

**GOVERNANCE TASK FORCE PUBLIC HEARING LOS ANGELES  
SPEAKER LIST**

**JANUARY 20, 2011  
9:30 a.m. – 5:00 p.m.**

Speakers will be called in the following order:

<b>Order</b>	<b>Name &amp; Contact Information</b>	<b>Response to Request for Information</b>	<b>A.M. or P.M.</b>
1	Professor Robert C. Fellmeth ED Center for Public Interest Law University of San Diego School of Law 5998 Alcala Park, San Diego, CA 92110 (619) 260-4806 <a href="mailto:cpil@sandiego.edu">cpil@sandiego.edu</a>	Letter	A.M.
2	Los Angeles County Bar Association Sally Suchil, Executive Director 1055 West 7 <sup>th</sup> Street, Suite 2700 Los Angeles, CA 90017 (213) 896-6424 <a href="mailto:ssuchil@lacba.org">ssuchil@lacba.org</a>	Letter	A.M.
	<b>BREAK</b>		
3	Professor Richard Abel Connell Professor of Law Emeritus UCLA Law School Box 951476 Los Angeles, CA 90095-1476 (310) 825-7392 <a href="mailto:abel@law.ucla.edu">abel@law.ucla.edu</a>	Letter	A.M.
4	Mexican American Bar Association of Los Angeles County Victor Acevedo, 2011 President 714 West Olympic Blvd., Suite 450 Los Angeles, CA 90015 (213) 749-2889 <a href="mailto:acevedoesq@yahoo.com">acevedoesq@yahoo.com</a>	Letter	A.M.
5	Beverly Hills Bar Association Stephen L. Raucher, President 10940 Wilshire Blvd., 18 <sup>th</sup> Floor Los Angeles, CA 90024 (310) 777-1990 <a href="mailto:slr@rrbattorneys.com">slr@rrbattorneys.com</a>	On-line survey response	A.M.
	<b>LUNCH BREAK</b>		12:15-1:00 p.m.
6	San Fernando Valley Bar Association (818) 227-0490 x101	On-line survey response	P.M.
7	Douglas A. Crowder (800) 455-1592	On-line survey response	P.M.
8	F. Tepedino Bar #64658 (858) 569-6454 <a href="mailto:condorgrup@aol.com">condorgrup@aol.com</a>	On-line survey response	P.M.
	<b>BREAK</b>		
9	Legal Aid Foundation of Los Angeles	On-line survey	P.M.

	Toby Rothschild, General Counsel 1102 Crenshaw Blvd. Los Angeles, CA 90019 (323) 801-7978 <a href="mailto:TRothschild@lafla.org">TRothschild@lafla.org</a>	response	
10	Roy Torres <a href="mailto:rttorresca@yahoo.com">rttorresca@yahoo.com</a>	Email response to Request for Information	P.M.
11	Tonja Jarrett, CIC, CISR Vice President Personal Lines Manager, Kaercher Campbell & Associates Insurance Brokerage 1800 Century Park East, Suite 400 Los Angeles, CA 90067 (310) 556-4732 work; (818) 693-2224 cell (310) 551-6809 fax <a href="mailto:tjarrett@kcaib.com">tjarrett@kcaib.com</a>	Email response	P.M.
12	Eileen Theofanous-Lasher 716 F Avenue #10 Coronado, CA 92118 (619) 847-8094 <a href="mailto:etheolasher@gmail.com">etheolasher@gmail.com</a>	On-line survey response	P.M.



January 10, 2011

William N. Hebert, Chair, and Members  
Governance in the Public Interest Task Force  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

Re: Testimony of the Center for Public Interest Law

Dear Mr. Hebert and Task Force Members:

The Center for Public Interest Law (CPIL) is pleased to submit the following testimony to the Task Force as it prepares to make “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 ....” Business and Professions Code section 6001.2(b), added by Assembly Bill 2764 (Committee on Judiciary) (Chapter 476, Statutes of 2010).

CPIL is a nonprofit, nonpartisan academic and advocacy center based at the University of San Diego School of Law. Since 1980, CPIL has examined and critiqued California’s regulatory agencies, including the State Bar of California. We have attended the Bar’s meetings and followed its activities for 30 years. From 1987 to 1992, I served as the State Bar Discipline Monitor (under now-repealed Business and Professions Code section 6086.9), under appointment by then-Attorney General John Van de Kamp, with CPIL serving as the Monitor’s staff. The State Bar Discipline Monitor position was created by the Legislature and — over the course of almost five years — we wrote eleven reports on the operation of the State Bar’s discipline system. We worked with Senator Robert Presley and a succession of State Bar Presidents to fashion some 40 reforms of the Bar’s attorney discipline system, including the passage of Senate Bill 1498 (Presley), 1988 legislation creating the independent State Bar Court. We are well aware that the State Bar’s Board of Governors is part of the judicial branch under the aegis of the California Supreme Court. And we are similarly familiar with the executive branch agencies that license and regulate other professions and trades in California.

Section II of our testimony below responds to the questions listed in the “Request for Information” issued by the Task Force on December 3, 2010. Those questions focus on the structure of the Board of Governors, the composition of the Board of Governors, the method in which members of the Board of Governors are selected, the length of terms of members of the Board of Governors, and qualifications for members of the Board of Governors.

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As noted in our November 29, 2010 letter to the Task Force (which is hereby incorporated by reference as additional formal testimony to the Task Force), CPIL agrees that these structural issues are relevant to the Legislature's intent in creating the Task Force in AB 2764. However, we do not believe the statute's scope is as limited as the questions listed in the "Request for Information" indicate. We note that the term "Board of Governors" does not appear in the statute at all. Instead, the statute broadly directs the Task Force to make "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...." Nor do the legislative analyses of AB 2764 focus merely on possible changes to the structure, composition, and/or method of selection of the members of the Board of Governors. Both the Senate Judiciary Committee's analysis dated August 24, 2010, and the Assembly Floor analysis dated August 30, 2010, note that the bill "also contains a helpful new Task Force within the Bar, again with the Bar's support, to take helpful stock about what if any **structural and other potential improvements** might make **the Bar's public protection efforts** as vigorous as possible" (emphases added).

As such, Section I of our testimony focuses on more fundamental structural issues that CPIL believes the Task Force — either this one or the one that is required to issue another report in May 2014 — must address if the State Bar is ever to fulfill the Legislature's goal of "ensuring that protection of the public is the [Bar's] highest priority in the licensing, regulation, and discipline of attorneys...." Section I also seeks to respond to a legitimate question raised by several Task Force members during its recent meetings: **Just what is the problem with the State Bar?**

**I. The Necessary Separation of the "Integrated Bar" — A Combination Trade Association / State Agency**

**A. The Two-Way Problem of Mixing Public and Private**

One underlying structural issue that will have to be addressed (if not in the report required in May 2011, then in the very near future) is the "elephant in the room" — the hybrid structure of the State Bar generally, which differs substantially from all other professional licensing agencies in California and from the structure of many other state bars.<sup>1</sup> The State Bar of California's "integrated" status has been an issue for at least two decades, and is a key issue of concern to the Legislature.

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<sup>1</sup> "The State Bar of California is radically different from most other entities that would be regarded in common parlance as 'governmental agencies. .... Only lawyers admitted to practice in the State of California are members of the State Bar, and all lawyers admitted to practice in the State must be members. [The Bar] undoubtedly performs important and valuable services for the State by way of *governance* of the profession, but those services are essentially advisory in nature. The State Bar does not admit anyone to the practice of law, it does not finally disbar or suspend anyone, nor does it ultimately establish ethical codes of conduct. All of those functions are reserved by California law to the State Supreme Court." *Keller v. State Bar of California*, 496 U.S. 1, 11 (1990) (emphasis added). The Court's use of the term "governance" is instructive in that it refers to the overall structure of the State Bar, and not merely its Board of Governors.

That “integration” means that the State 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*, 496 U.S. 1, 5 (1990). The State Bar exercises (in a strictly advisory role to the California Supreme Court) the traditional police power functions of an occupational licensing agency, “such as examining applicants for admission, formulating rules of professional conduct, disciplining members for misconduct, [and] preventing unlawful practice of the law....” *Id.*

In addition to these traditional functions, the State Bar also engages in a number of other activities (*e.g.*, lobbying, litigation, political activities) on issues that are not directly related to the regulation of the legal profession or to improving the quality of legal services. In *Keller*, the Bar’s use of compelled member dues to fund those “other” functions — which are more commonly within the province of a labor union or a voluntary trade/professional association — was challenged, and the U.S. Supreme Court held that it is unconstitutional (under the first amendment) for the California Bar to use compelled member dues on political and ideological activities that are unrelated to its core regulatory functions without allowing its members to “opt out” of paying for those unrelated activities.<sup>2</sup>

In other words, the California State Bar is a hybrid organization; it is part regulatory agency and part trade association. Under *Keller*, that structure can continue to exist, and the Bar may continue to engage in trade-association-type political and ideological activities unrelated to the regulation of the legal profession and improving the quality of legal services *so long as* it provides dissenting members with an opportunity to opt out of paying for those unrelated activities. And indeed, following *Keller*, the Bar established a “*Hudson* deduction” method by which dissenting members could avoid funding (with compulsory Bar dues) the Bar’s unrelated political/ideological activities.<sup>3</sup>

In stark contrast to the Bar’s structure and the limitations on its use of compelled licensee dues imposed by the U.S. Supreme Court, the California Supreme Court, and the California Legislature, other California occupational licensing agencies are limited to the traditional police power functions of licensing, standardsetting, and discipline. All other California occupational licensing agencies are strictly occupational licensing agencies; they have no “trade association”

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<sup>2</sup> “[T]he compelled association and integrated bar is justified by the State’s interest in regulating the legal profession and improving the quality of legal services. The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory dues of all members. It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity.” *Keller*, 496 U.S. at 13.

<sup>3</sup> That process has been controversial at times. Shortly after the Bar established a \$3 “*Hudson* deduction” in 1991, several dozen attorneys challenged the Bar’s calculation of the deduction, asserting that many expenditures cited by the Bar as “*Keller*-good” were in fact “*Keller*-bad.” This challenge culminated in the California Supreme Court’s decision in *Brosterhous v. State Bar of California*, 12 Cal. 4th 315 (1995), in which the Court disagreed with the Bar’s calculations and ordered it to discontinue funding numerous Bar activities with compelled Bar dues; and in the California Legislature’s further limitation on the Bar’s use of compelled Bar dues and its statutory adjustment of the “*Hudson* deduction” in SB 144 (Schiff and Hertzberg) (Chapter 342, Statutes of 1999).

component or function. No other agency has a “Hudson deduction.” Unlike the State Bar, they need not engage in detailed documentation of each and every expenditure so as to determine whether each comports with their core regulatory functions; they are simply not permitted to spend public money on issues outside their core regulatory functions. If licensees of those agencies want to engage — as members of a profession — in advocacy on issues related to their profession but unrelated to licensing, standardsetting, and/or discipline, they voluntarily join an external, independent trade association (and pay it membership dues, which are pooled and used to pay lobbyists, lawyers, and others needed to influence government on such issues). The agencies that license them have no authority to engage in lobbying on those issues and, as a result, the agencies play no role in such political lobbying.

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. One aspect of this problem is addressed implicitly by the Task Force’s questions and focus: How should members of the Board or other body controlling the State Bar be selected? And we argue at length below that because of its important function over basic public police power functions, Board members must be appointed by public officials, not elected by those with a financial interest in the exercise of that authority.

But the need for separation between public and private also commends private control of the private side. That is, were public officials to appoint Bar Board members, as we advocate, then the Bar should not serve as a trade association, any more than a trade association should perform agency functions. We are not concerned about the structure or governance of local bar associations, because they do not exercise a role in setting entry conditions, nor do they decide who to prosecute for violation of professional standards. Their members voluntarily agree to membership and to the payment of dues separate and apart from police power compulsion. And the function of such a professional association is then not limited by the *Keller* decision. And we would say parenthetically, that such an entity can do much good. It can lobby to enhance professional responsibility. It can work to educate the public about what attorneys do. It can represent the interests of the profession before numerous fora. Indeed, we would want to be, and would take pride in being, dues paying and active members of such an association. However, such voluntary associations do not exercise public police power.

## **B. The Particular Problem of Private Control of Profound Public Functions**

To the extent the Bar exercises police powers that emanate from the People, they are not appropriately performed by a professional association of those financially affected by those decisions and policies. The current “integrated” structure subordinates state functions to a cartel. This is something that few if any attorneys would tolerate for a minute were the accountants, doctors, pharmacists, or any other group to propose such a privileged role. Nor does the public have a categorically exalted view of attorneys to support its distinctive status as its own public

governor. The fact that some of us believe we are so exalted is part of the legitimate problem much of the public has with us.

A legitimate concern about public-private confusion is not necessarily based on a record of errors or evidence of bad faith by current or prior Bar Governors. We know that Board of Governors members are not paid. And we have been witness to many Bar decisions and activities that are laudable. The Bar has often had admirable leadership, including a willingness to give up territory where higher principle so commends. And so when we — in 1988 — proposed moving the State Bar Court from under the effective control of the Board of Governors to an independent, professional body of Supreme Court-appointed judges, we not only had the backing of five consecutive State Bar Presidents; they effectively led the reform. We ended up essentially following their lead; names like Anderlini, Culhane, Rothenberg, Wied, and others have our enduring respect, and warrant yours.

And we also acknowledge the traditional arguments advanced for control of the Bar by lawyers. They include the following: (1) the State Bar is somewhat different from many other agencies; (2) the California Supreme Court, consisting of public officials, has supervisory authority over much of what the State Bar does; (3) many regulatory decisions require expertise, and attorney selection of attorney members of the Board better assures it; and (4) the democratic selection of governors is entitled to respect as such.

### **1. The State Bar Is Part of the Judiciary**

As to the first acknowledgment above, we do not dispute the oft-repeated admonition that the Bar has some disparate features from many agencies — including its association with the judiciary. But most attorneys spend little time in court; they interact with consumers and businesses as do accountants and brokers and many other professionals. And while attorney services are of particular importance, so are those of doctors and engineers and other professionals. While legal regulation may require expertise, as discussed below, that needs to be expertise on point. The State Bar has some differences from other agencies, but what is the nexus between those differences and private trade association control of its governance? Many agencies have features that demark them from their counterparts, but the Bar performs many of the same functions — including mandatory assessment of fees for its budget, control over entry into the profession, generation of rules, and substantial discretion in disciplinary enforcement.

We do agree that many aspects of the Bar can and do benefit from a strong connection to the California Supreme Court. And members of the Bar are authorized to practice in our courts. That is a point of some distinction. But the Bar also exercises the common public powers noted above for consumer protection purposes. The State Bar Act is a statute, not a court rule. And consumers are vulnerable to irreparable harm from dishonest and incompetent attorneys quite outside of Court purview. In our proposal, these common aspects and the special judicial connection are reconciled by giving the Supreme Court power to appoint the majority of the Bar Board's membership (as suggested below).

## **2. The State Bar is Supervised by Public Officials – The Supreme Court**

The problem of private control of the Bar is not fully ameliorated by the potential for Supreme Court supervision. Much of what the State Bar does involves police power function that is not specifically so reviewed. Of course, final disciplinary decisions are made by Supreme Court appointees and subject to discretionary Court review; and the Court reserves the power to make decisions on the Rules of Professional Conduct. But much of what the Bar does is not reviewed by the Court, including much of the entry system into the profession, its finances,<sup>4</sup> the critical decisions about what should be investigated, and the filing of notices of disciplinary charges.

Pointing to some Supreme Court supervisory role actually ignores the significantly more extensive public-official oversight of every other occupational licensing agency. An apt example is the Medical Board of California (MBC). It consists of eight physicians and seven non-physician public members. The Governor appoints all of the physician members and five of the public members; the Legislature appoints the remaining two public members. The Medical Board and most other professional regulators have their rules reviewed by the Department of Consumer Affairs (DCA) — headed by a person appointed by the elected Governor. DCA also has a substantial review role in MBC's budgetary process. And although the Medical Board controls its investigators, the public Office of the Attorney General (headed by a separate elected constitutional official) prosecutes disciplinary cases, not an Office of Trial Counsel appointed by the Board. (Indeed, the investigators handling discipline matters for most trades are under the DCA.) Evidentiary hearings in MBC disciplinary matters are handled not by in-house judges but by administrative law judges employed by the separate Office of Administrative Hearings (again, directed by an individual appointed by the elected Governor). And even as to rulemaking, the Office of Administrative Law — headed by a director appointed by the elected Governor — reviews all MBC regulatory changes and can reject them if they lack authority, clarity, necessity, consistency, nonduplication, and/or reference. So having public officials in a review capacity might be a more persuasive argument for Medical Board member selection by the California Medical Association or by licensed doctors, than it is for Bar Board member selection by attorneys — because of the rather looser oversight of the Supreme Court.

## **3. Many Regulatory Decisions Require Expertise**

Proponents of the current structure argue that an attorney supermajority selected by attorneys who can weigh expertise is necessary to ensure informed and competent decisionmaking. We are aware that expertise may sometimes be an asset. And we do not object to having attorneys on the Bar Board of Governors, although it should certainly not be a 73% share — the current proportion! But where expertise is needed, it should be “on point.” And

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<sup>4</sup> Note that the Court did belatedly intervene to require attorney assessment after the regrettable 1997 veto of the Bar dues bill by Governor Wilson, but only after a substantial delay during which the discipline system had been eviscerated.

attorneys, who have to provide foundation for expert witnesses, well know about on-point expertise. General practitioners may not know much about a consumer class action case in federal court. Not too many of us who practice real estate law would know a great deal about immigration or personal injury or bankruptcy law. We well know that a podiatrist is not going to testify in a malpractice case involving brain surgery. The trick for us is to find that applicable expertise and to combine it with a process that preserves a measure of independence from the economic result of the decision. Ideally, we allow generalists to make decisions from a broad perspective on behalf of the public — informed by those who know a lot about the subject — including from those with a disclosed financial interest. Ironically, that reliance on a non-expert generalist is the lifeblood of our own profession. We do not vest our expert witnesses with final decisionmaking power. For one thing, we would be fighting over whose expert witnesses to rely upon. For another, we know that generalist judges and juries are best able to make a fair decision informed by on-point expertise. Why should we pretend that our own governance should eschew the very respect for the generalist public official that we all rely upon professionally and in the making of the most serious decisions in which we are involved?

#### 4. The Democratic Selection of Governors

The democratic selection of governors evokes an understandable positive connotation (even though only a small percentage of the qualified constituency casts votes). But the problem is not the mechanism of an election; it is the limitation of the electorate to attorneys — a group whose regulation is presumably governed in the interests of the broad body politic. Moreover, those who are elected to serve on the Bar Board are expected to represent the interests of the constituents who elected them — which contrasts starkly with the duty of other occupational licensing board members to treat public protection to their highest priority.

How does this governing constituency view the current system? Interestingly, one survey has suggested that support for the current system may not be strong even among that group. In 1992, a bill was proposed to abolish the State Bar and delegate attorney regulation to a new Attorneys' Board of California within the executive branch Department of Consumer Affairs. In October of that year, *California Lawyer* magazine conducted a poll of attorneys and published the results in its December 1992 issue. Eighty-nine percent (89%) of respondents answered "no" to the question: "Should the State Bar as it is currently structured continue to exist?" Over 75% said membership in a statewide bar should not be mandatory. In response to the question "How should the legal profession be regulated?," only 33% said "self-regulated as it is now," whereas 57% responded that lawyers should be regulated "by a state agency, like other professions." In response to the question "Would you favor a bifurcated bar in California with a mandatory bar regulating admission and discipline and a voluntary bar for all other activities?," 64% of respondents said "yes."<sup>5</sup>

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<sup>5</sup> We acknowledge that, pursuant to SB 60 (Kopp) (Chapter 782, Statutes of 1995), the State Bar was required to conduct an advisory plebiscite of its active members in good standing with respect to the following question: "Shall the State Bar be abolished as the agency regulating lawyers in this state on behalf of the Legislature

Our bottom line is that it is unethical for a private trade association to engage in the exercise of public police powers; and improper for public officials to purport to run a trade association. The “integrated Bar” can and should be divided; its trade association functions should be spun off to voluntary trade association(s) funded with voluntary dollars.

## II. The Board of Governors’ Selection and Tenure

In addition to the political/ethical issues raised by the hybrid structure of the State Bar and the need to separate the disparate functions of public agency and trade association, the composition of the Bar’s Board of Governors arguably hinders the Legislature’s goal of “ensuring that protection of the public is the highest priority in the licensing, regulation, and discipline of attorneys ...” (Bus. & Prof. Code § 6001.2(b)). These structural issues are not illuminated by the bulletpoint description of the Board of Governors included in the currently published “Request for Information.” Instead, they are revealed by comparing the Board of Governors’ structure and composition to those of most other California occupational licensing boards.

The Board of Governors consists of 23 members, sixteen of whom must be lawyers. Fifteen of those sixteen lawyers are elected by lawyers from designated “districts” within California. (By the way, usually only 13–19% of lawyers participate in these elections.) The sixteenth lawyer member is elected by board of directors of the California Young Lawyers Association (made up exclusively of lawyers). Six additional members are so-called “public members” — non-lawyers who have never been admitted to the Bar in California or any other state.<sup>6</sup> Four of the six public members are appointed by the Governor; the other two public

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and Supreme Court, with its regulatory functions turned over to another body or bodies and some or all of its other activities handled by a voluntary bar association or associations?” In the plebiscite conducted during June 1996, 64.5% of attorney respondents answered “no” to that question. However, many commenters (including opponents of Senator Kopp’s initiative) argued that “the plebiscite question, as written by the Legislature, does not specify what would replace the independent bar, what it would cost, or how it would be governed.” See Towery and Zelon, “Leave Well Enough Alone,” *Los Angeles Times* (May 30, 1996). Thus, the multiple-choice question included in the 1992 *California Lawyer* poll — which offered respondents a choice between “self-regulated as it is now” (33%), “by a state agency, like other professions” (57%), and “not at all” (10%) — may more accurately reflect the view of California attorneys.

<sup>6</sup> The “Request for Information” states that public members of the Board of Governors “may not within 5 years before being appointed employ or be employed by lawyers. Public members may not have a financial interest in any organization regulated by the board and may not within five years before being appointed have ‘engaged in pursuits’ within the legal profession or represented the legal profession.” This is erroneous. These restrictions appear in Business and Professions Code sections 450-453 and apply to public members of occupational licensing boards within the Department of Consumer Affairs. They do not apply to public members of the State Bar Board of Governors, nor do any of the appointing authorities recognize them as applicable. Public members of the State Bar Board of Governors are governed exclusively by Business and Professions Code section 6013.5, which states only that — “notwithstanding any other provision of law” (thus negating the applicability of sections 450-453) — BOG public members “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.”

members are appointed by the Senate Rules Committee and the Assembly Speaker. The 23rd member of the Board is the Board president, who is elected by his/her fellow Board members (and is usually a lawyer); only Board members who have served three years on the Board are eligible to run for president. Attorney members of the Board of Governors serve three-year terms (with the exception of the Board president, who may serve one additional year during his/her presidency); they may not be reelected to serve an additional term. Public members also serve three-year terms, but may be reappointed for additional three-year terms.<sup>7</sup>

By comparison, as discussed above, other boards that license and regulate professions in California are composed of members who are appointed by public officials (the Governor and the two houses of the Legislature). No members of those boards are elected by fellow licensees. Members of those boards are appointed for a four-year term, and may be reappointed to a second four-year term (for a maximum of eight consecutive years). The terms of all board members are staggered so that the terms of only 2-3 members (depending on the size of the board) expire each year; in no case does one-third of any board's members leave during the same year — every year. As discussed, most boards are composed of a fairly even split between licensee and non-licensee members; many now consist in majority of non-licensee members. Some of the health care boards have the lowest proportion of public members. But even in this area, the Medical Board of California is composed of 8 physicians and 7 public members; in other words, 47% (not 27%) of the Medical Board's members are not physicians. Those boards may elect any member as president (MBC's current president and vice-president are both experienced public members), and are not precluded from re-electing a president for a second year or for a two-year term.

The statute creating every other occupational licensing board in the State of California mandates that “public protection” (not professional promotion or protection) is the highest priority for each board. Example: Business and Professions Code section 2001.1 states: “Protection of the public shall be the highest priority for the Medical Board of California in exercising its 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.” No similar language exists in the State Bar Act.

These practical differences between the structure and composition of the Board of Governors vs. every other occupational licensing board — differences that bear on the Board's ability to protect the public as its highest priority — include the following<sup>8</sup>:

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<sup>7</sup> Business and Professions Code section 6013.5, which governs public members of the Board of Governors, is silent on the number of terms and/or consecutive years that public members may serve. All members of other California occupational licensing boards are generally restricted to two consecutive four-year terms (for a maximum of eight consecutive years of service).

<sup>8</sup> Some of these problems have been articulated by members of this Task Force. Others were identified in a document called “Board Governance Review” which was discussed at the January 8, 2010 meeting of the Board's Planning, Program Development & Budget Committee. Still others were formulated by the Commission on the Future of the Legal Profession and the State Bar in its April 1995 final report. Finally, others are the opinions of the Center for Public Interest Law.

- the 16 elected attorney members may perceive their role as “representation” of the attorney constituency that elected them, rather than as consumer advocates charged with public protection;
- one-third of the members of the Board of Governors turns over every year. This required exodus of the most experienced Board members presents a huge challenge to continuity, competent decisionmaking, effective long-term strategic planning, and reliable institutional memory among Board members;
- the fact that most Board of Governors members serve a maximum of three years (whereas other occupational licensing board members may serve up to eight consecutive years) inhibits institutional memory and experience;
- the fact that only third-year members of the Board of Governors are eligible to (a) chair Board committees, and (b) run for Board president results in excessive “presidential politicking” among eligible members every year, to the detriment of overall Bar governance and public protection;
- the brief one-year term of the Board president, and his/her inability to serve a second year or a second term, subjects the Board to the short-term priorities of the president and inhibits long-term planning or in-depth focus on difficult issues;
- the State Bar Act fails to establish a mandate requiring the Board of Governors to regulate the legal profession in the public interest, and to ensure access to the legal system;
- the State Bar Act fails to delineate meaningful requirements for public members of the Board of Governors to ensure they truly represent the public and not the legal profession; and
- the State Bar Act fails to subject the Board of Governors to the Bagley-Keene Open Meeting Act, Gov’t Code §11120 *et seq.*, with which every other California occupational licensing board complies and which offers multiple remedies for its violation (unlike the Bar’s open meetings “rules”).

With this comparison in mind, we now respond to the questions listed on the “Request for Information.”

1. **What do you understand “protection of the public” to mean in the context of governance of the State Bar?**

As discussed above, statutory law applicable to every other occupational licensing agency includes identical “public protection is highest / paramount priority language” (added by AB 269 (Correa) (Chapter 107, Statutes of 2002)), which is missing from the State Bar Act.

“Protection of the public” means that the Bar’s system should reflect the theoretical rationale for any system that imposes a “prior restraint” on practice. Nobody may engage in this enterprise unless they are cleared for honesty and competence in advance. Accordingly, the entry and renewal system properly focuses on at least those two traditional purposes. In terms of competence, “public protection” means that those who cannot themselves screen for competence should be able to rely on this agency to assure it. That competence is hardly the focus of the current Bar system. We give a single examination to applicants commonly at the age of 25, an examination that may not test actual competence in areas of common practice and consumer reliance. We do not license by actual area of specialty – where competence is critical. We have no monitoring of continuing competence in a profession where not knowing of a single court decision can be most unfortunate for a client. And we allow our members to dabble in ten disparate areas of the law — without ever testing them in actual competence for the forty or fifty or sixty years following a Bar examination taken at age 25. And we exacerbate these problems by failing to require any malpractice coverage. Indeed, we had an embarrassing struggle over whether to require the disclosure of the lack of insurance coverage, which might ensure a practical remedy for negligence to our clients — to whom we allegedly owe a fiduciary duty “of the highest order.” “Public protection” also means honesty and fair billing. How much has the Bar done to police that?

Of course, “public protection” for the Bar may extend beyond ensuring honesty and competence. Arguably, and according to the U.S. Supreme Court, access to the courts and improvement in the administration of justice — in a profession extolling “equal justice under the law” — may be co-equal public interest goals (just as physicians should be concerned about access to health care). So we should acknowledge that our regulatory goals go beyond merely protecting the public from damage due to our misdeeds. They should include the chance to resolve disputes regardless of means. They might even include, perchance, hard work to prevent the need for our services, which is arguably the highest calling of anyone seeking to be considered a “professional.”

2. **Who should serve on the board that governs the State Bar?**

The Board of Governors should be composed of 17 persons. Nine of them should be attorneys selected by the California Supreme Court, and eight should be public members appointed by the Governor and Legislature (the Assembly Speaker and the Senate Rules Committee). Accordingly, attorney members will have a narrow one-vote majority, and all three branches of government will be involved in making the appointments in a balanced and

reasonable fashion – with the court having more appointments than the other two branches, reflecting the connection between attorneys and the Court. The name of the board should be changed from “Board of Governors” to “Board of Directors” or — more advisedly — the “Board of Trustees,” to emphasize its role as fiduciary to the public.

**3. How should each of these individuals be selected? By whom and by what criteria?**

See above. The appointing authorities should be encouraged to make appointments reflecting the diversity of the profession and the state, including personal, professional, and geographic diversity. We would hope that those with an interest and background in legal ethics, consumer protection, and professional competence would be included.

**4. What qualifications should be required for each member of the board?**

See above. Note that future public members of the Board should be fully and expressly subject to the limitations in Business and Professions Code sections 450-453.<sup>9</sup>

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<sup>9</sup> 450. In addition to the qualifications provided in the respective chapters of this code, a public member or a lay member of any board shall not be, nor shall he have been within the period of five years immediately preceding his appointment, any of the following:

(a) An employer, or an officer, director, or substantially full-time representative of an employer or group of employers, of any licentiate of such board, except that this shall not preclude the appointment of a person which maintains infrequent employer status with such licentiate, or maintains a client, patient, or customer relationship with any such licentiate which does not constitute more than 2 percent of the practice or business of the licentiate.

(b) A person maintaining a contractual relationship with a licentiate of such board, which would constitute more than 2 percent of the practice or business of any such licentiate, or an officer, director, or substantially full-time representative of such person or group of persons.

(c) An employee of any licentiate of such board, or a representative of such employee, except that this shall not preclude the appointment of a person who maintains an infrequent employee relationship or a person rendering professional or related services to a licentiate if such employment or service does not constitute more than 2 percent of the employment or practice of the member of the board.

450.2. In order to avoid a potential for a conflict of interest, a public member of a board shall not:

(a) Be a current or past licensee of that board.

(b) Be a close family member of a licensee of that board.

450.3. No public member shall either at the time of his appointment or during his tenure in office have any financial interest in any organization subject to regulation by the board, commission or committee of which he is a member.

450.5. A public member, or a lay member, at any time within five years immediately preceding his or her appointment, shall not have been engaged in pursuits which lie within the field of the industry or profession, or have provided representation to the industry or profession, regulated by the board of which he or she is a member, nor shall he or she engage in those pursuits or provide that representation during his or her term of office.

450.6. Notwithstanding any other section of law, a public member may be appointed without regard to age so long as the public member has reached the age of majority prior to appointment.

5. **What size should the board be?**

See above. This 17-member composition is consistent with the size of other occupational licensing boards regulating professionals whose incompetence can cause irreparable harm to the public, e.g., the Medical Board of California (15 members) and the California Board of Accountancy (15 members).

6. **How long should the terms of the members (and the president) be?**

Each member should serve a four-year term, with a maximum of two terms per person. The appointments would be staggered (*i.e.*, approximately 3-4 of the 17 seats would be subject to appointment or reappointment each year) to ensure continuity over time, as is the custom with many state boards and commissions. The Supreme Court would invite applications and select its nine appointees through a process that it would fashion. The amended system should allow the Board to select the Bar President from among its membership, but confer a two-year term as President, with two terms as a maximum.

7. **How should the president and other officers be selected?**

See above — the president should be elected by the Board for a two-year term. Advisedly, a succession of officers from vice president to president, or an arrangement where a president who has served a term remains on the Board as an emeritus member for one year, or other measures might be considered to stimulate continuity.

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451. If any board shall as a part of its functions delegate any duty or responsibility to be performed by a single member of such board, such delegation shall not be made solely to any public member or any lay member of the board in any of the following instances:

- (a) The actual preparation of, the administration of, and the grading of, examinations.
- (b) The inspection or investigation of licentiates, the manner or method of practice or doing business, or their place of practice or business. Nothing in this section shall be construed as precluding a public member or a lay member from participating in the formation of policy relating to the scope of the activities set forth in subdivisions (a) and (b) or in the approval, disapproval or modification of the action of its individual members, nor preclude such member from participating as a member of a subcommittee consisting of more than one member of the board in the performance of any duty.

452. "Board," as used in this chapter, includes a board, advisory board, commission, examining committee, committee or other similarly constituted body exercising powers under this code.

453. Every newly appointed board member shall, within one year of assuming office, complete a training and orientation program offered by the department regarding, among other things, his or her functions, responsibilities, and obligations as a member of a board. The department shall adopt regulations necessary to establish this training and orientation program and its content.

8. **What changes or other governance models may enable the board to better serve the interest of public protection?**

A. ***Severance of State Bar's Trade Association Component.*** The State Bar's trade association component and functions should be severed from the Bar and spun off into voluntary trade association(s). See Section I above for a discussion of the proper separation of the trade association from state agency / police power functions.

B. ***Public Protection / Assurance of Access to the Legal System Mandate.*** The State Bar Act should be amended to include a "public protection mandate" similar to the language that is included in the statute creating every other occupational licensing agency in the state (see AB 269 (Correa) (Chapter 107, Statutes of 2002)). The mandate should be based on language in the U.S. Supreme Court's decision in *Keller v. State Bar of California*, 496 U.S. 1 (1990), and should require the Bar to ensure that protection of the public is the highest priority the licensing, regulation, and discipline of attorneys; additionally, the Bar should strive to improve the quality of and access to legal services.

C. ***Board of Governors Transparency.*** The State Bar Act should be amended to subject the Board of Governors to the Bagley-Keene Open Meeting Act, Government Code section 11120 *et seq.*

In 1985, CPIL sponsored AB 1971 (Harris), which — as amended July 1, 1985 — would have imposed numerous provisions of the Bagley-Keene Act on the Board of Governors and its committees. The Bagley-Keene Act applies to every other occupational licensing board in the state, including all of the boards in the Department of Consumer Affairs. In exchange for our agreement to drop the bill, the Bar promised to adopt open meetings rules very similar to those in Bagley-Keene; it has reneged on that promise. As reflected in your General Counsel's memo to the Task Force dated November 10, 2010, there are many significant differences between the Bar's rules and the Bagley-Keene Act. These differences include the following:

- The Bagley-Keene Act requires 10-day advance publication of agendas and public record agenda materials (Gov't Code § 11125). The Bar's rules require only 5-day advance publication of meeting agendas and public record agenda materials (Rule 6.51(A)(1)).
- The Bagley Keene Act requires boards to allow public comment on any agenda item (Gov't Code § 11125.7). The Bar's rules do not require the Board or a Board committee to entertain public comment; the public is permitted only to "attend and hear the discussions" (Rule 6.52(A)).
- Both sets of rules permit teleconference meetings, except that Bar members are permitted to participate from unnoticed non-public locations (thus opening the door to potential *ex parte* communications with interested parties during the

discussion and meeting) (Rule 6.52(B)), whereas the Bagley-Keene Act requires board members to participate from an open, public, noticed location (Gov't Code § 11123(b)(2)). Additionally, members of the public who wish to participate in a Board of Governors teleconference meeting (or the teleconference meeting of a Board-created committee) must travel to the Bar's Los Angeles or San Francisco office (Rule 6.52(B)); whereas members of the public who wish to participate in a DCA board teleconference meeting may participate from any of the open, public, noticed locations from which board members participate, and members of the public must be allowed to provide public comment from any noticed location (Gov't Code § 11123(b)(1)(B) and (C)).

- The grounds for a closed session under B-K are enumerated and are generally intended to protect a privileged communication or a privacy interest (Gov't Code § 11126); the grounds for a closed session of the Board of Governors or one of its committees are very vague (including "to receive advice of counsel" on any matter) (Rule 6.53).
- Under Bagley-Keene, board members are generally prohibited from taking action on items not appearing on the 10-day advance agenda. However, under Bagley-Keene's "special meeting" provision (Gov't Code section 11125.4), a board may entertain and act upon nine specified items not on the 10-day advance agenda only under certain circumstances — including at least 48 hours' notice on the board's Web site and a finding adopted by a two-thirds vote of the board at the meeting that compliance with the 10-day notice requirement would pose a substantial hardship on the agency, or that immediate action is required to protect the public interest. Under the Bar's rules, the Board of Governors may entertain and act upon any item not appearing on the required 5-day advance agenda, so long as it is an issue that "call[s] for immediate action before the next regular meeting of the board or board committee." The Board need provide no advance notice of its addition of the new agenda item, and no "hardship" finding is required.

And your General Counsel's memo omits to mention one difference of critical importance: The Bagley-Keene Act includes both a civil (Gov't Code section 11130) and a criminal (Gov't Code section 11130.7) remedy for decisions made in violation of the Act. An unlawful decision may be voided and/or board members may be prosecuted (for a misdemeanor) if they knowingly and intentionally violate the Bagley-Keene Act. However, there is **no expressed remedy** for the Bar's violation of its "open meeting rules." The Bar is free to violate its own rules with impunity.

Several Task Force members stressed that the Board of Governors and its committees usually comply "in spirit" with the Bagley-Keene Act. If that is the case, what legitimate objection could the Bar have to being subject to it?

Other Task Force members assert that, while the Legislature is authorized to enact the Bagley-Keene Act and require executive branch occupational licensing boards to comply with it, the separation of powers doctrine allegedly “prohibits” the Legislature from “imposing” the Bagley-Keene Act on a judicial branch entity. This argument is distracting and incorrect. As noted herein, many aspects of the Bar’s attorney discipline system, which is inherently the province of the California Supreme Court, are legislatively-mandated — from the level of mandatory Bar dues that support the Bar’s attorney discipline system; to the 1986 creation of the State Bar Discipline Monitor position in SB 1543 (Presley); to the creation of the independent State Bar Court in SB 1498 (Presley) (Chapter 1159, Statutes of 1988); to the change in the way the hearing judges of the State Bar Court are appointed (SB 143 (Burton), Chapter 221, Statutes of 1999). While the Supreme Court exercises plenary jurisdiction over many aspects of the State Bar’s operations, it is clear that it shares that jurisdiction with the California Legislature.

Every other occupational licensing board in the State of California has found a way to comply with the Bagley-Keene Open Meeting Act since its enactment in 1967. And members of most of those boards exercise quasi-judicial authority that the Board of Governors does not exercise. For example, members of the Medical Board and the Pharmacy Board and the Board of Accountancy review and approve proposed disciplinary decisions drafted by administrative law judges, and make the final decision in individual disciplinary matters. The Bagley-Keene Act allows members to engage in disciplinary decisionmaking in closed session. The State Bar Board of Governors exercises no quasi-judicial authority; it does not review and/or approve decisions of the State Bar Court’s Hearing Judge Panel or the Review Department. If the Bagley-Keene Act can accommodate the significantly more “judicial” authority exercised by executive branch agencies, why is it inappropriate for the Board of Governors — which exercises no such judicial authority and exercises its other authorities in relative sunshine?

As noted, the Bagley-Keene Act has existed since 1967; its provisions have been flexibly expanded to accommodate new technology and changed circumstances; and it has been subject to fairly extensive judicial interpretation. There are clear advantages to signing onto the existing transparency statute for statewide agencies. The law has been amended to allow for all of the necessary exceptions to the open meeting requirement, such as closed sessions to discuss examinations or pending litigation; emergency meetings where necessary; and special meetings for certain items where there is a time constraint. And there is a body of law in place — one that has already considered the issues that will similarly impact the Board of Governors. We realize that the Judicial Council and other judicial bodies properly have their own disparate rules,<sup>10</sup> but the functioning of the Board of Governors — including its connection to the judiciary — does not justify any less transparency than other agencies performing similar licensing, standardsetting, and public protection roles. We emphasize that the existing body of law is very much attuned with the Board’s role and function. If there is a justifiable need for some special confidentiality uniquely applicable to the Board of Governors, it can be written into the law.

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<sup>10</sup> We also note that even the Judicial Council requires 7-day advance notice of its meetings, and has a rule allowing public comment.

To be clear, the most important elements of open meetings law that properly apply are: (a) the 10-day advance notice and agenda provision; (b) the opportunity for public attendance and comment; and (c) a mechanism for enforcement. These and other Bagley-Keene Act measures are currently absent from the Bar's open meeting rules. The last omission is particularly galling given the universal mechanism extant for open meetings laws in all fifty states — litigation — which is what attorneys do to enforce the law.

Thank you for your consideration of these comments.

Sincerely,



ROBERT C. FELLMETH, Executive Director  
Center for Public Interest Law

Price Chair in Public Interest Law

cc: Honorable Noreen Evans, Chair, Senate Judiciary Committee  
Honorable Mike Feuer, Chair, Assembly Judiciary Committee

# Los Angeles County Bar Association

## Statement to State Bar of California Governance in the Public Interest Task Force

January 10, 2011

With more than 27,000 members, the Los Angeles County Bar Association ("LACBA") is the largest voluntary metropolitan lawyers' organization in the United States, and the largest voluntary lawyers' organization in the State of California. The vast majority of LACBA's members are members of the State Bar of California (the "State Bar"). LACBA's mission is to serve both lawyers and the public.

Our members take LACBA's public service role seriously. LACBA and its members regularly engage in numerous projects to improve the system of justice, protect the public and serve the community. For example, our Center for Civic Mediation actively trains mediators and promotes mediation to resolve community disputes, including training student peer mediators to resolve disputes in public schools, while our direct public legal assistance projects provide *pro bono* or low cost legal assistance to victims of domestic violence, people with HIV/AIDS and people in need of immigration assistance. LACBA trains and deploys hundreds of volunteers to serve thousands of clients annually in areas such as personal bankruptcies, home loan foreclosures and earthquake damage claims

Because of our commitment to public service, LACBA and its members have a strong interest in the governance of the State Bar and its role in protecting the public.<sup>1</sup> Accordingly, in response to the December 3, 2010 request for information from the State Bar's Governance in the Public Interest Task Force (the "Task Force"), LACBA respectfully submits the following:

### I. LACBA's View of the State Bar and the Task Force's Mission.

#### A. The State Bar's Public Protection Mission.

LACBA believes that AB 2764 correctly identifies the State Bar's highest priority:<sup>2</sup> protection of the public in its admission, regulation and discipline roles. LACBA also believes that public protection is now -- and should remain -- the State Bar's primary focus. We also concur with the Task Force that, when the State Bar pursues that public protection mission, it does so pursuant to the California Supreme Court's Constitutional, statutory and inherent authority to regulate the legal profession in this State.

