the State Bar Board of Trustees, the CBE may adopt reasonable rules, including those that govern unaccredited law schools. Pursuant to that authority, the Board of Trustees has adopted the Unaccredited Law School Rules. Further, the Board of Trustees has also authorized the CBE to enact guidelines to interpret the Unaccredited Law School Rules, and under that authority, the CBE has done so.

2. Antitrust Laws Applied to Law School Regulation.

The U.S. Supreme Court has held that the antitrust laws do not apply to state legislative enactments, regardless of anti-competitive intent or effect. (See, e.g., *Parker v. Brown* (1943) 317 U.S. 341, 350-51 ["We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature."]; *Hoover v. Ronwin* (1984) 466 U.S. 558, 568-69 ["When the conduct is that of the sovereign itself ... the danger of unauthorized restraint of trade does not arise. Where the conduct is that of the state legislature or supreme court, we do not need to address the issues of 'clear articulation' and 'active supervision.'"]) This immunity is known as the state action doctrine.

Furthermore, the State Bar is not a non-sovereign actor controlled by active market participants. (See *North Carolina State Bd. of Dental Examiners* (2015) 574 U.S. 494, 504.) As described above, the CBE and Board adopt reasonable rules and guidelines regarding the regulation and oversight of unaccredited law schools, pursuant to statute. There are no active participants in the market for legal education (i.e., law school deans) sitting on either the CBE or the Board of Trustees. As such, the antitrust laws are not implicated.

Furthermore, to the extent the Request pertains to oversight of unaccredited law schools, active supervision by the Court, consistent with *North Carolina State Board of Dental Examiners, supra*, 574 U.S. 494, is established by Rule of Court 9.30. The Supreme Court has regulatory oversight over registered unaccredited law schools (like Peoples College of Law). Any decision by the State Bar related to such law schools could be the subject of a petition for review under Rule of Court 9.13(d) in light of the Supreme Court's oversight as described in Rule 9.30.

The allegations contained in the Request do not establish any violations of federal antitrust laws.

D. Conclusion

Based on the foregoing analysis, there is no antitrust violation related to the State Bar's regulation of unaccredited law schools, which falls within the immunity of the state action doctrine.

E. Reviewability

OGC's determination of potential antitrust violations may be reviewed de novo by filing a petition with the California Supreme Court, pursuant to Rule 9.13, subsections (d) through (f), California Rules of Court, **within 60 days of the date of this determination**. California Supreme Court Administrative Order 2017-09-20.



The State Bar of California

REQUEST FOR ANTITRUST DETERMINATION

Pursuant to Supreme Court of California Admin. Order 2017-09-20

Requester Information

Date DECEMBER 8, 2022

First Name TODD

Last Name HILL

Organization REQUEST MADE IN PROPRIA PERSONA AS MEMBER OF THE PUBLIC AND PCL CORP OFFICER

Address 41459 ALMOND AVENUE

City QUARTZ HILL

State CA

Zip Code 93551

Email TODDRYANGREGORYHILL@GMAIL.

Phone [661] 899-8899

Fax EMAIL PREFERRED

It is the policy of the State Bar of California to comply with all laws. An important aspect of this policy is our commitment to obey the letter and the spirit of the antitrust laws. Pursuant to the Supreme Court of California's Administrative Order 2017-09-20, any member of the public may report a potential antitrust violation to the State Bar. When notifying the State Bar of your concerns, please include the following information:

- The nature of the potentially anticompetitive action;
- The department(s) or committee(s) of the State Bar undertaking the action;
- The specific type(s) of market impacts you believe may arise from that action; and
- Why you believe the State Bar does not enjoy immunity from antitrust laws for the action in question.

Request for Antitrust Determination

Please be as specific as possible. Attach additional sheets of paper as necessary.

Plaintiff, Todd Hill, in all good faith, attests to the following facts and asks if the State Bar acknowledges that its likely support per se naked restraint and fails any reasonable test for pro-competitive outcome :

1. REQUEST FOR LIMITED PURPOSE REVIEW UNDER RULE 2201

Please process Plaintiff's request for review for the limited purpose of determining whether the facts warrant a disciplinary investigation.