The current State Bar Board of Governors implements the State Bar's public protection mission principally through its limited oversight of attorney licensing (bar admission) and attorney discipline. Ensuring that persons practicing law in California meet minimum competency and ethical requirements, comply with ethical and legal rules, honor their duties to their clients and to the courts, and are disciplined appropriately when they fail to do so are all crucial aspects of the State Bar's responsibility to protect the interests of the public.

We also see the State Bar's role in supporting the administration of justice to be an essential public protection function. Its role in the drafting and enforcement of the rules regulating the conduct of lawyers and the delivery of legal services provide critical public

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<sup>1</sup> As an organization, LACBA interacts with the State Bar regularly and in numerous different ways. In some respects, LACBA cooperates with and supports the State Bar's activities and missions. In other respects, LACBA competes with the State Bar's activities and, sometimes, opposes State Bar actions.

<sup>2</sup> See B&P Code section 6001.2(b), added by AB 2764.

protection in the vast majority of actual or potential attorney-client relationships that never rise to the level of discipline. For example, the regulation of lawyer advertising and solicitation as well as legal referral services ("LRSs") in this State is important to its public protection mission. Ensuring that lawyer advertising and solicitation practices are neither untruthful nor misleading, and that LRSs refer clients only to licensed attorneys appropriately vetted for competence, integrity and insurance, also protects the interest of the public and the courts.

LACBA believes that effective protection against incompetent or unscrupulous lawyers serves not only the public and the courts, but the broad interests of the legal profession itself. Accordingly, LACBA supports the State Bar's mission of public protection, and wants to see the State Bar pursue that mission effectively.

#### B. The State Bar's Public Service Mission.

LACBA sees public service as an obligation of all members of the legal profession and as an important, secondary mission of the State Bar. We recognize that the ability to practice law in California is a privilege and therefore requires appropriate obligations of service to the courts, the legal profession and to the general public. We believe that, as the statewide overseer of the California legal profession, the State Bar Board of Governors has a crucial role in connection with those public service obligations.

Accordingly, we believe that the State Bar should continue its work educating the public on legal matters (including client rights against lawyers), improving access to justice for those of limited means, recommending changes to or entirely new legislation and providing technical advice and counsel to legislators who are drafting legislation. As part of its public service mission, we also believe that the State Bar should continue to encourage California lawyers to provide *pro bono* legal services. In addition, we see the State Bar's work to evaluate candidates for appointment to judicial office as an important part of its public service mission.

LACBA believes that the State Bar's public service mission also serves the broad interests of the legal profession itself. Accordingly, it supports the State Bar's mission of public service, and wants the State Bar to pursue that mission effectively.

#### C. Other State Bar Activities.

The State Bar also does many other things. For example, its sections, which by statute are self-supporting, make substantial contributions to the development of substantive areas of the law through comments on and suggestions for legislation, scholarly publications and continuing legal education. LACBA sees many of these other State Bar activities as important and valuable, and believes that they often support and enhance the State Bar's public protection and public service functions in key respects. Nonetheless, we also believe that these other activities are less important than the State Bar's core missions. Moreover, many of these other activities (including the provision of CLE programming as well as the professional development and networking opportunities provided through State Bar Sections) can be and are done effectively by voluntary bar associations, other non-profit organizations and for-profit businesses.<sup>3</sup>

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<sup>3</sup> Indeed, LACBA competes with the State Bar in the provision of certain programs, products and services.

## II. Issues of Interest to LACBA in State Bar Governance.

In the light of LACBA's view of the State Bar, we have two crucial concerns regarding State Bar governance matters: regulatory competence and the central role of the California Supreme Court.

### A. Regulatory Competence.

LACBA believes that the operations and activities of the State Bar are best overseen by a governing body made up of persons who are both 1) sincerely dedicated to the State Bar's core public protection and public service missions, and 2) competent and otherwise well-qualified to oversee and implement those core State Bar missions effectively.

The practice of law is complex, and regularly requires a lawyer to make judgments that are often subtle and difficult. Lawyers are also subject to ethical obligations and responsibilities unique to the practice of law, and consideration of changes and implementation of any revisions requires knowledge of how they impact the client, lawyer and practice of law. As a result, effective regulation of the legal profession is correspondingly complex, and requires a broad understanding of the law as well as the practice of law.

Accordingly, LACBA believes that a firsthand knowledge and understanding of the practice of law in California is necessary to ensure that the persons who oversee the State Bar implement its core missions effectively. As a result, we believe that most of the members of the State Bar's governing body should be persons experienced in the practice of law in this State. We see no inherent conflict of interest in members of the State Bar serving on the governing body that oversees the regulation of lawyers and other aspects of the State Bar's public protection mission.

At the same time, we also believe, however, that non-lawyers, particularly those with experience as clients, bring valuable skills and insights to the State Bar's governing body. Among other things, non-lawyer members may have knowledge and experience (e.g., in consumer protection, financial matters, management and administration, public education, or other fields) which can be helpful to advance the State Bar's core missions, or aid in the oversight functions of the State Bar's governing body.

### B. The Central Role of the California Supreme Court.

LACBA believes that an integrated bar, under the control of the State Supreme Court, is the regulatory structure best suited to oversee and implement the State Bar's public protection and public service missions. Ultimately, the Supreme Court controls the judicial branch of government and the operation of the courts. Therefore, control of who can practice before the courts should remain with the Supreme Court. Even though not all lawyers practice in court, the ability to do so is such a critical function of the legal profession that the regulation of all lawyers should be subject to the Court's ultimate authority.

## III. LACBA's Specific Comments on Possible State Bar Governance Changes.

LACBA understands that the Task Force will be considering the current composition and method of selection of the State Bar's governing body. Although we do not see how the criticisms mentioned in support of AB 2764 necessarily result from the composition of the Board of Governors, we believe its composition and manner of selecting governors could be changed in ways which might improve State Bar governance generally. Because some changes may have unintended consequences, or actually *worsen* effective governance of the State Bar or damage the pursuit of its

core missions, LACBA also urges the Task Force to proceed with caution as it considers possible changes to State Bar governance.

A. Concerns with the Status Quo.

Although we believe that any system should be reviewed periodically to determine whether it can be improved, LACBA does not see problems with the current State Bar so significant as to make material changes in the State Bar's governing body urgently necessary. Indeed, we believe that some of the concerns about State Bar governance expressed in the commentary to AB 2764 are misguided. In particular:

- **"Find a Lawyer."** As we understand it, "Find a Lawyer" was originally proposed as a State Bar revenue-raising project and not for consumer protection. Indeed, the proposal lacked any public protections, and conflicted with the basic public protection function of local LRS's that operate under strict State Bar LRS rules.<sup>4</sup> Certainly just providing a list of lawyers does not ensure the public of locating a lawyer with the appropriate skills and experience.
- **Non-renewal of the former State Bar Chief Trial Counsel's contract.** Based on reports from lawyers who practice extensively in the State Bar discipline system, we understand that the decision was a personnel matter unrelated to the former Chief Trial Counsel's policies and practices concerning attorney discipline. These reports are, moreover, supported by the fact that his policies and practices were adopted by the State Bar and continue in effect notwithstanding his replacement.
- **Attorney malpractice insurance disclosure requirements.** Malpractice insurance disclosure does not necessarily enhance public protection against the most common or most significant problems clients have with their lawyers. Focusing on that particular subject in selecting a lawyer may actually be to a prospective client's disadvantage. The mere fact that an attorney has a minimum level of malpractice insurance could be misleading and create a false sense of security because the amount or type of coverage may not actually cover a client's losses.

For those reasons, LACBA does not believe that any of these matters indicate that the current State Bar Board of Governors does not treat public protection as the State Bar's primary mission. Rather, we believe that these examples demonstrate a knowledgeable, independent board considering the complex effects of possible policy and personnel decisions, and refining those decisions as they believe in good faith best serves the public interest in the light of all the circumstances.

B. The Composition of the State Bar's Governing Body.

As noted above, LACBA believes that a large majority of the persons on the State Bar's governing body should be members of the State Bar with meaningful experience in the practice of law. This could be institutionalized by a requirement perhaps similar to the minimum 10-year practice experience required to become a California judge. Some requirement for diversity could also be introduced – for example by different practice specialties, practice settings, geographic locations and the diversity in the State and its legal profession.

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<sup>4</sup> For those reasons, LACBA opposed "Find A Lawyer" as it was originally proposed by the State Bar.

Also as noted above, LACBA believes that a meaningful number of the persons on the State Bar's governing body should be non-lawyer members whose knowledge and experience would be expected to be helpful to advance the State Bar's core missions or aid in the oversight functions of the State Bar's governing body.

C. The Method of Selecting Members of the State Bar's Governing Body.

1. Vetting of Candidates Could Improve the Selection Process.

Because LACBA believes that competence and dedication to the State Bar's core missions are the most important considerations in the selection of members of the State Bar's governing body, we would welcome a selection process whereby the qualifications and abilities of proposed governing body members are vetted by a knowledgeable and independent screening body (including lawyers and non-lawyers). We believe that State Bar governance would benefit from such vetting of both lawyer and non-lawyer candidates and that such vetting would be beneficial whether candidates are ultimately selected by election (e.g., in voting by State Bar members themselves, as is now the case for lawyer members of the current State Bar Board) or by appointment (e.g., as is now the case for non-lawyer members of the current State Bar Board).

2. The Selection Process Should be Non-Partisan.

We believe that membership on the governing body should, as much as possible, be unaffected by political party affiliation, and selected through a non-partisan process. In that connection, and in light of the California Supreme Court's authority in the regulation of the legal profession, LACBA would welcome an increased role for the Supreme Court in the selection of both lawyer and non-lawyer members of the State Bar's governing body. That said, LACBA has no strong objections to the current system of non-partisan elections of lawyer members of the State Bar Board among State Bar members according to geographic district.<sup>5</sup>

We do believe that the current system of appointment of non-lawyer public members of the State Bar Board by designated elected officials in the legislative and executive branches of government could be improved, in that such appointments should be non-partisan and subject to a vetting process. Based on concerns with potential partisanship and separation of powers, we would not welcome expansion of the political entities role in the selection of members of the State Bar's governing body. It is not necessarily in the public's interest to have more appointments by the political entities to the State Bar Board.

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<sup>5</sup> As described above, however, we believe that any election-based selection of members of the State Bar's governing body would be improved by a candidate vetting process.

# Los Angeles County Bar Association

## Statement to State Bar of California Governance in the Public Interest Task Force

### **EXECUTIVE SUMMARY**

January 14, 2011

The Los Angeles County Bar Association ("LACBA"), on behalf of its more than 27,000 members, submits this Executive Summary as a supplement to its previously submitted Statement.

- Lawyers, as officers of the Court, have a responsibility to the Justice System and through it to serve and protect the members of the public.
- The State Bar's highest priority is protection of the public in its admission, regulation and discipline roles. The Board of Governors' ("BOG") oversight of attorney licensing and discipline is essential to fulfilling this core mission.
- The Rules of Professional Conduct are vital to protection of the public.
- Public service is a secondary, but also core, mission of the State Bar. The State Bar's work in the areas of professional education, improving access to justice, pro bono services and evaluation of candidates for judicial office must continue.
- Effective administration of justice and access to justice are key elements of protecting all members of the public. Ultimate control of the Justice System and the Bar rests with the California Supreme Court, the third branch of government.
- State Bar Governors ideally should be (1) sincerely dedicated to the State Bar's core public protection and service missions, and (2) competent and otherwise well qualified to oversee and implement the core State Bar missions effectively.
- We welcome self evaluation of the BOG's current governance, encourage worthwhile improvements to it, but do not understand the instances cited in the legislation creating the Task Force to be valid reasons for change in the governance of the State Bar.
- We would welcome increased participation by the Supreme Court in selecting both attorney and non-attorney Governors. We would also welcome vetting procedures for both non-attorney and attorney Governors designed to ensure that they are well-qualified to serve.
- We believe that any changes that would increase partisan political influence in the process, for example by increasing the number of appointments to the BOG by the political entities, should be avoided for two reasons. First, such changes would not clearly improve governance of the State Bar. Second, such changes would be an unnecessary and unwise encroachment on the Judicial Branch.



**THE STATE BAR  
OF CALIFORNIA**

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**December 3, 2010**

**Request for Information from The State Bar of California  
Governance in the Public Interest Task Force**

The California legislature recently created within the State Bar a *Governance in the Public Interest Task Force* to provide “recommendations for enhancing protection of the public and ensuring that public protection is the highest priority in the licensing, regulation, and discipline of attorneys.”

As it develops these recommendations, the Task Force is seeking input from all interested individuals and organizations. In particular, we invite you to share your thoughts on the State Bar’s current governance model and on ways it could be improved with a view to enhancing public protection.

Please see the attached description of the current governance model together with a list of questions to which the Task Force would appreciate receiving your responses. (An overview of the State Bar and its various functions is available at [www.calbar.ca.gov](http://www.calbar.ca.gov) under “About Us.”)

If you would like your written responses to be discussed and considered at the public hearing meetings (details set out below), please return them to Amy Anderson, Office of the General Counsel, 180 Howard St., San Francisco, CA 94105 or [amy.anderson@calbar.ca.gov](mailto:amy.anderson@calbar.ca.gov). Priority to speak at the public hearings will be given to those who have submitted written responses. For speaking priority, please return your responses no later than Monday, **January 10, 2011**.

To be considered by the Task Force in preparation for its final report, all written responses are due by Tuesday, **February 1, 2011**, and should be sent to Amy Anderson, Office of the General Counsel, 180 Howard St., San Francisco, CA 94105 or [amy.anderson@calbar.ca.gov](mailto:amy.anderson@calbar.ca.gov). All written responses will become public and will be posted on the State Bar’s website.

The State Bar will hold public hearings to receive additional input from interested parties. The hearings will take place as follows:

**January 20, 2011** (Thursday), from 9:30 a.m. to 5:00 p.m.  
Los Angeles Office of the State Bar, 1149 S. Hill St., 7th Flr.

**January 27, 2011** (Thursday), from 9:30 a.m. to 5:00 p.m.  
San Francisco Office of the State Bar, 180 Howard St., 4th Flr.

Please contact Amy Anderson at (415) 538-2539 or [amy.anderson@calbar.ca.gov](mailto:amy.anderson@calbar.ca.gov) if you would like to participate at one of the hearings. You do not need to register in advance to be allowed to speak, but speakers who do register will receive priority. For any other questions, please contact Starr Babcock at (415) 538-2070 or [starr.babcock@calbar.ca.gov](mailto:starr.babcock@calbar.ca.gov).

Sincerely,

William N. Hebert  
President, State Bar of California

## REQUEST FOR INFORMATION

**I. Description of current governance model.** The State Bar is governed by a Board of Governors consisting of 22 members plus a president.

### **Composition**

- 15 lawyers elected by active lawyers from 9 geographic districts of 1 or more counties
- 1 lawyer selected from among lawyers age 36 or under (or in practice less than 5 years) by the board of the California Young Lawyers Association (CYLA)
- 6 members of the public (4 appointed by the Governor, 1 appointed by the Senate Rules Committee, and 1 appointed by the Speaker of the Assembly)
- A president elected by the board from among board members whose terms expire that year

### **Qualifications**

Elected lawyer members must be active lawyers and have their principal office for the practice of law in the geographic district from which elected.

Public members may not be current or former lawyers and may not within 5 years before being appointed employ or be employed by lawyers. Public members may not have a financial interest in any organization regulated by the board and may not within five years before being appointed have “engaged in pursuits” within the legal profession or represented the legal profession.

### **Terms**

Each elected lawyer member and each public member serves a term of 3 years. (Elected lawyer members are not eligible to serve consecutive terms; public members may be reappointed to consecutive terms.) The CYLA representative serves for 1 year. The president serves for 1 year.<sup>1</sup>

See Cal. Bus. & Prof. Code §§ 6010-6028.

## **II. Questions to address**

1. The legislature is interested in receiving “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.” What do you understand “protection of the public” to mean in the context of governance of the State Bar?

*Lawyers are the indispensable intermediaries in the legal system. Because of their specialized expertise and privileged information, it is imperative that others be able to trust them: clients above all, but also opposing counsel, courts, agencies, and the general public. The most important function of the State Bar is to ensure that lawyers are trustworthy. I have written about this in two recent books, in which I use disciplinary cases (from California and New York) to understand how lawyers betray trust and what must be done to restore it. Those books are “Lawyers in the Dock” (Oxford University Press, 2008) and “Lawyers on Trial” (Oxford University Press, 2010). Each contains a concluding chapter with proposals for improving the trustworthiness of lawyers.*

2. Who should serve on the board that governs the State Bar?

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<sup>1</sup> Neither the president nor the lawyer members receive compensation other than reimbursement of necessary expenses; public members receive \$50 for each day spent discharging official duties, up to \$500 per month.

*All those who can play a role in rendering lawyers trustworthy: the lawyers themselves; their clients; and representatives of the fora in which lawyers practice.*

3. How should each of these individuals be selected? By whom and by what criteria?

*Lawyers should select their own representatives. At present, constituencies are geographic. This made sense when the State Bar was created (as I explain in my history of the State Bar, which is contained in chapter one of "Lawyers on Trial"). Geographic constituencies make much less sense today. The significant divisions within the bar are between independent practitioners and lawyers employed in the public and private sectors, and among independent practitioners the divisions are firm size and specialization by subject matter and clientele. Lawyer constituencies should be reconfigured to reflect these divisions.*

*Client representatives should NOT be chosen by the Governor or Legislature; those political offices lack the time and interest in finding the best representatives. Consumer groups should be charged with this responsibility. Because lawyers' clienteles are generally unorganized, the groups will have to represent consumers in general. Governmental consumer advocates could also appoint representatives or serve themselves.*

*State (and possibly federal) courts and the administrative agencies in which lawyers appear regularly should also select representatives.*

4. What qualifications should be required for each member of the board?

5. What size should the board be?

6. How long should the terms of the members (and of the president) be?

7. How should the president and other officers be selected?

8. What changes or other governance models may enable the board to better serve the interest of public protection?

*The single most important function performed by the State Bar is discipline. Lawyers who overcharge, or neglect clients, or engage in egregious malpractice or serious conflicts of interest destroy the trust that is essential to every legal system and damage the reputation of all lawyers. The present inquiry does not address discipline as such. I believe that a separate inquiry should be directed at discipline broadly conceived (to include malpractice and sanctions).*

## 1. The Politics of Self-Regulation

Self-governance and self-regulation are defining characteristics of all professions.<sup>1</sup> The British Royal Commission on Legal Services began its list of the “five main features of a profession” with “a governing body” that “represents a profession and...has powers of control and discipline over its members.”<sup>2</sup> The preamble to the ABA Model Rules of Professional Conduct acknowledged why professions claim such authority: “To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated.”<sup>3</sup> But these core powers are ambivalently asserted, expediently exercised, and constantly contested. This chapter traces the institutional history of lawyer discipline in California in order to show how the system’s capacities and limitations influence the way it constructs lawyer deviance.

### I. Becoming Self-Regulating

Until 1927 bar associations were local, weak, ephemeral, and found in only 18 of the state’s 58 counties. A contemporary observer called them “little more than social clubs.” In 1916, the chairman of the Los Angeles Bar Association publicity committee deplored that all it offered members was a “little protection through the Grievance Committee.”<sup>4</sup> In San Francisco, local grievance committees made disciplinary recommendations to the city association (the strongest in the state), but the respondent’s friends often were able to block action; even after conviction only the District Attorney or Superior Court could seek penalties. Four statewide organizations rose and fell before World War I, enrolling only a tiny fraction of all lawyers, partly because rural practitioners resented urban dominance. One member remarked ruefully that “we are laughed at in the interior,” where lawyers “not only do not join, but they ridicule us.”<sup>5</sup>

Inspired by a 1912 visit to Ontario, Canada, whose lawyers had to join a “unified” self-governing bar, Herbert Harley, secretary of the American Judicature Society, drafted a model State Bar Act, published in 1918 and endorsed by the ABA Conference of Delegates two years later. North Dakota created the first such bar in 1921, followed by Alabama in 1923 and New Mexico and Idaho in 1925. California was next, but the effort took a decade. In 1917 worsening judicial backlogs and corruption scandals (ranging from police courts to the Supreme Court) prompted the Legislature to threaten to take over the entire judiciary, finally moving lawyers to collective action. One urged his colleagues to “take a leaf out of the book of the labor union movement and establish a quasi principle of closed shop.” At the (voluntary) California State Bar Association meeting that year, the San Francisco Bar Association president proposed that all such groups be authorized to discipline and granted subpoena power because they were

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<sup>1</sup> Parsons (1968); Carr-Saunders & Wilson (1933).

<sup>2</sup> Royal Commission on Legal Services (1979: vol. 1, pp. 28, 30).

<sup>3</sup> American Bar Association (1981: 1-2).

<sup>4</sup> Robinson (1959: 159).

<sup>5</sup> 28 Los Angeles Bar Association Bulletin 9 (10.52); John A. Wright, How to Get Good Judges 38, 40 (1892); Charles S. Wheeler, After-Dinner Proceedings of the Bar Association of San Francisco (5.20.10); 1 California Bar Association Proceedings 30 (1910); 8 California Bar Association Proceedings 192 (1917); A.Y. Wood (1926), “State Bar Organizations in California,” in Historical and Contemporary Review of the Bench and Bar of California 41 (1926). I rely heavily on Gilb (1956: 4, 33-34, 38-39, 102-03).

“practically impotent in the investigation of charges.” Bills to do this died in the Legislature in 1919 and 1921. Between 1922 and 1924 the California State Bar Association appointed a Special Committee on the “Self-Governing Bar,” adopted its report, and persuaded 20 local bar associations to concur. Although a bill to create a unified bar passed the Legislature the following year (the Senate unanimously, the Assembly 65-11) and was endorsed by the entire California Supreme Court as well as national notables like Charles Evans Hughes and Elihu Root, Governor Richardson refused to sign it because he wanted to appoint the governing board. But others also had reservations: rural lawyers feared urban dominance and resented paying for discipline, which they saw as a uniquely urban problem; others worried that discipline would target those who challenged powerful interests.<sup>6</sup>

The California State Bar Association persisted, empowering rural lawyers by giving each Congressional district a delegate and enlisting the support of competing occupations: realtors, title insurance and trust companies, and banks. Although a new bill was opposed by the influential chairman of the Senate Judiciary Committee, who wondered why only lawyers should be self-governing, it passed the Senate (25-14) and Assembly (61-15) and was signed by Governor Young, flanked by Joseph J. Webb, chairman of the Campaign Committee for the State Bar Bill, who became president of the new State Bar of California. The voluntary California State Bar Association dissolved.<sup>7</sup>

In its early decades, the State Bar (SB) was more interested in restricting entry and suppressing competition than in disciplining its members.<sup>8</sup> (Indeed, a referendum that repealed a 1921 bill prohibiting unauthorized practice of law was one reason lawyers embraced the unified bar.) A month after the State Bar adopted the nation’s first Rules of Professional Conduct, President Webb appointed a committee to investigate ambulance chasing, focusing on Los Angeles. Two years later SB President Beardsley warned that the ambulance chaser was “apt to be an outlaw generally. Subornation of perjury, blackmail, forgery embezzlement and general disregard of the interests of the individual client are frequent companions....” Violators “offend against the profession as a whole by obstructing the natural course of professional employment so as to prevent it from being spread out normally among the members of the bar....” The State Bar also created committees to deal with Trust and Title Companies, Claims Adjusters, and Unlawful Practice generally; their contributions to the 1930 annual meeting occupied 26 of the 35 pages devoted to committee reports. Discussion was “intense,” sometimes “vehement.” One newspaper “said the applause at times would have done credit to a group of college rooters.” A lawyer expressed confidence that “society will, when informed,” never “consent to the destruction of the profession and practice of law by unlicensed persons.” The following year the State Bar appointed a new Committee on Suppression of Soliciting Legal Business, which submitted a 14-page report to the annual meeting; and

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<sup>6</sup> Herbert Harley, “Redeeming of the Profession,” 2 J. Am. Jud. Soc’y 105 (1918); 20 J. Am. Jud. Soc’y 202 (1937); Dayton David McKean, *The Integrated Bar* 30-51 (Boston: Houghton Mifflin Co., 1963); *The Recorder* 12 (9.21.17); *The Recorder* 1 (1.11.19); 8 California Bar Association Proceedings 201 (1917); 9 California Bar Association Proceedings (1918); Wood (1926: 69-70); California Assembly Journal 2161 (1919); Gilb (1956: 37, 39-40, 53, 55-57, 61-63).

<sup>7</sup> Wood (1926: 70-71); “State Bar Organization Assured,” 1 SBJ 157 (1927); “State Bar Bill Signed,” 1 SBJ 179 (1927); “The First Step Toward Organization,” 1 SBJ 227, 236 (1927); Gilb (1956: 45, 69, 71-74); SB 9 (Nelson & Weller), Chap 34, Stats. of 1927.

<sup>8</sup> Robinson (1959: Chapter 10).

the *State Bar Journal* endorsed two Assembly bills to outlaw lay solicitation. Although the Bar passively responded to client grievances, its proactive investigations of advertising and solicitation accounted for about 5 percent of cases heard. Two committees on ambulance chasing in San Francisco and Los Angeles submitted 11 pages of statistics documenting the magnitude of the problem in 1934. That year the Los Angeles City Council criminalized the practice, and a Los Angeles Special Local Administrative Committee (LAC) of the State Bar prosecuted 26 cappers under it, winning convictions of all but one.<sup>9</sup>

Although ambulance chasing was the most visible competitive threat, and the most easily demonized, there were many others. The Bar began agitating against non-lawyers practicing in the (lay) Justices' Courts in 1930 and succeeded in ousting lay advocates three years later; but a similar campaign against lay representation before administrative agencies failed. A lawyer complained in 1931 that "the illegal practice of law in Los Angeles County alone...costs the attorneys over six million dollars annually in loss of fees." A year later another lawyer urged his colleagues not to "raise the standards of our profession upon the fallen bodies of our fellows. A decent chance will make a decent lawyer. Clean up encroachment and lawyers will 'clean up' themselves—and gladly!" The State Bar Board of Governors (BoG) "strongly disapproved" of radio stations that broadcast advice by judges in response to "tales of human misery." A Special LAC concluded that patent attorneys should not be allowed to call themselves attorneys or solicit business. The State Bar vigorously resisted proposals to transfer the growing number of automobile accident claims to a commission, where lawyers would be unnecessary (as had happened with workplace injuries).<sup>10</sup>

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<sup>9</sup> 2 SBJ 203-05 (1928); Joseph J. Webb, "A Message from the President," 2 SBJ 206-07 (1928); "The Story of the Pasadena Convention," 3 SBJ 75, 82 (1928); "The Work of the Board of Governors," 3 SBJ 175 (1928); "Report of Committee on Ambulance Chasing," 4 SBJ 28-30 (1929); Charles A. Beardsley, "A Message from the President," 4 SBJ 154-55, 224 (1930); "The Unlawful Practice of Law," 4 SBJ 234 (1930); "Report of the Adjusters Committee," 4 SBJ 240 (1930); 5 SBJ 11-36 (1930); Frank G. Tyrell, "Unlawful Practice—Convention Action," 5 SBJ 410-11 (1930); Ewell D. Moore, "The Trust Companies and the Bar Associations," 6 SBJ 58, 85 (1931); Vernon S. Gray, "The Practice of the Law," 6 SBJ 105 (1931); Philbrick McCoy, "The Unlawful Practice of the Law," 6 SBJ 111 (1931); Wallace E. Hyde, "Is There No Common Ground?" 6 SBJ 130 (1931); Oscar J. Seiler, "Suppression of Soliciting of Legal Business," 6 SBJ 153 (1931); "Committee on Suppression of Soliciting of Legal Business," 6 (Pt. II) SBJ 18-32 (1931); "More Proposed Measures Affecting Practice of Law," 6 SBJ 69-70 (1931); Leonard B. Slosson, "A Message from the President," 6 SBJ 166-67 (1931); E.V. Knauf, "Ambulance Chasing and Related Evils," 7 SBJ 22 (1932); "Report Concerning Work of Special Committee on Ambulance Chasing for San Francisco," 9 SBJ 225 (1934); Marion P. Betty, "Ambulance Chasing' Ordinance," 9 SBJ 165 (1934); "Report of Special Committee on Ambulance Chasing for Los Angeles County," 9 SBJ 238 (1934); John E. Biby, "Ambulance Chasers," 10 SBJ 42-43 (1935); 10 SBJ 295 (1935); T.P. Wittschen, "A Message from the President," 10 SBJ 299-300 (1935); John E. Biby, "Chasing Ambulance Chasers," 11 SBJ 97 (1936); Gilb, 1956: 43-44, 104-06. A defense of ambulance chasing, James F. Brennan, "The Bugaboo 'Ambulance Chasing,'" 6 SBJ 37 (1931), provoked furious replies: Bartley C. Crum, "Clean Up the Legal Profession," 6 SBJ 54 (1931); Fred L. Berry, "The Bugaboo 'Ambulance Chasing,'" 6 SBJ 66 (1931); John W. Hart, "Ambulance Chasing," 6 SBJ 79 (1931); David B. Maxwell, "Science of Law, or Law as a Business," 6 SBJ 148 (1931). Brennan retorted: "Concerning Soliciting Professional Employment," 6 SBJ 97 (1931).

<sup>10</sup> Arthur P. Hayne, "The Right of Unlicensed Persons to Practice in the Justices' Courts," 4 SBJ 208 (1930); George Allan Smith, "Compensation for Automobile Accident Injuries," 6 SBJ 19 (1931); James C. Nichols, "What Is a Complete Policy for the Bar to Adopt in Personal Injury Cases?" 6 SBJ 21 (1931); A.G. Bailey, "No More Commissions," 6 SBJ 94 (1931); "Problems of the Claims Adjuster," 6 SBJ 151

But the greatest challenge was corporate competitors. As early as 1926 the Attorney General responded to local bar association complaints by successfully prosecuting a corporation for practicing law. The State Bar Board of Governors declared in 1930 that "the most important problem before the bar...is the activities of the banks, title and trust companies." Candidates for the Board campaigned on this issue, complaining that "Control of your State Bar is now vested in banks, trust companies, casualty insurance companies and other business groups...." The preferred solution was a treaty dividing markets with competing trade associations. In 1932 the State Bar negotiated an agreement limiting automobile clubs to representing members only in small claims. When the State Bar sued banks for unauthorized practice of law in 1933, two of the state's largest sought legislation allowing laypersons to give free legal advice; they were joined by the California Bankers Association, California Real Estate Association, Retail Merchants Credit Association, California Land Title Association, and Life Underwriters Association. The Bar negotiated a treaty in which banks and trust companies agreed not to draft wills, appear in court except through an attorney, or advertise legal services. A 1936 State Bar treaty allowing the California Land Title Association to fill in blanks or retype forms outraged the Napa, Sonoma and San Joaquin county bars, which had concluded far more restrictive local agreements. Seven years after the Los Angeles Superior Court affirmed the right of realtors to fill in blanks the State Bar persuaded the State Real Estate Commissioner to remove certain legal forms from the real estate handbook. In 1939 the State Bar secured legislation requiring collection agencies to use attorneys; 13 years later it reached a further agreement with the California Association of Collectors and the Associated Credit Bureaus of California. Although a 1944 treaty between the American Bar Association and the American Institute of Accountants surrendered much of the tax field to the latter, a California court ruled in 1954 that an accountant who did legal research for a client was engaging in unauthorized practice; and when the U.S. Tax Court was established in 1947, the State Bar sought to limit practice to lawyers.<sup>11</sup>

If lawyers were united by efforts to curb external competition, they were much more ambivalent about disciplining themselves. The Legal Ethics section report to the State Bar's first annual meeting in 1927 blamed "the unfavorable comment received by the legal profession" on the fact that "the public is altogether lacking knowledge of just what they may reasonably expect." The section proposed to remedy this with "a carefully written series of articles...setting forth in simple language the ideals and principles of the

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(1931); "More Proposed Measures Affecting Practice of Law," 6 SBJ 69 (1931); Alfred L. Bartlett, "The President's Message," 11 SBJ 267-69 (1936); John W. Hart, "Are Patent Attorneys Practicing Law?" 13(2) SBJ 18 (2.38); Gray v. Justice's Court of Williams Judicial Township, 18 Cal.App.2d 420 (1937); 21 SBJ 167 (1946); Gilb (1956: 221-22).

<sup>11</sup> People v. Calif. Protective Corp., 76 Cal.App. 354 (1926); People v. Sipper, 61 Cal.App.2d 544 (1936); California Statutes 2753 (1939); "The Work of the Board of Governors," 4 SBJ 167, 170 (1930); Hubert C. Wyckoff, "Trust Companies and Lawyers," 7 SBJ 54 (1932); 9 SBJ 85, 88, 142 (1934); 10 SBJ 139 (1935); "Agreement Between The State Bar of California and the California Land Title Association," 11 SBJ 190 (1936); "The Treaty with the Title Companies; Correspondence," 11 SBJ 223, 229 (1936); A.G. Bailey, "Unlawful Practice by Collection Agencies," 13(6-7) SBJ 48 (6-7.38); 13(8 Pt. II) SBJ 117 (8.38); 14(8) SBJ 75 (8.39); 15(8) SBJ 80 (8.40); 16(8) SBJ 181 (6.41); 18 SBJ 467 (1943); 19 SBJ 289 (1944); 25 SBJ 21 (1950); 22 SBJ 476 (1947); Gilb (1956: 234-35, 239-42); "Bar Periscope," 54 CSBJ 532-33 (1979). All these treaties were revoked in 1979, after the U.S. Department of Justice questioned whether they violated anti-trust laws.

profession” while reassuring lawyers that the State Bar’s policy was “to keep `hands off’ in all matters of grievance where there is a local Bar Association” and noting that, although the State Bar had handled eight complaints, “in none of these cases was any prosecution undertaken or hearing held....” President Webb appointed a Committee on Legal Ethics to answer members’ questions, which dealt primarily with advertising and ambulance chasing; but it was abolished after two years because it was “inadvisable to advise lawyers in advance upon questions that might later form the basis of disciplinary action.” His successor reiterated that “the Board is ever zealous of protecting the interests of the attorney in all disciplinary matters.” A year later a State Bar Governor reported the “very gratifying” “experience” that “complaints are fewer and more than a majority of these are trivial.” “Every member of the Board is impressed with the fact that in suspension and disbarment cases the accused has his life’s work at stake....” The Board found “that over 80 percent of the complaints were without any merit at all” and prompted by “a lack of understanding on the part of the client as to just what are the duties of a lawyer.” The fourth SB president reiterated this statistic and sought to dispel “the altogether...erroneous impression...that The State Bar’s principal occupation to date has been to investigate its members for their alleged delinquencies, great and small, and to suspend or disbar as many as possible.” On the contrary, the Board had adopted a process “by which complaints against members may be quickly investigated and tried, with a minimum of publicity to the accused attorney if the facts are found not sufficient to warrant discipline.” A month later the president was “glad to say that there has been a pronounced falling off recently in the number of disciplinary cases coming before the board.” At the end of the first decade, the SB president attributed the steady decline in punishment to “the fact that any lawyer who might be inclined to forget his oath and his professional obligations realizes that he cannot get away with it and also the fact that the type of men and women admitted to the bar in the last several years has much higher standards than formerly.”<sup>12</sup>

As this defensiveness showed, members strongly resented discipline. One wrote the *San Francisco Recorder*: “we are zealously raising the standards of our profession upon the fallen bodies of our fellow lawyers and unwittingly building a barrier of distrust between our profession and the public. Return to reason. Stop the witch-burning; leave off the inquisition.” A State Bar president felt compelled to devote his monthly message to a four-page defense of the disciplinary record. His successor deplored that

the public thought that all the crime, all the dishonesty, all the fraud, all the delays in the administration of justice, all drought, all floods, all wind storms, all the overproduction, all the lack of proper distribution, were due to the delinquencies of lawyers.

But after declaring that “no other class of citizens is making such diligent efforts to weed out those who are unworthy to be trusted,” he conceded that “the surface of discipline in this State has been scarcely scratched” and placed responsibility “at your door and mine.”

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<sup>12</sup> “The Coronado Convention Program,” 2 SBJ 228-30 (1928); “The Work of the Board of Governors,” 3 SBJ 94-95 (1928); Frank James, “The Board of Governors’ Page,” 3 SBJ 208-09 (1929) “Questions in Legal Ethics Answered,” 3 SBJ 11, 54-57 (1928); “Report of Committee on Legal Ethics,” 3 SBJ 30-32 (1929); Leonard B. Slosson, “A Message from the President,” 5 SBJ 404-05 (1930); Leonard B. Slosson, “A Message from the President,” 6 SBJ 10 (1931); Phillips & McCoy (1952: 90).

I venture to say that there is not a man in this room who has not, at some time in his career, become possessed of facts which, if they had been brought to the attention of the proper authorities, would have resulted in the discipline, perhaps the disbarment, of some lawyer.

But they had done nothing. "It is [also] the duty of the judge, when the misconduct of attorneys is brought to his attention, to report with the record to The State Bar. But how many times is it done?" The Board successfully opposed members' efforts to fend off discipline: a one year statute of limitations, a requirement that grievances be verified (exposing complainants to prosecution for perjury), a ban on publicity until the Supreme Court acted, even a proposal that all discipline be subject to referendum and all Governors subject to recall. The *State Bar Journal* resisted these "step[s] backward" to "the old ineffective procedure under which but 27 attorneys were disciplined in [the] 78 years" before the State Bar was established, compared with the 53 disbarred or suspended in the three years since then. But the new regime was hardly punitive: in its first 20 years, the Board heard an average of 100 complaints annually, dismissing half for lack of jurisdiction or because they charged "minor negligence or discourtesy or ignorance of the law...or that fees are too large." By the 1950s California was disbaring just a few each year—sometimes none.<sup>13</sup>

For its first half century, State Bar discipline relied entirely on volunteers: 178 members of the 35 LACs, which investigated complaints, decided whether to issue a notice to show cause (NTSC), and then held a formal hearing (closed to the public). The BoG could accept the LAC disciplinary recommendation or hear the case de novo. From the outset, discipline occupied a distressingly large proportion of the Board's time: the entire two-day July 1928 meeting, for instance. The Supreme Court heard every case de novo; as of 1956 it had never increased the penalty and frequently reduced it. (In the first ten years it reduced the penalty in 23 percent of the 119 cases it reviewed and dismissed the proceedings in another 8 percent.) The view of one justice that only intentional misconduct should be punished demoralized the entire process according to contemporaneous observers. The *State Bar Journal* published monthly (anonymous) reports of State Bar convictions and recommended punishments, as well as the names and penalties of those punished by the Supreme Court (without identifying the offenses). The State Bar suspended all disciplinary proceedings for months after the Supreme Court required verified complaints, causing a "decided falling off" of discipline for a year. To strengthen the appearance that justice was being done, the president in 1933 urged that smaller counties create two LACs, one for investigation, accusation and prosecution and the other to hear trials. Although he rejected the charge that "a group of ambulance-chasing lawyers has contrived to get control of the Board of Governors and has thus made disciplinary action impossible," he warned that "subversive elements of the bar are

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<sup>13</sup> AB 423 (1931); Leonard B. Slosson, "A Message from the President," 6 SBJ 62 (1931); "Legislation Sought by or Affecting The State Bar," 6 SBJ 48, 50-52 (1931); Charles A. Beardsley, "Investigation and Discipline Without a Verified Complaint," 6 SBJ 183 (1931); Charles A. Beardsley, "The Disciplinary Procedure of The State Bar," 6 SBJ 241 (1931); *In re Herron*, 81 Cal.Dec. 549 (1931); Hubert C. Wyckoff, "State Bar Policies," 7 SBJ 160 (1932); M. Mitchell Bourquin, "State Bar Policies: A Reply to Hubert C. Wyckoff," 7 SBJ 186 (1932); Guy R. Crump, "Message from the President," 7 SBJ 274 (1932); Norman A. Bailie, "The President Speaks," 9 SBJ 301 (1934); Phillips & McCoy (1952: 95, 101); Blaustein & Porter (1954: 254-55); Turrentine (1935); Gilb (1956: 80-83, 101, 104, 110).

organized and keep up a campaign to thwart the activities of the organization. They would scuttle the ship if they could.”<sup>14</sup>

The threat was not just internal. James F. Brennan (who had defended ambulance chasing) became chair of the Assembly committee to investigate “the present status, conditions and mode of operation of the State Bar of California.” Together with William B. Hornblower (a fellow Assembly member who had earlier introduced a bill to divert all State Bar dues to the State Treasury), the committee asked the State Bar in February 1935 to conduct a plebiscite on the question: “Do you favor repeal of The State Bar Act?” The Bar disparaged the initiative as a misguided expression of lawyer discontent with discipline and admissions. But it made the mistake of asking “what better way can be suggested for the handling of these important and sometimes intricate problems that is more democratic than a self-governing Bar?” Brennan retorted: “if the Bar is to be self-governing, its members should be allowed to express themselves through a plebiscite....” The results strongly vindicated the State Bar; but a quarter of those voting favored repeal, and 42 percent did not vote.<sup>15</sup>

Although the State Bar concentrated on issues closely related to the legal profession, it inevitably became involved in politics. Soon after its founding, the Bar retained a lobbyist in Sacramento, who not only advocated on its behalf but also examined every bill. In 1934 it created a Conference of Bar Association Delegates, representing local (and later specialist) organizations, which reviewed legislation proposed by State Bar committees before it was presented in Sacramento. But the Conference cautiously avoided controversial issues: foreign affairs, national politics, adultery, animal control, even adapting tort law to the growing number of automobile accidents. During the McCarthy era the Board resisted demands to expel communists voiced by the House Committee on Un-American Activities, the ABA Special Committee on Communist Tactics, Strategy and Objectives, and even the State Bar’s own Rules Committee. The September 1966 Conference of Delegates held a “lively debate” about whether the State Bar should take positions on anything other than “procedural law.” While acknowledging that this boundary was “often blurred,” the president insisted that it excluded abortion and the death penalty, although “it can be argued that capital punishment is merely a step in the administration of criminal justice.” Even the automobile guest statute was out of bounds because “the State Bar should not advocate the repeal of legislation that has been enacted as a matter of public policy—particularly when the repeal would result in a financial benefit to one segment of the bar....” Until the U.S. Supreme Court clarified its opaque decision about the activities permitted the unified Wisconsin bar,<sup>16</sup> the Conference should limit itself to the administration of justice, judicial reform, and procedure. The next president agreed that the Conference should not address “questions of moral, social, or political policy.” The Board of

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<sup>14</sup> Joseph J. Webb, “A Message from the President,” 2 SBJ 142-43 (1928); “The Work of the Board of Governors,” 3 SBJ 1 (1928); “The Story of the Del Monte Convention,” 6 SBJ 267 (1931); “Disciplinary Proceedings Suspended,” 5 SBJ 335-40 (1930); Hubert C. Wyckoff, “A Message from the President,” 8 SBJ 242-43 (1933); “A Message from the President,” 8 SBJ 292-93 (1933); Phillips & McCoy (1952: 98, 100-04); Gilb (1956: 108-09); CAG (1977c).

<sup>15</sup> “Legislation Sought by or Affecting The State Bar,” 6 SBJ 48, 50-52 (1931); “The State Bar Plebiscite,” 10 SBJ 57, 83 (1935).