Pursuant to the Rules of Procedure of the State Bar of California, Rule 2201, a review of an inquiry or complaint shall be conducted to determine whether the alleged facts establish a colorable violation of the Rules of Professional Conduct or of the State Bar Act.

Generally, if the factual allegations do not articulate a violation, or would not result in disciplinary action if the factual allegations were proven, then the complaint will be closed.

Essentially in order to warrant further investigation a complaint must contain factual allegations that "articulate a violation", or factual allegations that, "if proven, would result in discipline of the attorney." Your complaint must contain an articulation of facts specific enough to allow the finder of fact to conclude that if the facts are proven, discipline is warranted.

1. The State Bar, from 2015 to present, has willfully allowed the People's College of Law (PCL), to recruit and matriculate students without regard to PCL's duties of student qualification, statute related to student consumer protection, nor State Bar published Rules and mandatory guidelines.
 - a. PCL during this timeframe suffered FYSLX failure rates as high as 100%; similarly, it at times during this period went years without producing a graduate capable of passing the Bar Exam.
 - b. Students in some cases did not meet technical matriculation requirements, like the 60 unit collegiate minimum for lawful entry into a legal program in the State of California.
 - c. PCL submitted numerous transcripts for students it recruited to take the FYLSX for a fee paid to the State Bar for administration of the test.
 - d. Defendants State Bar and PCL knew or should have known and had sufficient evidence in their position to surmise that student recruitment and retention were not in
 - e. comportment with the duty owed, and that a school with similar failure rates would likely fail as a matter of course in the active market.
2. The State Bar, from 2015 to present, allowed PCL to award 2/3rd of the statutory amount required to be given to students for 30 hours of lecture over a 10-week quarter period, i.e., 2 units were awarded for every 3 earned by the student. Plaintiff alleges that it is a per se violation of the Sherman Act, in that the consequence to the student consumer is that transfer to another institution will at the very least delay their graduation from a different institution that complies with the law and academic standards.
 - a. State Bar policy prevents an accepting institution to change the grades or units awarded in any fashion greater than correcting for differences in semester and quarter hours conversions.
 - b. State Bar policy also prevents the repeat of courses for credit.
 - c. This combination of business practices allowed the school to recruit students to attend remotely from at least Arizona; these students would find similar issues to those in California, as legal academia has essentially standardized the unit granting approach.
 - d. The conduct above satisfies that the conduct was satisfies the definition of per se interstate commerce.

Therefore it is clear that PCL, and through inchoate and other culpable acts of its agents under “color of law” in their capacity as the sole monopoly regulators for law schools operating in the State of California.

3. at a rate of with the foreseeable consequence that the State Bar and PCL the reduction would provide a negative incentive for consumers (law students) in the marketplace.
4. The Law School Student Transfer Marketplace is active interstate commerce, specially monitored through ABA 509 reporting.
5. Plaintiff has reason to believe that the State Bar, in another apparent grant of special monopoly exemption to PCL, has allowed PCL to engage in interstate commerce with the full knowledge of both the institutions long standing issues as well as the State Bar Rule that Unaccredited Fixed Facility Schools intending to enter into interstate commerce must apply for and give notification of a major change,

Plaintiff asserts that this conduct results in per se illegal consequences because:

- a. It functions as the grant, or attempted grant, of a monopoly power, for any enterprise that is allowed by its horizontal monopoly regulator and market participant to shirk laws that are directly related to the lawful operations of the entity would more probably than not have a tendency to favor the market participant who is not held accountable.
- b. This further appears as a likely per se violation and naked restraint of trade, as the California Legislature enacted the State Bar Act of 1927 with the express intent of protection of the public, no matter the COI.
 - i. There is no rational argument that supports per se unlawful conduct or wanton lawbreaking by the regulated entity as pro-competitive conduct, since the conduct since the conduct allows the regulated to anticipate non-interference and thereby ignore the regulator and its express rules.
 - ii. There is **no tenable or reasonable argument supporting a regulator**, here the vertical monopoly marketplace participant and regulatory rules maker and enforcement agency in the sphere to ignore **because** any such argument relies on the counterfactual that it is somehow in the interest of the Sovereign State of California or its citizens to:
 - a. Allow its Legislated institutions to decide their own purpose, no matter the original intent of the body responsible for its creation or the plain language reading of the instantiating statute; and,
 - b. Allow the entities the Legislature sought to protect the public from to remain uncontrolled and unaccountable, able to bend or break the law at will without fear of reprisal, protected by the “long shadow” of the State Bar.