<sup>16</sup> Lathrop v. Donohue, 367 U.S. 820 (1961).

Governors was “gravely concerned” that the very number of bills proposed might “wear[] out our welcome in our State Capitol.”<sup>17</sup>

The State Bar was particularly vulnerable because the 1927 Act required the Legislature to approve the dues. These rose from \$5 (for active members) in 1927 to \$20 in 1963. But when the Bar sought an increase to \$50, members of both Judiciary Committees authorized only \$35, expressing “their very strong view that the State Bar should intensify its activities in respect to the enforcement of discipline and in the field of unauthorized practice of law.” Returning to an Extraordinary Session in 1964, the State Bar argued that it needed “a full staff of capable investigators” because clients did not complain about ambulance chasing; furthermore, lawyers paid substantially lower dues than doctors, and expenditures on both discipline and unauthorized practice of law had doubled between 1960 and 1964. It won the \$50 ceiling.<sup>18</sup>

The State Bar consistently demonstrated its reluctance to regulate. Although its first president had noted as early as 1928 that “a large percentage of the serious charges made against attorneys grow out of the use of funds coming into their possession and their inability to pay their clients when demand is made for same,” it was not until 1956 that the Rules of Professional Conduct mandated lawyers to deposit all client funds into a separate trust account. A few years later the Board approved a unanimous Rules Committee recommendation that “no Rule of Professional Conduct constituting negligence as a basis for discipline be adopted.” In 1961 a former president urged the Bar to create a clients’ security fund for the “moral” reason that “when a lawyer betrays...trust by stealing a client’s money, all lawyers are to a degree responsible....” Such a plan would also “improve the profession’s public relations” and avoid the threat of legislation mandating individual malpractice insurance. But opponents argued successfully that such a plan would “be an official recognition of the fact that the legal profession is the one profession in this country whose members are so corrupt that it must assess itself to indemnify the public.” It would “publicize the dishonesty of lawyers” and “unjustifiably encourage and increase charges of dishonesty against members of the bar” as well as “actions for malpractice based upon claims of simple negligence.” The estimated \$5 charge “would succeed only in getting a proverbial foot in the door.”

Although the 1957 SB president praised the Bar’s “commendable” record in “disciplining the small number of its members who are complained against,” on the basis of a “thorough study of our disciplinary system” the Board approved adding two more staff lawyers to the two already devoted to discipline, freeing the latter “to ‘ride circuit’ among the disciplinary committees in the nonmetropolitan areas and assist them in a more expeditious handling of their cases.” Another indication of the limits of volunteerism was the fact that the Board was spending “close to half” its time on disciplinary matters in 1959, a week every month by 1965. It responded in several ways:

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<sup>17</sup> “Report of the Committee on Rules of Professional Conduct to the Board of Governors,” 29 SBJ 349 (1954), 30 SBJ 348 (1955); William P. Gray, “President’s Message,” 38 SBJ 162 (1963); “Report of Committee on Communist Lawyers to Board of Governors,” 38 SBJ 172 (1963); A. Stevens Halsted, Jr., “Message of the President: Role of the State Bar in Social Reform: Procedural: Not Substantive,” 42 SBJ 321 (1967); Daniel A. Weber, “A Dissent: The Role of the State Bar,” 42 SBJ 849 (1967); John M. Cranston, “Scope of State Bar Legislative Activity,” 42 SBJ 858 (1967); J. Thomas Crowe, “Message from the President: The Question of Purview,” 44 SBJ 769 (1969); Gilb (1956: 142-50).

<sup>18</sup> “The First Step Toward Organization,” 1 SBJ 227, 236 (1927); Samuel H. Wagener, “President’s Message,” 39 SBJ 7 (1964); SB 7, Chap 29, First Extraordinary Session of 1964.

promulgating "Guides to Disciplinary Procedure," delegating hearings to two Disciplinary Review Boards (DRBs, soon merged into a single 15-person board), and assigning primary responsibility for discipline to the General Counsel (assisted by five new attorneys). Although the State Bar defended itself against Governor Reagan's criticism of its disciplinary record (which was echoed in the press), it doubled bar dues to finance more activity.<sup>19</sup>

## II. The Rise of Consumerism

These reforms were unlikely to satisfy the rising tide of criticism, reflected in the ABA's creation in 1968 of a special committee, chaired by retired Supreme Court Justice Tom C. Clark, to investigate lawyer discipline nationwide. Its 1970 report began by decrying

a scandalous situation that requires the immediate attention of the profession. With few exceptions, the prevailing attitude of lawyers toward disciplinary enforcement ranges from apathy to outright hostility. Disciplinary action is practically nonexistent in many jurisdictions; practices and procedures are antiquated; many disciplinary agencies have little power to take effective steps against malefactors.<sup>20</sup>

The committee found disbarred attorneys practicing in other jurisdictions and routinely reinstated, tax evaders and convicted felons continuing to practice, and lawyers covering up their peers' unethical and criminal conduct, especially in smaller communities. It identified 36 problems, including inadequate funding, decentralization, delay, reliance on volunteers, dependence on complaints by clients (who were discouraged from making them), poor record-keeping, lack of lesser penalties for minor offenses, inadequate procedures for resignations with charges pending or incapacitated lawyers, no mechanism for reciprocal discipline in other states, no interim suspension, excessive secrecy, no protection for clients abandoned by counsel, no compulsory accounting and auditing of client trust funds, and the need for mandatory malpractice insurance, client security funds, and fee dispute arbitration.<sup>21</sup>

Based on the Clark Report's occasional praise for the California State Bar, President Plant boasted that it "utilizes most of the disciplinary procedures recommended." The Report's criticism "that 'at the root of the problem (of self-policing) is the widespread disinclination of individual lawyers and bar associations to take action against fellow attorneys,' is not true in California." The State Bar relied on 600 volunteer lawyers, and 15 attorney and 21 clerical employees; "record keeping procedures are being revised and updated, and a determination has been made to initiate the use of professional staff examiners in place of volunteer examiners, at least on a trial basis." The

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<sup>19</sup> 2 SBJ 203-07 (1928); 31 SBJ 293 (1956); Graham L. Sterling, "Report of President for 1958-1959," 34 SBJ 808, 811-12 (1959); Burnham Emersen, "President's Message: The Supreme Court and the State Bar," 34 SBJ 893, 897 (1959); Graham L. Sterling, Sr., "The Argument for a Clients' Security Fund," 36 SBJ 957 (1961); Galen McKnight, "The Argument Against Clients' Security Fund," 36 SBJ 963 (1961); August F. Mack, Jr., "Annual Report of the Board of Governors," 40 SBJ 659, 661-64 (1965); John H. Finger, "President's Message: Disciplinary Procedure Updated and Streamlined," 43 SBJ 9 (1968); ABA Special Committee (1970: 35); Business & Professions Code § 6086.5; Gallagher (1993: 92).

<sup>20</sup> ABA Special Committee (1970: 1).

<sup>21</sup> *Id.* 19, 24, 30, 46, 48, 60, 71, 74, 77, 86, 92, 97, 101, 110, 116, 122, 138, 147, 150, 156, 167, 172, 186.

president recognized that “in the public view our effort to deal with misconduct of attorneys...is the major task facing the organized bar” and warned that “unsatisfactory performance” could threaten the “precious right of self-discipline,” as had happened in Michigan with the addition of public members. He urged lawyers to report misconduct, even though this was “not the recommended way of becoming the most popular fellow at the cocktail hour preceding the local bar association’s annual dinner meeting.”<sup>22</sup>

The Clark Report was just the first salvo in a continuous cycle of criticism, defense, and piecemeal reform. In 1970 the DRB rejected an examiner’s proposal that it give reasons for dismissing charges, because “it may not be possible to get a majority of the [DRB] to agree on the reasons for dismissal.” But the Board of Governors did recommend that the LAC hearing the case be different from the one that investigated it. The following year President Robinson opposed a bill (supported by the Attorney General) making incompetence a basis for discipline. “[T]he Supreme Court has stated in these situations that no discipline is warranted.” In response to “justifiable” criticism of “delay and inefficiency,” the State Bar had made “major improvements in our disciplinary procedures” and would “be able to intensify our efforts” if the dues increase were approved. The “State Bar’s activities and results in this field have been major and second to no association in the nation.” “[O]ne of the most important changes in policy” was the Supreme Court’s decision to issue press releases about disciplinary decisions. Over the next few years the Bar would replace volunteer examiners with employees. “We have now developed a modern system of record keeping so that we can keep track of all of our cases and know which ones are delinquent and why, and compare our progress with prior periods.”<sup>23</sup>

Noting that delay had been a “continuing” problem and was becoming “serious,” the next president, Leonard Janofsky, warned: “If we fail to meet this challenge, the administration of this exceedingly important responsibility may be assumed by some other public body.” A SB special committee recommended that parties be able to stipulate for a single hearing officer, only one continuance should be granted without good cause, and a staff examiner should be able to file an NTSC without a preliminary hearing in commingling cases and refer complaints lacking probable cause to client relations committees. His successor, Seth Hufstедler, blamed Watergate for the fact that “the State Bar probably receives more questions from lawyers, the press and the public about our disciplinary system than any other subject.” Having served three years on the Board and several more on LACs, he believed that “the system is quite good” and the results “acceptable to the public, the bench and the bar” as shown by the fact that in three recent years the DRB had followed LAC recommendations in 162 out of 300 matters and the Supreme Court had followed the DRB in 76 out of 93 cases. Noting that 83 percent of the last 42 lawyers disciplined were solo practitioners and all but one belonged to firms of less than six, he urged “periodic supervision and review of financial records.” Because proceedings were “still too slow,” taking “years not months,” the BoG had approved “a new, imaginative proposal” to combine the formal LAC hearing and DRB review. Since

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<sup>22</sup> Id. 35-36, 122; Forrest A. Plant, “President’s Message: The Disciplinary Problem: A Call for Individual Dedication,” 46 SBJ 130 (1971).

<sup>23</sup> Disciplinary Board, “1970 Annual Report to Board of Governors,” 46 SBJ 538, 540-41 (1971); David K. Robinson, “President’s Message: Leadership Exercised by the Organized Bar,” 46 SBJ 570 (1971); David K. Robinson, “Annual Report of the Board of Governors,” 47 CSBJ 501, 512 (1972).

“by far, the largest share of complaints we receive is about lawyers who have failed to perform in a pleasing and satisfactory manner,” he suggested a “non-disciplinary complaint committee—a ‘friend of the client,’” to deal with neglect. To reduce excessive secrecy “we should now consider whether or not a [NTSC] should be made public when it is issued.” For the fourth successive year after the Clark Report, the SB president urged lawyers to anticipate complaints about neglect and delay by sending clients “a copy of every paper and letter you file,” returning phone calls, and “keep[ing] your client informed about the progress of his matter, without waiting to be asked.” His vice president urged local bars to create fee arbitration panels with lay participation and engage in an “aggressive campaign” to persuade lawyers to submit to them. “[W]hen our level of enforcement of the rules of professional responsibility fail [sic] to adequately protect those for whom they were designed, we must necessarily expect that the task of disciplinary enforcement and administration will be taken from us, as has happened in other states.” The 1979 SB president again pronounced that California’s disciplinary system was “widely regarded as the nation’s best” and “the Bar here was moving further out front as the national leader....” He urged earlier publicity of proceedings, random trust account audits, conciliation of non-disciplinary complaints, and mandatory continuing education in legal ethics and law office management.<sup>24</sup>

The pressure for reform was not just talk. The California Supreme Court ruled in 1971 that the statute of limitations for legal malpractice ran from the date the client should reasonably have discovered it. Five years later the SB president proposed that the Bar negotiate a malpractice insurance policy for all members, effectively making it mandatory. After malpractice insurance premiums increased as much as 400 percent between 1976 and 1977 and the number of insurers dropped from six to three, the president promised a lawyers’ mutual as soon as 3,000 members subscribed.<sup>25</sup> The client security fund, first proposed by a SB president in 1961, was finally established in 1972.<sup>26</sup> California responded to the ABA’s 1969 Code of Professional Responsibility by revising its own rules in 1973, prohibiting illegal or clearly excessive fees, requiring lawyers to maintain records of client funds, and exposing to discipline those who willfully or habitually performed legal services for which they lacked the skills or knowledge or failed to use reasonable diligence.<sup>27</sup> In 1975 the *California State Bar Journal* finally began reporting the misconduct underlying Supreme Court disciplinary decisions.<sup>28</sup> The BoG embraced mandatory fee arbitration in 1977.<sup>29</sup>

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<sup>24</sup> Leonard S. Janofsky, “President’s Message: Reducing Delays in Lawyer Discipline,” 48 CSBJ 8 (1973); Seth M. Hufstedler, “President’s Message: Another Look at Discipline,” 49 CSBJ 224 (1974); Brent M. Abel, “President’s Message: Are You Subject to Complaint?” 50 CSBJ 6 (1975); Brent M. Abel, “President’s Message: Following the Rules,” 50 CSBJ 70 (1975). Hufstedler’s identification of the most frequent bases for discipline was confirmed four years later. Richard Blum, “A Perspective on the Bar,” 53 CSBJ 98 (1978); Charles H. Clifford, “President’s Message,” 54 CSBJ 490 (1979).

<sup>25</sup> *Neel v. Magana, Olney, Cathcart & Gelfand*, 6 Cal.3d 176 (1971); Ralph J. Gampell, “President’s Message: Malpractice Insurance: Equal Burden for All?” 51 CSBJ 575 (1976); Ronald E. Mallen, “Panacea or Pandora’s Box? A Statute of Limitations for Lawyers,” 52 CSBJ 22 (1977); David J. Levy, “President’s Message,” 54 CSBJ 366-67 (1978).

<sup>26</sup> David K. Robinson, “Annual Report of the Board of Governors,” 47 CSBJ 501, 508 (1972).

<sup>27</sup> Leonard S. Janofsky, “President’s Message: After 45 Years—New Rules of Professional Conduct,” 48 CSBJ 224 (1973).

<sup>28</sup> “Disciplinary Board Proceedings,” 50 CSBJ 279 (1975).

<sup>29</sup> Ferdinand F. Fernandez, “The Pending Proposal for Mandatory Fee Arbitration,” 52 CSBJ 520 (1977).

In 1976 the Bar implemented “a comprehensive change in the procedure...which completely revolutionizes the concept and administration of the trial and review phases of the disciplinary panel.” It replaced the LACs and DRB with a new Disciplinary Board composed of 40 lawyers and seven laypeople, assisted by another 80 lawyer and three lay pro tem referees. Parties could stipulate to a single hearing officer and request review, which was merely advisory. Three years later the Bar delegated all disciplinary authority to the State Bar Court (SBC), divided into investigation (260 referees), hearing (315 referees), and review (12 lawyers and 3 laypersons sitting en banc).

The chair of the Bar’s Committee on Discipline rejected the criticism “that the disciplinary process is a backscratching, self-protecting exercise.” The Bar was reducing delay by using staff examiners, setting fixed time limits, and holding hearings on evenings and weekends. It was increasing uniformity by training referees and publishing a “Summary of Discipline Imposed.” Review became binding rather than advisory. The chair was “absolutely convinced” that using volunteer “lawyer-peers with a mix of public members provides benefits which far outweigh any other procedure.” Critics who glibly compared the approximately 5,000 complaints with just 200 NTSCs and 75 serious penalties were playing a “truly superficial” “numbers game.” Lawyers

are probably monitored more closely and by more people than persons who are engaged in any other type of activity...many complaints arise that are totally lacking in merit... When the result is not in accord with [clients’] optimistic expectations, they often attribute the loss not to the merits but to either their own attorney or opposing counsel, and are quick to translate that into a charge of violating the Rules of Professional Conduct.

The disciplinary process was “not a procedure for testing or reviewing competence...a wholly separate subject.” Because “every member of the bar has been through a rigorous screening process” and had reached “25 years of age or older, without serious instances of misconduct...it is to be expected that deliberate violations of moral or ethical standards would be unusual.” When the Director of the California Office of Administrative Hearings called “the use of volunteer lawyers from the community...a defect” and its “secret nature” the “worst indictment against the Bar’s disciplinary process,” a lawyer responded that “the entire system of justice under which we operate involves a trial by peers,” and the process was far from secret: “one newspaper in Los Angeles County rejoices in publishing each and every transgression.” (He meant the *Daily Journal*, which was read only by lawyers.) The lawyer dismissed administrative agencies as “usually composed of hearing officers who can’t make it in the private sector.” Nevertheless, reports by Bar committees in 1979 (Sproul/Steiner) and 1982 (Hanst) “reluctant[ly]” recommended “consideration of permanent staff as State Bar Court referees.” In 1981, SB President Robert D. Raven again claimed that “the ABA’s model system [proposed by the Clark Report] was the California discipline system,” which was “nationally recognized as ‘outstanding’—an example for other states to follow.” Sentiments like these help to explain why the BoG rejected a 1981 proposal to open disciplinary proceedings to the public (all 13 lawyer members voting against, all 6 public members voting for) and opposed mandatory continuing education in 1983 and written fee agreements in 1984.<sup>30</sup>

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<sup>30</sup> E. Dean Price, “President’s Message: The Hewes Plan and Disciplinary Procedures,” 51 CSBJ 175 (1976); Peter J. Hughes, “President’s Message,” 54 CSBJ 6 (1979); Herbert W. Nobriga, “Letter to the

External critics remained unsatisfied. The cover sheet of a 1976 report by the California Auditor General—featuring a fat man in a wig and robe clutching an equally bloated money bag and sticking out his tongue—was captioned “incredulous membership fee increase.” Noting that two years earlier the Auditor General had found that the Bar had “not yet fully developed workload standards upon which to make a satisfactory analysis of projected staffing needs,” the chair of the Joint Legislative Audit Committee derided the request for a 32 percent dues increase on the ground that the Bar would have a \$250,000 surplus even without which the augmentation. When the Bar resisted what it called “deficit financing,” the Auditor General reiterated that proposed expenditures could not be “verified without...an allocation of expenses among departments.” Subsequent Auditor General reports urged the Bar to make full use of existing facilities before constructing new ones, replace lawyer employees with laypersons, increase *California State Bar Journal* advertising revenues, and budget for several years. It also criticized the Bar’s continued reliance on volunteers to prosecute two-thirds of disciplinary cases despite the 1970 Clark Report’s recommendation to make ending this practice “a first priority” and the BoG’s 1972 resolution to do so as soon as possible.<sup>31</sup>

Journalistic exposés were another prod for change. In 1981, the *Los Angeles Daily Journal*—read by virtually every local lawyer—published the results of a six-month investigation, which reached “the unavoidable conclusion that California lawyers seldom are held accountable for their misdeeds.” Lawyers rarely reported misconduct; less than one complaint in five was investigated; few of those investigated were disciplined; most of those disciplined were just reprimanded; and nothing was done about incompetence.<sup>32</sup>

But the Bar remained impervious to criticism and slow to recognize the chronic and worsening delay in the disciplinary process. Lily Barry (who had joined the State Bar as a staff lawyer in 1966) became chief trial counsel in 1976, the year the Bar replaced LACs with the DB and began using staff attorneys to prosecute cases. More comfortable managing a small law office than a large bureaucracy, Barry let backlogs accumulate and then made staff work overtime to clear them. She believed “the backlog shouldn’t determine your long-range staffing” and refrained from seeking more funds because the Board would “laugh at you” and cut even her modest budget. Barry resigned under pressure in February 1983. A few months after taking over, Susan Mahoney-St. Clair discovered 6,000 uncatalogued complaints, some ten years old. Although she requested \$1.1 million to clear them, the Board appropriated only \$100,000. By October, however, the Board made backlog reduction the highest priority, resolving to eliminate it within two years. Philip Schafer, who had won election to the Board in 1982 on a promise to reform discipline and become head of the Committee on Adjudication and Discipline,

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Editor,” 54 CSBJ 215 (1979); Clifford R. Anderson, Jr., “Letter to the Editor,” 54 CSBJ 420 (1979); Gert K. Hirschberg, “The New State Bar Court,” 54 CSBJ 438 (1979); Robert D. Raven, “President’s Message,” 56 CSBJ 268-29 (1981) (also published in *San Diego Union*, 5.24.81); “Bulletin Board,” 1(2) California Lawyer 67 (10.81); “Bulletin Board,” 3(7) California Lawyer 49 (7.83); “Bulletin Board,” 4(4) California Lawyer 49 (4.84); “Bulletin Board,” 5(12) California Lawyer 67 (12.85); Coyle (1984: Appendix 5).

<sup>31</sup> CAG (1976; 1977a; 1977b; 1977c).

<sup>32</sup> Jon Standefer, “Is the Legal Profession Guilty of Failing to Police Itself” LADJ 5 (5.15.81); “State Meting Out Fewer—and Lighter—Penalties,” LADJ 6 (5.18.81); “Attorney Incompetence Presents Difficult Problem,” LADJ (5.19.81); “State Bar Resisting Discipline Changes,” LADJ 8 (5.20.81); Gallagher (1993: 95).

appointed a Subcommittee on Expediting the Discipline Process, chaired by Robert E. Coyle.<sup>33</sup>

The subcommittee's 1984 report found "systemic" inefficiencies: contested cases averaged 40 months; even cases with stipulated facts could take two years to conclude. At the ABA's February meeting, Chief Justice Warren Burger had called for comprehensive examination of disciplinary mechanisms, warning that "State legislatures may move independently if our profession does not act." Coyle agreed this was not "unduly alarmist." U.S. Senator Bob Packwood had recently introduced a "consumer protection" bill to transfer all attorney discipline to the Federal Trade Commission (which had sent "voluntary" questionnaires to state disciplinary bodies in 1978 and 1981). Some Ninth Circuit Court of Appeal judges had proposed a separate disciplinary system for lawyers appearing before them. The subcommittee found 4,392 complaints under investigation, 2,300 of which had been pending more than six months; more than 200 NTSCs had been waiting three months for charges—some much longer. But "the statistics only indicate delay. They are almost useless for anything else and are deceptive." It was "particularly disturbing" that the same criticism had been made ten years earlier "because of the vast amount of money spent on computer resources in the intervening years." Predicting that California's 80,000 attorneys would increase 4 percent a year while the annual number of complaints per lawyer (then one in ten) would grow even faster "because of the larger number of underemployed attorneys and more stringent rules governing attorney competence," the subcommittee recommended that the "temporary" backlog team created by the BoG be made permanent. The Office of Trial Counsel (OTC) should be empowered to issue a NTSC without returning to the investigative referee and to impose admonitions without trial. Simple cases should be heard by a single referee, more complicated ones by a compensated referee (although the subcommittee resisted eliminating volunteers).<sup>34</sup>

Asked by the Coyle subcommittee to evaluate the prosecutorial function, Mark C. Kroeker (a Los Angeles Police Department commander) reported in June 1985 that investigators should handle no more than 35-40 cases; the actual caseload of "100 or more is completely unrealistic." Investigation and prosecution should be separated. Less serious cases, "which are obviously not going to result in disciplinary dispositions," should be mediated by paralegals empowered to draft admonitions and warnings. A "massive effort will be needed to catch up" with the backlog, but "the establishment of numerical closure goals or the ratio of cases per investigator is highly speculative."<sup>35</sup>

The BoG responded by allowing OTC lawyers to issue NTSCs, constituting two referee pools (a few paid to conduct long or complex cases and many volunteers for fee arbitrations), creating a master calendar in order to complete trials in a continuous hearing, separating the Office of Investigations (OI) from the OTC, constructing a career ladder to retain investigators, and instituting mandatory settlement conferences in 11

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<sup>33</sup> "Bulletin Board," 3(10) California Lawyer 50 (10.83); Robert Egelko, "State Bar Discipline Under Fire," 6(6) California Lawyer 55 (6.86); Gallagher (1993: 96-97).

<sup>34</sup> "Shorthand," 56 CSBJ 173 (1981); Coyle (1984: 1, 18-19, 28-29).

<sup>35</sup> Kroeker (1985) (emphasis in original).

counties (accounting for 85 percent of complaints). It expected these changes to halve the 40 months from complaint to decision.<sup>36</sup>

The taxpayer revolt that produced Proposition 13 in 1978 also affected the Bar's dues requests. The Legislature granted a \$5 increase that year conditioned on a day-long hearing by the Senate and Assembly Judiciary Committees, which resulted in a \$10 decrease the following year. The Legislature rejected the Bar's proposal to index dues for inflation and membership growth. Another SB bill to raise the dues floor permanently for the first time since 1976 was amended at the last minute to impose a one-year \$5 decrease. Only on the last day of the 1982 legislative session did the SB obtain a substantial increase (to \$90 and \$160).

In 1978 Senator Robert Wilson also introduced a bill to reduce dues to a flat \$50, limit Bar activities to admissions and discipline, assign discipline to administrative hearing officers reviewed by panels of four laypersons and a lawyer, and eliminate the Conference and all SB committees. The voluntary associations also wanted the Conference to have more power and less state control. At its annual meeting in Monterrey, the Conference of Bar Presidents created a study group, which reaffirmed support for the integrated bar. But concerned about a recent U.S. Supreme Court decision limiting the right of unions to use mandatory dues for political advocacy,<sup>37</sup> it proposed to transfer all lobbying (other than for bar dues) to the Conference of Delegates, which would be made more representative and financed voluntarily. Seeking to avoid guilt by association, the Bar authorized the Conference of Delegates to lobby without seeking BoG approval.<sup>38</sup>

### III. The Perils of Political Engagement

This cycle of complacency, external criticism, and piecemeal reform might have continued indefinitely but for a political explosion. The Conference of Delegates took positions on increasingly contentious issues, convincing the BoG in 1976 to support decriminalization of prostitution. SB President Shallenberger "became convinced that it was within our purview because so much time and money is taken up in the judicial system processing prostitution cases." But Board members objected to Conference stances on abortion, affirmative action,<sup>39</sup> and the Equal Rights Amendment. In 1980 the Assembly Judiciary Committee held a hearing on the "Use of Mandatory State Bar Dues." Two years later the BoG urged that private clubs be subjected to federal anti-discrimination laws if a "substantial portion" of their revenue came from business sources, and it opposed two law-and-order measures: a constitutional amendment introduced by Senator Robert B. Presley (D-Riverside) to deny bail to defendants charged

<sup>36</sup> "Bulletin Board," 4(8) California Lawyer 49 (8.84); "1983-84 The State Bar of California Annual Report," 4(12) California Lawyer 77-78 (12.84); Gallagher (1993: 100-01).

<sup>37</sup> *Aboud v. Detroit Bd. of Education*, 431 U.S. 209 (1977).

<sup>38</sup> David J. Levy, "President's Message," 54 CSBJ 138 (1979); Bert Z. Tigerman, "Letter to the Editor," 54 CSBJ 286 (1979); Jack Stutman, "President's Message," 54 CSBJ 210 (1979); "Shorthand," 54 CSBJ 528 (1979); Mary A. Eikel, "Where Is the State Bar Going?" 55 CSBJ 154 (1980); Mary A. Eikel, "The Monterrey Committee Report," 55 CSBJ 380-81 (1980); "Shorthand," 54 CSBJ 462 (1979); "Sacramento Scene," 54 CSBJ 531 (1979); "Bar World," 55 CSBJ 265 (1980); "Bar World," 56 CSBJ 168 (1981); "Bulletin Board," 2(2) California Lawyer 44 (2.82).

<sup>39</sup> In response to *Bakke v. Regents of the University of California*, 438 U.S. 265 (1978).

with capital crimes and other violent felonies, and the just enacted "Victims' Bill of Rights" proposition.<sup>40</sup> In August 1984, Pete Wilson, then a candidate for U.S. Senator, threatened a recall campaign against any California Supreme Court Justice who voted to invalidate the proposition.

This prompted a strong response from SB President-Elect Anthony Murray, who was echoed by the Bar Associations of San Francisco and Los Angeles, among others. Murray used his inaugural speech to the September SB annual meeting to defend the Court's independence.

We must make it clear that the only legitimate basis for refusing to retain or recalling a justice is a showing of incapacity or misconduct in office. We must make it clear that judges cannot be removed because the politicians disagree with their judicial philosophies or with specific decisions.

Denouncing the proposition as a "dangerous measure," which "pretends to deal with the deep complexities of crime by throwing slogans at the problems," Murray called on the Bar to defend courts from

the idiotic cries of the self-appointed vigilantes; the committee on law and order; the court watchers; the self-seeking prosecutors and lawyers who want to be judges; *and every unscrupulous politician who thinks there is something in it for him if he gets in line to kick the courts, which he sees as inert and defenseless.*  
[emphasis added]

While not naming Wilson, he attacked "a candidate for national office, himself a lawyer, who threatens a recall of our chief justice if the Supreme Court dares to overturn Proposition 8." At the same meeting the Conference endorsed propositions for handgun control and a bilateral nuclear weapons freeze, urged that Martin Luther King Jr.'s birthday be made a national holiday, and echoed Murray's criticism of Wilson. The BoG unanimously adopted a resolution strongly supporting the independence of the judiciary.<sup>41</sup>

A group of 55 lawyers, led by Eddie T. Keller (a 16-year veteran of the Attorney General's office, angered by opposition to the death penalty), protested that "it was totally improper for the state bar to have become embroiled in an issue which is so obviously political," which "disenfranchises those in the membership who disagree." The Conference executive committee chair replied that the resolution "was fully debated," "no speaker sought to defend the conduct," and "the vote was the expression of a substantial majority of the delegates." This provoked a *California Lawyer* article declaring "the rock-hard fact...that the state bar has long involved itself in ideological pursuits" and demanding that it be "split[] in two." President Murray retorted that "if we believe that our profession must preserve its dedication to public service, we should retain our unified bar with its commitment to the interests of the public." The following

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<sup>40</sup> Presley, who played a pivotal role in subsequent events, was a World War II veteran who spent 24 years in the Riverside County Sheriff's Department, 12 as Undersheriff, focused on the plight of domestic violence victims.

<sup>41</sup> 53 CSBJ 190-91 (1978); Garvin F. Shallenberger, "President's Message," 53 CSBJ 214 (1978); Claude D. Morgan, "Letter to the Editor," 54 CSBJ 363 (1979); Joseph Carr, "Letter to the Editor," 54 CSBJ 420 (1979); Kenneth Hopp, "Letter to the Editor," 54 CSBJ 493 (1979); Michael V. McIntire, "Letter to the Editor," 54 CSBJ 493 (1979); "Bulletin Board," 2(5) *California Lawyer* 43-44 (5.82); "Bulletin Board," 2(7) *California Lawyer* 89 (7-8.82); "Bulletin Board," 2(9) *California Lawyer* 67 (10.82); "Annual Meeting Wrap," 2(11) *California Lawyer* 28 (12.82); "Bulletin Board," 2(1) *California Lawyer* 64 (12.82).

year the Conference called for abolishing the death penalty (on a show of hands because the voice vote was too close to call) and opposed retention elections for California Supreme Court justices. Even before then, however, Keller and co-worker Raymond Brosterhous contacted the conservative Pacific Legal Foundation, which sued on behalf of them and 19 others (including Assemblyman Patrick J. Nolan) to enjoin the State Bar from taking political positions and using dues to do so. On May 24, 1984, the trial court granted the State Bar summary judgment, finding that, as a governmental agency, it had not acted improperly.<sup>42</sup>

In March 1985, while the *Keller* plaintiffs were appealing, the *San Francisco Examiner* published a six-part series entitled "The Brotherhood," which resembled the *Los Angeles Daily Journal* exposé four years earlier but was now on the front page of a major newspaper. It quickly grabbed the reader's attention.

There are convicted criminals practicing law in California. They include lawyers who have lied, cheated and stolen. A bagman in a bribery scheme is allowed to practice law. So is an attorney who burglarized a client's market. So are a drug smuggler, an embezzler and a stock swindler. So is a lawyer who impersonated a cop. So is an attorney who did dirty tricks for the White House, and another who tried to raise campaign funds for President Nixon by selling an ambassadorship. After punishments ranging from a wrist slap to a few years on the sidelines, all were judged to be fit attorneys.

Although the SB had received 9,000 complaints the previous year, it investigated only two out of five and held formal hearings for just 6 percent, disbaring 11 lawyers while suspending five times as many for failing to pay bar dues than it did for ethical transgressions, in a process that was too slow and secretive.<sup>43</sup>

Once again the Bar insisted everything was fine. Former President Kenneth Jost called California's disciplinary system the "envy" of other states; current President Burke M. Critchfield insisted it was the "most effective" regulatory system "of any bar or other professional group in the country." The *Examiner's* findings characterized only "an extremely small percentage of California lawyers." And while Critchfield warned local bar leaders that "the number of complaints we are receiving each year exceeds the resources we have available to carry out this important function," he assured them that "a great many reforms have been implemented, and more are proposed to make the discipline program faster [and] more efficient." At its June meeting, the Board diverted money from other functions to let the OTC hire more staff. At the end of his term Critchfield welcomed the "intense public and legislative scrutiny" as "healthy attention," which had simply "sped the bar along" in "the very areas the bar itself already had targeted for reform." But other insiders were more skeptical. David Clare, who had resigned as assistant chief trial counsel after 13 years with the SB, declared: "With one or two exceptions, I never knew a member of the Board of Governors who had the least

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<sup>42</sup> *Keller v. State Bar*, Superior Court of Sacramento County, No. 307168 (Cechettini, J.); Edward L. Lascher, "Dismantle the unified bar," 3(5) *California Lawyer* 12 (5.83); Anthony Murray, "The unified bar serves the public interest," 3(5) *California Lawyer* 13 (5.83); "Conference calls for end to capital punishment," 4(12) *California Lawyer* 21 (12.84); James Evans, "Behind the Keller Case," 10(5) *California Lawyer* 35 (5.90).

<sup>43</sup> K. Connie Kang and James A. Finefrock, "The Brotherhood: Justice for Lawyers," *San Francisco Examiner* (3.24-29.85). Journalistic exposés also prompted reform of discipline in West Virginia, Washington State, and Oregon. Collins (1992).

interest in discipline.” And Harriet Katz, a public member of the Board from 1976 to 1981, recalled that when she raised the bar’s consumer protection responsibilities at a meeting, “a mild-mannered lawyer stood up and slammed his fist on the table and said, ‘The State Bar is not a consumer protection agency.’”<sup>44</sup>

The *Examiner* series had many ramifications. A month after it appeared Senator Presley created a task force to explore the problem and propose solutions. In September a majority of the committee recommended transferring discipline to an independent agency responsible to the Supreme Court, a proposal the *Sacramento Bee* felt “deserves serious consideration.” The entire task force recommended random audit of client trust accounts, standardized written fee agreements, itemized bills, arbitration of fee disputes, less delay in discipline, expansion of the client security fund beyond dishonesty, mandatory malpractice insurance, a prohibition against lawyers conditioning settlement of malpractice claims on clients agreeing not to file disciplinary complaints, a public majority on the Board of Governors; the exclusion of trivial matters (such as marijuana possession) from discipline and its extension to “the most common client grievances: overcharging, incompetence, negligence,” reduction of investigative caseloads, heightened penalties, discipline of more elite lawyers, reporting of ethical violations by lawyers and judges, and authority to place lawyers on inactive status early in an investigation.<sup>45</sup>

The *Examiner* series also reignited smoldering Legislative resentment toward the dues bill, which Senator Dan Boatwright had introduced on February 13. At a Senate Judiciary Committee hearing on the bill, Presley demanded that the Bar first clear up the disciplinary backlog. The Senate passed a bill requiring the Bar to use any additional fees exclusively for discipline, report to the Legislature on disciplinary reforms, reduce its backlog by 80 percent by the end of 1987, and establish goals for promptly handling future cases. But the bill did not reach the Assembly until Friday, September 13<sup>th</sup>, the final day of the 1985 session. At the last minute Republican minority leader Patrick Nolan (a *Keller* plaintiff), invoked a recently enacted procedural rule requiring that legislators receive conference committee reports a day before voting. Although the Senate had voted that day (after its Secretary found no obstacle), the Chief Clerk of the Assembly disagreed. Although a Legislative counsel agreed with the Senate Secretary, Speaker Willie Brown temporized (perhaps because the previous spring the Board had opposed his bill to require malpractice insurance). At 5:30 AM he ruled that it was a new legislative day, allowing the Assembly to vote, but Nolan successfully

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<sup>44</sup> Kenneth Jost, “The Public’s State in Lawyer Discipline,” LADJ 2 (4.8.85); Burke M. Critchfield, “The Bar Is Improving a Good System’s Shortcomings,” LADJ 4 (4.10.85); Karen Ringuette, “Cleaning Up the Act,” 5 California Lawyer 12 (1985); “Bulletin Board,” 5(7) California Lawyer 71 (5.85); “Bulletin Board,” 5(9) California Lawyer 60 (9.85); Burke M. Critchfield, “Looking Back,” in “The State Bar of California Annual Report 1984-1985,” 5(12) California Lawyer 67, 69 (12.85); Robert Egelko, “State Bar Discipline Under Fire,” 6(6) California Lawyer 55 (6.86).

<sup>45</sup> “Recommendations of Senator Presley’s Task Force on Bar Discipline, Following Meeting in San Francisco,” (9.18.85), in California Assembly (1985: App. A); Philip Carrizosa, “Task Force Urges Stripping State Bar of Discipline Cases,” LADJ 1 (9.19.85); “Editorial,” *Sacramento Bee* (10.85), reprinted in LADJ 1 (10.7.85).

objected that the Legislature had been required to adjourn by the previous midnight unless two-thirds of both houses overrode this. The bill died.<sup>46</sup>

On September 30 the Assembly Subcommittee on the Administration of Justice, chaired by Lloyd G. Connelly, held a joint hearing of the Assembly and Senate Judiciary Committees immediately after the SB annual conference in San Diego. Orville A. Armstrong, outgoing chair of the Committee on Admissions and Discipline (CAD) criticized the *Examiner* for focusing on 70 “exceptional cases” out of “tens of thousands.” “[R]adical changes” had created a “new State Bar discipline system,” which would “cure the backlog very quickly.” Armstrong’s successor, Joe S. Gray, proposed to alleviate investigators’ intolerable burden of 130 cases by “calling on a resource that’s available only to the State Bar...the large number of volunteers.” Susan Mahony-St. Clair, Chief Trial Counsel, boasted that “an investigation in the past that may take six months...has been able to be completed in five to seven working days.” SB President David M. Heilbron had “said yesterday before perhaps a thousand people that we are committed to solving this problem...this is not an idle promise. It’s a commitment.”<sup>47</sup>

But legislators were skeptical. Assemblymember Richard Robinson (not a lawyer) had chaired three previous Bar dues conference committees, which had been “hung up until the very waning hours” by questions about discipline. He criticized the SB’s heavy dependence on volunteers “where a lot of...the ‘old boy syndrome’ operates.” Lawyer friends told him that LACs often refused to find moral turpitude because “you’re talking about somebody’s ability to make a living.” Senator Bill Lockyer (Judiciary Committee chair and a lawyer) asked for something “that would be confidence inducing” because he did not see the “small discrete changes” as a “new discipline system.” Robinson got Gray to agree that “an attorney who files excessive paper” or engages in “other types of fee running-up procedures is just as much guilty of stealing a client’s money as the attorney who converts a client’s trust funds.” Connolly noted that a few days earlier the *Examiner* had criticized the Bar for failing to distribute a report (prepared at Heilbron’s request), which found that it took an average of 488 days from complaint to the filing of formal charges. Claiming not to know that lawyers conditioned settlement of malpractice claims on clients agreeing not to file grievances, Gray said he “would consider that grounds for discipline...and expect a push for disbarment.”<sup>48</sup>

Heilbron offered multiple arguments against transferring disciplinary authority: the state constitution lodged it in the judiciary, creating separation of powers issues; “we’re geared up to fix [the backlog], and nobody else is;” the Bar’s “500 volunteers” made its disciplinary process cheaper; many observers were properly skeptical about the Department of Consumer Affairs; a lawyer could not “freely” “represent people against the state...if that lawyer has to be afraid that...the state can punish him.”<sup>49</sup>

Presley task force members were unpersuaded. Stanford Law School Professor Deborah Rhode testified that “the consistent conclusion of all this scholarship is that...professional sanctions and regulations generally ought not to rest with the bar

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<sup>46</sup> California Assembly (1985: Exhibits J and K); Gallagher (1993: 110-14). On BoG opposition to Brown’s malpractice bill, AB 2087, see James E. Towery, “Malpractice insurance should be mandatory,” 5(7) California Lawyer 16 (5.85).

<sup>47</sup> California Assembly (1985: 2-10, 12-14).

<sup>48</sup> Id. 16, 19-21, 23-26, 28, 30.

<sup>49</sup> Id. 33-36.

itself.” But her inability to identify a successful regulatory agency moved Lockyer to dismiss the possibility of devising something “independent of politics” as “little more than slogans.” Boalt Hall Professor Stephen Bundy agreed with Rhode that self-regulation was “simply a matter of conflict of interest,” confirmed by the “history of poor performance.” Although Bar Governor Philip Schafer had established the Coyle Commission, he opposed divestment of disciplinary power. “We are not a brotherhood...a Cosa Nostra that’s devoted to trying to cover up and protect our brethren.”

Every single complaint is investigated. ... It may be a review saying: “...because you don’t like the suit your lawyers [sic] wears it’s not a disciplinary matter.”

Some of them reach that level of absurdity.

Philip Martin, who had prosecuted disciplinary cases for three years and now represented legal malpractice plaintiffs, supported divestment. The lawsuit he had had to bring to force the State Bar to grant due process rights to client security fund claimants showed the “kind of stuck-in-the-mud type bureaucracy that is operating.”<sup>50</sup> Three weeks earlier the Bar had directed the OTC to close all complaints filed in 1983, which “may not be good faith compliance with what the legislature had in mind.” Richard Annotico, a public Bar Governor, also wanted discipline transferred to an agency composed of a lay majority and lawyers who were appointed rather than elected.<sup>51</sup>

In October the Bar sought authority to collect dues from the Supreme Court, but it deferred to objections from Governor Deukmejian and legislators. In response to a plea for voluntary dues, 54 percent of active members and 90 percent of inactive had paid by February 25, 1986, when the Governor finally signed a dues bill. This legislation required the Auditor General to survey lawyers’ views on discipline. Although the State Bar was forbidden to communicate with members, presidents of 33 voluntary bar associations endorsed the integrated bar. This time half the 90,000 members responded. Although only a small plurality thought the Bar was doing “an adequate job of disciplining attorneys” (45 to 38 percent), four out of five still felt it was “the appropriate organization to receive and investigate complaints.” Lawyers split almost evenly (49 to 48 percent) over whether the Bar should be able to advocate on topics other than technical law revision, court reform, and issues directly related to the legal profession. If it did, 69 percent wanted dues to be voluntary; and only 44 percent thought they should support the Conference of Delegates. By the time these results were reported, a divided Court of Appeal had reversed *Keller*, holding that the SB had failed to sustain its burden of proof to justify Murray’s speech and the BoG might be personally liable for violating the petitioners’ rights.<sup>52</sup>

#### IV. Professionalizing Discipline

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<sup>50</sup> Saleeby v. State Bar, 39 Cal.3d 547 (1985).

<sup>51</sup> California Assembly (1985: 37-43, 47-66, 77). Annotico graduated from law school but acquired his wealth from real estate. David O. Weber, “Still in Good Standing?: The Crisis in Attorney Discipline,” ABAJ 58, 60-61 (November 1987).

<sup>52</sup> “Bar Watch: Lawyers back the bar,” 6(5) California Lawyer 11 (5.86); “Bar Watch: Local bars support State Bar,” 6(7) California Lawyer 11 (7.86); “Bar Watch: State Bar plebiscite results,” 6(7) California Lawyer 12-13 (7.86); Gallagher (1993: 115); *Keller v. State Bar*, Court of Appeal, Third Dist., Civ. No. 24124 (5.86).

In January 1986 Senator Presley introduced two bills: SB 1543 would entrust disciplinary hearings to administrative law judges supervised by a 15-member commission with a lay majority, all of whose members would be appointed (4 by the Governor, 6 by the Legislature, 4 by the State Bar, and one by the Chief Justice); SB 1569 made lesser changes: lawyers had to disclose fees and provide written agreements if fees exceeded \$1,000; they had to report three or more malpractice claims filed within a year, as well as some judicial sanctions; the State Bar could audit trust funds; and it had to process complaints within six months and report to the Legislature annually. A supportive *Sacramento Bee* deplored the

general pattern of laxity that plagues the State Bar's disciplinary proceedings. The bar is slow to act against lawyers who steal from clients, lie to them, misuse drugs and commit felonies. When it does act, it is far less likely than disciplinary authorities in other states to hand out serious punishment such as disbarment and suspension. The State Bar...has failed in its duty to protect the public from misbehaving lawyers.<sup>53</sup>

Although the *Los Angeles Herald* had no doubt that "the State Bar's disciplinary system is not working properly" and is "besieged by some 6,000 backlogged cases, as well as complaints that the discipline it delivers is often absurdly lenient for the violations," it opposed the bills because the Bar had "already acted to reform itself."<sup>54</sup> When the BoG opposed the first bill 18-1 (only Annotico dissenting) and it seemed doomed to fail, Presley proposed an independent director for the Bar's disciplinary system. When the Bar successfully blocked this as well, he settled for a monitor. President Heilbron declared victory. Although Attorney General John Van de Kamp initially envisaged a retired judge as monitor, in January 1987 he picked Robert Fellmeth, a former Nader's Raider turned law professor, who directed the University of San Diego Law School's Center for Public Interest Law.<sup>55</sup> The Long Beach *Press-Telegram* lauded Fellmeth's "impressive consumer advocacy credentials" and hoped lawyers would "feel constrained to take extra care in dealing with clients' money and legal rights."<sup>56</sup>

Just when the Bar was taking comfort from the fact that it remained under the protective wing of the judiciary, the Supreme Court harshly criticized the State Bar Court. Drastically reducing a lawyer's punishment from disbarment to a year's suspension, the Supreme Court said: "This record, like others we are receiving with increasing frequency, leaves material gaps in the analytic path from charges to proof to findings and conclusions to recommendations."<sup>57</sup> The SBC had failed to "relate individual facts to specific professional duties and rules." The Supreme Court found "important evidentiary deficiencies"; in several "significant" instances "conduct not charged, or not proved, is found and relied upon as a basis for discipline." While upholding the penalty in a second case, the Supreme Court deplored that "the record is otherwise deficient with respect to both the findings and the conclusions reached therein."<sup>58</sup> It was "essential that the records offered in support of the disciplinary

<sup>53</sup> "A New Court for Lawyers," *Sacramento Bee*, reproduced in LADJ 4 (3.6.86).

<sup>54</sup> "A Second Chance," *Los Angeles Herald*, reproduced in LADJ 4 (3.20.86).

<sup>55</sup> Gallagher (1993: 124-31).

<sup>56</sup> "Monitoring the Bar," reproduced in LADJ 4 (2.5.87).

<sup>57</sup> *Maltaman v. State Bar*, 43 Cal. 3d 924, 931 (1987).

<sup>58</sup> *Guzzetta v. State Bar*, 43 Cal.3d 962, 968 (1987).

recommendations be adequate to permit [the Supreme Court] to act upon those recommendations.”

Presley returned to the fray in February 1987, successfully seeking an Auditor General investigation of the Bar’s record in disciplining lawyers who stole from client trust accounts.<sup>59</sup> But this was nothing compared with Fellmeth’s first report that June.<sup>60</sup> The disciplinary system’s toll free number was not listed in any telephone directory. “Middle-level bar staff is candid about the reason”: fear of increasing backlog. Even so, callers encountered a busy signal 62-72 percent of the time. Seven out of eight local bars surveyed accepted complaints they had no power to resolve, referring them to “Client Relations Committees.” Only 20 percent of complainants to whom forms were sent bothered to return them. In order to reduce the backlog, the Bar had revived the Volunteer Investigative Assistance Program, whose investigators usually lived and worked in the respondent’s community. Of 38 volunteers in one program, only 13 attended the workshop; a large proportion of them did nothing; and most of those who did anything missed the deadline. Staff investigators had caseloads of 150-200 (although Kroeker had recommended no more than 35-40). They had to obtain special permission to conduct on site inquiries, photocopy, travel, or subpoena, could not identify the respondent to potential witnesses, and required approval by three members of CAD to interview other clients. They needed bank names and account numbers to subpoena records, information the Legal Services Trust Fund possessed by would not disclose. The Bar took attorney fingerprints at admission but would not use them in investigations. Although lawyers had to report criminal convictions and malpractice claims to the membership office, it would not give investigators that information. Investigations were routinely abated for pending criminal or civil actions and not always revived when those ended. Only five interim suspension motions had been filed in Los Angeles in the first half of 1987, and some investigators were unaware they had that power. The Bar had to “prove up” defaulted cases, which could take a year, although members who failed to pay dues were placed on inactive status within weeks. OTC lawyers needed special permission to spend any money or take depositions (and hence took very few). Turnover among OTC lawyers was high, and 10 of the 13 who left in 1986 were not replaced. Salaries started at \$2,000 a month and peaked just over \$3,000, provoking lawyers to strike.<sup>61</sup>

As the backlog rose, the Bar began sending complaining witnesses (CWs) a form letter warning there would be a six-month delay before any response. The first real contact, 12-18 months later, often was just a request for more information. Failure to respond led to closure of the case, accounting for much of the backlog reduction. Another strategy was to classify an increasing proportion of phone calls as “inquiries.” Of the 8,574 calls found to be complaints in 1986, 7,715 were closed for “not sufficient facts” (NSF). Although the Bar increased case closings from 580 in January 1987 to 1,096 in March, the proportion producing NTSCs fell from 20 percent to 2. CWs were not informed of admonitions or private reprovls. Because the Hearing Department still relied on 448 lawyers and 80 laypersons, “wide inconsistency exists among the rulings and standards applied by the many briefly-trained referees.” Although the SBC boasted

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<sup>59</sup> Robert Fairbanks, “Sen. Presley Takes Aim at the California State Bar Once Again,” LADJ 4 (4.9.87).

<sup>60</sup> Fellmeth (1987a; 1987b).

<sup>61</sup> See also “Bar Watch: Board of Governors: Three-week strike settled,” 6(7) California Lawyer 9 (7.96).

that disbarments and resignations with charges pending rose from 59 in 1985 to 107 in 1986, almost all the increase was attributable to the 69 resignations; per capita disbarment rates in other states were ten times higher.

When SB President Armstrong claimed that Fellmeth's report showed that disciplinary procedures just needed some "fine tuning," the *San Francisco Examiner* replied: "Wrong. They need a complete overhaul." "[T]ogether with the hiring of greater numbers of investigators, the use of administrative law judges would go a long way toward restoring public confidence in the bar and in practicing attorneys."<sup>62</sup> But at the end of his term Armstrong continued to insist that lawyers had "the best professional disciplinary program in California."<sup>63</sup> He boasted that the Bar had anticipated by a year the legislatively mandated goal for reducing the backlog and gave "much credit" to the 450 volunteer lawyers, whom he hoped "will continue to be a part of the discipline system in the future." By the end of the year California would be "a model system for other states." Fellmeth was more cautious: "If California doesn't have a model system within two years, then I haven't done my job. Or they haven't listened to me."<sup>64</sup>

Although Fellmeth's next semi-annual report called the Bar's response "constructive," he still found that "fundamental" deficiencies rendered the disciplinary system "unacceptable."<sup>65</sup> Investigative caseloads were too heavy; complex cases required vertical prosecution. Both Fellmeth and Van de Kamp "strongly" endorsed professional judges in both the Hearing and Review Departments; but the SBC dismissed "any suggestion that [referees] are or have been biased" as "unsupported by any empirical evidence." Although Fellmeth urged the Bar to seek a \$50 dues surcharge for discipline, it sought only \$25, because "upper staff" had engaged in "blockage of the grim facts concerning backlog, abeyance, and low staff morale." The Bar "should require all local bar associations to immediately transmit any complaint received about any attorney which might facially involve a breach of the Rules of Professional Conduct." The Bar should use and improve systems for notifying it of criminal convictions, malpractice claims, and contempt orders or sanctions. It should address incompetence, perhaps by limiting practice areas. The "highly funneled pattern" of terminating more than 95 percent of cases without a hearing had become even more "exaggerated" in the preceding six months.<sup>66</sup>

The Bar responded by seeking a dramatic dues increase to improve discipline (from \$276 to \$470, which the Legislature cut to \$417).<sup>67</sup> President Anderlini declared that "it is the legal profession's responsibility to run a strong discipline system and that

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<sup>62</sup> "Cleanup Task for the Bar," *San Francisco Examiner*, reproduced in LADJ 5 (6.8.87).

<sup>63</sup> Orville A. Armstrong, "Reflections," in "The State Bar of California Annual Report 1986-1987," 7(12) *California Lawyer* 60-61 (12.87).

<sup>64</sup> Weber (1987: 63).

<sup>65</sup> Fellmeth (1987c: 1, 6).

<sup>66</sup> Id. 12, 16, 18, 28, 30-34, 37-38, 47-51, 56, 60, 173, 175 and Exhibits I and XII.

<sup>67</sup> Tom Dresslar, "Legislators Trim State Bar Dues, Discipline Bills," LADJ 1 (5.18.88); Tom Dresslar, "Assembly Judiciary Panel Approves Bar Dues Bills," LADJ 2 (5.19.88); Tom Dresslar, "Assembly Approves Landmark Attorney Discipline, Dues Bill," LADJ 2 (6.3.88); Tom Dresslar, "State Legislators Return Today to Full Plate of Bills," LADJ 1 (8.1.88); Tom Dresslar, "Dispute Stalls Action on State Bar Two-Bill Dues Package," LADJ 2 (8.4.88) (public members on BoG and power to appoint SBC judges); Tom Dresslar, "State Bar Discipline, Dues Bills Clear Senate Judiciary Panel," LADJ 2 (8.10.88); Tom Dresslar, "Senate Passes Bar Dues Hike, Companion Bill Stalls," LADJ 2 (8.19.88); Tom Dresslar, "Assembly Sends Bar Dues, Discipline Bills to Governor," LADJ 2 (8.23.88).

anything less will risk having the responsibility taken away but not the cost.”<sup>68</sup> The Los Angeles *Daily News* agreed that increased dues should fund improved discipline: “At least this is a reform for which lawyers would pay. The public has paid enough.”<sup>69</sup> While also supporting the increase, the *San Gabriel Valley Tribune* warned that the state would assume “complete control of the discipline process...if attorneys don’t get their house in order.”<sup>70</sup> The *Sacramento Bee* praised the Bar for taking a “first step toward laying the financial basis for some long-overdue reforms in the legal profession’s notoriously inept system of self-discipline.”<sup>71</sup> The

bar’s current enforcement efforts constitute a system that might as well have been designed to fail. Every conceivable barrier has been enacted to frustrate consumer complaints, prevent investigations into attorney wrongdoing and safeguard the license of lawyers who steal from their clients.

But the newspaper warned that “The Los Angeles and San Francisco bar associations and the state’s major corporate law firms exercise a lot more political clout than the board of governors, and they’ve been able to block reforms proposed by the State Bar in the past.” Quoting Anderlini’s admission that the disciplinary system is “not one we can be proud of,” the *Los Angeles Times* said that “some overdue changes have been undertaken since the Legislature scared the bar,” but “problems remain” (listing Fellmeth’s criticisms).<sup>72</sup> It endorsed the professionalized State Bar Court and criticized “resistance to a dues increase” as “unbecoming to the profession.” “California could learn to respect lawyers—if, this once, they demonstrate that they are willing to pay what it takes to police their own ranks.”

Fellmeth’s April 1988 report found little improvement. True, in its first eight months the Complainants’ Grievance Panel (created by SB 1543 for clients dissatisfied by dismissal of their complaints) had completed 320 cases, ordering further investigation in 88 and recommending action in ten., But intake had cleared its backlog by classifying calls as inquiries rather than complaints. the ratio between which had increased from 1:1 to 4:1. And the bottleneck had simply moved downstream: nearly 2,000 cases had been in investigation more than six months (the legislative definition of backlog), more than half for at least a year, and 700-1,000 cases were awaiting NTSCs. The Supreme Court’ Select Committee on Internal Procedures (Richardson Committee) had complicated institutional reform by recommending that the Court of Appeal review SBC decisions. Fellmeth preferred SB 1498 (supported by the Attorney General and State Bar staff), which would professionalize the SBC (and make many of the other changes he had urged).<sup>73</sup>

The Auditor General’s first annual report mandated by the 1986 legislation seconded Fellmeth’s criticisms.<sup>74</sup> From 1984 to 1986 the State Bar met the six-months goal for resolving complaints in less than half the cases. Even though it obtained 46 new

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<sup>68</sup> Terry Anderlini, “President’s Message,” 8(3) California Lawyer 66 (3.88); “President’s Message,” 8(4) California Lawyer 75 (4.88); “Discipline, Fee Bills Advance,” 8(7) California Lawyer 75 (7.88); AB 4391.

<sup>69</sup> “It’s Broken, So Fix It,” *Los Angeles Daily News*, reproduced in LADJ 4 (1.23.88).

<sup>70</sup> “Cleaning House,” *San Gabriel Valley Tribune*, reproduced in LADJ 4 (2.8.88).

<sup>71</sup> “Self-Discipline,” *Sacramento Bee*, reproduced in LADJ 4 (2.19.09).

<sup>72</sup> “A Little Respect,” *Los Angeles Times*, reproduced in LADJ 4 (4.6.93).

<sup>73</sup> Fellmeth (1988a: 5-6, 21-23, 31-51, 53, , 56, 72).

<sup>74</sup> CAG (1988: s-1 to s-3, 10, 20-21, Table B-4); Letter from Terry Anderlini, State Bar President, to Thomas W. Hayes, Auditor General (6.16.88), in Id.

positions in 1986, "it still has been unable to meet its six-month goal because it also lacks an effective case management system." The SB had done no work for 180 consecutive days on 40 out of a random sample of 131 cases and none for almost 18 months on one of them. Although New York paid CSF claimants within two months of discipline, California took an average of 18 months. Between 1984 and 1987 disciplinary complaints took an average of 640 days to complete. President Anderlini responded that the report "looks at a limited number of cases" and "concerns history rather than the present." The problem was the number and complexity of the cases and the scarcity and inexperience of staff.

Looking back on his year as president, Terry Anderlini called passage of SB 1543 "the most massive administrative reform of a state agency ever accomplished in California." As a result, "the California attorney discipline system will be the model for the nation." Senator Presley "hope[d] this all works, and I think it will. The bar now seems seriously concerned about reforming its discipline system." Although incoming President Colin Wied thought it "a little premature to declare victory," it was "not too early for the board to return its attention to the bar's other responsibilities." Optimistically entitling his first president's message "Life after Discipline—1989," Wied congratulated California lawyers "for overwhelmingly supporting the change to (and cost of) a system that will protect the public from the few among us who discredit the profession."<sup>75</sup>

But as Wied began his (unopposed) presidential term, Fellmeth's next report found that the backlog was increasing at all stages and "greater than it has ever been in the bar's history."<sup>76</sup> He voiced new criticisms. A recent survey found that 28 percent of full time private practitioners carried no malpractice insurance; of those who had gone bare, over half had done so since premiums began increasing dramatically in 1985. Although there were few unsatisfied awards, plaintiffs' lawyers discouraged claims against uninsured attorneys. Fellmeth urged that malpractice insurance be mandatory (a reform the State Bar had abandoned under pressure from large urban bars) and an unsatisfied judgment be a disciplinary offense leading to interim suspension until it was paid. Lawyers who were the object of malpractice claims were also more likely to face disciplinary complaints. But the State Bar had successfully defeated requirements that plaintiffs filing malpractice claims inform the disciplinary system, attorneys report the settlement of all civil judgments, and courts report serious contempt and non-discovery sanctions. The Bar opposed Fellmeth's proposal that disciplinary proceedings be public when there was a criminal investigation or charge, a high priority investigation, or multiple CWs. The current rejection letter, informing the CW that "the Supreme Court has ruled that the State Bar's decision must be in favor of the attorney" where there was no evidence beyond the CW's word was "somewhat dishonest." Although the Board had rejected mandatory continuing legal education in 1983, it now was sponsoring legislation to require 36 hours every three years, at least eight concerning legal ethics and practice management. Fellmeth also urged specialist certification through additional

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<sup>75</sup> "Beyond Discipline," 8(7) California Lawyer 76 (7.88); Colin Wied, "Life After Discipline—1989," 8(10) California Lawyer 100 (10.88); "Bar Has Fee Bill, Discipline Goals," 8(11) California Lawyer 99 (11.88).

<sup>76</sup> Fellmeth (1988b: 1, 5, 13, 17-18, 35-36, 39, 45-46, 50-51, 60, 62-63, 67, 76, 95, 106-08, 110-11, 112-19, 132-34, 147-55, and Ex. I (David Long, "Malpractice Insurance Report" 3.29.88)).

examinations. Although “at least 30% of meritorious disciplinary cases involve some form of chemical dependency,” existing programs enrolled a “miniscule” number of lawyers. Despite “substantial evidence that overbilling is common,” the requirement of a written agreement was enforceable only when the lawyer sought more than the fair value of services (i.e., a contingent fee). “[C]harging fees beyond those agreed to or consistent with time competently expended” should be ‘a very basic part of the disciplinary jurisdiction of the Bar.’ The client security fund had a 30 percent overhead, did not pay until discipline was final (often 4-5 years), and its backlog was approaching 2,000 claims. Fellmeth urged that it be better publicized, expanded to inadequate professional service, and authorized to grant default judgments up to \$1,000 and recover it from the lawyer.

Gert K. Hirschberg (who had been a Bar Governor and presiding referee of the volunteer SBC and represented two of the lawyers in the disciplinary cases described below) passionately defended the old system and attacked the new.<sup>77</sup> “On balance, I trust a lawyer more than a non-lawyer” client. The dues bill imposed “onerous conditions” to promote reforms that “demeaned lawyers.” The “whole tenor” of Fellmeth’s “demeaning” report was that “attorneys are crooks, clients are honorable, and we the lawyers of California must be watched on a 24-hour basis with the precision of a national anti-nuclear defense system. I don’t like the concept that attorneys should be treated like burglars.” The elimination of volunteer referees was “devastating” and responsible for “the onslaught of disciplinary filings that we now have in technical and/or Mickey Mouse matters.” The volunteer system was “speedier and more efficient.” “I believe that only an attorney can evaluate an attorney.” “[O]n balance we had the best system.” Hirschberg offered examples of “recently enacted changes [that] should be repulsive to any lawyer”: “failure to cooperate can be another basis of discipline;” “confidentiality disappears” after issuance of an NTSC; the hypocritical claim that “the function of discipline is protection of the public and not punishment.” He ended apocalyptically: “If California lawyers continue to be passive, non-assertive and silent, then read my lips: The State Bar, as we now know it, is bound to die.”

In February 1989 the California Supreme Court reversed the Court of Appeal decision in *Keller*.<sup>78</sup> Justice Broussard (writing for just three others) upheld the general authority of the State Bar, as a public corporation, to engage in lobbying and file amicus briefs to promote “the improvement of the administration of justice” but agreed it could not participate in electoral politics. Although Murray’s speech crossed that line, the Governors were not personally liable.

At the end of his term, Wied looked back on “a very good year” and called “Discipline, A Done Deal.”<sup>79</sup> But Fellmeth’s next three reports continued to find “serious problems.” The number of complaints opened for investigation had fallen from 7,542 in 1987 to 4,376 in 1988, while the number of communications to the SB had increased from 8,000 to 14,000. The toll-free number still was not adequately listed in telephone directories. Self-reporting of malpractice claims, sanctions, criminal convictions, fraud judgments and discipline in other jurisdictions was a farce. But Fellmeth praised the use of letters of warning (instead of admonitions) and “agreements in lieu of discipline” (ALD), a form of diversion for substance abuse. OI was issuing nearly twice as many

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<sup>77</sup> Gert K. Hirschberg, “The State Bar Has Wimped Out on Discipline,” LADJ 6 (3.17.89).

<sup>78</sup> *Keller v. State Bar*, 47 Cal.3d 1152 (1989).

<sup>79</sup> Colin Wied, “President’s Report,” 9(9) California Lawyer 103 (9.89).

Statements of the Case (SOCs). The dues increase had allowed the Bar to increase disciplinary personnel from 381 to 494.<sup>80</sup> Investigator workload fell from 180 to 40-50 and OI backlog from 4,000 to less than 700. Formal discipline in 1988 was twice the previous seven-year average. That 60-75 percent of respondents had other pending complaints suggested that a “hard core” of 1-2,000 lawyers were responsible for “an extraordinary proportion of consumer complaints.”<sup>81</sup> The Bar responded by creating a “Repeaters’ Task Force,” which “identified just over 50 attorneys responsible for 570 currently open matters.” By January 1990, OI had further reduced its backlog to 352 “in the face of an extraordinary increase in the number of new cases filed by a more active public” and without “dumping” cases. Cases classified as complaints and those submitted for formal discipline both had tripled. Median case age had declined to eight months, its lowest level in ten years. The 29 interim suspensions were several times the previous number. Whereas only 10 percent of investigated cases used to lead to discipline, 20 percent now led to informal and 30-40 percent to formal discipline.<sup>82</sup>

In February 1990 SB President Alan I. Rothenberg held a press conference in the Capitol to present the Bar’s first annual report on “a reformed, revitalized and rebuilt system that I believe will set new standards in professional discipline” and “serve as a model for all professions and businesses in this country.” He praised members for having “footed the bill—more than \$100 million over the past three years—to improve their discipline system.” Senator Presley agreed that “we’re now doing a reasonably good job.” Assemblymember Nolan concurred that “the bar has put in place an effective system.”<sup>83</sup> But not all lawyers were convinced.<sup>84</sup> A San Francisco lawyer waged an unsuccessful BoG campaign based on dissatisfaction with increased dues, which was not “worth the output.” “We are not going to appreciably affect the discipline problem...by simply adding 50 disbarments a year.” A lawyer who had quit the OTC found “the emphasis on numbers...very distressing.” Another defector said OI “were more concerned with moving numbers than with properly preparing cases to prosecute at trial.” Fellmeth conceded that “in the frenzy to reduce the backlog, there very likely were cases that weren’t adequately investigated.” But defense lawyers praised the SBC for consistency and striking “a good balance between sterner discipline and fairness.”

In June 1990 the U.S. Supreme Court unanimously reversed *Keller*.<sup>85</sup> Justice Rehnquist began by listing some of the issues on which the Conference had taken political positions to which the plaintiffs had objected: mandatory polygraph tests for government employees, armor-piercing handgun ammunition, standing to sue for air pollution, the display of drug paraphernalia for sale to minors, individualized education programs for special needs students, gift tax exemptions for the costs of education and medical care, life imprisonment without parole for minors tried as adults and convicted of murder, voter approval for low rent housing, guest worker programs, the constitutionality of a victim’s bill of rights, a nuclear weapons freeze, and limitations on federal court

<sup>80</sup> Fellmeth (1989a: 1, 13-14, 20, 24-25, 44-45, 49, 59-61).

<sup>81</sup> Fellmeth (1989b: 2, 13-17, 19, 51, 67).

<sup>82</sup> Fellmeth (1990a: 1-3, 7, 19, 22, 27-28, 57, 61-6, 66-69, 72-73, 75-76).

<sup>83</sup> State Bar of California (1990b: 3, 5, 15, 20); “Rothenberg, Legislators Praise California Lawyers for Revitalization of Discipline System,” 10(4) California Lawyer 65 (4.90).

<sup>84</sup> Michael J. Hall and Clyde Leland, “The State Bar Court One Year Later: Is it working and is it worth the cost?” 10(12) California Lawyer 30 (12.90).

<sup>85</sup> *Keller v. State Bar*, 491 U.S. 1 (1990).

jurisdiction over abortion, school prayer, and school busing. The Court followed its 1997 decision limiting the use of dues from nonunion public employees in agency shops to support political and ideological causes unrelated to collective bargaining,<sup>86</sup> finding that the State Bar was much more like a trade union than a government agency. Although the line between permitted comment on regulation of the legal profession and “activities having political or ideological coloration which are not reasonably related to the advancement of such goals” was “not always easy to discern,” gun control and a nuclear weapons freeze were “clear[ly]” at the “extreme ends of the spectrum.

President Rothenberg spun the decision as “a ringing affirmation of the constitutionality of the unified bar and its important relation in the administration of justice.” “Since the vast majority of all State Bar funds are in fact dedicated and used for” permissible purposes, “in my view this decision will not affect the bulk of our activity.” The president of the conservative Pacific Legal Foundation (which represented the plaintiffs) agreed that “bifurcation was never discussed....” And a member of the PLF Board of Trustees declared: “It would be terrible if the bar were dismantled because of the suit.”<sup>87</sup>

Gert Hirschberg used the first anniversary of the reforms to declare that “The New State Bar Court Has Become a Monster.”<sup>88</sup> “The new system is a catastrophe and the good lawyers of California have been irreparably damaged.” “The immediate past leadership of the State Bar has greatly—very greatly—increased our Bar dues to satisfy the insatiable appetite of the new disciplinary system.” He described “a recent case in which my client committed the unforgivably serious, heinous offense of not returning one or two phone calls.” “[T]he matter was eventually dismissed bec it turns out that the complaining witness was even more irresponsible than he claimed the respondent attorney to be.” “A certain number of investigators, armed with the power of subpoenaing trust accounts, not only use their power indiscriminately, but wield their atutority as a threat to the attorneys they contact.” “Much attorney misconduct was created by the U.S. Supreme Court when it legitimized lawyer advertising.”

Fellmeth’s last three reports between September 1990 and September 1991 were generally positive. Client calls were leveling off. Warning letters had removed hundreds of cases from OI, and settlement conferences before and after NTSCs resolved 60-65 percent of cases. The Bar was using information on NSF checks and criminal charges and random trust account audits to reduce attorney theft.<sup>89</sup> But the bottlenecks had shifted from OI to the charging stage. And “the vast majority of consumer complaints directed to us now concern the delays and unresponsiveness of the Complainants Grievance Panel.” A 1990 letter to all judges from Chief Justice George produced three or four calls a week about attorney misconduct. The entire process had speeded up: 7-9 months from NTSC to decision and another 219 days to the end of an appeal. Fellmeth called the Supreme Court’s decision to make Review Department rulings final a “vote of confidence manifested beyond rhetorical support.”<sup>90</sup> His final report noted that even though the toll-

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<sup>86</sup> *Aboud. v. Detroit Board of Education*, 431 U.S. 209 (1977).

<sup>87</sup> “The Keller Decision: U.S. Supreme Court Upholds Concept of Unified Bar,” 10(8) *California Lawyer* 67 (8.90); James Evans, “Behind the Keller Case,” 10(5) *California Lawyer* 35 (5.90).

<sup>88</sup> Gert K. Hirschberg, “The New State Bar Court Has Become a Monster,” LADJ 7 (20.24.90).

<sup>89</sup> Fellmeth (1990b: 2, 4-5, 7, 23, 29-30, 53-55, 71, 95).

<sup>90</sup> Fellmeth (1991a: 21-22, 25-26, 31-33, 35, 48, 62, 68-75, 78-80, 98).

free number still was not listed in most directories, it received 70,000 calls a year.<sup>91</sup> “Most important, the backlog is gone,” and not through “summary closure of cases.” But “the elimination of the OI backlog created a backlog in OT as a ‘bubble’ of cases has moved through the system over the past four years. The State Bar Court is now receiving the full brunt of this bubble”: an expected 1,800 cases in 1991, forcing it to depend on pro tem judges. The magnitude of the change reflected the “inadequacy of the Bar’s discipline system in January 1987.”

But the real test was the “impact on the profession,” which remained seriously deficient in the two areas most critical to regulatory purpose: “the personal dishonesty and incompetency [sic] of large numbers of licensees....” “The measures undertaken by the Bar over the past four years to address the incompetence problem have been well-intentioned but are grossly inadequate.... The failure of the Bar to establish overall standards of personal honesty is similarly stark.” Fellmeth had fundamental doubts about self-regulation: “Political reality makes it difficult for the Bar’s governors or its electorate...to burden themselves substantially for the benefit of a larger population or purpose.” His own survey of client complaints identified the most common (in descending order): untruthfulness, abandonment, keeping unearned money, not returning calls, failing to investigate, and overcharging. Listening to the toll-free number for two days had been a “deeply troubling” experience. Several callers had “spent half a day looking” for the number, and half still encountered a busy signal. Because so many did not return complaint forms, “the bar should consider capturing oral complaints into its pattern detection system.” The State Bar

must understand that the disrepute of what should be a proud profession is not the product of media bias, and is not curable through public relations campaigns...it is the cumulative impact of thousands upon thousands of these experiences, endured and then shared by word of mouth.

Perhaps regretting some of his earlier praise, Fellmeth told the *Los Angeles Times* that “the State Bar is prone to excessive spates of self-congratulation.” It was regrettably likely to focus on the deserved acknowledgment of progress to dampen the equally important need for further reform. In point of fact, in terms of bottom-line performance by attorneys, we are still in a state of crisis.

Indeed, SB President John M. Seitman declared that Fellmeth “has now confirmed that the State Bar’s turnaround has been truly unique, and that we today have the finest attorney discipline system in the nation.” Not all his constituents agreed. One called the disciplinary system “a behemoth that consumes 75 percent of the bar’s annual budget” and quoted an even angrier colleague, who denounced the SB as a home for “self-regarding power-mongering, duplicitous punks with ethical standards far beneath those of the lawyers they regularly pillory.”<sup>92</sup>

Establishment figures also were critical, if in more measured tones. The ABA Commission on Evaluation of Disciplinary Enforcement (created in February 1989 and chaired by Robert B. McKay until his death in 1990) submitted a draft report in 1991,

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<sup>91</sup> Fellmeth (1991b: 21-22, 28-31, 41-42, 45, 47, 52-53, 56, 61, 63, 67, 69, 94, 119).

<sup>92</sup> Philip Hager, “State Bar Steps Up Disciplining of Lawyers,” *Los Angeles Times* A25 (9.21.91); Michael J. Hall, “Gotcha! The care and feeding of the state’s disciplinary watchdog,” 12(8) *California Lawyer* 44 (8.92).

which was adopted by the ABA House of Delegates the following year.<sup>93</sup> Although it found “revolutionary changes” since the Clark Report 20 years earlier, “times...have changed.” “The existing system...is narrowly focused on violations of professional ethics” and did not address “complaints that the lawyer’s service was overpriced or unreasonably slow” or “incompetence or negligence except where the conduct was egregious or repeated” or situations where “the lawyer promised services that were not performed or billed for services that were not authorized.” “Some jurisdictions dismiss up to ninety percent of all complaints,” many of which “state legitimate grounds for client dissatisfaction.” “Complainants should be permitted a reasonable opportunity to rebut” the respondent’s defense and be “notified in writing when the complaint has been dismissed” with “a concise recitation of the specific facts and reasoning upon which the decision to dismiss was made.” “The disciplinary system also does nothing to improve the inadequate legal or office management skills that cause many of these complaints.” “Every year, millions of dollars of clients’ money are stolen by a relatively few lawyers. Yet, most disciplinary systems lack authority to take basic preventive measures such as auditing trust account records or monitoring trust account overdrafts.” Unless these deficiencies were remedied, “the public may remove the authority of the judiciary to regulate lawyers.” Because “control of the lawyer discipline system by elected officials of bar associations...creates an appearance of conflicts of interest and of impropriety,” “the state high court should control the disciplinary process *exclusively*.”

SB President Vogel called the report an endorsement of California’s disciplinary system. “Virtually all of the recommendations contained in the report already have been implemented...” Indeed, when New Jersey commissioned a comparison with California, the latter looked far better. It investigated a higher proportion of its lawyers (6.6 versus 2.2 percent), imposed discipline on more (0.5 versus 0.1 percent), and concluded the vast majority of simple cases in less time (16 months versus 666 days).<sup>94</sup>

But these figures also could justify criticism of both states. And in December 1993, SB President Margaret M. Morrow appointed a Discipline Evaluation Committee (DEC) chaired by Judge Arthur Alarcon (who had recently taken senior status on the Ninth Circuit) to report on the system’s cost effectiveness and fairness in order “to ensure consumer protection and fair process for attorneys.” Its August 1994 report found that the Bar’s response to the crisis exposed by the *Examiner* was “A Success Story—The Backlog Eliminated—The Delay Reduced.”<sup>95</sup> Nevertheless, it suggested numerous changes. Because the Complainants Grievance Panel “raises false expectations” but “recommended discipline in only one percent of cases” it should be replaced with random audits of rejected complaints by the Office of Consumer Advocate. The State Bar should “respond in writing to all written complaints and provide complainant a chance to rebut the respondent’s story before the case is closed.” Disagreeing with Fellmeth, the DEC supported a pilot SB program “to turn over certain discipline related matters to the local bars.” It also recommended reversing Kroeker by placing investigators under OTC supervision (although “total verticalization” was not possible). Ethics School should be

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<sup>93</sup> ABA Commission on Evaluation of Disciplinary Enforcement (1992: xi-xx, 14, 33, 43, 48-50, 75).

<sup>94</sup> “State Bar’s Discipline System Mirrors Most Recommendations in ABA Commission Report,” 11(7) California Lawyer 92 (7.91); Gillers (1993: 26-27, 32-33).

<sup>95</sup> State Bar of California Discipline Evaluation Committee (1994: 16, 24-36, 38-44, 47-48, 50-68); California Legislative Analyst’s Office (1991).

part of all formal discipline since only 9 percent of its graduates were recidivists, compared with 62 percent of all respondents. Summary and permanent disbarment should be expanded. The system should investigate billing fraud and publish the names of firms whose attorneys were disciplined.

Making "reducing the cost of the discipline system...a priority" because of the lawyers' "widespread perception" that it "is too high," the report proposed reducing Bar dues from \$578 to \$450 in 1995 and \$399 in 1996. The "first place to look for overstaffing" was "in the supervisory and management ranks," which supervised only 2.7 employees, compared with 7 in other courts. SBC judges also had too many legal and lay assistants. Travel costs were too high, perhaps because at least one employee commuted from San Francisco to Los Angeles at State Bar expense. In a "classic example of Parkinson's Law, the SBC has engaged in practices to make its work expand to occupy the ample time available for its completion." Caseloads were "significantly lower" than in federal and state trial courts despite the fact that SBC judges "specialize in one area of the law." The number of judges should be reduced from six to four and the seventh position not filled. Because of their low caseload, hearing judges "spend one-half of their time writing scholarly twenty-page opinions in every case before them, including default matters." They should limit opinions to the 11 percent of cases appealed and dispense with evidentiary hearings in the 20 percent of cases where the respondent defaulted (since defaulters should lose their right to appeal). Judges should play an active role in settlement to achieve the higher rates found in other courts. The Review Department's low caseload—approximately 40 a year—did not justify three judges and their support staff. (A 1991 review by the Legislative Analyst's Office had reached the same conclusion.) The Department should not review the entire record de novo. Having published more than a hundred opinions, it should publish more only if the case established, altered, modified or clarified a rule, resolved an apparent legal conflict, made a significant contribution to the legal literature, or involved legal or factual issues of special public interest.

An angry State Bar began its rebuttal by noting that "none of the committee Members...ever observed a SBC proceeding."<sup>96</sup> The SBC had underspent its budget by several hundred thousand dollars every year since 1990, reducing staff from 80 to 74 while processing 2.5 times as many cases. The "radical surgery" proposed would "cripple" the SBC to save lawyers only about \$2 a year. A recent 81 percent increase in pending investigations would soon cause "a major spike in court filings." Estimates of judicial workload should take account of the fact that one judge was a layperson, while the presiding judge spent half her time on administration. Hearing judges had increased their average dispositions from 100 in 1990 to 190 in 1994 and their settlement rates from 17 to 51 percent. Disciplinary cases were more complicated than other civil matters. The SBC maintained that written opinions were legally required; almost half were less than 15 pages. Publication of Review Department decisions had a prophylactic effect on lawyer behavior, increased public confidence, and encouraged settlement. The Supreme Court required de novo review. The judges unanimously believed "it would be impossible for the SBC competently to perform its mandated functions with only four hearing judges statewide." The recommendation that a single manager execute policies

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<sup>96</sup>State Bar of California, State Bar Court (1994: 2-25, 29-30, 37); memorandum from Scott Drexel, Chief Court Counsel (2.9.94) in Id.

set by the Board of Governors was “contrary to the dictates of the key 1988 reforms ensuring separation of powers,” as well as the “ABA McKay Commission’s recommendations for reducing the role of elected bar officials.” The Response concluded: that the “recommended reductions to the SBC [are] both misguided and dangerous to the continued effectiveness and credibility of the California attorney disciplinary system.”

Nevertheless, the Bar made some changes. The Office of Intake “formalized use of directional letters as a viable alternative to discipline,” “developed a pilot program to refer matters to ADR programs operated by local bar associations,” and expanded other diversion alternatives: Ethics and Client Trust Accounting schools, attorney substance abuse programs, a law office management assistance program, ADR camp, civility programs, and agreements in lieu of discipline. The Bar eliminated the Office of Investigations, subordinating investigators to OTC attorneys. The sunsetted Complainants’ Grievance Panel was replaced with a volunteer Discipline Audit Panel reporting to the OTC.<sup>97</sup> Declaring that “the time has come for the bar to steer away from a numbers-based system which focuses on the speed of completing cases rather than on the severity of disciplinary offenses,” Judy Johnson (the new CTC) created “strike teams” focused on insurance fraud, probate abuses, unauthorized practice of law, uncertified lawyer referral services, workers compensation abuses, billing and bankruptcy fraud, and capping at major disasters (earthquakes, fires, plane, rail and bus accidents). Legislation expanded involuntary inactive status, authorized nolo pleas, and prohibited lawyers from conditioning settlement of malpractice claims on clients withdrawing disciplinary complaints.<sup>98</sup>

In addition to these contradictory pressures for more effective discipline at lower cost, 11 discipline defense lawyers (most of them former SB prosecutors) wrote the president and BoG charging “highly questionable” prosecutorial conduct.<sup>99</sup> They objected to “the withholding of evidence which should have been made available through discovery and also to the withholding of exculpatory evidence favorable to the accused, possible tampering with witnesses, [and] the improper leaking of confidential information to third parties.” During the recent disciplinary proceeding against palimony progenitor Marvin Mitchelson, a “deeply disturbed” Judge Langhauser recommended dismissal because of prosecutorial overcharging and failure to comply with discovery requests, the first time that had ever happened. Declaring that the OTC “shoot with a shotgun...they’re not officers of the court. They’re just interested in winning,” Ted Cohen (one of the letter’s signatories) urged the BoG to appoint a special prosecutor. SB President John Seitman called this unnecessary. “We just went through about three years of a discipline monitor. Generally, he made a lot of very laudatory comments about the system.” At the end of 1992 four defense lawyers appeared at the SB’s annual hearing on discipline to press their case.<sup>100</sup>

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<sup>97</sup> CTC Judy Johnson supported this change, arguing that the DGP cost about \$1 million a year and only led to discipline in 1-2 percent of cases, mostly a warning or directional letter.

<sup>98</sup> State Bar of California (1995: 1-2, 4, 9; 1996: 3, 21; 1997: 3-5, 12-15); “Bar’s chief prosecutor signals new approach to attorney discipline,” CBJ 1 (1.95).

<sup>99</sup> William Vogeler, “State Bar Asked To Investigate Discipline Staff,” LADJ 1 (8.26.92). The signatories were Ted Cohen, David Clare, Diane L. Karpman, Ken Kocourek, Tom Low, Arthur Margolis, Susan Margolis, R. Gerald Markle, Ellen A. Pansky, Michael J. Rochford, and Erica Tabachnick.

<sup>100</sup> Jean Guccione, “Lawyers Join Consumers in Attack On Discipline System, Profession,” LADJ 1 (12.3.92).

Others had personal reasons to resent the disciplinary system. In March 1993 Assembly Speaker Willie Brown Jr. introduced AB 1544 to increase knowingly filing a false complaint from a misdemeanor to a felony and extend the statute of limitations from one year (which made it almost impossible to charge) to three.<sup>101</sup> Brown, who unsuccessfully advocated this before, had been investigated twice, and though no charges were filed the allegations became public. Defense lawyer Ellen Tabachnick (who had helped draft the bill) said it “will cause people filing vindictive complaints to think twice.” The bill also would preclude future charges following a decision not to charge (absent new evidence), deny the Bar costs and make it liable for defense costs if prosecutors failed to secure a penalty more severe than what the respondent had accepted, exclude doctors from complaining about unpaid medical liens, mandate settlement conferences before the filing of charges, and require the OTC to produce exculpatory evidence. Fellmeth warned that these changes would “debilitate the discipline system severely and are irresponsible.” “You have a consumer already terrified and who has to stand up against someone who is familiar with the legal system. And the first thing you tell them is, ‘if what you’re saying here is proved wrong, you’re going to jail.’” “Prosecutors may have a very good reason for seeking disbarment. This may deter them from doing so.” The *San Diego Union-Tribune* editorialized against this “Lawyer Protection Act,” which would “nullify many of the improvements the reforms have produced.”<sup>102</sup> The perjury threat “would have a chilling effect on many clients....” The newspaper blamed the bill on “howls of protest from a few lawyers” angered by the 300 and 500 percent increases in disbarments and suspensions. But at the Italian American Lawyers Association, Willie Brown implicitly threatened to block the dues bill (which he was carrying) if the Bar did not accept his discipline bill.<sup>103</sup> A few days later, just before the Senate Judiciary Committee was to take up the latter, Brown defended the perjury threat: “those who criticize it are really bordering on being the lynch mob...of a particular group.”<sup>104</sup>

It was not just celebrities who attacked the system. Richard Gayer, a gay rights sole practitioner, filed a federal civil rights action alleging that State Bar discipline discriminated against sole practitioners and its use of newspaper stories in investigations violated the First Amendment.<sup>105</sup> The bar was investigating reports that Gayer entered a San Francisco apartment through a window during a 1989 probate dispute between an executor and the decedent’s former roommate. Gayer was ordered to pay the defendant in the probate case over \$5,000. “My main motivation for filing the lawsuit is the clipping service. I think it is outrageous. They must get enough complaints as it is.” “When somebody writes a letter, they go out and find the allegations...why go digging? They had to do a lot of research to even find the case.” “There has to be an ulterior motive. Maybe it’s as simple as having something for their bloated bureaucracy to do.”