Here, in the case of the Plaintiff, the State Bar has not only failed in its duties, it allows PCL to continue in its unlawful conduct, now under formal probation, without any evidence they ever intend to actually stop.

Here, not only can the Plaintiff not transfer without facing unfair and undue consequence because he has no reasonable path to obtain the degree he and his family have sacrificed and suffered egregious conduct to earn.

Is interference, disincentivizing or prevention of law student transfer “per se illegal” as a naked restraint of trade under the Sherman Act?

Preventing students for transfer is likely per se illegal and a naked restraint of trade under The Sherman Act.

In addition, Plaintiff has completed all mandatory substantive coursework and has sufficient unit/credit hours to meet all of the requirements; he simply has earned them earlier than the State Bar Act allows.

In addition, student has already completed

- iii. Evidence of a consistent pattern and practice exists, with no fewer than 50 and likely 100’s of transcripts, issued by PCL and ratified (deemed compliant and accurate for the purposes of taking the First Year Law Student Exam, already in the hands of the State Bar Officers, Directors, and Agents.
- iv. Plaintiff learned after he passed the FYLSX that he had been awarded two (2) units instead of the required three (3), contrary to both California statute and State Bar guidelines that require and render synonymous a quarter unit, defined as one unit for every 10 hours of lecture over the course of a quarter, which is the current time period used by PCL.
- v. The Bar charges each student a “registration fee” where they MUST register with the regulator as students. PCL recruited students that were not qualified to enter law school and had them pay fees under color of law or quasi-legislative rule.
- vi. When grading issues were brought to the attention to the office of Admissions, State personnel failed to respond timely and communicated with PCL, also under the auspices of “color of law”, with further conduct that failed to address the issue, including issuing notice to PCL
- vii. PCL began harassing the plaintiff, engaged interfering

6. The State Bar and PCL’s conduct likely lacks pro-competitive benefit sufficient for justification.

- a. Here, the State Bar and PCL appear to have engaged in per se illegal conduct with no pro-competitive justifications, because the benefit of the proper bargain to the student consumer, i.e., the lawful and timely award of units and good faith performance of the contract by the school, was not supported by the monopoly regulator and market participant the State Bar.
- b. Here Plaintiff asserts upon reasonable belief and evidentiary support that the State Bar and its staff engaged in an effort to assist the private non-profit PCL retain those students it recruited that were capable of passing the First Year Law Student’s Exam, and in fact did pass, from transferring, since it

was also “more likely than not” that these students would be able to pass the DState Bar exam for admission and professional licensure.

- c. Plaintiff asserts that student transfer in the academic marketplace is one of the main approaches used by student consumers to locate the best available resources for their circumstances. To interfere with the timing of a student’s right to “transfer” to any institution that would be a restraint of trade in the “micro” and is easily foreseeable as having a tendency to restrain trade in the aggregate (macro) as well.

7. Otherwise accept him without penalty but for the Defendants negligence and malfeasance.

The State Bar Act establishes as the California State Bar as a corporation that serves as the sole designated monopoly regulator in the sphere of attorney discipline and law school regulation.

The California State Bar inchoate violations include:

1. Failure of the Office of General Counsel to recuse itself, as required by Judiciary Rule for Antitrust determinations where reasonable ;
2. Failure from all members, directors, officers, agents of both the State Bar and PCL to respect legally binding “Demands of Preservation of Evidence” documents, although the legal basis was provided and the duty attached to take the appropriate steps necessary upon receipt and likely prior.
3. Incorporated by reference, my prior request entitled:

The State Bar of California Request for Antitrust Determination THILL092622

SUBMIT THIS FORM

1) *By E-mail:* AntitrustRequest@calbar.ca.gov 2) *By Mail:*

The State Bar of California
Office of General Counsel
Attn: Antitrust Request
180 Howard Street
San Francisco, California 94105