If the popular press generally called for more discipline, professional journals sometimes sided with disciplined lawyers. A series of five lead articles in the *Los Angeles*

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<sup>101</sup> Tom Dressler, “Bill by Brown Would Modify Bar Discipline,” LADJ 1 (3.9.93).

<sup>102</sup> “Kill the ‘Lawyer Protection Act,’” *San Diego-Union Tribune*, reproduced in LADJ 6 (4.23.93)

<sup>103</sup> Susan McRae, “Brown to State Bar: I’m Ready for Battle,” LADJ 2 (8.20.93).

<sup>104</sup> “Speaker Assails State Bar on Discipline,” LADJ 3 (8.25.93).

<sup>105</sup> Michael J. Hall and Jessica Guynn, “S.F. Lawyer Alleges Bias in Bar Discipline,” LADJ 3 (6.4.93).  
Gayer v. State Bar, N.D.Ca C93-2085.

*Daily Journal* quoted a complaint by an “outspoken consumer advocate” that SB prosecutors “go after the easy fish,” which was seconded by former CTC Lily Barry: “the bar goes too far with minor discipline. They see their mission as being out to get the lawyers.”<sup>106</sup> Defense lawyers who had signed the letter above agreed: “a great deal of resources [are] being spent on low-level cases” (Ellen A. Pansky); “investigators...don’t know the law they are supposed to enforce” and were “heavy-handed” (David A. Clare); “you have got some Dirty Harrys there” (Arthur L. Margolis); and “important and complicated cases get pushed to the back of the file cabinet while the number-crunchers push easier cases that generate better statistics” (Jerome Fishkin). Roberta M. Yang, director of trials, acknowledged that trust account violations “are our bread and butter” and investigators got frozen turkeys for clearing their caseloads at the end of the year. But though complaints had increased greatly, charges were still close to their 1989 level because the system was at capacity, and about half of them settled.

The third article questioned the system’s cost, repeating criticisms that the three Review Department judges wrote just 40 opinions a year and hearing judge opinions did not become case law.<sup>107</sup> Judge David S. Ewsley replied: “If I could say, ‘Guilty,’ and check a box, I would do it,” but it would lead to more appeals. The court spent had spent \$214,851 on temporary judges in 1992 (at \$350/day) and budgeted \$72,756 for 1994. A third of their decisions were appealed, compared with 11 percent of those by the six full-time judges. Defense lawyer Theodore Cohen commented: “You would think your death penalty cases—which is what disbarment is equivalent to in this system—would be handled by State Bar Court judges.” Full evidentiary hearings were held for the one in five respondents who defaulted but could still appeal. Defense lawyers who had severely criticized prosecutors lavished praise on the SBC: “almost perfect compared to the old system” (Ellen Pansky); “an oasis in the discipline system. Even when we lose, we feel we have been heard” (Arthur Margolis). But prosecutors felt that the court, which dismissed more than a quarter of the cases heard in 1993, was “too lenient” toward lawyers and generally hostile to the OTC. In response to these criticisms, Presiding Judge Lise A. Pearlman decided that the other two Review Department judges would begin working just 60 percent of the time.

Soon after the Supreme Court proposed that each SBC judge would compete with two others for reappointment, SBC Presiding Judge Lise Pearlman and four of the eight others were not reappointed, to the surprise and dismay of prosecutors, defense counsel, and former judges. Although some attributed the action to criticisms of excessive lenience, Pearlman said the Applicant Evaluation and Nomination Committee had been interested only in her relations with the BoG. One committee member had asked “why I should be recommended for reappointment if I couldn’t ‘get along’ with the board.” Pearlman had resisted the DEC proposal to strip her of control over staff, which “has severe implications for the independence of the court.” Several months earlier Towery (CAD chair and president-elect) had criticized Pearlman for failing to offer a staff reduction plan in response to the DEC report. A DEC member criticized her testimony as “a defense of the status quo.” Pearlman called the remark “regrettable,” complaining that

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<sup>106</sup> Jean Guccione and Michael J. Hall, “Is Too Much Evidence Given to Minor Violations?” LADJ 1 (7.12.94). The first article on July 11 dealt with intake.

<sup>107</sup> Jean Guccione and Michael J. Hall, “State Bar Court Lavish, Wasteful, Critics Claim,” LADJ 1 (7.13.94).

her court had been “left out of the loop recently.” Eight months after being removed, Pearlman said she initially had been “highly praised by bar leaders for establishing the court’s credibility as an independent entity,” but in the last two yaers “Bar leaders began giving administrative orders to court staff, bypassing me and the State Bar Court Executive Committee....” She was “vilified by new board members for defending the very same degree of independence with which the court had started.” California was “moving in the opposite direction” from the 1991 ABA committee recommendations.<sup>108</sup>

## V. Backlash

When Willie Brown introduced a bill in 1992 to abolish the State Bar, President John Seitman persuaded him to withdraw it by agreeing to establish a Commission on the Future of the Legal Profession (a majority of whose 30 members would be appointed by his successor and the rest by Governor Pete Wilson and legislative leaders). Its 1995 report recommended shifting control of the SBC (14-6) but not the entire discipline system (10-11) to the Supreme Court (even though Chief Justice Lucas resisted); it favored keeping the unified bar with its current functions (13-8), including admissions and discipline (17-2), and opposed a voluntary bar to handle all other functions (12-6). A contemporaneous poll of 500 lawyers found that large majorities believed that the bar should remain mandatory (74%) and continue to discipline (76%) and license lawyers (79%). The BoG responded by affirming the status quo over the dissent of two public members, one of whom (Wendy Borchardt) objected: “we seem to err on the side of the tainted attorney. ...I urge you to consider public protection and not always protecting your own.”<sup>109</sup>

But politicians continued to use the Bar as a whipping boy. Contemporaneously with the Commission report, Sen. Quentin L. Kopp (I-San Francisco) introduced SB 60 to reduce bar dues by \$100 and require the Bar to conduct yet another plebiscite on its mandatory status. SB President Don Fischbach protested that the reduction would cripple Bar programs. Dues had not been increased since 1991; even the DEC report recommended only a \$79 cut over two years. The Bar had responded to that report by cutting expenditures by \$700,000, and a budget review ordered by Fischbach had saved another 5%, avoiding a fee increase. A month later Willie Brown introduced AB 1435 to freeze dues for two years, and Sen. Nicholas Petris (D-Oakland) introduced SB 596 to limit the Bar’s power to admissions and discipline. After Brown’s bill easily passed the Assembly, Kopp dropped his dues cut but retained the plebiscite and added an annual budget audit. Fischbach objected that the Bar had been audited 71 times since 1986 at a cost of \$3 million. Although “we’re not afraid of an audit,” the plebiscite needed “to let

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<sup>108</sup> Michael J. Hall, “S.F. Bar Votes to Oppose Discipline Plan,” LADJ 3 (1.13.95); Nancy McCarthy, “Tensions rise in discipline overhaul,” CBJ 4 (3.95); “Bar committee votes to slash 13 positions from the State Bar Court,” CBJ 1 (5.95); Nancy McCarthy, “Presiding judge, 4 others bounced from bar court,” CBJ 1 (8.95); Nancy McCarthy, “Five new judges prepare to join bar court; job cuts seen by end of year,” CBJ 1 (9.95); Lise A. Pearlman, “Declare Independence,” 16 California Lawyer 27 (4.96). Pearlman had been the subject of a glowing profile at the time of her appointment. Michael J. Hall, “Profile: Lise Pearlman,” LADJ 1 (6.26.89).

<sup>109</sup> “Lucas: ‘No’ to bar court control,” CBJ 5 (1.95); Patricia Phillips, “Commission charts future of bar,” CBJ 11 (1.95); “Board votes to keep bar mandatory,” CBJ 1 (9.95); Nancy McCarthy, “Where does the bar go from here?” CBJ 1 (7.96).

attorneys know they will continue to be regulated and they'll have to pay for that regulation." President-elect James Towery saw no "groundswell of requests from our rank-and-file that the State Bar go through an extraordinary effort." But Governor Wilson signed Kopp's bill. Although the State Bar did not directly urge a "no" vote, it organized a volunteer Committee to Save the Unified Bar, operating through county committees, which was opposed by Attorneys for a Voluntary Bar. Although Towery initially proposed to reduce bar dues \$20 (for the first time ever), he soon withdrew this pledge.<sup>110</sup>

Although the California District Attorneys Association had originally backed Kopp's bill to abolish the State Bar, it remained neutral on the plebiscite. Towery asked a meeting of 200 DAs if "we want to give up control of our profession...ethical standards, discipline and budget and transfer it to some unnamed state agency?" Peter Keane, a former Bar Governor who now led the Lawyers Committee for a Yes Vote, responded that "the State Bar is a sham, a shell game, one large fraud. It exists for the perpetuation of the officers at the top who run an enormous fiefdom." He claimed that \$139 of dues went to administration, "\$19 more than you would pay to belong to the New Jersey bar." If discipline were transferred to the state "the public would see an entity at arm's length from the bar association and we'd have a much better reputation." Because of limitations imposed in the wake of *Keller*, "we do not have a statewide association to advocate for us as a profession." When a DA called the State Bar irrelevant, Towery boasted that it had "successfully resisted legislative proposals for recertification by [sic—read "of"] lawyers, random audits of lawyers' bank accounts, and expanded roles for unsupervised paralegals." The California Judges Association urged a no vote. Governor Wilson leaned toward a yes vote, accusing trial lawyers of frivolous strike suits and applauding *Keller's* limitation on advocacy. But he conceded that "the disciplinary side is a serious problem." "I would like to see something that is effective but doesn't require the creation of a new state agency."<sup>111</sup>

The Bar was defended by more than 70 local and specialty organizations, the California Public Defenders association, the 17 Section Chairs, and the Conference of Delegates. Towery insisted that "legislative control of our profession...is not a scare tactic." Keane asserted that "the sole reason for the comparatively high cost of dues in California is wanton inefficiency and gross mismanagement of State Bar finances by its unchecked bureaucracy." The DEC had "found a pattern of waste, overspending, lack of economy of scale and staff indifference to the abuses which were so appalling that...these problems could only be forced to be redressed by measures such as an immediate reduction of \$100 in every lawyer's dues." The State Bar was "a timid, bloodless entity which is constantly looking over its shoulder in terror at the legislature."

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<sup>110</sup> "Fischbach says proposal to slash dues would devastate bar programs," CBJ 1 (2.95); "Speaker Brown introduces measure to freeze bar dues at \$478," CBJ 1 (3.95); "Key bills affecting the state bar and lawyers advance in Sacramento," CBJ 1 (6.95); "Bar President-elect James Towery opposes plebiscite on State Bar," CBJ 1 (8.95); Nancy McCarthy, "Forces mobilize to decide bar's fate," CBJ 17 (12.95); James Towery, "Ask the President: Towery works toward dues decrease," CBJ 5 (12.95); "Opinion: Budget: Courage or folly?" CBJ 8 (1.96).

<sup>111</sup> "Board backs '96 budget, appoints new NJE chair," CBJ 28 (1.96); "Nancy McCarthy, "Towery, Keane debate bar's future," CBJ 17 (2.96); Nancy McCarthy, "Disciplining errant lawyers is the bar's biggest task," CBJ 1 (3.96); "CJA supports bar," CBJ 6 (3.96); James Towery, "Ask the President: The plebiscite: Why should I care?" CBJ 7 (3.96); Dean Kinley, "The governor reflects on law and the legal profession," CBJ 1 (4.96).

Patricia Phillips warned that “yes” vote supporters included minority members of the Futures Commission (which she had chaired), who wanted “a bar exam for every lawyer every five years,” random audits of law office accounts, and mandatory malpractice insurance and pro bono. But Peter Appleton (past Beverly Hills Bar Association president, former Los Angeles County Bar Association trustee, and member of the Conference of Delegates executive committee) urged a yes vote. The BoG “do not represent lawyers and they do not take positions on behalf of lawyers.” “Lack of financial accountability is a primary reason why we have the most expensive bar dues in the country,” caused by “our ‘Cadillac’ discipline system. Why must we pay for the hotline the bar continues to urge clients to use against lawyers,” a “legislatively driven and law professor-designed discipline system” that “last year generated 128,063 calls.”<sup>112</sup>

Three days before the ballots went out the legislatively mandated audit praised the discipline system for making changes that increased its “efficiency, effectiveness and reliability” but believed the Bar could reduce dues by recovering costs from disciplined attorneys and charging for voluntary programs. Towery said “no fair reading of this report can support abolishing the bar,” adding that 100 bar groups recommended a no vote. When trds of the half of members who returned ballots voted no, Towery claimed “decisive support for an independent profession,” and President-elect Thomas Stolpman said it had “validate[d] the legal profession.” Kopp retorted that “the State Bar had better seize the opportunity to improve its performance” and threatened a bill to reduce dues \$40 the following year. “I think that the State Bar now knows that at least 35 percent is dissatisfied and would like an end to forced conscription.” Keane was even more belligerent: “The results show 70 percent of lawyers either voted against the bar or felt it was so out of it it wasn’t worth the powder to blow it up.” “This was just a dress rehearsal. If the bar thinks it was the final scene, they’re kidding themselves.”<sup>113</sup>

Senator Bill Lockyer, who had voted no, felt that compliance with *Keller* had softened legislative criticism of the Bar: “It doesn’t seem as intensely partisan as it used to be.” But he spoke too soon. When President Stolpman defended a \$900,000 lobbying contract with Mel Assagai, Vice President Peter Kaye (a public member appointed by Wilson) wondered out loud “if the State Bar is too important an organization to be left in the hands of lawyers.” He called the contract “lobbygate...conceived in darkness, nurtured in secret, authorized behind closed doors and executed without discussion or disclosure.” A \$75,000 bonus for successfully negotiating a multiyear dues bill was excised when it was revealed. Wendy Borchardt (another Wilson appointee) said her fourth year on the Board was “not...a happy experience.” “From the beginning it was

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<sup>112</sup> “Update: Towery, Keane tapped to write arguments for/against SB 60,” CBJ 1 (4.96); James Towery, “Ask the President: Scare tactics, or real loss of control?” CBJ 12 (4.96); Peter G. Keane, “Longtime bar opponent says it’s time for lawyers to make history by closing down the mandatory bar,” CBJ 16 (4.96); Patricia Phillips, “Veteran bar proponent says abolition would lead to lawyers having no hand in governing themselves,” CBJ 17 (4.96); Colin W. Wied, “Opinion: Sever the ties that bind,” CBJ 13 (5.96); Peter M. Appleton, “For lawyers in California, the time is here to decide between the status quo or taking risks to do better,” CBJ 14 (5.96).

<sup>113</sup> Nancy McCarthy, “Update: Kopp says he wrote new bill mostly to dispel ‘untruths,’” CBJ 1 (6.96); Nancy McCarthy, “Lawyers vote 2 to 1 to keep California’s State Bar unified,” CBJ 1 (7.96); Nancy McCarthy, “Where does the bar go from here?” CBJ 1 (7.96).

clear that the bar's business was to be run by a small clique of lawyer members" with "disastrous" results.<sup>114</sup>

Senator John Burton (D-San Francisco) introduced SB 1145 to authorize dues for two years. But before it could be voted, the State Bar supported AB 250, which Sheila Kuehl (D-Santa Monica) had introduced to raise the medical malpractice nonpecuniary damage cap. The Association for California Tort Reform, which opposed AB 250, asked legislators to reduce dues from \$458 to \$160 and said the group was "looking at the broader issue of the politicization of the bar." The State Bar responded that

the original balance struck in 1975 by MICRA had, by 1997, become skewed. The vast majority of the lawyer board members who voted in support of AB 250 represent business interests or public entities. The Board viewed AB 250 only as a modest step to restore the balance in certain egregious cases, rather than a statement endorsing the expansion or repeal of MICRA.

When Burton limited the dues bill to one year just before the vote, it passed by the bare minimum (21-13). Assemblymember William Morrow (R-Oceanside), vice-chair of the Judiciary Committee, then proposed a \$25 reduction. Three Wilson-appointed Governors (Kaye, Borchardt and Jo Ellen Allen) testified in favor of the reduction and claimed that at least two other Governors agreed. Allen questioned "whether the Bar exercises its authority to influence the legislature in a prudent manner," citing its position on medical malpractice damage caps, funding for "the highly controversial Legal Services Corporation," and the decision to appeal a Court of Appeal judgment holding MCLE unconstitutional. "As long as membership in the State Bar is mandatory and fees are extracted forcibly, the Board is obligated to avoid as much as possible taking positions which are likely to divide attorneys..." But after the Judiciary Committee defeated the reduction (7-7) and passed the one-year dues bill (10-4), the Assembly concurred in September. Morrow and two other legislators had also sued the State Bar in June for violating *Keller*, complaining about State Bar support for four bills (including the medical malpractice damages cap and a gay rights bill). Judge Garland E. Burrell, Jr. dismissed the action in September, holding that the plaintiffs failed to show "they have been forced to make or support politically expressive acts of the State Bar." (The Ninth Circuit affirmed 3-0 two years later.)<sup>115</sup>

Governor Wilson told Wendy Borchardt he was thinking of vetoing the dues bill. Lunching with her daughter in England several days later, he said "Tell your mom, I'll veto again unless there are some significant changes." California Supreme Court Chief Justice George, Associate Justice Chin, the California Judicial Council, and SB President Marc Adelman (a San Diegan like Wilson) urged the Governor not to do so. But Wilson vetoed the bill on October 11, a day before the deadline. Although he attacked the lobbying contract and supported the \$25 dues reduction, he really seemed to be reacting

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<sup>114</sup> "Lockyer supports unified bar, says criticism is diminished," CBJ 2 (1.97); Thomas G. Stolpman, "The Bar's president says the new contract will save money as well as retain the skills of its veteran lobbyist," CBJ 10 (3.97); Peter F. Kaye, "A leading critic says the contract was negotiated in secret, presented as a fait accompli without a vote," CBJ 11 (3.97); Wendy Borchardt, "Anxious for an unhappy year to end," CBJ 8 (5.97).

<sup>115</sup> "Nancy McCarthy, "Burton agrees to amend fee bill to one year, setting dues at \$458," CBJ 1 (6.97); "\$458 fee bill goes to Assembly floor," CBJ 6 (8.97); Joe Ellen Allen, "Losers don't forfeit right to dissent," CBJ 8 (8.97); Kathleen O. Beitiks, "Federal judge dismisses lawsuit challenging State Bar activities," CBJ 1 (10.97).

to the dismissal of Morrow's lawsuit. "Last year, a substantial minority of bar members voted to abolish the mandatory bar in favor of a voluntary model embraced in 10 other states." That vote exposed "what might be charitably characterized as an almost chronic disharmony." Some members "believe that the bar cannot function effectively as both a regulatory and disciplinary agency as well as a trade organization." Recent lawsuits "illustrate the long held belief of some members that the bar is partisan...." Although "less favored members were vindicated" by *Keller*, the bar had responded "by conducting business as usual while offering a miniscule rebate to those opposed."<sup>116</sup> "[I]n recent months, as disgruntled members have leveled charges that the bar is bloated, arrogant, oblivious and unresponsive, the bar has promptly done its best to verify each indictment." He cited the \$900,000 lobbying contract, which "initially included an illegal \$75,000 bonus," and the hiring of a new executive officer for \$200,000 plus perks (much more than Wilson was paid). Both the State Auditor and the DEC had "found a significant glut in the bar's budget and called for a substantial reduction" in its dues, which were "more than twice the average of the other 49 states." "None of this appears to be of any consequence to the bar, but then the bar's own small army of staff attorneys pays no bar dues at all."

Wilson accused "delegates" at the annual State Bar conference in his San Diego hometown (actually the separate Conference of Delegates) of adopting resolutions "in favor of legalizing same-sex marriages; to prohibit discrimination against transvestites and transsexuals; to reduce penalties for drug dealers; to reduce penalties for repeat child molesters; to thwart the will of voters relative to affirmative action at state law schools."

The bar has drifted...and become lost, its ultimate mission obscured. It is now part magazine publisher, part real estate investor, part travel agent and part social critic, commingling its responsibilities and revenues in a manner which creates an almost constant appearance of impropriety. It is time for the bar to get back to basics: admissions, discipline and education standards. I would look with favor upon a bill that required bar members to pay only for functions which were, in fact, a mandatory part of a responsible, cost-efficient regulatory process...to scrupulously heed Thomas Jefferson's admonition that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical."

The *San Francisco Examiner*, which had exposed lax discipline a decade earlier, now came to the defense of a Bar that "was all but disbarred by a furious attorney," a "lame-duck Republican," who "happens to be the Governor."

In effect, the state's legal eagles were told to bow to whatever rules are dictated by whoever happens to be governor. It raises a pertinent question: Why should politicians have this power? ...lawyers, like members of other professional associations and labor organizations, should be allowed to govern themselves without fear of budgetary swings.

Wilson had timed his response so "as to block for at least three months any attempt at compromise." This "punitive action could have a devastating effect on the orderly conduct of the State Bar's most important functions," including discipline. (Indeed, CTC Judy Johnson warned that "the system will come to a grinding halt. We're going to have to dump all but the most serious cases and only try the equivalent of homicide.") Across

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<sup>116</sup> Never more than a few dollars.

the Bay the *Oakland Tribune* called Wilson's "spiteful veto" "irresponsib[le]." "[S]ince [the plebiscite] failed, it appears the governor now wants to find another way to kill" the State Bar. "To eliminate a pesky fly that's annoying him, he used a bulldozer." The Bar insisted that its role was "to seek improvements in the administration of justice, and occasionally the issues are political." President Adelman asked Borchardt and others to seek a compromise with Wilson, but Towery "shudder[ed] to think what the compromise will be." Peter Keane triumphantly declared the Bar dead: "Only a nostalgia for the past or blind intransigence on the part of advocates of a unified bar keeps this organization propped up." Even defenders wondered if it had a future. Former president Fischbach had "to admit the chances" for bifurcation "are much stronger than I ever believed possible before." John McGuckin Jr. (a former Bar Governor and presidential candidate) thought "we need to face up to the fact that the governor and a significant number of legislators feel the bar has to shed some voluntary functions." But the San Diego County Bar Association president urged members to pay their dues voluntarily; Pillsbury Madison & Sutro became the first large firm to do so; by mid-December 76 firms and corporate law departments and 52 nonprofits and public agencies had followed suit. (When the Bar later offered refunds or credits for voluntary donations, very few lawyers took advantage.)<sup>117</sup>

Senator Kopp introduced SB 1371 on the first legislative day of 1998 to abolish the State Bar and transfer admissions, discipline, a minimal MCLE, and the CSF to the Supreme Court. "Let's eliminate lawsuits over that amount of annual dues allocable to political and ideological expenditures, end the 'closed shop' and release California's lawyers from conscription." Nine days later Assemblymember Robert Hertzberg (D-Van Nuys) introduced AB 1669 as urgency legislation to divide the Bar into mandatory and voluntary units, set dues at \$419 for 1998 and \$399 for 1999, require bidding on all contracts over \$50,000 and an annual independent audit, prohibit the Bar from spending dues on lobbying for legislation unrelated to the itself, regulation of lawyers or improvement of legal services, and prohibit funding for the Conference of Delegates or the 18 practice sections. The purpose of the voluntary bar was "to insure responsibility over advocacy." He was under pressure to cut dues further because "there's no constituency out there who wants to support lawyers." There also were "problems with Republicans on IOLTA."<sup>118</sup> The governor's office was saying "Let's have lawyers regulated and look like other professions." The BoG split on AB 1669 (10-4 with 4 abstentions). Based on "reading countless letters from members" and "talking to attorneys and consumers statewide," Adelman had found "very few complaints focused on the workings of the discipline system." The emphasis was on the bar's political positions and the dues level.<sup>119</sup>

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<sup>117</sup> Kathleen O. Beitiks, "Wilson vetoes fee bill; bar moves to secure funding," CBJ 1 (11.97); Nancy McCarthy, "The question looms again: Will California's bar remain unified?" Ibid.; Kathleen O. Beitiks, "Bar will assess \$77 fee, ask members to pay the remainder voluntarily," Ibid.; "Bulldozing a Pesky Fly," *Oakland Tribune* (11.11.97), reprinted in SBJ 8 (12.97); *San Francisco Examiner* (10.16.97); "77 Law Firms, Corporate Legal Departments Pledge to Pay Voluntary Dues," CBJ 1 (1.98); "Generosity of members adds up to donation of \$11 million," CBJ 1 (5.00).

<sup>118</sup> Interest on Lawyers Trust Accounts.

<sup>119</sup> Kathleen O. Beitiks, "Bills vie to restructure bar," CBJ 1 (2.98); "Hertzberg: The option is, 'Fix it, or lose it,'" CBJ 1 (2.98); Marc Adelman, "Rebuilding the State Bar," CBJ 8 (2.98); Sen. Quentin Kopp, "Time to end conscription," CBJ 9 (2.98).

Morrow introduced a third bill, AB 1798, to cut dues to \$317 (\$272 in 1999) and limit expenditures to admissions and discipline. The Bar would no longer be able to certify lawyer referral services, mandate CLE, operate the CSF, evaluate judicial nominees, or use IOLTA to fund legal services. He praised Wilson's "bold step"; "there is too much opportunity for abuse when the State Bar takes political positions on matters its members oppose." The BoG would be subject to the Brown Act (mandating open meetings) and could take positions only after polling the entire membership. Hertzberg was willing to compromise on everything but IOLTA. President Adelman predicted optimistically that when Morrow "starts to take away things that serve the public, I think he'll start to lose allies." The Bar's CFO said it would have to close its doors in May. The Bar's executive director warned that "we couldn't run the discipline system on [\$272] in '88, so certainly we can't run it today on less."<sup>120</sup>

Hertzberg dropped his bill's urgency status (which would let it pass by a simple majority but not take effect until 1999) and gained the support of the *Los Angeles Times*, *San Francisco Chronicle*, and *San Jose Mercury News*. Morrow tried (unsuccessfully) to amend Hertzberg's bill to "plug a giant loophole that allows the State Bar to lobby." The CSF created "a whole new class of victims by penalizing all good lawyers." MCLE was a "joke that should be done away with." The Bar was "howling" at dues cuts "like the boy who cried wolf." Although the Bar negotiated with the Association for California Tort Reform about lobbying activities, Hertzberg balked: "they wanted...far too much." But the Joint Legislative Audit Committee approved Kopp's request for an audit of the Bar's admissions operations, which he claimed had generated a \$2.2 million reserve.<sup>121</sup>

Without the dues bill, the Bar was authorized to collect only \$27 for discipline. In April it laid off nearly 500 employees and rejected any new cases. Left with only three or four of its 65 investigators, the Bar halted all investigations. CTC Judy Johnson warned complainants to "expect years of delay." She would prioritize those of the 1,400 pending matters most likely to lead to suspension or disbarment. All monitoring of the thousand probationers would cease. "It's like the sheriff will have left town on a Saturday night when he knows the cowboys are coming in." Although the SBC had set 121 cases for trial between April 1 and June 26, director Scott Drexel said the other 600 pending cases would be delayed because he had to cut his staff from 52 to seven; the 8 judges agreed to share the salary of three positions. The Bar's executive director warned that failing to authorize dues would "bankrupt the organization and force it to rebuild the discipline system all over again from scratch." The Senate Judiciary Committee approved Hertzberg's bill and rejected Kopp's. Adelman complained that "every good faith effort we've made to restructure has been met with stony silence or with intemperate comments about the bar and attorneys." Morrow gloated: "When you have them by the family jewels, their hearts and minds will follow." In order to get Republican support, Hertzberg accepted amendments requiring user fees for some programs, reducing lawyer

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<sup>120</sup> Kathleen O. Beitiks, "Bar battles against time," CBJ 1 (3.98); Nancy McCarthy, "Whittling away ultimately may harm public," CBJ 1 (3.98); Assemblyman Bill Morrow, "Time for meaningful change," CBJ 8 (3.98).

<sup>121</sup> Nancy McCarthy, "Bill inches to lawmakers," CBJ 1 (4.98); Nancy McCarthy, "Kopp wins audit of admissions," CBJ 1 (4.98); "Serving the Public Interest," *Los Angeles Times* (3.2.98); "Getting Closer to the cliff's edge," *San Jose Mercury News* (3.26.98); "The State Bar and its leaders deserve another chance," *San Francisco Chronicle* (3.25.98).

contributions to the CSF, transferring funding for the Commission on Judicial Nominees Evaluation to the state, and suspending MCLE while it was reviewed.<sup>122</sup>

The *San Francisco Examiner* urged compromise. The “months-long impasse over bar funding could victimize the public by inviting rogue lawyers to see how much they can get away with.” The Bar was

partly responsible for the mess. It has given ammunition to its enemies with a long record of arrogance toward critics and questionable use of dues money for lobbying and liberal-leaning political advocacy with which many members disagree.

Dues had been “twice the average in the other 49 states.” But

the important thing is to retain and improve whatever protections the non-lawyering public can get against professional misconduct, and put the serious offenders out of business. Wilson’s grievances about lawyers who have not supported him are trivial compared to the people’s stake in the outcome.

The *Los Angeles Times* asked Wilson “to be specific and constructive about solutions to a crisis he created.”<sup>123</sup>

By the end of June the Bar had shut most of its operations, retaining only 200 employees. Adelman denounced this as “politics,” which “has nothing to do with the administration of justice.” Even the concession of an entirely appointed Board (7 by the Supreme Court, 6 by the governor, and 2 each by the Assembly and Senate) failed to win sufficient support. Adelman had vainly sought to meet Wilson during nearly 30 visits to Sacramento. The day before the June 26 layoffs the governor’s spokesman said he would not negotiate the issue in public. Hertzberg now introduced AB 1374 as an interim measure authorizing \$100 dues exclusively for discipline. On June 22 Adelman wrote the Supreme Court a 19-page letter asking it to authorize \$287 in dues. Although the court declined to act, it

recognize[d] the importance of the core functions relating to the admission and discipline of attorneys carried out by the State Bar and encourage[d] the other two branches of government and the State Bar to resolve this matter as quickly as possible in light of the interest of the public and the potential impact on the operations of the court of the Bar’s inability to carry out its disciplinary functions.

Although Chief Justice George offered his good offices, only the Bar accepted. The discipline system staff dropped from 283 to 20, who concentrated on trials, freezing all but 50 of the 700 pending cases. Written complaints (which was all the Bar would accept) fell to half the usual level.<sup>124</sup>

Accusing Wilson of “indulging a long-festering political grudge,” whose “main victims” were “people reporting what they believe is lawyerly malpractice or theft,” the *San Francisco Examiner* urged both sides to “make a deal...without delay.” But the *San Diego Union Tribune* blamed the Bar alone and condemned its “audacious bid to circumvent the legislative process” by appealing to the Supreme Court. Wilson had

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<sup>122</sup> Nancy McCarthy, “Revised bar bill awaits action,” CBJ 1 (6.98); Marc Adelman, “Avoiding a bigger problem ahead,” CBJ 7 (6.98).

<sup>123</sup> “Raising the bar,” *San Francisco Examiner* (5.18.98); “Californians poorly served by the stalemate,” *Los Angeles Times* (5.20.98).

<sup>124</sup> Marc Adelman, “The last few gasps of a dues bill,” CBJ 8 (10.98); Nancy McCarthy, “Bar operations pared to barest essentials,” CBJ 1 (7.98); Nancy McCarthy, “200 remain to navigate ‘The Ark,’” *Ibid*;

“ample justification” for his complaint “that the bar was using its hefty dues for a variety of political purposes rather than for its central mission of enforcing ethical rules and disciplining wayward members.” The \$295 he proposed was “enough to maintain the bar’s exemplary disciplinary system.”<sup>125</sup>

The antagonists just moved further apart. Adelman complained that “posturing by many in Sacramento left virtually no chance of a resolution.”

All one hears from Sacramento is that the bar isn’t willing to reform. That we are trying to circumvent the governor’s wishes. That the shutdown of the attorney discipline system was not motivated by a lack of funds but set in motion for political purposes and effect. That despite the impasse in the legislature, our request to the Supreme Court for relief was nothing more than a “slap in the face of the legislative process.”

There were even accusations that Hertzberg’s interim bill “was introduced at the insistence of bar leaders in order to circumvent the governor’s proposal and resist impending reforms.” Two months after the shutdown “the number of calls and correspondence concerning lawyer discipline” reaching Adelman’s office was “increasing with each passing day.” The California Republican Party chairman responded by accusing the Bar of “arrogance.” It had “stolen interest from client trust accounts.” MCLE was “replete with politically correct courses.” It was “arrogant...to claim that the entire amount of non-mandatory dues spent for political activities was only \$1.” It “arrogantly abused the JNE...procedures when the governor’s nominee to the Supreme Court was not sufficiently liberal.” Among its “numerous fiscal abuses” was paying “State Bar officials more than the governor and than the judges.” The two state gubernatorial candidates also weighed in. Republican Dan Lungren said the Bar “should concentrate on serving as the guarantor of the quality and integrity of the legal profession.” Other activities had become “unacceptably politicized.” Democrat Gray Davis noted the 2:1 vote to retain the unified bar two years earlier. “Allowing the executive branch or the legislative branch to appoint a majority of the Board of Governors would effectively transform the bar into an arm” of those branches. Although the Bar must serve “its appointed purposes rather than becoming primarily a lobbying organization,” Wilson’s veto was “a heinous act.”<sup>126</sup>

On September 28 Wilson asked Chief Justice George to take over discipline to “protect the public while giving the legislature time to consider the issues of governance, the scope of legitimate functions, and the membership fee level of the State Bar.” He also warned the Bar that “it would be a serious mistake” to ask the court “to take the unprecedented step of imposing a membership fee that the legislature had declined to enact, thereby intruding on the legislative process and raising serious separation of powers questions.” But two days later the Bar did just that. At its annual conference (October 1-4), the Chief Justice said “the crisis in bar discipline has had a detrimental impact on the protection of the public.” Two weeks later the Court agreed to hear the

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<sup>125</sup> “Time to end the grudge,” *San Francisco Examiner* (6.28.98); “Both the governor and bar must compromise,” *San Diego Union Tribune* (6.25.98).

<sup>126</sup> Marc Adelman, “Exhausting every conceivable effort,” CBJ 12 (7.98); Marc Adelman, “A sad time for public protection,” CBJ 7 (8.98); Michael J. Schroeder, “At the mercy of the rebels it created,” CBJ 8 (9.98); Nancy McCarthy, “In the race for governor... Lungren, Davis look at the bar, the legal profession and laws,” CBJ 1 (9.98).

petition, taking the unusual step of soliciting public input. The same day the *Los Angeles Times* urged the Court to recreate the “vigilant and highly regarded” disciplinary system, blaming Wilson for having “precipitated the crisis” and then having “foiled legislative efforts to fix the problem until it was too late.” On November 2 Davis was elected governor, and the Democrats gained five seats in the Assembly and two in the Senate (but not a two-thirds majority in either house). By the time of the November 9 hearing the Court had received 50 written submissions. In oral argument, SB President Ray Marshall described a “crisis situation”: a backlog of 7,000 complaints, with 500 more arriving every two months. Dan Kolkey argued for Governor Wilson that levying a fee would “undo” his veto and interfere with a “legislative creation.” But Chief Justice George noted that “the legislature hasn’t acted and that’s why we’re here, isn’t it.” He was “troubled” by the governor’s suggestion that his Court take over discipline and “question[ed]” how it would pay the \$41 million annual cost.<sup>127</sup>

The Court decided in less than a month, rejecting Wilson’s separation of powers argument, as well as the suggestion “that there is no real need for a disciplinary system, and...attorney misconduct should be dealt with exclusively through criminal complaints and civil lawsuits brought by injured clients.” Many ethical violations would not interest a plaintiff’s attorney or criminal prosecutor. “More generally, the objective of the discipline system is not punishment of the attorney, but protection of the public.” “[E]very other licensed profession in the state of which we are aware is regulated by a board that has the power to suspend or revoke the license of an errant practitioner—and practitioners pay a fee for licensure.” “An unregulated profession soon may lose its right to call itself a profession.” The courts would suffer because doubts would grow about “the integrity of the profession and the legal system.” The Court was grateful that the SBC had relieved it of a significant burden of deciding disciplinary cases (40 a year until SBC judgments were granted finality in 1991). The Court unanimously ordered dues of \$173, \$1.56 of which was dedicated to a special master, Judge Elwood Lui.

Our action today is intended to respond to an unprecedented emergency threatening the protection of the public, the integrity of the legal profession, and the interests of the courts. In short, the administration of justice is at risk. ... California has had ample reason during the past 10 years to take pride in an attorney discipline system that has been recognized as one of our nation’s finest. We anticipate that in the near future, it will again return to normal operation with appropriate funding as determined by the legislature and the governor.<sup>128</sup>

The Bar’s executive director warned that restarting the disciplinary system would be slow because it had to “restore our human resources department” and “engage in an intensive effort of recruiting and training dozens and dozens of new people with no experience whatsoever.” The Bar sent members a \$173 bill on December 31. The hotline reopened on March 1, 1999 for four hours a day (reaching eight hours only in 2004). The OTC would be 25 percent smaller and deal exclusively with cases presenting great risk to clients or likely to result in at least a year’s suspension and those involving criminal convictions, failure to perform legal services, misrepresentation to the court, or

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<sup>127</sup> “Nancy McCarthy, “Supreme Court to hear petition on discipline,” CBJ 1 (11.98); “No bar, no discipline,” *Los Angeles Times* (10.14.98); Nancy McCarthy, “Election results give bar backers new hope,” CBJ 1 (11.98); Nancy McCarthy, “Supreme Court weighs discipline fate,” CBJ 1 (11.98).

<sup>128</sup> *In re Attorney Discipline System*, 19 Cal.4<sup>th</sup> 582, 606, 608, 610-14, 623-34 (1998).

unconscionable fees. The SBC cut its staff from 52 to 37. Presiding Judge Obrien felt “the court now is relatively stable” but worried that “there are some aspects of our fundamental role that are very fragile, and the political machinations that have gone on have really exploited that fragility.”<sup>129</sup>

Senator Adam B. Schiff (immediate past chair of the Judiciary Committee) introduced SB 144 on January 5 (co-sponsored by Robert Hertzberg). Schiff wanted “more clarity in terms of the functions of the bar and a greater level of confidence that dues are being spent on appropriate functions,” but he was “not willing to sacrifice the consumer protection functions” or the “democratic features of the bar.” The bill retained the Conference and sections but did not fund them out of the mandatory dues (which increased the deduction for lobbying to \$5 and offered hardship reductions for low-income lawyers). There were limitations on bar lobbying. (The following year the BoG required two-thirds votes, first whether the subject matter of lobbying fell within the *Keller* guidelines and then whether to take the position; it also required sections, committees and the Conference to disclaim that they represented the Bar.) Bar contracts over \$50,000 had to comply with the public contracts code. Attorneys had to cooperate with investigations. MCLE was extended to retired judges but cut from 36 hours to 25, while law practice management was eliminated and ethics reduced to four hours. A companion bill (SB 143) replaced the only lay Review Department judge with a lawyer and empowered the governor, Senate Rules Committee chair, and Assembly speaker each to appoint one of the five hearing judges. (Three SBC judges unsuccessfully challenged this on separation of powers grounds.)<sup>130</sup> The bill also limited the Review Department to a review of the record. (In later cases the Supreme Court struck this down in order to “relieve [itself] of the burden of intense scrutiny of all disciplinary recommendations” and held that the Review Department’s plenary review with a right to petition the Supreme Court satisfied due process.)<sup>131</sup> When Governor Davis signed both bills on September 7, SB President Andrew J. Guildford celebrated this “great day for the bar” but warned it “to be careful not to repeat the mistakes of the past.” (The political threat seemed to recede. The Legislature authorized dues of \$395 in 2001 by large votes: 63-7 in the Assembly and 23-12 in the Senate; large margins also passed the 2002 dues bill—the first extending over two years—and the 2004 dues bill.)<sup>132</sup>

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<sup>129</sup> Nancy McCarthy, “Supreme Court orders \$173 fee,” CBJ 1 (1.99); Nancy McCarthy, “Marshall sets eye on new fee bill,” CBJ 1 (1.99); “Complaint hotline also up and running,” CBJ 1 (3.99); Nancy McCarthy, “Bar starts to rebuild discipline,” CBJ 1 (3.99); Nancy McCarthy, “Bar court trimmed by \$1 million,” CBJ 1 (4.99); Nancy McCarthy, “Opening a new front in discipline,” CBJ 1 (5.99); Nancy McCarthy, “State Bar Court bounces back,” CBJ 1 (2.01); State Bar of California (2005: 3).

<sup>130</sup> *Obrien v. Jones*, 23 Cal.4<sup>th</sup> 40 (2000).

<sup>131</sup> *In re Rose*, 22 Cal.4<sup>th</sup> 430 (2000).

<sup>132</sup> Ray Marshall, “From the President: It’s time to move on,” CBJ 9 (1.99); Nancy McCarthy, “Fee bill fate back to Sacramento,” CBJ 1 (2.99); Matt St. George, “Funding the conference,” CBJ 9 (3.99); “Board tentatively approves budget based on dues of \$384,” CBJ 34 (4.99); Nancy McCarthy, “Schiff bill would set dues at \$395 per year,” CBJ 1 (5.99); Raymond C. Marshall, “From the President: An update on the bar’s progress,” CBJ 7 (7.99); Raymond C. Marshall, “From the President: A long struggle finally pays off,” CBJ 9 (9.99); Nancy McCarthy, “Governor signs \$395 fee bill, ending 2-year political battle,” CBJ 1 (10.99); “Board mandates two-thirds vote twice, in backing any legislation,” CBJ 1 (1.00); Nancy McCarthy, “Supreme Court rejects bar court suit,” CBJ 1 (7.00); “Gov. Davis signs 2001 bar fee bill,” CBJ 3 (8.00); Nancy McCarthy, “High court reaffirms its ultimate control over discipline cases,” CBJ 1 (4.00);

The month Davis signed the 2000 dues bill the Bar won another victory. Lew Warden, who had lost his license in 1993 for refusing to satisfy MCLE, had convinced a Court of Appeal in 1997 that the program violated equal protection by exempting retired judges, full-time law professors, legislators, elected state officers, and federal and state attorneys. The Supreme Court now rejected the challenge 5-2.<sup>133</sup> About half of all lawyers took advantage of the two-year hiatus not to register for courses. President Guilford called MCLE “probably a good thing” but added that “we need to...make it painless.” Although a survey found that 60 percent of respondents wanted to cut MCLE hours down from 25, the BoG refused and voted 13-1 to keep an hour each for substance abuse and bias elimination. The new SB President Karen Nobumoto (the first African American) commented: “Two hours in three years? If we can’t take the heat on that, we don’t belong in this job.”<sup>134</sup>

But the Bar lost yet another challenge to its political activity. In 1992, two years after *Keller*, Raymond Brosterhous (Keller’s colleague and co-plaintiff, again represented by the Pacific Legal Foundation) challenged the Bar’s lobbying, its programs on minority relations and women lawyers, Volunteers in Parole, and the Conference of Delegates. In August 1999 the trial judge found that the Bar had improperly spent dues on political and ideological activities in 1991 and set trial for the amount of the refund (which would go only to the named plaintiffs). When the Court of Appeal upheld the first decision in April 2000, the Bar decided against a further appeal because the \$10 refund was so trivial, settling the plaintiffs’ lawyers’ \$2.35 million fee claim for \$900,000.<sup>135</sup>

The Conference of Delegates struggled to survive without Bar dues. Only 25,000 members voluntarily checked off \$3 on their 2000 dues bill, raising less than a third of its \$240,000 target. Lacking staff, the Conference was virtually unable to lobby. In 1999, to avoid further alienating the Legislature, the Conference had confined itself to technical issues: attorneys fees, unemployment insurance, discovery practices, and arbitration. The Bar had refused to let it urge the governor to declare a moratorium on the death penalty. President Nobumoto appointed a commission to resolve the relationship between the two.

The Conference has a justifiable desire to continue its long tradition of helping shape and analyze legislation in our state. The bar has a justifiable desire not to be dragged continually into political hot water for positions the conference takes and which the bar does not choose to endorse.

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“Bar court judge appointments process to be reviewed,” CBJ 4 (4.00); “Davis signs diversion bill, nixes more access money,” CBJ 3 (9.01); “State Bar fee bill moves through the legislature,” CBJ (8.03).

<sup>133</sup> Warden v. State Bar, 62 Cal. Rptr.2d 32 (1<sup>st</sup> Dist. Ct. of App. 1997), rev’d, 21 Cal.4<sup>th</sup> 628 (1999).

<sup>134</sup> A second challenge to MCLE as “compulsory governmental propaganda” was rejected in 1996, affirmed in 2000. Nancy McCarthy, “MCLE: A little, a lot, or none at all,” CBJ 1 (6.99); Nancy McCarthy, “Supreme Court upholds bar’s MCLE program in its entirety,” CBJ 1 (10.99); “Reprieved for one year, but lawyers still must comply,” CBJ 1 (10.99); Nancy McCarthy, “Appeals judges appear unswayed by new challenge to MCLE program,” CBJ 1 (2.00); Nancy McCarthy, “Challenge to MCLE program turned back one more time,” CBJ 1 (3.00); Sharon Lerman, “MCLE commission calls for better quality, more hours,” CBJ 1 (6.01).

<sup>135</sup> Nancy McCarthy, “Bar’s use of dues money scrutinized again in courtroom,” CBJ 1 (6.99); “Agreement to avert damage phase, speed bar appeal,” CBJ 3 (5.00); Judge grants \$10 refund, refuses future preclusion,” CBJ 3 (9.00); Nancy McCarthy, “State Bar drops its appeal of dues case after 10-year fight,” CBJ 1 (2.01); “Bar hit with \$2.35 million fee demand in lawyer dues case,” CBJ 7 (4.01); Nancy McCarthy, “State Bar and PLF spar over \$2 million for Brosterhous fee,” CBJ 1 (8.01); “State Bar settles Brosterhouse case for \$900,000,” CBJ 1 (9.01).

On the commission's recommendation, the BoG authorized the Conference to reorganize as a separate non-profit; the Bar would continue to provide services (for pay), help the Conference collect donations from members, and meet consecutively in the same venue. The Conference executive committee chair was pleased that "our purview rules will be free of *Keller*." Fewer members donated in the next two years (14,800 and 17,109); but the \$10 check-off generated greater resources.<sup>136</sup>

Both sides praised the appointment of Judge Lui as Special Master. Even though he found that the investigations backlog was down to 2,000 (partly because new complaints were half the pre-closure level), he urged the Bar to set priorities and refer less serious complaints to local bar ADR, allowing it to close approximately 1,200 cases. Before filing charges the Bar offered respondents Early Neutral Evaluations (ENEs), about a third of which produced settlement. The SBC had cut its budget from \$5.3 million to less than \$3 million and its staff positions from 52 to 37, of which it planned to fill only 29. Even with the revival of many abated cases, the hearing department caseload was only about half its former level. To increase efficiency Lui urged standardized pleading, easier default, and an expedited procedure for less serious cases, entailing limited sanctions and less discovery and hearing time. Noting that "the climb to full strength will be long and slow," the *Los Angeles Times* said that "the bar's travails and its slow return present an object lesson for Gov. Davis and his successors: It's easy to tear down a valuable institution but very hard to rebuild it."<sup>137</sup>

The confrontation over dues led to several external reviews of the disciplinary system. The ABA urged the Bar to focus resources on "alternatives" to discipline, especially for "single instances of minor neglect or minor incompetence," whose "summary dismissal...is one of the chief sources of public dissatisfaction with disciplinary systems." But most of the report recommended greater severity. For more than 30 years it had been ABA policy that lawyers who withdrew from practice while under investigation should be treated as disbarred. Similarly, the 35-40 percent of lawyers who defaulted should not receive the present "low level discipline" but be suspended and required to petition for reinstatement. Prosecutors should use subpoenas "to compel recalcitrant respondents to provide information," rather than waiting for the Early Neutral Evaluation or letting respondents use that to delay. No hearing should be required to place lawyers on involuntary inactive enrolment, nor should the bar have to consider "whether the lawyer's clients or the public are likely to suffer greater injury from the denial of the petition than the lawyer is likely to suffer if it is granted." "The interests of clients and the public in cases like these are paramount." Respondents should pay the cost of reinstatement proceedings, as they did of discipline. The legislature should repeal the law making a knowingly false and malicious report to the Bar a misdemeanor and grant complainants absolute immunity.

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<sup>136</sup> Nancy McCarthy, "Targeted by Wilson, conference struggles to get back on feet," CBJ 1 (4.00); Nancy McCarthy, "Bar rebuffs conference death penalty move," CBJ 1 (5.01); "Presidential panel will review role of bar's conference," CBJ 1 (10.01); Nancy McCarthy, "Whither the Conference of Delegates?" CBJ 1 (3.02); Karen Nobumoto, "New era of Bar-Conference cooperation," CBJ 8 (3.02); Nancy McCarthy, "Conference of Delegates and State Bar are likely to divorce," CBJ 1 (5.02); Nancy McCarthy, "Bar board OKs separation from conference," CBJ 1 (6.02); Karen Nobumoto and Stephen Marsh, "A beneficial split for both parties," CBJ (6.02);

<sup>137</sup> "Lui selection hailed by friend and foe," CBJ 1 (1.99); Lui (1999a; 199b; 1999c; 2000); "Easy to destroy, hard to rebuild," *Los Angeles Times* (2.23.00); see also State Bar of California (2001).

Noting that “as a result of the 1998 shutdown of the system, the OCTC lost approximately 700 years of collective experience,” and the “bulk” of the 14 lawyers in Los Angeles “have 18 months or less experience,” the ABA feared that the current system lacked sufficient “stability” to “assure public confidence in the competency and integrity of the bar.” It urged transfer of the OCTC and SBC to the Supreme Court, which would either administer them itself or delegate responsibility to an appointed commission and would promulgate “a rule designating the disciplinary budget as a protected fund consisting of a court imposed regulatory fee collected by the bar at the same time as it collects its dues.”<sup>138</sup>

The State Auditor praised the Bar for having “reduced costs and improved the effectiveness of its disciplinary process by developing a priority system.” Dues were reasonable and used “to support only the State Bar’s mandated functions.” But the Bar failed to recover the costs of discipline and client security fund payments from the lawyers responsible; indeed, the proportion of disciplinary costs collected fell from 39 percent in 1995 to 29 percent in 2000. (Far lower proportions were collected from lawyers who were disbarred or resigned, or to recoup CSF payments.) Although the Bar expected to reduce its disciplinary backlog to 600 by the end of 2001, it closed more complaints in intake in 2000 than in 1995, and the percentage of cases closed without discipline in intake and enforcement also rose. Declaring that “these numbers tell it all,” SB President Jim Herman declared: “The bar is doing a great job as stewards of the members’ dues and as protectors of the public interest.”<sup>139</sup>

## VI. The Chronic Contradictions of Self-Regulation

Although the Bar’s separation from the Conference seems to have averted further external challenges to self-regulation, chronic controversies continue to expose basic internal tensions. A study of whether discipline unfairly targeted solo and small firm practitioners (mandated by the companion bill to the 1999 dues authorization) found that prosecutions merely reflected the overrepresentation of those lawyers as complaint targets.<sup>140</sup> Malpractice insurance was another festering problem. In 1992 Senator Presley introduced a bill requiring that clients be told whether lawyers were insured. Over the opposition of the Los Angeles County Bar Association, the Legislature imposed such a requirement in cases where fees were contingent or exceeded \$1,000.<sup>141</sup> On behalf of the California Trial Lawyers Association, Willie Brown promptly made an unsuccessful attempt to repeal it, arguing: “If you’re going to do it for lawyers, do it for everybody.”<sup>142</sup> After the disclosure law sunsetted in 2000, a survey found that one in five California

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<sup>138</sup> ABA, 2001: 9, 15-16, 19-22, 24-26, 30-31, 33-34, 36-38, 4-45, 51.

<sup>139</sup> California State Auditor (2001; 2003: 18-21; 2005); Nancy McCarthy, “Audit affirms bar’s use of member dues,” CBJ 1 (5.03).

<sup>140</sup> Business & Professions Code § 6095.1, SB 143, Chap. 221, Stats of 2001; State Bar (2001b). In fact, solo practitioners were 23% of attorneys, 54% of inquiries, 68% of investigations, and 78% of prosecutions, whereas those in larger firms were 42, 11, 5 and 2. Some of the difference was attributable to the content of client complaints: 23% concerned failure to communicate and 18% failure to perform, delay, or abandonment.

<sup>141</sup> Arleen Jacobius, “LACBA Opposes Pair Of Discipline Proposals,” LADJ 2 (4.10.92).

<sup>142</sup> “Speaker Assails State Bar on Discipline,” LADJ 3 (8.25.93).

lawyers went bare. When nine underwriters quit within nine months, premiums rose rapidly in 2002: from \$8,000 to \$30,000 for intellectual property and patent attorneys.

In 2004 the ABA approved a model rule requiring lawyers to tell state licensing authorities whether they had insurance. In response, SB President John Van de Kamp appointed an Insurance Disclosure Task Force in 2005, chaired by former President Towery, which proposed in early 2006 that lawyers make such disclosure both to the Bar (for posting on its website) and in writing to new and existing clients (15 states had such a requirement and seven were considering it). Nearly 80 percent of the more than 100 responses to a request for public comment were opposed, including the Conference of Delegates. Solo and small firm lawyers complained they could not afford insurance. One lawyer called the proposal “nothing less than an open invitation to a dissatisfied client to cut losses by suing the non-insured attorney in the hope of a quick cash settlement.” (States adopting the requirement actually found no significant change in the number of malpractice claims or the cost of insurance.) By contrast, the ethics, professional liability, and mandatory fee arbitration committee chairs supported the proposal. The Task Force eliminated the obligations to notify existing clients or obtain a signed acknowledgment of the notification from new clients and again sought public comment. John Dutton, a Bar Governor representing a rural northern California district, many of whose lawyers practiced alone or in small firms, warned that “we’re alienating thousands of California lawyers.” When the BoG split 7-7, President Sheldon Sloan cast the deciding negative vote because he opposed posting the information on-line.

Towery refused to admit defeat: “strong client protection is in the interest of the bar. It is one of our *raison d’être*. ... Clients ought to be empowered with information.” Dutton retorted that the Bar did not know how many malpractice judgments went unsatisfied because lawyers were uninsured. Former Bar Governor JoAnn Grace called the proposal “bull pucky.”<sup>143</sup> Ed Pohl (former chair of the Law Practice, Management & Technology Section) asked: “Why don’t you give [the uninsured lawyers] a yellow armband?” But Jim Penrod (a Bar Governor and Morgan, Lewis & Bockius partner who handled malpractice and insurance cases) said 90 percent of clients “think they ought to know if their attorney carries malpractice insurance.” SB President Jeff Bleich, who had voted for the proposal, argued that “the public will feel better protected and better served if we have disclosure.”

At its next meeting the BoG voted 10-9 to endorse disclosure in principle but accepted an amendment by Richard Frankel (San Ramon) mandating it only when the rules already required the lawyer to provide the client with a written retainer (fees that were contingent or over \$1,000 but not when the client had retained the lawyer in similar matters). When Bleich objected, the BoG sent the proposal to its Committee on Regulation, Admissions and Discipline. Dutton continued to contend that disclosure was impractical when non-clients casually sought advice. “We get those calls on a regular basis,” three to five a week. Penrod replied that “any time you give anyone legal advice and someone relies on it, you have an attorney-client relationship.” The Committee voted 4-3 for a rule drafted by Dutton, requiring disclosure if it was reasonably foreseeable that the work would take more than four hours, unless it was an emergency or the client previously had been told the lawyer was uninsured. State Bar staff called the four-hour requirement arbitrary and the qualifier ambiguous. John Peterson (Fresno) proposed

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<sup>143</sup> A euphemism for “bull shit.”

online disclosure as a more effective alternative than “requiring a lawyer to communicate with a client.” Dutton strongly objected, warning that angry members would urge legislators to block bar dues. “I can’t think of any proposal that will more severely shoot this bar in the foot.” The Committee rejected Peterson’s proposal 4-3. In May 2008, despite continuing opposition by the Law Practice Management and Technology Section and the Committee on Professional Responsibility and Competence, the Board finally voted 16-4 for disclosure in writing before beginning representation that would take four hours. Peterson condemned this as “an unnecessary irritant to the attorney-client relationship.” Dutton called the rule (which he had drafted) “oppressive;” lawyers should only be required to disclose if they had lost a case because of a mistake or been sued for malpractice. By this time 23 states had adopted disclosure requirements (although 18 only in the annual bar registration).<sup>144</sup>

Lawyers also objected to the severity and form of sanctions. In 2000, defense counsel sought to have technical record-keeping errors in client trust accounts diverted from the disciplinary process. Although the Discipline Committee, Conference of Delegates, and former and present SB Presidents agreed, the Bar ethics committee was opposed. So were senior staff lawyers, who noted the Bar got some 4,000 NSF notices from the banks each year.<sup>145</sup> In 2001 the Bar created a drug court in response to the fact that nearly a third of the thousand lawyers on probation at any time were substance abusers. But prosecutors had become concerned that some of the approximately 15 percent of cases diverted to the Alternative Discipline Program (ADP), established in June 2007 for alcohol, drug, and mental health problems, were there inappropriately. CTC Scott Drexel proposed limiting diversion to lawyers whose offenses did not warrant disbarment, were reasonably likely to succeed in the program, and did not seek to participate “as a means of delaying the ultimate disposition of the proceeding or avoiding disbarment.” Twenty-one other states limited their diversion programs to minor misconduct not involving misappropriation or significant client harm. Drexel sought other changes: every diverted attorney should be considered for inactive enrolment, lawyers facing serious charges would be able to resign only after admitting or pleading no contest to charges, lawyers seeking diversion would have to offer stronger evidence of the connection between misconduct and substance abuse or mental health, and the OTC could appeal to the Review Department. The Supreme Court shared many of his concerns, but defense counsel resisted.<sup>146</sup>

Drexel also proposed to place disciplinary charges on the State Bar website as soon as an NTSC was filed. The only other ways to obtain such information were to pay

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<sup>144</sup> Nancy McCarthy, “Malpractice premiums skyrocket,” CBJ 1 (7.02); “Possible disclosure rule for uninsured lawyers,” CBJ (1.06); Diane Curtis, “Malpractice insurance disclosure circulated for public comment,” CBJ (7.06); Nancy McCarthy, “Broad opposition to insurance disclosure,” CBJ (6.07); Nancy McCarthy, “Bar board will tackle malpractice insurance disclosure again,” CBJ (11.07); Nancy McCarthy, “Board ducks malpractice disclosure,” CBJ (12.07); “Board committee approves another version of insurance disclosure rule,” CBJ (1.08); “Finally, board approves an insurance disclosure rule,” CBJ (6.08); State Bar of California (2007: 25).

<sup>145</sup> Nancy McCarthy, “Proposal for diversion class sparks debate,” CBJ 1 (10.00).

<sup>146</sup> Nancy McCarthy, “State Bar will open nation’s only drug court for lawyers,” CBJ 1 (7.01); Nancy McCarthy, “50 sign up for State Bar’s new diversion program,” CBJ 1 (7.02); Nancy McCarthy, “Prosecutors want tighter rules for diversion programs,” CBJ (6.07); Nancy McCarthy, “Prosecutors want tighter rules for discipline diversion program,” CBJ (1.08); “Board tightens disciplinary resignation rules,” CBJ (4.08).

\$.50 a page and wait several weeks or make an appointment to visit the SBC in San Francisco or Los Angeles. Drexel noted that only 10 percent of complaints resulted in charges, more than 90 percent of those charged in 2006-07 were found culpable, and some of the others enrolled in ADP or received informal sanctions. Few were acquitted of all charges: none in 2006, one in 2007, and two in 2008. Most public comment on the proposal was negative, including unanimous votes by the Los Angeles County and Beverly Hills Bar Associations. "It's going to snare up the innocent along with the guilty." David Carr (president of the Association of Discipline Defense Counsel) claimed that the OTC frequently overcharged, and there was "something about" the Internet "that lets people accept what they read" uncritically. Defense counsel Diane Karpman said posting would violate the "presumption of innocence" and be "profoundly destructive" to the lawyers. One Governor called the proposal "an unnecessary blow." "Is what we are doing helping the profession or hurting the profession? ... What we are doing here is to highlight issues, highlight charges." But the Board adopted the proposal 18-4 (all six public members voting in favor), although it would apply only to new charges.<sup>147</sup>

In 1992, 17 years after being disbarred, Ronald Silverton was readmitted on his fourth petition. When he committed additional misconduct two years later the SBC recommended suspension, but the Supreme Court disbarred him a second time in 2004 and asked the Bar to act on a 1996 proposal for permanent disbarment. Each year about a hundred lawyers were disbarred, another hundred resigned with charges pending, and 15-20 sought reinstatement, about half of whom succeeded. Between 1990 and 2005, nearly three-fourths of reinstated lawyers were the subject of grievances; six were disbarred again and another 6-12 resigned. The Committee on Regulation, Admissions and Discipline narrowly approved (3-2) proposals to require disbarred lawyers to wait seven years rather than five before petitioning for reinstatement, compel anyone seeking reinstatement to pass the attorney bar examination, and make disbarment permanent for stealing client funds, crimes of public malfeasance, engaging in unauthorized practice of law while disbarred, or "conduct so egregious that the member should be permanently disbarred." Although comment was evenly split, every nonlawyer favored permanent disbarment. Defense lawyer Joann Robbins objected that most disciplined attorneys are "good people who do bad things" in a crisis. SB President James Heitung was opposed, because of his "personal experience with the idea of getting close to second degree murder" when he severely injured someone while driving drunk. Had the victim died "I would never have had the opportunity to come back here." Nevertheless, the Board approved the last two proposals while refusing to extend the time to petition for reinstatement.<sup>148</sup>

The divisions exposed above did not emerge when the Bar adopted a "civility code." President Sheldon Sloan (who had opposed mandating disclosure of malpractice insurance) made civility the focus of his year in office. But though the task force chair emphasized that the guidelines were aspirational, Joann Robbins warned that they "will inevitably be considered standards that will lead to disciplinary sanctions." In response,

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<sup>147</sup> Misconduct charges may be posted online," CBJ (6.08); Nancy McCarthy, "Lawyer misconduct charges will go online," CBJ (8.08); Mike McKee, "California Bar OKs Posting Discipline Charges Online," *Minority Law Journal* (7.14.08).

<sup>148</sup> Nancy McCarthy, "Permanent disbarment moves forward," CBJ (4.06); Nancy McCarthy, "Board OKs permanent disbarment," CBJ (9.06).

they were revised to state specifically that they are “not mandatory rules of professional conduct, nor rules of practice, nor standards of care” and cannot be used in disciplinary proceedings.<sup>149</sup>

## VII. The Professional Is Political

The lesson of this sorry story is inescapable. Professional self-regulation is always an arena of political contestation, both within the legal profession and between it and outsiders: clients, competitors, politicians, and the media. The professional project is born of self-interest, which and continues to motivate it long after the core of professionalism has been firmly secured. The State Bar dedicated its first four decades to controlling entry (educational requirements, law school accreditation, bar examinations, character and fitness tests) and limiting competition, first from outsiders (unauthorized practice, market division treaties) and then among lawyers (bans on advertising and solicitation, minimum fee schedules). Although Terrence Halliday entitled his superb study of the Chicago Bar Association “Beyond Monopoly,” lawyers never transcended monopoly; they simply convinced others to take it for granted.<sup>150</sup> Limitations on monopoly power were imposed on a strongly resistant profession by outside forces, primarily the U.S. Department of Justice and the U.S. Supreme Court, responding to the consumer movement of the 1960s. The profession still seeks to limit competition by adjusting the difficulty of the bar examination, restricting entry by lawyers from other states and countries, and regulating the institutional structures within which lawyers may practice (partnerships with other professionals, non-lawyer equity interests in law firms).

Nascent bar associations faced a classic collective action problem: how to persuade lawyers to participate (join, pay dues, vote, attend meetings, and serve on committees) rather than free ride.<sup>151</sup> Most state bars remained voluntary, accepting free riders as the price of political autonomy. California (perhaps because its size and diversity rendered voluntary associations weak and rural lawyers suspicious of urban dominance) opted for the unified bar’s compulsory membership. But this had its own price, which often has been very high (partly because of the historical quirk that the Legislature must approve State Bar dues). Resistance by any dissenter severely constrains the political positions compulsory organizations can take. University public interest groups funded by student fees offer vivid illustrations. For its first few decades, the State Bar pursued policies that united lawyers (the professional project described above), leaving more controversial topics to the voluntary Conference of Delegates. But perhaps because this was California, the Conference took positions on highly volatile issues—the death penalty, law and order, affirmative action, prostitution, abortion, nuclear disarmament—subjects well outside what Halliday describes as the core of lawyers’ moral authority.<sup>152</sup> Inevitably, the Conference became a lightning rod for attacks. And because most of the same actors met immediately after and in the same venue as the State Bar, the two were readily conflated.

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<sup>149</sup> “Guidelines for lawyer civility move forward,” CBJ (5.07); Board adopts civility code,” CBJ (8.07).

<sup>150</sup> Halliday (1987).

<sup>151</sup> Schneyer (1983).

<sup>152</sup> Halliday (1987: chap.2).

Even though a high proportion of state legislators were lawyers, they tended to be suspicious of the State Bar (perhaps because many had graduated from lower status, sometimes unaccredited, law schools and practiced alone or in small firms). Some legislators may have cynically calculated that lawyer-bashing was good populist politics. But others had particular axes to grind. Robert Presley (from the Riverside Sheriff's Department) and Patrick Nolan were law and order champions. Willie Brown was angry about the State Bar's opposition to his mandatory malpractice insurance bill—and perhaps about its treatment of the grievance against him. (Brown was one of the many prominent disciplinary targets who testified on behalf of David Harney: see chapter 3.) Most critically, Pete Wilson had been personally vilified by SB President Anthony Murray (for threatening California Supreme Court Justices who voted against the death penalty) during Wilson's successful U.S. Senate campaign; this may partly explain Wilson's veto of the SB dues bill 13 years later. For all these reasons, the State Bar was under constant attack from the moment of its founding: repeated plebiscites (all which resulted in member endorsements, to the dismay of critics), endless external audits and reviews, numerous lawsuits challenging its authority to take political positions, and two shut-downs when the Legislature or Governor blocked the annual dues bill.

Self-regulation poses its own difficulties. The State Bar had to convince external critics (dissatisfied clients and hostile legislators) that it was more effective than an independent regulatory agency. At the same time, it had to persuade members that it was less stringent and less expensive than an independent agency, whose creation was a real threat.<sup>153</sup> (Some lawyers opposed the mere existence of a disciplinary system as an admission that lawyers might misbehave.) Talking out of both sides of its mouth, the Bar rarely convinced either audience.<sup>154</sup> This is a classic dilemma, whether phrased in Latin (*quis custodiet custodes*) or English (setting the fox to guard the henhouse). (Think about how the police or military handle misconduct, politicians deal with corruption, corporations set executive compensation, or the Roman Catholic Church covered up sexual abuse by priests.) The Bar told the public that most complaints were unfounded, the dissatisfactions inevitably engendered by an adversary system in which one party's victory is the other's defeat. It warned that reform would only encourage more frivolous grievances. The Bar told its members that refusal to pay dues or accept cosmetic reforms would lead to direct regulation. Bar leaders spun every criticism as praise. They boasted about making "radical" reforms (although—like the answer to the question "when did you stop beating your wife"—this acknowledged the inadequacy of the unreformed system). They claimed perfection—or at least superiority to every other state's bar and every other California profession—and expressed frustration when critics kept asking for more. But the observers could (and did) object that the same criticisms were made decade after decade—the Clark Report, the *Los Angeles Daily Journal* and *San Francisco Examiner* exposés, Fellmeth's detailed semi-annual reports—yet nothing changed.

The Bar constantly dragged its feet in creating and operating an effective regulatory system. It required lawyers to maintain client funds in a trust account only in 1956. It created the Client Security Fund only in 1972. It refused to require lawyers to carry malpractice insurance or even tell clients they did not have it. The Bar mandated

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<sup>153</sup> The Illinois bar voluntarily relinquished regulation to the state in the 1980s. Powell (1986).

<sup>154</sup> Lloyd Fallers (1965) described this difficult intermediate position in the context of British colonial rule in Uganda.

arbitration of fee disputes only in 1972. It successfully resisted making neglect—the single most common complaint—a ground for discipline. It opposed professionalizing the investigation, prosecution, and adjudication of client grievances as long as possible (even though the California Supreme Court was highly critical of decisions by volunteer referees). Its explanations for the extraordinary attrition from client “inquiries” to punishment satisfied few outsiders. It allowed backlogs and delays to reach intolerable levels; and when the public outcry became too vociferous, it focused all its energy on reducing those numbers without regard to the behavior underlying client grievances.

Because the contradictions of self-governance and self-regulation are structural, they are unlikely to be resolved. They generate endless debates over publicity and secrecy, alleged bias, lenience and severity, and recidivism, while failing to address the fundamental problems of lawyer behavior. For all those reasons, adjudicated cases represent only one window into the many ways in which lawyers betray trust. Nevertheless, I hope the following chapters show that the analysis of disciplinary cases is an essential first step in mapping what is still a largely unknown terrain.



# Mexican American Bar Association of Los Angeles County

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January 10, 2011

## Via Email

Amy Anderson  
Office of the General Counsel  
The State Bar of California  
180 Howard St.  
San Francisco, CA 94105

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**President-Elect**  
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RE: Government in the Public Interest Task Force  
Written Responses

Dear Ms. Anderson:

Enclosed are the responses requested by the State Bar to provide "recommendations for enhancing protection of the public and ensuring that public protection is the highest priority in the licensing, regulation, and discipline of attorneys." These answers are being submitted by me on behalf of the Mexican American Bar Association (MABA), of which I am the 2011 President.

1. What do you understand "protection of the public" to mean in the context of governance of the State Bar?

I understand "protection of the public" to mean that State Bar undertakes to ensure that new lawyers entering the profession have the necessary preparation to be legal practitioners. Moreover, that once in practice, that there are protocols in place by which members of the public can seek accountability for the actions of attorney members of the bar that fall short of the minimum standards of professional competence, while at the same time being vigilant against those who engage in the unlicensed practice of law, something that the Latino community knows too well.

2. Who should serve on the board that governs the State Bar?

Because of the nuances involved with the practice of law, including the many professional obligations and ethical duties imposed on attorneys in California, it is necessary that any governing body of the State Bar be made up mostly of attorneys. Only seasoned attorneys can properly reflect upon the merits of a particular complaint against an attorney from the standpoint of understanding the Rules of Professional Conduct as well as the Ethical Canons that guide every practicing lawyer. Without such a make up, any governing body would run the risk of misapplying legal principles, not understanding the true issues involved, or simply believing that a given outcome is contrary to perceived notions of fairness when in fact certain results might be demanded by the very rules that regulate our practice. I do believe that it is important to include non-lawyers on such a governing body, so long as their tenure is not permanent and so long as their voice is a minority, and not a majority, voice.

**"Committed to the Empowerment of the Latino Community"**

3. How should each of these individuals be selected? By whom and by what criteria?

Geographic representation, in a state as vast as California, is extremely critical so that every region and its issues can be properly represented state-wide. The current practice of electing 15 lawyers state wide by practicing attorneys in different geographic regions is something I believe works. Having maybe more than one lawyer in practice less than 5 years might be helpful as well, although both would not have to come through CYLA. I believe the current make up of 6 members of the public might be acceptable if criteria are established to ensure that the members have some familiarity with issues arising from attorney-client relationships.

4. What qualifications should be required for each member of the board?

For attorney members they should be required to be in good standing and should ideally bring to the table a set of experiences different from the rest. However, since they will be elected, it is up to each region to decide what lawyers represent them. At least one lawyer from CYLA seems appropriate. As for the public members, they should not have an agenda. They should ideally be active members of their communities and have some familiarity with issues arising from attorney-client relationships.

5. What size should the board be?

Big enough to handle the work its mandate requires but not too big that it becomes an unmanageable bureaucracy.

6. How long should the terms of the members (and of the president) be?

It depends on whether there are particular issues that the current makeup and terms of office have made impractical and if so, knowing what logical changes could be implemented to meet those particular issues. If the system isn't broken, why fix it?

7. How should the president and other officers be selected?

See answer to #6.

8. What changes or other governance models may enable the board to better serve the interest of public protection?

I believe that changing the institutional structure of any entity as big as the State Bar should not begin with asking these kinds of questions. Rather, it is helpful to refer to data that deals with the different functions of the State Bar, and then rate how the State Bar has been fulfilling its functions before deciding on a course of action (lest one be accused of putting the cart before the horse). In the particular area of public protection, as long as the State Bar has sufficient resources to address each and every complaint in a competent and timely manner, and holds attorneys accountable when they are in violation of their ethical and/or professional obligations, then the State Bar is seemingly fulfilling its function of protecting the public. Of particular concern to MABA is that the State Bar remains independent of any state agency. The State Bar is self-funded and requires no money from California. Any proposed change to make the State Bar a part of any California agency is likely doomed to fail given the current economic climate. MABA believes it is critical that attorneys from underrepresented groups have a voice on the State Bar so that issues of particular concern to minority attorneys are not lost. Lastly, any effort to centralize the operations of the State Bar should be resisted if that means that being on the State Bar becomes an issue of who one knows rather than allowing each geographic area to decide for itself who represents them and their interests at the State Bar level. The choice must remain local. Cronyism, or the risk thereof, should be avoided.

**Comments of the Legal Aid Foundation of Los Angeles to the Governance in the Public Interest Task Force**

The Legal Aid Foundation of Los Angeles (LAFLA) is one of the oldest and largest legal services programs in California. It is the front-line law firm for the poor in Los Angeles, providing assistance to over 30,000 low income individuals each year. These comments are submitted on behalf of LAFLA to address what we see as important issues in addressing the structure and governance of the State Bar.

The State Bar fulfills several functions that relate to public protection. Clearly, admissions and discipline are critical functions. In addition, the Bar has several other functions that enhance public protection in entirely different ways. The effort of the Bar to expand access to justice is an extremely important function which protects a large segment of the public from being denied access to the courts and justice. Through the Access to Justice Commission, the Standing Committee on Delivery of Legal Services, and the staff that support those entities, the low and moderate income members of the public are much better able to have their rights protected. The regulation of Lawyer Referral Services assures the public that lawyers receiving referrals have the experience necessary to assist them, and malpractice insurance to protect them. The Legal Services Trust Fund Commission and its staff assure that services provided to the poor are of the highest quality. The diversity efforts of the bar work to expand the availability of lawyers in minority and other underserved communities. All of these functions are extremely important in protecting the public, and should be a high priority for the State Bar in whatever governance system is created.

The integrity of our system depends on equal access to justice and effective representation for all parties by attorneys whose backgrounds reflect the diversity of California. For these reasons, we feel that the public is best protected by a system which addresses not just the regulatory issues of admissions and discipline, but also the critical issues of access to justice and fairness in the justice system.

1. The legislature is interested in receiving "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." What do you understand "protection of the public" to mean in the context of governance of the State Bar?

	Response Count
	151
answered question	151
skipped question	8

2. Who should serve on the board that governs the State Bar?

	Response Count
	147
answered question	147
skipped question	12

3. How should each of these individuals be selected? By whom and by what criteria?

	Response Count
	144
answered question	144
skipped question	15

4. What qualifications should be required for each member of the board?	
	Response Count
	140
answered question	140
skipped question	19

5. What size should the board be?	
	Response Count
	142
answered question	142
skipped question	17

6. How long should the terms of the members (and of the president) be?	
	Response Count
	142
answered question	142
skipped question	17

7. How should the president and other officers be selected?	
	Response Count
	143
answered question	143
skipped question	16

**8. What changes or other governance models may enable the board to better serve the interest of public protection?**

	Response Count
	136
<b>answered question</b>	<b>136</b>
<b>skipped question</b>	<b>23</b>

**9. Would you like to speak at one of the public hearings the Governance Task Force is holding in January? (Please provide your contact information and state whether you would like to speak on January 20, 2011 in Los Angeles, or on January 27, 2011 in San Francisco.)**

	Response Count
	133
<b>answered question</b>	<b>133</b>
<b>skipped question</b>	<b>26</b>

**1. The legislature is interested in receiving &quot;recommendations for**

	Response Text	
1	The State Bar has a duty to come up with an effective and efficient admission and discipline system to protect the public from dishonest, unethical, and incompetent lawyers.	Dec 20, 2010 10:23 PM
2	Keeping incompetent and/or immoral lawyers from being able to practice law.	Dec 20, 2010 10:27 PM
3	Disbarring attorneys who steal from or injure their clients.	Dec 20, 2010 10:27 PM
4	Avoidance of fraud, competence	Dec 20, 2010 10:27 PM
5	Disciplining lawyers, including suspension and disbarment.	Dec 20, 2010 10:28 PM
6	1) Protecting the public against unethical lawyers; 2) Protecting the public against nonlawyers who pose as lawyers; 3) Protecting the rule of law, including respect for the law on the part of members of society, including by means of assuring that those who practice law are deserving of their respect and trust.	Dec 20, 2010 10:29 PM
7	Ensuring that licensed members of the Bar uphold our ethical responsibilities, are appropriately punished when we fail to adhere to our responsibilities, and ensuring that the representational structure of the State Bar looks after members and non-members alike.	Dec 20, 2010 10:31 PM
8	making certain that we have competent and ethical lawyers providing competent legal services to the public	Dec 20, 2010 10:31 PM

## 1. The legislature is interested in receiving &quot;recommendations for

	Response Text	
9	Protection of the public w/r/t governance of the State Bar means ensuring the general public has a meaningful presence on the Board, i.e., several members who have voting priveleges.	Dec 20, 2010 10:31 PM
10	to protect clients from unethical lawyers or lawyers charging unconscionable fees.	Dec 20, 2010 10:31 PM
11	Qualified, ethical, professional	Dec 20, 2010 10:31 PM
12	Protect the public from being taken advantage of, harrassed or otherwise exploited by members of the bar.	Dec 20, 2010 10:32 PM
13	that Attorneys represent the and protect their clients within the rules of law of the State/Federal government	Dec 20, 2010 10:33 PM
14	lawyers misusing their position as a fudiciary for monetary gain	Dec 20, 2010 10:33 PM
15	Ensuring that individuals and businesses are not harmed through attorney misconduct or negligence. Thus, the State Bar should be ensuring that these protections are adequetely funded and implemented both the enforcement and support for attorneys in need of assistance	Dec 20, 2010 10:35 PM
16	Protection from attorney fraud or other conduct by attorneys that harms or may harm the public.	Dec 20, 2010 10:36 PM
17	"protection of the public" should mean protecting the rights of the common man to have legal representation. It's unlikely that the legislature really has that in mind.	Dec 20, 2010 10:38 PM
18	Ensuring that members of the legal profession are held to the highest ethical standard to maintain the integrity of the profession and insure that the public is receiving qualified legal services consistent with the rules of professional conduct.	Dec 20, 2010 10:39 PM
19	Protection of clients.	Dec 20, 2010 10:39 PM
20	Insuring that practitioners are qualified for the work they perform and that moneys etc. held in trust by practitioners are properly safeguarded.	Dec 20, 2010 10:41 PM
21	Providing oversight for attorney continuing education in topics of professional ethic s, and providing disciplinary procedures when those ethical parameters are not complied with.	Dec 20, 2010 10:43 PM
22	Making certain only ethical, competent attorneys are permitted to practice	Dec 20, 2010 10:43 PM
23	1. Rules and procedures for admission to practice. 2. Rules and procedures for maintaining lawyer competence. 3. Rules and procedures for administering discipline for lawyer failures 4. Rules and procedures regulating lawyer advertising and 5. Rules and procedures for compensating individuals for attorney defalcations	Dec 20, 2010 10:46 PM
24	Make sure attorneys are available, able and are ethical in their representation of aggreived members of the public	Dec 20, 2010 10:48 PM
25	Protection from attorney malfeasance.	Dec 20, 2010 10:48 PM
26	I never thought of the Bar as an entity to protect the public, which is one of the basic functions of government (health, safety and welfare). If the essence of the Bar is public safety, then the Bar should be a government agency and I would see no reason for ONLY lawyers to join or mandated to join the Bar in order to practice law. I thought the function and purpose and function of the Bar was collegial and professional effort to promote integrity among lawyers and to elevate the overall quality of service by legal practitioners (this ultimately benefits the public but it is NOT equal to protecting the public). My understanding is that the Bar has morphed into a public service quasi governmental agency that takes money from lawyers to spend on non-lawyers. If the Bar was doing IT RIGHT, they would use Bar fees to develop CEB high quality programs that would be mandatory and free for member lawyers. I believe the Bar has become something it was not intended to be and not worth much to those who pay for it. Taxation is what is supposed to be used to protect the public.	Dec 20, 2010 10:51 PM

# 1. The legislature is interested in receiving &quot;recommendations for

	Response Text	
27	Disbarment of lawyers who commit a crime when their client is the crime victim, and referral of the attorney for prosecution by a district attorney.	Dec 20, 2010 10:51 PM
28	protecting the public against fraud and malpractice.	Dec 20, 2010 10:54 PM
29	That the State Bar will protect the public from unethical attorneys and from people not licensed to practice law.	Dec 20, 2010 10:57 PM
30	To protect the public from lying attorneys which is rampant.	Dec 20, 2010 10:59 PM
31	Protection of the public from lawyers.	Dec 20, 2010 11:02 PM
32	Protecting members of the public from financial, ethical or other abuses by members of the Bar and/or Judiciary.	Dec 20, 2010 11:03 PM
33	Review laws, regulations which affect the legal profession to ensure that public is not taken advantage of by attorneys as well as the public is represented by competent honest attorneys as qualified by our license exam and disciplinary actions.	Dec 20, 2010 11:03 PM
34	Competent representation of clients in all matters with substance being more important than form. Adequate and realistic public education as to what the law is and is not capable of doing. Ability to access competent legal services.	Dec 20, 2010 11:04 PM
35	Seeing that the public is protected from dishonest and inept attorneys by censoring and disbaring them - and making the results public knowledge.	Dec 20, 2010 11:11 PM
36	Efforts to insure that both clients and members of the general public who interact with attorneys are not mistreated by reason of the attorneys' superior knowledge of the law	Dec 20, 2010 11:16 PM
37	Protecting the public from fraudulent attorneys	Dec 20, 2010 11:20 PM
38	Selection [admission] of new lawyers on the basis of both character and competence.	Dec 20, 2010 11:22 PM
39	I don't know and I don't want to speculate. Because decisions of discipline are published and if any person looks up that attorney's name in the calbar website, information related to discipline is readily available, I believe that the public already has good protection and access to information about attorneys and I don't see why "protection of the public" with regard to attorneys is such a high priority.	Dec 20, 2010 11:26 PM
40	Preventing sharp lawyers from victimizing people without lawyers.	Dec 20, 2010 11:26 PM
41	Ensuring that lawyers are competent and ethical.	Dec 20, 2010 11:28 PM
42	Disciplining lawyers	Dec 20, 2010 11:31 PM
43	(1) protection of the public in general from unethical lawyers. (2) protection of the courts from lawyers lacking in civility. (3) protection of parties from incompetent lawyers.	Dec 20, 2010 11:31 PM
44	Ensuring competence and honesty of lawyers	Dec 20, 2010 11:32 PM
45	Ensure that members of the bar have a minimum level of competency in the fields which they practice, agressive prosecution of attorneys that violate ethical rules, especially of those involved in misrepresentations to the court and to their clients.	Dec 20, 2010 11:39 PM
46	Attorney discipline; educating the bar; and ensuring that the Rules of Professional Conduct are clear and understandable.	Dec 20, 2010 11:39 PM
47	That lawyers are qualified to practice and are ethical in their practice	Dec 20, 2010 11:44 PM
48	Following up and disciplining lawyers who act unethically or in violation of the applicable B&P Codes e.g., plaintiff's bar that unfairly prosecute ADA cases simply to recoup statutory atty's. fees.	Dec 20, 2010 11:52 PM
49	assuring attorneys continue to learn = CLE and are held to high ethical standards	Dec 20, 2010 11:53 PM
50	The public is protected from unethical and incompetent lawyers.	Dec 21, 2010 12:00 AM
51	Protection of the public from dishonest, unethical or criminal acts of lawyers.	Dec 21, 2010 12:01 AM

# 1. The legislature is interested in receiving &quot;recommendations for

	Response Text	
52	Not being "ripped off" by incompetent or predatory lawyers.	Dec 21, 2010 12:06 AM
53	Protecting the public from incompetent and unethical lawyers.	Dec 21, 2010 12:17 AM
54	Those who serve in governance capacities for the State Bar should: (1) protect the structure and integrity of the judicial process as an officer of the court; (2) to protect the integrity of the legislative process through enforcement of proper elections and related processes; and protect of public from over-reaching members of the bar, especially those who hold public office and act in prosecutorial or public capacities and do so in ways which wield public power improperly.	Dec 21, 2010 12:20 AM
55	-ensuring lawyers are competent to practice -making sure State Bar licensing standards are upheld and rules of professional responsibility are enforced.	Dec 21, 2010 12:22 AM
56	Preserving the rights of non-licensed citizens under the State and federal constitutions.	Dec 21, 2010 12:27 AM
57	I think it means protecting individuals and businesses from harm by lawyers - whether by theft of their funds, involvement in fraudulent prosecution of claims, overzealous representation, or incompetence.	Dec 21, 2010 12:29 AM
58	Make sure attorneys follow the professional responsibility rules	Dec 21, 2010 12:42 AM
59	Assurance of quality of representation/legal skill Investigation and enforcement against abuses committed by members of the Bar against clients, and violations of ethical prohibitions.	Dec 21, 2010 12:43 AM
60	Protection from unethical and incompetent lawyers.	Dec 21, 2010 12:45 AM
61	I understand it to mean the protection of non-lawyers from unscrupulous lawyers who might use their legal knowledge to prey on non-lawyers.	Dec 21, 2010 12:46 AM
62	institutional safeguards against fraud, misfeasance and malfeasance	Dec 21, 2010 12:57 AM
63	To ensure that non-attorneys do not become victims if attorneys.	Dec 21, 2010 1:13 AM
64	In this context "protecton of the public" means two things; first, protection of the substantive and procedural rights of persons who are clients of attorneys from invasion by third parties; and, second, protection of the interests of persons who are clients of attorneys or non-clients from invasion by dishonest or unscrupulous attorneys. The first definition encompasses preservation of the means by which attorneys are best able to serve their clients, such as the confidentiality of the relationship.	Dec 21, 2010 1:20 AM
65	Making certain that attorneys licensed to practice law are competent, have a basic knowledge of ethical standards and hold by them.	Dec 21, 2010 1:27 AM
66	I think it means value for dollar.	Dec 21, 2010 1:56 AM
67	Protection from bad, dishonest, incompetent lawyers.	Dec 21, 2010 3:12 AM
68	Protection of the public from unethical attorneys, incompetent attorneys by means of regulation,	Dec 21, 2010 3:23 AM
69	Written notice with full disclosure of all fees & costs & legal services to be rendered, in detail, at a 6th grade reading level.	Dec 21, 2010 4:15 AM
70	Prevention of damage caused to clients by their attorneys.	Dec 21, 2010 4:19 AM
71	Promote public awareness of law	Dec 21, 2010 4:30 AM
72	This term equals protection of the Rights of the people in my mind. Ultimately this boils down to ensuring that Constitutional Rights are upheld, Of course within this context I also include a client's property rights honored by the attorney.	Dec 21, 2010 4:55 AM
73	A. Provide recourse for clients against lawyers who cheat or take advantage of clients. B. Ensure a basic level of competency of all lawyers.	Dec 21, 2010 5:31 AM

## 1. The legislature is interested in receiving &quot;recommendations for

Response Text		
74	Ensuring that lawyers are competent to practice, engage in the practice of law ethically, and are committed to serving not only those who can afford to hire a lawyer but those who cannot	Dec 21, 2010 5:48 AM
75	Prohibiting the practice of law by (and protecting the public from) the incompetent, the greedy, the emotionally unprepared (depressed, etc.) attorney.  Also protecting the wrongly accused defendant from the deprivations of the greedy plaintiff and their greedy, etc., attorney.	Dec 21, 2010 5:58 AM
76	protecting the public from unethical attorneys	Dec 21, 2010 12:18 PM
77	THE BAR MUST BE GOVERNED BY PEOPLE WITHOUT A CONFLICT OF INTEREST. THEY MUST NOT DERIVE ANY DIRECT OR INDIRECT PECUNIARY BENEFIT FROM WHOM AND WHAT THEY GOVERN	Dec 21, 2010 12:34 PM
78	Better enforcement of the existing rules, which includes the rules of professional conduct, statutes, and case law. The level of enforcement is disgraceful.	Dec 21, 2010 3:10 PM
79	Monitoring conduct & discipline is highest priority.	Dec 21, 2010 3:21 PM
80	To ensure both competency and integrity of practicing attorneys.	Dec 21, 2010 4:05 PM
81	Removal of lawyers who are a danger to themselves and the public on account of their actions or inaction.	Dec 21, 2010 4:38 PM
82	To be protected from non attorneys and also attorneys who may take advantage of their interests.	Dec 21, 2010 5:12 PM

# 1. The legislature is interested in receiving &quot;recommendations for

## Response Text

83 It is axiomatic that if one does not ask the right questions one increase the odds one will never get the right answers and will never solve real problems. Dec 21, 2010 5:18 PM

My review of this series of 9 questions strongly suggests to me the entire senior leadership of the CA State Bar has not asked the right questions and, down deep, may be 100% clueless as to what are extremely pressing, serious, real problems, and what needs to be done to meaningfully promote "protection of the public", or, in the alternative, is not that clueless and really does not entertain a serious agenda to "protect the public".

Let me point you in the right direction. A small but highly intelligent, very perceptive, and dedicated group of CA licensed attorneys and lawyers and other professionals in CA and around the US are of this growing opinion, with good cause: A) Most, if not all, professional licensing groups, only give lip service to "protection of the public" and, overall, fail to do so; B) real, effective, meaningful, "protection of the public" begins when the licensing group strongly and unequivocally supports a bold, gutsy, dedicated, fearless, member who stands up to the Establishment's usurpations of power, so the licensed professional can use his/her skill set to force the Establishment to obey the US Constiution and other bedrock laws that are faithful to that Supreme Law of the Land; C) the record is replete, however, with real life, sad, tragic, facts where the CA State Bar and other professional licensing organizations, however, have turned against such a licensed professional; D) compare, for one example, how the CA State Bar handled attorney Richard I. Fine of the LA area and attorney Thomas Giarrdi. The dissimilar treatment is egregious. Some day, some one should erect an honorary statute to praise attorney Fine for his principled, courageous, stand to expose and to oppose apparent corruption that permeates the LA County civil justice system and the CA state govt, but, instead, the CA State Bar, instead of supporting him, which it should have, abandoned him and did nothing to support him, and now he is disbarred, with no protest by the State Bar; E) another example follows. The federal IRS and the federal Dept of Justice have this unified mindset when it comes to a license attorney or CPA who represents a taxpayer before the IRS or Tax Court: First, the licensed professional must limit all arguments exclusively to only how the IRS and DOJ interpret relevant laws and can never deviate from their official interpretation of same; second, the licensed professional must make only arguments for a client that, when limited to the official IRS/DOJ position have at least a one out of three chance of prevailing; third, if a licensed professional deviates from how the IRS/DOJ construe the law or makes an argument that they determine had less than a one out of three chance of prevailing, even if limited to how they construe the law, they automatically deem the licensed professional to be unethical and will demand that the licensed professional sign an agreement to that effect, including agreeing to be "disbarred" from appearing before them for X number of years, as determined by them, unilaterally. IT IS IMPOSSIBLE TO GIVE A CLIENT "ZEALOUS REPRESENTATION" AND "LOYALTY", AS REQUIRED BY APPLICABLE CA STATE BAR RULES, IF AND WHEN A LICENSED PROFESSIONAL YIELDS TO WHAT THE IRS AND/OR DOJ DEMAND. EVEN GOD CANNOT COMPLY WITH TWO MATERIALLY DIFFERENT STANDARDS OF CONDUCT FOR WHAT IS "ETHICAL" CONDUCT. WHEN A CA LICENSED ATTORNEY COMPLAINS ABOUT THIS TO A CA STATE BAR LICENSED ATTORNEY AND ASKS FOR HELP AND SUPPORT, THE CA STATE BAR LAWYERS OPINE AS FOLLOWS: YES, WE KNOW ABOUT THIS SITUATION. WE ARE WATCHING IT. IT IS A MATTER OF "FEDERAL PREEMPTION". YOU ARE ON YOUR OWN. BE CAREFUL. BULL FECAL MATTER. THIS IS NOT A MATTER OF "FEDERAL PREEMPTION". THIS IS A MATTER OF 1) FEDERAL USURPATION OF POWER AND 2) THE GUTLESS CA STATE BAR DOING ABSOLUTELY NOTHING TO SUPPORT A CA LICESED LAWYER WHO HAS THE COURAGE TO REPRESENT A CLIENT "ZEALOUSLY" WITH "LOYALTY", WITH 100% COMPLIANCE WITH WHAT IS REQUIRED OF THE CA LICENSED LAWYER BY THE CA STATE BAR, THE CA LEGISLATURE, AND THE CA SUPREME COURT 3) BUT THE CA STATE BAR ALLOWS THE IRS AND THE DOJ TO FUNCTION AS AN INDEPENDENT DE FACTO SECONDARY BAR ASSOCIATION WITH MATERIALLY CONFLICTING STANDARDS FOR WHAT

# 1. The legislature is interested in receiving &quot;recommendations for

## Response Text

83

IS "ETHICAL" CONDUCT AND FAILS TO DO ANYTHING MATERIAL TO SUPPORT THE CA LICENSED ATTORNEY WHO PERFORMS "ETHICALLY" AND COMPETENTLY PER THE CA STATE BAR'S RULES.

Dec 21, 2010 5:18 PM

QUESTION: How can any competent, ethical, experienced, CA licensed attorney function ethically before the IRS when the IRS/DOJ and the CA State Bar have such materially conflicting standards and definitions for "ethical" and/or "competent" behavior?

Question: What kind of a track record does the CA State Bar have of supporting CA licensed lawyers in that kind of a situation? Of telling the IRS and DOJ--and its lawyers, in effect, to go to hell?

Question: What kind of record does the CA State Bar have of disciplining IRS/DOJ lawyers who stoop to such gross, egregious, unethical usurpations of the real controlling Constitutional Rule of Law?

Question: What kind of a record does the CA State Bar have of supporting CA licensed lawyers against bad judges? Bad govt lawyers? Bad sworn peace officers? Bad lawmakers?

Answer: For all of the above questions, the CA State Bar has a horrible record, an absolutely egregious, indefensible, abominable, embarrassing record.

Question: How can a CA licensed attorney perform to the best of his or her ability, at full throttle, when he or she knows that if he/she does that, the CA State Bar will discipline him/her for standing up to the Establishment's usurpations?

One bottom line is this: If the senior leadership of the CA State Bar is serious about wanting to "protect the public" [which I doubt], it should do all of the following: 1) Reinstatement attorney Richard I. Fine forthwith, with a public apology for abandoning him; 2) publicly tell the IRS/DOJ/ and State and Federal judges and lawmakers that the CA State BAR is 100% seriously committed to supporting all CA license attorneys who truly represent clients "zealously", even if those people disagree with their arguments or their style, etc.; 3) the CA State BAR should take a strong proactive public position against corrupt judges, unethical govt lawyers, and the entire system of "immunities" in the US.

Nothing in the real Constitutional Rule of Law supports the idea of "immunities" for judges, lawmakers, govt lawyers, sworn peace officers, etc. It is illogical to require these folks to swear to uphold and to support and to defend the US Constitution and to then allow them to hide behind their "immunities" when they fail to do so, including when they usurp power for reasons of personal malice. Immunities subsidize, encourage, and perpetuate incompetence and horrible governance, yet the State Bar has done nothing to end wide spread immunities, which allows the pinnacles of justice to function criminally without accountability, so that "Justice" means, for them, "just us" and to hell with the rest of us, which makes a mockery of "Due Process of Law" and "Equality for All" and "Equal Justice".

State Bar dues were used to pay for this survey, one that does not ask anywhere near the right questions. Thus, this survey is another manifestation of CA State Bar trite, crap, and window dressing, just something it can point to to justify, for the uninformed, its existence.

Until the State Bar starts to do as I suggested above it will continue to function as a trade group for the politically well connected and as a hell hole that will be used by insiders to crush people, including the best of the best of its membership, such as attorney Richard I. Fine.

This survey, coupled with how the CA State Bar fails to support its members who stand up to usurpations, is another splendid Exhibit One of how the CA State Bar excels at misleading the public when it proclaims that it wants to "protect the public".

If the CA State Bar really wanted to "protect the public" it would seriously and immediately address in a sustained, meaningful, no compromise, manner, the issues I raised above, and damn the consequences as to who gets a well deserved comeuppance and a well deserved, belated, "At-a-boy!".

I have no realistic expectation that the senior leadership of the CA State Bar will do anything positive or good in response to my unfettered, candid, constructive input.

I write this with the realistic expectation that I am wasting my time and I am

# 1. The legislature is interested in receiving &quot;recommendations for

Response Text		
83	<p>for daring to be candid, for daring to communicate concepts unflattering to the CA State Bar.</p> <p>I decline to answer yours Questions Nos. 2-9 because I deem them to be, in context, a waste of time and essentially irrelevant.</p> <p>Who protects CA licensed lawyers from the unduly politically correct CA State Bar? Answer: No one!</p> <p>What is one of the biggest threats to the CA public? Answer: The CA State Bar itself! Why? Because its construction [interpretation and application] of its rules to CA attorneys is grossly inequitable, penalizes the best of the membership, has an undue chilling effect on competent and ethical zealous representation--which seriously harms the public, and tolerates the worst of the worst who are politically well connected.</p> <p>-- Peter J. Mancus, CA State Bar No. 52606</p>	Dec 21, 2010 5:18 PM
84	Education of attorneys re bias, conflicts of interest, ethics. Investigation of complaints by public. Discipline of attorneys who betray the public trust.	Dec 21, 2010 5:25 PM
85	client relations only	Dec 21, 2010 5:25 PM
86	Bureaucratic double-speak for making people feel good about what the State Bar does.	Dec 21, 2010 5:31 PM
87	<p>The public should have a place to go with any questions they may have about whether they are receiving adequate representation, and they should be able to receive candid feedback and advice. For the huge number of people who need occasional cost-prohibitive legal advice, perhaps the State Bar should sponsor a pool of attorneys who can be on "retainer" to answer questions and provide general advice to people, who perhaps can pay a token sum into the pool in exchange. There must be hundreds of attorneys who can spare a few minutes to help someone sort out a legal situation over the phone and point someone in the right direction. If legal representation is deemed necessary, perhaps there could be a State Bar-sponsored web portal where the attorney who has just sorted through the legal situation on the phone can post case details with a request for someone to volunteer their services at a reduced rate. Perhaps law firms with deep pockets, money placed into a fund from class action settlements, can provide partial payment of fees (or costs, expert fees) for these volunteer heroes. There should be a State Bar-sponsored program to mediate disputes, assist with domestic violence cases, etc. The State Bar should be a place of first resort for the public. Right now it is utterly, completely irrelevant to the public at large.</p>	Dec 21, 2010 6:07 PM
88	Disciplinary oversight of professional conduct	Dec 21, 2010 6:12 PM
89	<p>The Bar should ensure that only qualified applicants are admitted. In addition, the Bar needs to properly police the members of the Bar to ensure all adhere to both the letter and spirit of ethical responsibilities. Finally, the Bar should not be in such an adversarial relationship to its members. If you call th Ethics Hotline the first thing you are told is that the advice you recieve will not protect you. The only time you hear from the Bar is in an adversarial or punitive way. The Bar should be a resource to its members rather than just a policing agency.</p>	Dec 21, 2010 6:28 PM
90	Doing everything possible to disipline solo practioners and ignoring large firms	Dec 21, 2010 6:46 PM
91	Protection of the public means proper licensing of attorneys and quick and severe discipline and/or disbaring of unqualified/unethical attorneys.	Dec 21, 2010 7:04 PM
92	The best way to protect the public would be to focus on controlling the criminals in the legislature and leave the bar as it is.	Dec 21, 2010 7:05 PM
93	Make sure lawyers who act illegally cannot continue to practice	Dec 21, 2010 7:17 PM
94	Regulating the admission of applicants to the practice of law and the conduct of lawyers with respect to clients and members of the public.	Dec 21, 2010 7:25 PM
95	integrity	Dec 21, 2010 8:51 PM

# 1. The legislature is interested in receiving &quot;recommendations for

	Response Text	
96	Attorneys should be regulated to ensure that they provide the highest caliber legal advice and representation. This means that the State Bar MUST enforce disciplinary proceedings at the highest stds for misdeeds. It also means that the COURTS need to stop letting attorneys abuse the system without reporting them to the bar.	Dec 21, 2010 9:27 PM
97	Prevent unqualified lawyers from harming the public through poor practices. "Unqualified" meaning dishonest or grossly incompetent.	Dec 21, 2010 9:32 PM
98	Protection against broad-based scams like loan modification fraud, etc. Not the protection against attorney's who have trouble balancing their trust accounts!	Dec 21, 2010 10:40 PM
99	It's a code word for imposing additional hassle and expense on lawyers (but only solo practitioners, not big-firm lawyers or prosecutors) in addition to the profound challenges of this economic depression.. It's politically easy to bash lawyers.	Dec 21, 2010 10:59 PM
100	Protecting the public from unethical attorneys.	Dec 21, 2010 11:38 PM
101	incompetence, fraud, stealing, narcotics or alcohol addiction.	Dec 22, 2010 12:08 AM
102	In the context of governance of the State Bar, I understand "protection of the public" to encompass two distinct goals: identifying misfeasance/malfeasance by attorneys; and preventing further misfeasance/malfeasance	Dec 22, 2010 12:22 AM
103	Reducing or minimizing malpractice.	Dec 22, 2010 1:46 AM
104	Protection against lawyers committing legal malpractice; protection of pro se litigants; increasing bar counsel actions; encouraging judges, other lawyers, and the public to report unethical behavior; educating the public on what they should expect from ethical, competent lawyers (e.g. keep informed about litigation, money issues, etc.); providing information in Spanish, Chinese, etc. so that a language barrier will not prevent clients from understanding their rights. No need to protect the wealthy public. Need to protect the needy public, so need to get members from walks of life that have direct contacts with these populations. Need to have a few "reality checks" among what I assume to be a room of wealthy lawyers with little understanding or compassion for those in need and those who are unable to navigate our complex legal system.	Dec 22, 2010 4:45 AM
105	Harrasment, meddling, scape-goating, and lawyer bashing. Unnecessary and excessive licensing fees. .	Dec 22, 2010 3:39 PM
106	Harsh discipline for those who break the rules	Dec 22, 2010 9:42 PM
107	I understand "protection of the public" to mean that the interests of lawyers and law firms, as well as those of the State Bar, shall not come before the best interests of the public.	Dec 22, 2010 11:06 PM
108	Protect the public from negligent or dishonest lawyers	Dec 23, 2010 5:32 AM
109	The words do not mean anything. Police, fire; earthquake protection? More specific please.	Dec 23, 2010 11:47 AM
110	uphold quality and ethics and resist discourtesy and greed	Dec 23, 2010 8:08 PM
111	Make sure that attorneys who represent them serve them competently.	Dec 24, 2010 8:53 PM
112	Maintenance of high ethical standards among practicing attorneys, and discipline of those who fail to uphold those standards.	Dec 26, 2010 5:20 PM
113	Insuring, as much as possible, that no member of the public is harmed because of a lawyer's miscoduct, malpractice, or unethical actions.	Dec 26, 2010 7:01 PM
114	No.	Dec 26, 2010 10:03 PM
115	In this context, protection of the public should mean that licensed attorneys are competent and honest.	Dec 27, 2010 4:54 PM
116	It means that the public trust in the legal system is protected, through the rules of professional responsibility and through systems such as the ethics hotline where lawyers can "check themselves" in questionable situations.	Dec 28, 2010 7:30 AM

## 1. The legislature is interested in receiving &quot;recommendations for

Response Text		
117	Protecting the public from unethical attorney behavior.	Dec 29, 2010 7:15 PM
118	To insure that members of the public receive competent legal services from attorneys who understand and submit to the high ethical standards set by the Bar.	Dec 29, 2010 9:30 PM
119	Lawyers generally make a lot of money for so little oversight into what they actually do to earn it. Corrupt ones need weeding out, not protecting. The State Bar seems to be more interested in protecting the ranks. Not enough complaints are even investigated. Corrupt persons that are members of the bench also need to be examined.	Jan 1, 2011 11:07 PM
120	policing for bad lawyers; a very limited scope. Public Interest should include promoting the use of ADR, but for 20 years the board has shot this down as a required course for the State Bar exam, as a required course in law school, as a standard of ethics for lawyers (encourage settlement, discuss ADR alternatives with client).	Jan 3, 2011 8:03 PM
121	The bar board is responsible for recruiting, selecting, and evaluating certain management level employees of the bar who are responsible for licensing, regulation and discipline of attorneys. As such, the board of governors has ultimate responsibility for that function.	Jan 4, 2011 12:00 AM
122	Require all attorneys to have malpractice insurance; be less lenient in penalizing/sentencing attorneys who have been proven in the State Bar Court to have harmed a client; Create special bankruptcy court rules relating to attorneys that will preclude them from avoiding malpractice lawsuits by simply filing for bankruptcy.	Jan 4, 2011 12:51 AM
123	Enhancement of the legal process; protecting consumers from unethical lawyers.	Jan 4, 2011 1:20 AM
124	Protection of the public from lawyers who abuse their relationships with their clients, whether by acts of dishonesty, malpractice, trust account violations, etc.	Jan 4, 2011 1:34 AM
125	Elimination of incompetent and crooked lawyers and judges.	Jan 4, 2011 1:50 AM
126	Attorneys should be competent and ethical.	Jan 4, 2011 2:21 AM
127	Ensure public confidence on the legal system.	Jan 4, 2011 5:15 AM
128	Disciplining errant attorneys but never disciplining prosecutors no matter what they do. Ever.	Jan 4, 2011 5:23 AM
129	Reigning in attorneys and judges who abuse their power, delay the completion of litigation and/or act in a way which is harmful to the judicial process.	Jan 4, 2011 8:19 AM
130	Improving access to legal advice and representation. Assuring competence and dedication in attorneys. Providing clear guidance to attorneys as to their duties. Assuring legislation and regulations are logical, understandable, and workable. Dealing out appropriate discipline. Assisting attorneys with training, continuing education, and meeting issues they face in practice.	Jan 4, 2011 3:29 PM
131	whatever is the passing fancy of the chair of the funding committee and her staff	Jan 4, 2011 6:57 PM
132	Keeping unscrupulous, unethical and incompetent lawyers out of the business of representing clients.	Jan 4, 2011 9:17 PM
133	I fear that it means clamping down on plkaintiff's attorneys and is motivated by anti-attorney feelings that are fanned by conservatives seeking to undercut the protection of citizen and consumer protections and individual rights.	Jan 4, 2011 11:26 PM
134	Making sure Lawyers earn their fees, guard client confidences, and faithfully assist the Courts properly to administer justice under our State's and our Nation's Laws.	Jan 5, 2011 1:23 AM
135	Exactly what it says: That the CA State Bar Board of Governors shall license, regulate the activities of and discipline - if necessary - licensed attorneys practicing in the State of CA.	Jan 5, 2011 3:12 AM
136	Protection of the public means that the State Bar will diligently review, investigate, and if appropriate, prosecute complaints against attorneys.	Jan 5, 2011 8:21 PM

## 1. The legislature is interested in receiving &quot;recommendations for

Response Text		
137	That attorneys are held accountable to high standards of professional competence, integrity and professional ethics	Jan 6, 2011 12:27 AM
138	Rules that protect the public as individuals	Jan 6, 2011 2:43 AM
139	Ensuring access to justice is fair and affordable to the public; ensuring that the lawyers in our State are committed to ethical conduct in dealing with clients, court and opposing counsel.	Jan 6, 2011 4:43 PM
140	Protecting the public from unscrupulous lawyers.	Jan 6, 2011 10:14 PM
141	Ensuring that active members of the bar (practicing lawyers) have the requisite minimum legal skills sufficient to provide legal services competently to their clients.	Jan 8, 2011 6:59 PM
142	discipline of attorneys who breach the public trust such as foreclosure fraud, theft of client funds, use of law to file many lawsuits the purpose of which is not protection of the public but generation of legal fess. Class action fees should not exceed 25 percent and where no cash benefit is given, the attorney fees should not exceed 10 percent. Class actions should benefit the class, not the attorney who files them.	Jan 8, 2011 10:29 PM
143	Fundamentally, the Board's purpose is to provide a means to ensure there is some entity that effectively "guards the Guardians". The Board is the internal means for the judicial branch of government to police itself. The Board should ensure that there are appropriate standards and review procedures for judges, lawyers, and other officers of the court and Bar; and that these standards and reviews are effective for all.	Jan 9, 2011 10:19 PM
144	Currently, "protection of the public" in context of the State Bar simply means attack defenseless sole practitioners or small firms to make it appear they are "protecting the public" while turning their back or actively assisting a variety of bad acts committed by members of large firms or the government.	Jan 10, 2011 4:27 AM

## 1. The legislature is interested in receiving &quot;recommendations for

### Response Text

145	<p>Protection of the Public involves the regulation of the legal profession in discipline and licensing; monitoring the relationship of lawyers with their clients, the courts, and the legal system.</p> <p>We believe that the Board has focused on public protection. In a number of significant policy decisions, the Board has recently acted to protect the public over the objections of voluntary bar associations and contrary to what may be viewed as the more parochial interests of lawyers.</p> <p>For example, the Bar wholeheartedly supported SB 94, which placed prohibitions on lawyers' accepting advanced fees for assistance to clients in obtaining loan modifications.</p> <p>A few years ago, the Board supported the posting of Notices of Disciplinary Charges on their website. Allegations are posted on the Internet prior to any determination of guilt or innocence. This was opposed by many local bar organizations.</p> <p>Further, the Board enacted a new Rule of Professional Conduct requiring that lawyers disclose the absence of legal malpractice coverage. This was opposed by many local bar organizations.</p> <p>Finally, the Board of Governors (September 22, 2010) adopted a revision to the Rules of Procedure that loosens the standards that apply to the admissibility of evidence at the State Bar Court, enacting standards similar to the Administrative Procedures Acts. Now evidence at the State Bar Court need only be "relevant and reliable," and can include hearsay.</p> <p>These recent actions by the Board were almost uniformly opposed by local bar organization, yet the Board determined that they fostered and promoted public protection.</p>	Jan 11, 2011 12:37 AM
146	<p>"Protection of the public" means keeping crooks and incompetents out of the profession. No enhancement is required. Lawyers already are the most heavily-regulated profession in the state.</p>	Jan 12, 2011 11:28 PM
147	<p>The problem is that this is only half of what the State Bar does. Licensing, regulation and discipline is to make sure that the lawyer is qualified, and serves his or her client ethically, honestly and well.</p> <p>The other part of the State Bar's activities is to educate lawyers and legislators, provide input on necessary and appropriate changes to the law, and to be a trade association for lawyers in California. If this second part is not considered necessary by the legislature, then the legislature should allow this part to be split off and remain self regulated (it would then follow the structure in many states of having a separate, voluntary state bar association, controlled by the members, that is not connected with the admission, regulation and discipline of lawyers).</p>	Jan 12, 2011 11:36 PM
148	<p>Protection of the public from unscrupulous lawyers and unscrupulous business practices by lawyers.</p>	Jan 13, 2011 1:05 AM
149	<p>"Protection of the Public" means adequate representation of all of the geographic areas in California so that the State Bar can enact rules and regulations to make sure the attorneys representing the public provide services in a proper manner. To ensure this happens, the Board of Governors must be able to hear the various concerns of the public in all of the geographical areas of California. If one particular area is not represented, than the needs of the public, in that geographical area, will be overlooked. Thus to ensure the public is properly protected, each geographical area of California should have local representation on the Board.</p>	Jan 13, 2011 1:45 AM

## 1. The legislature is interested in receiving &quot;recommendations for

	Response Text	
150	Attorneys be required to work for their client to the best of their ability without deliberately delaying resolution or failing to provide all of the options available.	Jan 13, 2011 10:44 PM
151	A group of attorneys'/lawyers' protecting themselves from the violations of Laws Passed by State Legislature & "Acts of Congress", disregarding United States of America Public Citizens & others within its jurisdiction legal rights.	Jan 13, 2011 10:44 PM

## 2. Who should serve on the board that governs the State Bar?

	Response Text	
1	Attorneys and non-attorneys.	Dec 20, 2010 10:23 PM
2	Fifty percent members of the pulbic that have made substantial use of an attorney's services in the past five years and fifty percent members of the bar with at least one member having been subjected to State Bar's disciplinary process wihin the last five years.	Dec 20, 2010 10:27 PM
3	Retired Judges, Retired Attorneys, Citizens	Dec 20, 2010 10:27 PM
4	no opinion	Dec 20, 2010 10:27 PM
5	lawyers, judges, public.	Dec 20, 2010 10:28 PM
6	Mostly lawyers, but the presence of some lawyers on that board is not inconsistent with the function and goals.	Dec 20, 2010 10:29 PM
7	I believe that the Bar should consist of a roughly equal number of professional and non-professional members.	Dec 20, 2010 10:31 PM
8	lawyers with a minimum legal experience of 15 years practicing law; judges who have served on the bench for at least 10 years; three members at large who are non lawyers	Dec 20, 2010 10:31 PM
9	Lawyers, judges, public interest lawyers, general public.	Dec 20, 2010 10:31 PM
10	lawyers, judges and members of the public	Dec 20, 2010 10:31 PM
11	A minimum number of lawyers, some non-lawyers	Dec 20, 2010 10:31 PM
12	Present make up appears appropriate	Dec 20, 2010 10:32 PM
13	People who represent the constituency served and some must be attorneys who are engaged in the practice of law.	Dec 20, 2010 10:33 PM
14	tenured attorney, those who are not members of the bar that are answerable to the public	Dec 20, 2010 10:33 PM
15	Both attorneys and members of the public knowledgeable about attorney-client issues.	Dec 20, 2010 10:35 PM
16	Attorneys.	Dec 20, 2010 10:36 PM
17	Lawyers who believe in protecting the rights of the common person to hire attorneys of their choice. Non-attorneys should not serve on the board.	Dec 20, 2010 10:38 PM
18	Attorneys, paralegals and informed members of the public with relevant experience. While there is currently a focus on diversity of geography across the state in selecting members of the board, there should also be a focus on diversity of experience (i.e. large vs small firm, litigation vs transactional practice and age).	Dec 20, 2010 10:39 PM
19	People knowledgeable about the practice of law and business regulations	Dec 20, 2010 10:39 PM
20	Lawyers, judges and members of the public who have no ties to the legal field.	Dec 20, 2010 10:41 PM
21	Attorneys with experience in handling allegations of ethical infractions and public complaints of same.	Dec 20, 2010 10:43 PM

## 2. Who should serve on the board that governs the State Bar?

	Response Text	
22	Current system seems balanced	Dec 20, 2010 10:43 PM
23	Lawyers who understand the practice of law and some members of the public	Dec 20, 2010 10:46 PM
24	Attorneys, retired attorneys, a few judges and very few political based personnel without a legal background.	Dec 20, 2010 10:48 PM
25	Attorneys without qualification to age.	Dec 20, 2010 10:48 PM
26	Anybody who does not have a "rice-bowl" or "empire-building" or bureaucratic mentality or who is a liberal with other people's money.	Dec 20, 2010 10:51 PM
27	Lawyers only, selected by the members of the State Bar.	Dec 20, 2010 10:51 PM
28	members of the bar	Dec 20, 2010 10:54 PM
29	Judges, attorneys, the public.	Dec 20, 2010 10:57 PM
30	Both members of the public and members of the state bar.	Dec 20, 2010 10:59 PM
31	Persons appointed by the governor and legislative leadership.	Dec 20, 2010 11:02 PM
32	The present composition seems adequate.	Dec 20, 2010 11:03 PM
33	Both attorneys and non-attorneys. Should be diverse (gender, race, disability, etc.)	Dec 20, 2010 11:03 PM
34	I note that the current selection method is based on geographic boundaries which is of course fitting as agricultural areas most likely have differing need from urban areas. However it occurs to me that years in practice may just as well be a valid criteria. In that regard, the current make up is one attorney under 36 years of age or less than 5 years of practice. Seems to me that perhaps 8 members should be selected on geographic basis and 8 based on years of practice at least as far as the attorneys go. As far as the public members go there appears to be no guidelines set forth other than the number which leads me to suspect they are political appointments. I think that heads of political or social activists should be considered for these positions.	Dec 20, 2010 11:04 PM
35	Attorneys, judges and public members.	Dec 20, 2010 11:11 PM
36	Discipline and enforcement is skewed against smaller firms. There is a model that presumes that larger firms do not have discipline problems	Dec 20, 2010 11:11 PM
37	Current makeup is fine	Dec 20, 2010 11:16 PM
38	Neutral attorneys who care about other attorneys.	Dec 20, 2010 11:20 PM
39	Both lawyers and members of the public, pretty much the way it is now. But a larger cross-section of public representation seems to be a good idea.	Dec 20, 2010 11:22 PM
40	Lawyers, judges and law professors should definitely be the majority of the members that serve on the bar. I can see why individuals that are not lawyers could be included but those individuals should be well-versed in issues relating to attorneys and to their work.	Dec 20, 2010 11:26 PM
41	Non lawyers	Dec 20, 2010 11:26 PM
42	Lawyers, members of the public, and an accountant knowledgeable regarding financial transactions.	Dec 20, 2010 11:28 PM
43	Current make up is OK	Dec 20, 2010 11:31 PM
44	I do not accept the premise that the State Bar should exist. I believe lawyers should be regulated as New York does it, by the courts, and if California has a bar association it should be of lawyers and for lawyers and a purely private sector organization.	Dec 20, 2010 11:32 PM
45	Attorneys who are known for being competent and highly ethical, with a minimum of 5 years practice with the state bar.	Dec 20, 2010 11:39 PM
46	Attorneys and members of the public.	Dec 20, 2010 11:39 PM

## 2. Who should serve on the board that governs the State Bar?

	Response Text	
47	Only members of the State Bar. Members of the Public do not know enough to be of useful assistance and usually do not understand what lawyers need to do. The Public can make suggestions and submit complaints as noted below.	Dec 20, 2010 11:44 PM
48	Lawyers recommended by the State Judicial Commission and receive the highest rating, business and community leaders.	Dec 20, 2010 11:52 PM
49	only attorneys and judges as they would take pride in the calibre of fellow members as in the old Guilds	Dec 20, 2010 11:53 PM
50	Lawyers. Some public members are appropriate, but public members candidly are like lay arbitrators -- it seems nice in concept, but you need to have actual familiarity with laws, procedures and practices.	Dec 21, 2010 12:00 AM
51	The same as now (mostly lawyers with 6 or 7 lay people.	Dec 21, 2010 12:01 AM
52	LAWYERS! ONLY!	Dec 21, 2010 12:06 AM
53	Practicing lawyers and members of the public.	Dec 21, 2010 12:17 AM
54	The current structure is acceptable.	Dec 21, 2010 12:20 AM
55	The current mix of practicing attorneys and laymen is a good model. In house lawyers should be represented on the board if they are not already.	Dec 21, 2010 12:22 AM
56	California-licensed Attorneys in good standing and Public Members. 3 Attorneys for each Public Member.	Dec 21, 2010 12:27 AM
57	In lieu of some of the active lawyers, I would like to see 1-3 judges, active or recently retired. Perhaps the current and past Chief Justice of the state Supreme Court (or the newest member, even)? And, if the past Chief Justice can't or declines, then the Chief Justice could name another sitting or recently retired judge. Replacing active lawyers with retired judges would also decrease the influence of active non-judge lawyers in the State Bar, which would give strength to the other groups. Active non-judge lawyers should constitute no more than 50% of the board.	Dec 21, 2010 12:29 AM
58	Attorneys and lay persons	Dec 21, 2010 12:42 AM
59	Attorneys and members of the public	Dec 21, 2010 12:43 AM
60	Lawyers directly elected by all current bar members.	Dec 21, 2010 12:45 AM
61	It should be mixture of lawyers and non-lawyers. The purpose of having a mixture of lawyers and non-lawyers would be to certain that the non-lawyer perspective is taken into consideration.	Dec 21, 2010 12:46 AM
62	Lawyers	Dec 21, 2010 12:57 AM
63	Less lawyers than are currently serving, more and more diverse members of the public.	Dec 21, 2010 1:13 AM
64	I am pretty well satisfied with the present composition of the Board.	Dec 21, 2010 1:20 AM
65	Individuals should serve on the board who understand the qualities necessary to possess the qualities mentioned above AS WELL AS individuals from the public who are sensitive to the broad range of sophistication (or lack thereof) in the public that uses or needs access to legal services. Also allow for law student interns.	Dec 21, 2010 1:27 AM
66	Lawyers and non-lawyers.	Dec 21, 2010 3:12 AM
67	A broad range of primarily attorneys with untarnished credentials. More solo practitioners and small firm members should serve. Political appointees should probably not serve.	Dec 21, 2010 3:23 AM
68	ALL SHOULD BE NONLAWYERS.	Dec 21, 2010 4:15 AM
69	I believe only lawyers should serve. The "public member" -- however fashionable -- seems unnecessary. The only one I've met was a complete, arrogant, jackass.	Dec 21, 2010 4:19 AM
70	active members in good standing	Dec 21, 2010 4:30 AM

## 2. Who should serve on the board that governs the State Bar?

	Response Text	
71	The current framework seems practical.	Dec 21, 2010 4:55 AM
72	Because "protection of the public" is but one of several State Bar functions, it needs to be only attorneys.	Dec 21, 2010 5:31 AM
73	I am satisfied with the current make-up of the Board.	Dec 21, 2010 5:48 AM
74	Majority of public members; minority of attorneys.	Dec 21, 2010 5:58 AM
75	ethical attorneys who live in the geographical district they represent	Dec 21, 2010 12:18 PM
76	CITIZENS WITHOUT A CONFLICT OF INTEREST AND WHO ARE NOT THERE TO BUILD A RESUME, OR FUTHER A FINANCIAL OR POLITICAL CAREER	Dec 21, 2010 12:34 PM
77	Current model is fine.	Dec 21, 2010 3:21 PM
78	Former lawyers should be mandatroy in the composition of the Board	Dec 21, 2010 4:05 PM
79	Predominately lawyers.	Dec 21, 2010 4:38 PM
80	Trusted attorneys and judges and some members ot the public who understand the issues	Dec 21, 2010 5:12 PM
81	a mix of attorneys and lay people.	Dec 21, 2010 5:25 PM
82	CA licensed lawyers only	Dec 21, 2010 5:25 PM
83	Attorneys.	Dec 21, 2010 5:31 PM
84	It should be one-third attorneys, one-third judges and one-third members of the public.	Dec 21, 2010 6:07 PM
85	Assuming that this means a sub-Board for the oversight of the disciplinary system: Actively practising lawyers only; meaning that they are not retired, elected to public office or judges	Dec 21, 2010 6:12 PM
86	I think it would be useful to have a judge serve as an appointed member. In addition, perhaps some of the presidents or delegates of various state associations for public attorneys could serve as non-voting members. For example, I am a past president of the California County Counsels Association. There are similar associations for other public lawyers. In my opinion public lawyers are underrepresented on the Board.	Dec 21, 2010 6:28 PM
87	Attorneys & Judges	Dec 21, 2010 6:46 PM
88	Combination of attorneys and the public	Dec 21, 2010 7:04 PM
89	Experienced attorneys - say, 5 years or more in the bar. I'd try and get some in-house as well as a mix of solo and large firm types.	Dec 21, 2010 7:05 PM
90	There should be greater diversity among the public appointments - as it is currently structured you would have to be politically-in with the governor or politicians to get a public recommendation. Insiders taking care of insiders	Dec 21, 2010 7:17 PM
91	lawyers, members of the public and one member of the judiciary (active or retired).Otherwise the composition of the Board shoould remain the same.	Dec 21, 2010 7:25 PM
92	insurance commissioner	Dec 21, 2010 8:51 PM
93	How is this relevant to the protection of the public more than it already does? This appears to be a politically motivated question rather than one which is intended to actually discover where problems lie. Changing the faces on the board will NOT solve anything. Thus, if this is the only type of question that this survey can come up with, it is useless.	Dec 21, 2010 9:27 PM
94	Lawyers	Dec 21, 2010 9:32 PM
95	The representatives should include several of the practices: solo, big firm, corporate, etc. I don't believe that State appointed persons are representative of the "public".	Dec 21, 2010 10:40 PM
96	Lawyers.	Dec 21, 2010 10:59 PM

## 2. Who should serve on the board that governs the State Bar?

	Response Text	
97	I think the current structure is a good one. Perhaps, there could also be an emphasis for ensuring tha there is equal representation by both the plaintiff and defense bar.	Dec 21, 2010 11:38 PM
98	lawyers	Dec 22, 2010 12:08 AM
99	Respected attorneys, legislatures and/or public officials with years of service.	Dec 22, 2010 12:22 AM
100	Malpractice attorneys, judges, educators, members of the public.	Dec 22, 2010 1:46 AM
101	Representative from FTC or state consumer protection agency, state trial judge, federal trial judge, state AG lawyer, bar counsel, legal aid attorney, transactional lawyer, trial attorney, general counsel, new attorney, healthy dose of non-lawyers, lawyers not from big metropolitan areas.	Dec 22, 2010 4:45 AM
102	yes if the pay is right.	Dec 22, 2010 3:39 PM
103	elected lawyers	Dec 22, 2010 9:42 PM
104	I think the current composition is acceptable.	Dec 22, 2010 11:06 PM
105	Majority should be lawyers, with some lay input	Dec 23, 2010 5:32 AM
106	A mix of Lawyers; judges and public members.	Dec 23, 2010 11:47 AM
107	lawyers interested in maintaining high standards in the profession and not just interested in self aggrandizement. Maybe a couple of devoted law school teachers/administrators should be mixed in, but everyone has to understand the challenges of practice in the public. private, corporate and other sectors. Also the board should have diversity: big firm, solo, urban rural.	Dec 23, 2010 8:08 PM
108	Attorneys, Judges and nonlawyers	Dec 24, 2010 8:53 PM
109	Attorneys with clean public disciplinary records should make up at least one-half of the board. Non-lawyers selected by the Governor or the legislature should make up the balance.	Dec 26, 2010 5:20 PM
110	I am satisfied with the present method of selecting board members.	Dec 26, 2010 7:01 PM
111	Lawyers.	Dec 26, 2010 10:03 PM
112	A smaller numbere than 22. Experienced lawyers should be on the board, with a few retired judges.	Dec 27, 2010 4:54 PM
113	Lawyers of unquestionable inetegrity and members of the public who do not contribute or have any conflicts of interest with the bar.	Dec 28, 2010 7:30 AM
114	I think it's fine how it's now structured.	Dec 29, 2010 7:15 PM
115	Lawyers and Judges.	Dec 29, 2010 9:30 PM
116	More members of the public than lawyers.	Jan 1, 2011 11:07 PM
117	lawyers and members of the public, as you have	Jan 3, 2011 8:03 PM
118	Primarily lawyers, if not exclusively lawyers. Power and leadership come from consent of the governed. Nonlawyers issuing edicts about how lawyers should behave will not be well accepted.	Jan 4, 2011 12:00 AM
119	Lawyers are best qualified to serve on the Board.	Jan 4, 2011 1:20 AM
120	I think the mix is about right; there should be public members, but I think the majority should be lawyers.	Jan 4, 2011 1:34 AM
121	Lawyers, judges, and other interested citizens	Jan 4, 2011 1:50 AM
122	Only persons admitted to practice law in the state of California.	Jan 4, 2011 2:21 AM
123	Lawyers and non lawyers	Jan 4, 2011 5:15 AM
124	Good question.	Jan 4, 2011 5:23 AM
125	Active attorneys, judges and qualified members of the public.	Jan 4, 2011 8:19 AM
126	Members of the judiciary, a representative cross-sectiion of attorneys, legal educators, some public members.	Jan 4, 2011 3:29 PM

## 2. Who should serve on the board that governs the State Bar?

Response Text		
127	Lawyers directly elected by bar members	Jan 4, 2011 6:57 PM
128	A panel of lawyers and educated lay people	Jan 4, 2011 9:17 PM
129	It should be fairly balanced between attorneys who represent people and those who represent corporations, those who represent criminals and those who are prosecutors, solo practitioners and large law firm attorneys.	Jan 4, 2011 11:26 PM
130	Instead of 16 Lawyers and 6 Laypersons, the Board should be composed of 20 Lawyers and 2 Laypersons. Laypersons should have had some experience as Clients of Lawyers.	Jan 5, 2011 1:23 AM
131	Those individuals, including licensed and active attorneys and non-attorneys, as outlined in applicable sections of the CA B&P Code.	Jan 5, 2011 3:12 AM
132	The present composition of the board of governors is adequate.	Jan 5, 2011 8:21 PM
133	Active attorneys are recognized to meet/exceed these standards and members of the public who have the capability to evaluate professionals such as other current or former licensed professionals (architects, teachers, CPAs, MDs, etc).	Jan 6, 2011 12:27 AM
134	attorneys and non attorneys. These members should not know eachother or be friends of friends.	Jan 6, 2011 2:43 AM
135	Lawyers who have experience in public protection issues; public members must have actual experience in the legal system in some meaningful way.	Jan 6, 2011 4:43 PM
136	Lawyers. I'm not sure that including public members has improved anything.	Jan 6, 2011 10:14 PM
137	The board should be comprised of both lawyers and members of the public.	Jan 8, 2011 6:59 PM
138	attorneys	Jan 8, 2011 10:29 PM
139	As diverse a group of interested,trustworthy, and knowledgeable members of the public, the legislative and executive branches, and the Bar that is yet small enough to have open and frank discussion and able to decisively make uncomfortable decisions	Jan 9, 2011 10:19 PM
140	Only sole practitioners or attorneys in firms of 5 or less attorneys. Attorneys employed by large firms or the government should be disqualified. In the alternative, equal representation - one sole practitioner for ever large firm OR government attorney.	Jan 10, 2011 4:27 AM

## 2. Who should serve on the board that governs the State Bar?

Response Text		
141	<p>When lawyers are admitted to the practice, they swear to abide by the core principles of the legal profession, as are articulated in the Rules of Professional Conduct and State Bar Act. Lawyers are fiduciaries as a matter of law, and officers of the court.</p> <p>Many of the constituent groups (voluntary local bar association) opposed the requirement of disclosure of malpractice coverage, and the posting of Notices. The Board enacted those and other protocols because they believed they promoted and enhanced the core values of the profession.</p> <p>We believe lawyers should constitute the majority of the Board of Governors. According to substantial case precedent, lawyers are within the judicial branch of the government, as opposed to the other professions. Lawyers remain one of the last self-regulating professions because of this critical factor.</p> <p>Public members should continue to serve. They are important because (if properly selected) they represent the voices of the consumers of legal services.</p> <p>During the last decade, the Rules Revision Commission has worked with great diligence to rewrite and articulate the Rules of Professional Conduct. While many lawyer members of the Board have attended those meetings, we are advised that public members have rarely, if ever, attended them. We would like to see public members appointed who have demonstrated a commitment to addressing issues of public concern and who are prepared to devote the time and energy necessary to educate themselves in these matters.</p>	Jan 11, 2011 12:37 AM
142	A majority of lawyers and a minority of highly qualified community leaders.	Jan 12, 2011 11:28 PM
143	lawyers actively engaged in the practice of law	Jan 12, 2011 11:36 PM
144	A variety of people from different parts of the legal profession - large firms, small, solos, government lawyers, public interest lawyers, in house counsel, and one or two members of the public	Jan 13, 2011 1:05 AM
145	Individuals who best represent the interest of a diverse bar should serve on the governing board of the State Bar. This is best accomplished with separate districts that allow for local representation.	Jan 13, 2011 1:45 AM
146	A variety of previous litigants specifically previous high conflict litigants who have strived to expose deliberately churning of cases which finally has been acknowledged initially by the Elkins Task Force.	Jan 13, 2011 10:44 PM
147	Internal Revenue Service verifying attorneys'/lawyers' report monies earned in its corporation & public corporation profession; Congress law committee; State Legislature law committee, & Attorneys'/Lawyers' represent attorney-lawyer	Jan 13, 2011 10:44 PM

## 3. How should each of these individuals be selected? By whom and by what

Response Text		
1	The attorney members should be elected by the membership at large. Non-attorney members should be appointed by	Dec 20, 2010 10:23 PM
2	See above for criteria. The Chief Justice should appoint the members with consent of a majority of the sitting members.	Dec 20, 2010 10:27 PM
3	I don't know.	Dec 20, 2010 10:27 PM
4	N/A	Dec 20, 2010 10:27 PM

### 3. How should each of these individuals be selected? By whom and by what

	Response Text	
5	No strong opinion; bar members can elect lawyers; judges and public should be appointed.	Dec 20, 2010 10:28 PM
6	By persons of wisdom within the profession.	Dec 20, 2010 10:29 PM
7	I believe that the election scheme should be ended, and the board should be fully appointed by the State Senate, Assembly and Governor.	Dec 20, 2010 10:31 PM
8	A committee should be appointed to review applications ...criteria as specified above	Dec 20, 2010 10:31 PM
9	Selected by self-application and appointment for certain positions. Appointed by Judicial Council, Governor, and Legislature. Criteria should include, for attorneys, active membership in the bar, proven commitment to ethical practice of law and the general public, for non-lawyers should have a demonstrated commitment to a general population social issue--a commitment to the importance of protection of the public from predatory lawyers, and an interest in providing legal information to the general public in non-legal terms.	Dec 20, 2010 10:31 PM
10	some of the lawyer members should be elected, as they are now. some lawyers should be appointed. the members of the public and the judges should be appointed.	Dec 20, 2010 10:31 PM
11	Represent various interests, including legal, political, industry, social causes	Dec 20, 2010 10:31 PM
12	Present make up appears appropriate	Dec 20, 2010 10:32 PM
13	By the legislative, judicial and executive branches of government - by appointment powers	Dec 20, 2010 10:33 PM
14	current selection process seems reasonable	Dec 20, 2010 10:33 PM
15	Contested elections.	Dec 20, 2010 10:36 PM
16	Current selection method is OK.	Dec 20, 2010 10:38 PM
17	These individuals should be selected by a nominating committee composed of respected experts in the legal field (i.e. retired judges, professors, retired lawyers). This committee should be insulated from political influence.	Dec 20, 2010 10:39 PM
18	They should not be selected by government officials. That system is based on political debts. This is not a formula for selecting talent. Form a selection committee of judges and law school deans.	Dec 20, 2010 10:39 PM
19	By the Chief Justice of the Supreme Court.	Dec 20, 2010 10:41 PM
20	By election and appointment, where necessary. Individuals should have a minimum of 10 years of legal education and attorney experience.	Dec 20, 2010 10:43 PM
21	Appointments are worthless - always political. No one will appoint someone not put forward by their entourage, or whom they know personally, so anyone not in the inner circle (or someone whose favor is being carried) is automatically excluded. People should be asked to volunteer and then an impartial (some academicians would be nice) panel should interview, vet and select from the volunteers.	Dec 20, 2010 10:43 PM
22	Attorneys should be elected by practicing members of the bar statewide. There is no reason why there should be 9 geographic areas with a representative each. Being from Shasta County, for example, or any other county, for that matter, brings no particular expertise to the role. Lawyers with less than 5 years should not be represented. They do not have enough experience to make valuable contributions. The Governor, not the Legislature, should appoint the public members. The qualifications are fine as they are.	Dec 20, 2010 10:46 PM
23	One third should come from small firms and the private sector	Dec 20, 2010 10:48 PM
24	Members of the California Bar by members of the bar apportioned by district.	Dec 20, 2010 10:48 PM

### 3. How should each of these individuals be selected? By whom and by what

	Response Text	
25	To be fair and non-political, I would select by lottery every year or two-years. Serving would be on NO COMPENSATION but expenses reimburseable basis and mandatory if selected by lottery.	Dec 20, 2010 10:51 PM
26	Election by members of the State Bar, by district, with no requirement that any specific group of members being given any preference.	Dec 20, 2010 10:51 PM
27	Application	Dec 20, 2010 10:54 PM
28	By public election	Dec 20, 2010 10:57 PM
29	Members of the public could apply. The criteria could be a 4 year degree or higher.	Dec 20, 2010 10:59 PM
30	See response to No. 2.	Dec 20, 2010 11:02 PM
31	The methods currently used seem to be adequate.	Dec 20, 2010 11:03 PM
32	I think a committee should be put together to determine the qualifications and then reviewed and selected versus the board itself choosing--nepitism and all (sp?)	Dec 20, 2010 11:03 PM
33	As far as the selection goes no criteria is set forth other than the Governor getting to appoint 4 and one each by the Senate Rules Committee and 1 by the Speaker of the House. I would have the Speaker choose 2 and the Senate Rules Committee choose 2.	Dec 20, 2010 11:04 PM
34	By application and appointment.	Dec 20, 2010 11:11 PM
35	The composition of panels etc are not the problem is the enforcement models and/bias.	Dec 20, 2010 11:11 PM
36	Current selection process is acceptable	Dec 20, 2010 11:16 PM
37	These individuals should be nominated by members of the bar.	Dec 20, 2010 11:20 PM
38	I'm not familiar with current procedures. But the Bar should reach out for under-represented segments of the public.	Dec 20, 2010 11:22 PM
39	Individuals can volunteer or be appointed by the governor.	Dec 20, 2010 11:26 PM
40	Elected at large	Dec 20, 2010 11:26 PM
41	4 lawyers (1 from L.A. area, 1 from Northern Calif., 1 from Fresno/Bakersfield area, and 1 from Redding/Eureka area); 4 public members from each of those areas; and 1 accountant. Publish openings on the Board in the legal papers, in the main newspapers in L.A., San Diego, San Francisco, Oakland, Sacramento, Fresno, Bakersfield and Redding; and put on Craigslist and a couple of other jobs websites. From interested responses, existing Board can select the best candidates for the next year.	Dec 20, 2010 11:28 PM
42	Current approach is OK	Dec 20, 2010 11:31 PM
43	I am opposed to lay people governing an organization of lawyers. For that reason regulation should be done by the courts or another government agency and the bar association should be private and not in the regulation business.	Dec 20, 2010 11:32 PM
44	They should be elected by the public.	Dec 20, 2010 11:39 PM
45	A majority of the board of governors should be attorneys.	Dec 20, 2010 11:39 PM
46	Members of the Board of Governors should be selected by the Judges on the California Supreme Court, The California Distrit Courts of Appeal and by the Superior Court judges. Their selection should be based on their knowledge of the experience, competence and high moral standards and ethics of the candidates.	Dec 20, 2010 11:44 PM
47	Similar to the judiciary, lawyers should receive peer ratings. Business and Community members should be elected in the same manner judges are elected.	Dec 20, 2010 11:52 PM
48	nominated by local bars and voted upon by active attorneys	Dec 20, 2010 11:53 PM
49	Lawyers appointed by the California Supreme Court/Judicial Council with perhaps some consent or concurrence by the Governor and Attorney General. Competence and experience.	Dec 21, 2010 12:00 AM

### 3. How should each of these individuals be selected? By whom and by what

	Response Text	
50	Lawyers - by vote of their peers; public members by appointment of senate (as opposed to 4 selected by governor, 1 each by the leader of the Senate and Assembly. Criteria: Active lawyers, honest and good reputation.	Dec 21, 2010 12:01 AM
51	Appointment by the Judicial Counsel.	Dec 21, 2010 12:06 AM
52	The State Bar should advertise the public roles in general newspapers, etc and a special committee in the legislature and governor's office should select the members of the public to participate. The committee should ensure diverse representation (economic, sex, political views) so that the members of the public are representative of the community's views. Lawyers should be able to nominate themselves to be appointed and be elected by other State Bar members.	Dec 21, 2010 12:17 AM
53	The current structure is acceptable.	Dec 21, 2010 12:20 AM
54	The current model is OK.	Dec 21, 2010 12:22 AM
55	By the State Bar Governors	Dec 21, 2010 12:27 AM
56	The active lawyers should be selected by vote of the lawyers in their district. The appointments by the various political authorities is fine, as the the CYL appointee (although this person should probably serve for 3 years, or until age 36, whichever is first). A couple of spots should be designated positions within government or the bar, such as the judges noted above, and could include the Lieutenant Governor or Secretary of State or the person holding some other elected position.	Dec 21, 2010 12:29 AM
57	Attorneys elected by active attorneys, lay persons appointed by Governor	Dec 21, 2010 12:42 AM
58	Attorneys by members of the California Bar.	Dec 21, 2010 12:43 AM
	Members of the public by the Governor, with the advice and consent of the State Senate.	
59	Election by all current bar members based on a platform.	Dec 21, 2010 12:45 AM
60	They should be appointed by the Governor with the advice and consent of the CA State Senate.	Dec 21, 2010 12:46 AM
61	Election by members. Criteria should include experience, record and accomplishments	Dec 21, 2010 12:57 AM
62	The election of the attorney members by their peers, by a structure that compels geographic distribution, and thereby a mix of law practice backgrounds, has worked well. I was concerned about the appointment of non-attorneys when it began, but the appointments have been generally responsible and the appointees have made useful contributions	Dec 21, 2010 1:20 AM
63	That is a much more difficult question. Judges, neutrals, lawyers from various disciplines [academia; criminal law; corporate law; immigration; debtor/creditor law; general/commercial litigation; personal law (trusts, estates, probate, family law, conservatorships); solo practitioners; labor; complex litigation; nonlawyers (sociologists, public health experts, mental health/poverty/veterans assistance experts, corporate/banking executives, representatives from other local industries and other consumers of legal services).	Dec 21, 2010 1:27 AM
64	Lawyers elected by the members of the Bar, non-lawyers elected by the general public. NO political appointments, that is no politicians to have a say in the process.	Dec 21, 2010 3:12 AM
65	I think there should be a more random selection method as long as those selected have appropriate experience and a clean record.	Dec 21, 2010 3:23 AM
66	By the commanding officer of the Salvation Army in California; Selected by diversity of occupation with no relatives who are lawyers.	Dec 21, 2010 4:15 AM
67	I believe the current system of election within districts is the best devised.	Dec 21, 2010 4:19 AM
68	Professional achievement as solid evidence of qualification	Dec 21, 2010 4:30 AM

### 3. How should each of these individuals be selected? By whom and by what

	Response Text	
69	The selection method should be far from political, but of course this is not likely. I think we would all like to see members who appreciate the need to honor Rights, act ethically and with fairness.	Dec 21, 2010 4:55 AM
70	Each superior court and each appellate court should select one person for a 2-year term with no repeats permitted. That group of ~65 should vote on the officers from among themselves. the existing plebiscite is not working. We don't know those people. The people who run usually have some ax to grind OR are a product of the "system," i.e., people who avoid action or attention unless on a politically correct topic.	Dec 21, 2010 5:31 AM
71	I would like to see more minority representation, but I am uncertain as to how to select such representatives and which minorities should have a seat - perhaps a rotating system.	Dec 21, 2010 5:48 AM
72	By membership of the bar and every member of the public who has served on a jury (including as an alternate) in that year or prior three year period.	Dec 21, 2010 5:58 AM
73	these attorneys should be elected by registered voters in the geographical district where they serve	Dec 21, 2010 12:18 PM
74	VOLUNTEERS SHOULD BE SOLICITED. THEY SHOULD BE PEOPLE WITH THE TIME, ENERGY AND SKILL TO FAIRLY GOVERN AND NOT SEEK FINANCIAL REWARD OR ACCOLADES OTHER THAN THE GOAL OF PUBLIC SERVICE	Dec 21, 2010 12:34 PM
75	Active members of the bar. Qualifications obvious criteria.	Dec 21, 2010 3:21 PM
76	A nominating committee comprised of current board members should compile the slate of candidates.	Dec 21, 2010 4:05 PM
77	The members of the legal profession.	Dec 21, 2010 4:38 PM
78	Appointed some by the State bar president, one by the governor and some elected by the bar membership	Dec 21, 2010 5:12 PM
79	Appointment of the Chairman and several top attorneys and several top public persons, application of interested persons for other committee members. Appointments would be by the governor, approved by the assembly.	Dec 21, 2010 5:25 PM
80	regional, by bar members. Candidates should at minimum have held license for 3 years	Dec 21, 2010 5:25 PM
81	By election of State Bar members	Dec 21, 2010 5:31 PM
82	Any member of the Bar who wishes to serve should be required to submit character references that will be published along with their bio's and statement of reasons for wanting to serve, and members of the Bar should vote accordingly. Judges should obviously be volunteering, and elected by their peers, interested in assuring that the least are as well-served as the well-moneyed interests. Members of the public should, perhaps, have to run for the office and be elected by other members of the public to represent their interests.	Dec 21, 2010 6:07 PM
83	By nomination by the members of the State Bar Board of Governors	Dec 21, 2010 6:12 PM
84	A judge could be appointed by the Chief Justice. Public association members could be selected by their associations.	Dec 21, 2010 6:28 PM
85	Governer Must have significant experience in private practice and/or the bench	Dec 21, 2010 6:46 PM
86	By the State Bar, the Courts and the Governor's Office through public applications.	Dec 21, 2010 7:04 PM
87	Vote of bar membership along with the annual dues statement.	Dec 21, 2010 7:05 PM
88	There should be some standards determined regarding skill sets needed to be a member. There should be an application process, with some type of screening criteria developed by the CA Bar, that addresses crucial key issues, such as ethics, not bilking people and making the services more accessible. etc.	Dec 21, 2010 7:17 PM

### 3. How should each of these individuals be selected? By whom and by what

	Response Text	
89	As presently selected. If a judicial officer is appointed it should be made by the Chief Justice.	Dec 21, 2010 7:25 PM
90	elected	Dec 21, 2010 8:51 PM
91	Again, relevancy?	Dec 21, 2010 9:27 PM
92	Same as at present, except selections should be diverse geographically and by nature and type of private practice.	Dec 21, 2010 9:32 PM
93	Peer nominated, assigned to pools then drawn at random	Dec 21, 2010 10:40 PM
94	Some at random, some elected	Dec 21, 2010 10:59 PM
95	Members should be appointed based upon a nomination process with the caveat that there be representation by both plaintiff and defense attorneys alike.	Dec 21, 2010 11:38 PM
96	elected at large by active members based upon their individual resumes	Dec 22, 2010 12:08 AM
97	By nomination by the State Bar members at large and general election. The individual criteria should be left to the discretion of each member	Dec 22, 2010 12:22 AM
98	Nomination by former task force members, and a few by random selection of bar members. Criteria should include minimum number of years as a bar member, record free of disciplinary measures, and some members should have experience with disciplinary actions as a defending attorney or as a judge.	Dec 22, 2010 1:46 AM
99	For the representatives of various stakeholders, I would leave it up to the stakeholder to select the representative (e.g. bar counsel, state AG office, FTC/state consumer protection agency, state trial judge, federal trial judge). Other than that, I'm not sure. Any sort of general election will end up being a popularity or networking contest. Perhaps they should be nominated and then confirmed by general election among bar members, but I'm not sure who should nominate.	Dec 22, 2010 4:45 AM
100	by vote from members of the bar	Dec 22, 2010 3:39 PM
101	district elections	Dec 22, 2010 9:42 PM
102	The State Bar should select these people	Dec 23, 2010 5:32 AM
103	applicants without conflicts of interests; by a panel of judges and Bar Association officers.	Dec 23, 2010 11:47 AM
104	applications, nominations, references, input from judges, lawyers others.	Dec 23, 2010 8:08 PM
105	Nonlawyers should be elected by the people, everyone else appointed.	Dec 24, 2010 8:53 PM
106	Attorney members elected by members of the State Bar; non-attorney members appointed by the Governor and/or the Legislature.	Dec 26, 2010 5:20 PM
107	As stated above, the present selection process is satisfactory.	Dec 26, 2010 7:01 PM
108	By lawyer members of the Bar.	Dec 26, 2010 10:03 PM
109	By election with licensed attorneys voting. Having the governor and legislative appointments politicizes the Board.	Dec 27, 2010 4:54 PM
110	This is difficult. I'm not sure. Lawyers, by peer review and interviews with people who work with them. Their secretaries, paralegals, etc., who really know them day to day. For example, I worked for a very unethical lawyer who billed illegally as a lawyer for the Los Angeles Fire Department lawyer and was dishonest in general, yet she was voted by peers as a "super lawyer." A perk for the firm? I have no idea. Sad for the industry.  For citizens, people who are interested in the process and voted in by some means.	Dec 28, 2010 7:30 AM
111	I don't think the current selection structure as it relates to the public members is appropriate. I do not believe the governor or legislature should be involved. I think the non-attorney (public) members should also be selected by the bar.	Dec 29, 2010 7:15 PM

### 3. How should each of these individuals be selected? By whom and by what

Response Text		
112	Elected by members of the Bar.	Dec 29, 2010 9:30 PM
113	Invite applicants. See what those most interested have to offer.	Jan 1, 2011 11:07 PM
114	as is	Jan 3, 2011 8:03 PM
115	Election is probably best. It avoids political cronism. Certainly there exist "political" issues within regions that contribute to who is elected, but I'd rather have local politics than the governor play that role.	Jan 4, 2011 12:00 AM
116	Lawyers should be selected by plurality vote of their peers.	Jan 4, 2011 1:20 AM
117	I would not change the way that public members are selected. I can only speak to the way that members are selected in my district, which is District 7. I think that the Breakfast Club often has disproportionate influence in selecting candidates to run for the board.	Jan 4, 2011 1:34 AM
118	Supreme court some (one third) / attorneys by vote others (one half) / governor others (one sixth)	Jan 4, 2011 1:50 AM
119	Election by members of the bar. There should be no set-asides for attorneys of a certain age (i.e., attorneys under the age of 36).	Jan 4, 2011 2:21 AM
120	By election for lawyers and appointment for non lawyers by the governor and lottery by the state bar.	Jan 4, 2011 5:15 AM
121	Nobody really knows who they are voting for. But voting by bar members	Jan 4, 2011 5:23 AM
122	Ask attorneys and judges to nominate attorneys, attorneys and judges to nominate judges, and any individual with a demonstrable knowledge of the judicial system to be nominated or apply for public positions. Above all else, they must have common sense, an understanding of civility and moral (smelltest for right and wrong) behavior and, with regard to the public members, an ability to apply the rules of judicial conduct (perhaps after completing a course on it).	Jan 4, 2011 8:19 AM
123	One attorney from each county bar. One from each section of the State Bar. One from each accredited law school. One judge from each county. Five-to-seven by the Governor who may or may not be attorneys, but who cannot have ever been a plaintiff in a malpractice action.	Jan 4, 2011 3:29 PM
124	geographic districts, self-nomination and election within district	Jan 4, 2011 6:57 PM
125	Self-selection/volunteering; nomination by peers or judges or court personnel	Jan 4, 2011 9:17 PM
126	They should reflect the broad range of attorneys and the range of clients and interests they represent.	Jan 4, 2011 11:26 PM
127	The 20 Lawyers should be elected Statewide by the Members of the State Bar as a Whole. The 2 Laypersons should be appointed 1 by the Governor and 1 by the collective action of the State Assembly and State Senate Judiciary Committees acting together.	Jan 5, 2011 1:23 AM
128	As currently mandated by the applicable sections of the CA B&P Code.	Jan 5, 2011 3:12 AM
129	The present selection process and criteria are adequate.	Jan 5, 2011 8:21 PM
130	The Board of Governors would solicit nominations from members of the State Bar and present a list of nominees to be selected by the Governor. Nominees from members of the public should be developed by the Governor's office and by the public members of the Board.	Jan 6, 2011 12:27 AM
131	Members of the public should be selected by age, gender, race, income. These are the criteria that predatory attorneys use in selecting their victims. If the board is balanced based on those who have been victimised then it will do the job that it has set out to do. Place an ad in the paper and ask for applications tell the people what you are looking for.	Jan 6, 2011 2:43 AM
132	The election process based upon districts provides a cross-section of experience and should be sustained; the selection of public members should be reviewed since it appears to be become a political trophy.	Jan 6, 2011 4:43 PM

### 3. How should each of these individuals be selected? By whom and by what

	Response Text	
133	The current criteria for election of lawyer members is fine.	Jan 6, 2011 10:14 PM
134	The present combination of elected and appointed members seems reasonable and effective.	Jan 8, 2011 6:59 PM
135	Except for newly admitted, the board representation should be proportional to population density. Otherwise it is not representational.	Jan 8, 2011 10:29 PM
136	As outlined in your material above, but with more of the appointments made by legislative and executive Branches and by other significant institutions (such as Univ of California Regents, California law enforcement organizations, district attorneys,public defenders, etc.)	Jan 9, 2011 10:19 PM
137	Majority vote by the constituency you represent - sole practitioners vote for sole practitioners, etc.	Jan 10, 2011 4:27 AM
138	<p>We support transparency in the selection of the Board that will govern the profession. Greater transparency is achieved through a democratic process. Thus, we support the continued election of the Governors. However, we also believe in a representational democracy. The recent "redistricting" only exacerbated the unfair distribution of Governors through the state. Up to seventy percent of all California lawyers are located in the Southern California corridor (including Los Angeles and Orange County), yet those counties are "under represented" on the Board.</p> <p>We urge the adoption of direct elections for a new position of President Elect, as the best method to obtain greater transparency and accountability.</p> <p>It has long been required that our State Bar Committees (appointed by the Board of Governors) reflect all types of diversity, yet the appointing Board acutely fails to reflect the diverse population of California.</p>	Jan 11, 2011 12:37 AM
139	Lawyer members elected by the lawyers much as they are now; non-lawyers appointed by the Chief Justice	Jan 12, 2011 11:28 PM
140	For the licensing, regulation and discipline, the board should be under the supervision of the Supreme Court of California. However, if the bar continues to also have the educational, development of law and trade assn components, the Board should be selected by lawyers actively engaged in the practice of law (including sitting judges who are also lawyers). If I were designing this structure I would require that there be representatives from different fields of law and different sizes of law firms.	Jan 12, 2011 11:36 PM
141	I like the appointment method. It would help ensure diversity as outlined in number 2, in addition to racial, ethnic, and gender diversity. Public interest law would stand a much better chance of being represented.	Jan 13, 2011 1:05 AM
142	<p>These individuals should be selected in a manner that allows for local representation. They should be selected by the members of the local region they are to represent. If multiple representatives are to be selected from one region or county, that region should be divided into several regions, so the unique interests of the entire region is represented.</p> <p>For instance, five representatives from Los Angeles County currently serve on the Board and each of those representatives works for a private or public law firm in downtown Los Angeles. This has historically been the case because governors from Los Angeles County have been endorsed by the downtown breakfast club organization. This is not representative of the diversity of the community or profession in Los Angeles County.</p>	Jan 13, 2011 1:45 AM
143	They need to have no alliance or attachment to the outcome.	Jan 13, 2011 10:44 PM

### 3. How should each of these individuals be selected? By whom and by what

Response Text		
144	Pursuant Business & Professions Code 6020 & State Bar Protocol; Internal Revenue Service State Bar Corp. & Public Corp. Monetary Task Force; Supreme Court Joint Investigation & Enforcement Task Force Non State Bar.	Jan 13, 2011 10:44 PM

### 4. What qualifications should be required for each member of the board?

Response Text		
1	Attorney members - at least five years in practice, no significant history of discipline. Non-attorney members - some business or other background that would demonstrate the ability to understand the complex nature of the issues involved in attorney admission and discipline.	Dec 20, 2010 10:23 PM
2	See No. 2 above.	Dec 20, 2010 10:27 PM
3	I don't know.	Dec 20, 2010 10:27 PM
4	no opinion	Dec 20, 2010 10:27 PM
5	Lawyers should have been practicing a minimum number of years and have always been in active good standing with no record of discipline.	Dec 20, 2010 10:28 PM
6	For attorneys, active membership in the bar. For lawyers and non-lawyers, an unblemished record.	Dec 20, 2010 10:29 PM
7	All attorney members should be in good standing with no history of discipline, while non-professional members should have at least a bachelor's degree.	Dec 20, 2010 10:31 PM
8	State Bar member 15 years or more Judiciary member more than 10 years non lawyer members professionals or corporate executives	Dec 20, 2010 10:31 PM
9	For lawyers and judges college and law school; for non-lawyers college degree minimum.	Dec 20, 2010 10:31 PM
10	the genreal public members should have an understanding of the legal system. the lawyers should be in proactice for a specified number of years and no record of discipline.	Dec 20, 2010 10:31 PM
11	Basic understanding of the legal system and role of legal profession	Dec 20, 2010 10:31 PM
12	Present make up appears appropriate	Dec 20, 2010 10:32 PM
13	Practicing Attorneys with 5 years of more experience and those with less than 5 years and a member of the public at large - possible two to three.	Dec 20, 2010 10:33 PM
14	most qualified, AV rating, etc no history of discipline. Outside the bar those who have exhibited a desire for public betterment	Dec 20, 2010 10:33 PM
15	Minimum of 15 years as a practicing attorney.	Dec 20, 2010 10:36 PM
16	Current qualifications are OK.	Dec 20, 2010 10:38 PM
17	A background in the law or familiarity with ethical governance issues.	Dec 20, 2010 10:39 PM
18	Knowledge of the practice of law and/or knowledge of business regulatory processes. This should be a very practical group that can be held accountable to measurable results. Not ideology.	Dec 20, 2010 10:39 PM
19	Lawyers should meet the requirements to qualify as an appointed judge; non lawyers should be of a minimum age (50) and demonstrate substantive involvement in public interest matters.	Dec 20, 2010 10:41 PM
20	Good standing of State Bar; min. of 10 yrs. of legal education and experience.	Dec 20, 2010 10:43 PM
21	Silly - without knowing the Board's explicit duties and areas of operation	Dec 20, 2010 10:43 PM
22	The current qualifications are fine.	Dec 20, 2010 10:46 PM

#### 4. What qualifications should be required for each member of the board?

	Response Text	
23	Exemplary record with the bar, substantial real world experience in practicing law, being a judge and from all geographic areas of the State, not just the most populous.	Dec 20, 2010 10:48 PM
24	Member of the Bar 5 years in good standing.	Dec 20, 2010 10:48 PM
25	A law degree and good standing with the Bar.	Dec 20, 2010 10:51 PM
26	Being a member in good standing of the State Bar.	Dec 20, 2010 10:51 PM
27	10 years practice and good standing	Dec 20, 2010 10:54 PM
28	A desire to protect the public.	Dec 20, 2010 10:57 PM
29	4 year degree or active member of the bar.	Dec 20, 2010 10:59 PM
30	Good standing with the Bar; no record of discipline; geographic diversity.	Dec 20, 2010 11:03 PM
31	Good record; 10 + years of experience; ability to commit time and energy; ability to speak	Dec 20, 2010 11:03 PM
32	As far as lawyers go, there should be lawyers from all areas without duplication of areas of practice where ever possible.	Dec 20, 2010 11:04 PM
33	Desire to serve and history of public service and commitment.	Dec 20, 2010 11:11 PM
34	Current qualifications are acceptable	Dec 20, 2010 11:16 PM
35	Unbiased and sole objective is to serve the State Bar.	Dec 20, 2010 11:20 PM
36	Education, Experience or demonstrated concern for matters affecting public interest - especially where legal services are concerned.	Dec 20, 2010 11:22 PM
37	Maturity and common sense	Dec 20, 2010 11:26 PM
38	Lawyers should be of the highest ethical standards/ratings and be or have been in active practice 15 years or more. Balance between corporate and solos and try to get at least one attorney who is or was involved in legal malpractice or legal ethics work. Public members should preferably be those who have in the past used, who intend in the future to use, or who are likely to use legal services.	Dec 20, 2010 11:28 PM
39	Current system is OK	Dec 20, 2010 11:31 PM
40	See previous answer.	Dec 20, 2010 11:32 PM
41	Attorneys who are known for being competent and highly ethical, with a minimum of 5 years practice with the state bar.	Dec 20, 2010 11:39 PM
42	Attorneys should be from a broad array of backgrounds, including law firms, public agencies, and public interest organizations. Geographic diversity is important, but not the only factor.	Dec 20, 2010 11:39 PM
43	Each Member should have at least 109 years of actual practice in California and should have an AV Rating in Martindale and Hubble and should have a reputation in the community for competence and reliability and high moral standards.	Dec 20, 2010 11:44 PM
44	Lawyer candidates should have practiced for 15 or more years - preferably with a mid-size or large firm. Business or Community Members should have received some awards or recognition for public service, charitable, or non-profit work.	Dec 20, 2010 11:52 PM
45	Should be older experienced attorneys with impeccable reputations	Dec 20, 2010 11:53 PM
46	Some minimum years of practice and geographical and other diversity considerations (e.g. plaintiffs and defense lawyers, personal injury and business litigators, transactional, criminal, estate etc. practitioners. Some members should have specific experience as prosecutors and some should have legal malpractice and attorney disciplinary experience (from both sides). But this is based on the statement in #1 above. I worry that in our unified Bar system, the Sections have taken a real "second seat" to admissions and disciplinary matters.	Dec 21, 2010 12:00 AM
47	None other then honest and good reputation for non-lawyer members; a California attorney with a good reputation for the attorney members.	Dec 21, 2010 12:01 AM

## 4. What qualifications should be required for each member of the board?

	Response Text	
48	Minimum 10 years in private practice, at least five of which should be in solo practice or in a firm of four or less attorneys. NO large firm attorneys, no government attorneys!	Dec 21, 2010 12:06 AM
49	For lawyers the main qualification should be that they can demonstrate they are of good moral character. The public members should be representative of the community.	Dec 21, 2010 12:17 AM
50	I believe it would be helpful to have additional members knowledgeable of technical issues, such as members trained in science, forensics, and hard science topics in order to add that necessary element to considerations before the Bar as they may affect justice issues. For example, changes in forensic DNA and the appellate process.	Dec 21, 2010 12:20 AM
51	For lawyers, at least 5 years of post qualification practice; must be in good standing.	Dec 21, 2010 12:22 AM
52	At least 5 years of experience in the Attorneys' field of practice. 5 years of public service for the Public Members	Dec 21, 2010 12:27 AM
53	For active lawyers, they should be over age 30 and have practiced for at least 5 years. Appointed persons should have some qualifications, but I'm not sure what those should be.	Dec 21, 2010 12:29 AM
54	No adverse claims for ethics or fraud violations	Dec 21, 2010 12:42 AM
55	Attorneys-Members in good standing of the State Bar	Dec 21, 2010 12:43 AM
56	Current member of the bar in good standing.	Dec 21, 2010 12:45 AM
57	The non-lawyers should be citizens of CA over the age of 35, with either a degree of higher learning, military service, or significant professional experience, such as owning a business. The lawyers should be barred in CA for at least 10 years and should have good standing in the legal community for public service and/or pro bono service.	Dec 21, 2010 12:46 AM
58	Minimum time of admission	Dec 21, 2010 12:57 AM
59	Again, I see no reason to deviate from the existing criteria.	Dec 21, 2010 1:20 AM
60	The board should be represented by two groups ... (1) a diverse group of legal experts and (2) a diverse group of expert consumers of legal services.	Dec 21, 2010 1:27 AM
61	Lawyers in good standing with five years of experience and prior criminal or disciplinary convictions, non-lawyers should have no criminal record and be over 30 years old with a bachelor degree.	Dec 21, 2010 3:12 AM
62	Experience in the practice of law and/or some experience involving the work of attorneys.	Dec 21, 2010 3:23 AM
63	Able to devote 4 hours per month; Able to read at 12th grade level in English	Dec 21, 2010 4:15 AM
64	I believe each member must be engaged in the practice of law -- and have done so for no less than ten years.	Dec 21, 2010 4:19 AM
65	Professional achievement	Dec 21, 2010 4:30 AM
66	If the members abide the highest standards of ethics and fairness then these qualities should provide fitness.	Dec 21, 2010 4:55 AM
67	Practicing attorney (active member) for at least 5 years.	Dec 21, 2010 5:31 AM
68	A minimum number of years in practice, being in good standing	Dec 21, 2010 5:48 AM
69	Either minimum bachelor's degree and three years work experience or no degree required but at least seven years business or trades experience. Character for honesty and competence in the community.	Dec 21, 2010 5:58 AM
70	Active member of the California State Bar	Dec 21, 2010 12:18 PM

## 4. What qualifications should be required for each member of the board?

	Response Text	
71	PEOPLE WHO ARE IN A POSITION TO MAKE DECISIONS WITHOUT REGARD TO THEIR PERSONAL FINANCIAL, POLITICAL OR PERSONAL BENEFIT.	Dec 21, 2010 12:34 PM
72	Knowledge of duties, fairness, good judgement.	Dec 21, 2010 3:21 PM
73	The present qulaifications are adequate, except as indicated in 2 above.	Dec 21, 2010 4:05 PM
74	Active practice of the law.	Dec 21, 2010 4:38 PM
75	proven track record of ethical conduct and experience in the law	Dec 21, 2010 5:12 PM
76	For Chairman, 10 or more years as working attorney, without any discipline by the State Bar. Committee members should have a working knowledge of the court systems and understand the fiduciary duties of attorneys.	Dec 21, 2010 5:25 PM
77	Candidates should at minimum have held license for 3 years	Dec 21, 2010 5:25 PM
78	Status as a member of the State Bar, in good standing and willing to serve	Dec 21, 2010 5:31 PM
79	For lawyers, at least 10 years in practice, so time is not wasted on impractical, pie-in-the-sky initiatives. Age and experience tends to bring realistic, mature judgment into situations. As this would be an institutional change, it can't be implemented with rallying cries alone, it has to work successfully over time. Judges should have served at least 10 years as judges as well. These seats should be an honor, and carry weight and responsibility. Members of the public would be qualified by whatever qualifications the electorate deems most important when they vote.	Dec 21, 2010 6:07 PM
80	Active practice of law: no public or private reproof; no misdemeanor or felony conviction; no prior State Bar elected position..	Dec 21, 2010 6:12 PM
81	See above	Dec 21, 2010 6:28 PM
82	see above	Dec 21, 2010 6:46 PM
83	Fluent in English, College degree (JD for lawyers), 10 years of post-College employment	Dec 21, 2010 7:04 PM
84	Active bar membership. I would get rid of the non-attorney members.	Dec 21, 2010 7:05 PM
85	Age: 30 plus Education/work experience: High School and 10 years of work in any field.	Dec 21, 2010 7:17 PM
86	In practice for 10 years.	Dec 21, 2010 7:25 PM
87	judge or law degree	Dec 21, 2010 8:51 PM
88	Irrelevant to the issue of public protection beyond the current application.	Dec 21, 2010 9:27 PM
89	At least 10 years of private practice except for several members chosen to represent CYLA or other designated interest group.	Dec 21, 2010 9:32 PM
90	Varying years of practice, but at least 5. One should have some sort of experience to draw from.	Dec 21, 2010 10:40 PM
91	State Bar membership and a willingness to serve. Board members should not be State Bar employees.	Dec 21, 2010 10:59 PM
92	See answer to question above.	Dec 21, 2010 11:38 PM
93	active membership in the bar	Dec 22, 2010 12:08 AM
94	See above.	Dec 22, 2010 1:46 AM
95	Utmost ethical behavior; willingness to put in actual work as a board member (not just a resume booster), which can be shown via extensive prior unpaid volunteer service to non-legal organizations; vetting by their peers and state/federal judges via confidential evaluations	Dec 22, 2010 4:45 AM
96	20 years of private practice - ABSOLUTELY NO ONE FROM THE PUBLIC SECTOR. US AND CALIFORNIA CITIZEN. MUST BE SOBER. PASS AN IQ TEST..	Dec 22, 2010 3:39 PM
97	5 years of practice	Dec 22, 2010 9:42 PM

## 4. What qualifications should be required for each member of the board?

Response Text		
98	Successful lawyers with good reputations and outstanding members of the public	Dec 23, 2010 5:32 AM
99	Lawyers: no - NONE - history of discipline actions. Judges the same - Public - no politicians.	Dec 23, 2010 11:47 AM
100	at least 15 years post bar admission, however the board should appoint and consult newer practitioners for their special issues, with presentations and meetings with the board quarterly	Dec 23, 2010 8:08 PM
101	For attorneys at least 5 years of practice; for judges at least 5 years of judging, for public at least a masters.	Dec 24, 2010 8:53 PM
102	Attorney members should have no pending disciplinary proceedings against them, never have been disbarred or suspended, and not have been subject to lesser discipline at any time in the past five years.	Dec 26, 2010 5:20 PM
103	The highest level of experience and competency possible for lawyers. For the public members - a history of public service.	Dec 26, 2010 7:01 PM
104	They should have been in practice a long time and be highly respected members of the profession	Dec 26, 2010 10:03 PM
105	A minimum of 10 years of experience as a CA attorney in good standing with no major disciplinary matters decided against the member.	Dec 27, 2010 4:54 PM
106	A license to practice law for lawyers. Non-lawyers, concerned citizens from varied backgrounds.	Dec 28, 2010 7:30 AM
107	Reputation with respect to ethics.	Dec 29, 2010 7:15 PM
108	Active (or judicial officer) member, in good standing, with no history of any ethical violations. I would make this proven violations, not just allegations.	Dec 29, 2010 9:30 PM
109	I think rather than focusing on establishing more extra paperwork and silly rules, the focus should be on "how best to protect the public and what it needs.	Jan 1, 2011 11:07 PM
110	as is	Jan 3, 2011 8:03 PM
111	If any board members are nonlawyers, they should be highly educated and preferably licensed professionals in another endeavor.	Jan 4, 2011 12:00 AM
112	Members of the Board should be lawyers in good standing with the State Bar.	Jan 4, 2011 1:20 AM
113	Obviously, no record of public discipline. Minimum of 10 years in practice.	Jan 4, 2011 1:34 AM
114	U.S. citizen registered to vote in California	Jan 4, 2011 1:50 AM
115	Each should be an lawyer admitted to practice in the state of California.	Jan 4, 2011 2:21 AM
116	Understanding of the legal system and the practice of law, but otherwise best qualified based on education and experience.	Jan 4, 2011 5:15 AM
117	Be a member of the bar in good standing.	Jan 4, 2011 5:23 AM
118	See 3	Jan 4, 2011 8:19 AM
119	The majority should be attorneys and a number should be judges. No public member should have been involved in a malpractice or disciplinary action.	Jan 4, 2011 3:29 PM
120	active member of the Calif bar	Jan 4, 2011 6:57 PM
121	Active law practitioners from various practice areas committed to a high ethical standard, 15+ years in practice except for a representative from the newly admitted lawyer group	Jan 4, 2011 9:17 PM
122	Only a member of the bar.	Jan 4, 2011 11:26 PM
123	Current Qualifications are fine. Except that the Laypersons serving on the Board should have had some significant experience as Clients of Lawyers prior to joining the Board.	Jan 5, 2011 1:23 AM
124	As currently mandated by the applicable sections of the CA B&P Code	Jan 5, 2011 3:12 AM
125	The main qualifications should be an interest in the public's need for access to well-qualified and ethical legal counsel.	Jan 5, 2011 8:21 PM

## 4. What qualifications should be required for each member of the board?

Response Text		
126	A member's background should reflect the high standards of professional competence and conduct expected of members of the State Bar.	Jan 6, 2011 12:27 AM
127	the attorneys should be attorneys. Those representing the public should have the ability to read write and be US Citizens.	Jan 6, 2011 2:43 AM
128	Experience in public protection in some meaningful way; Bar Association experience; understanding of financial statements.	Jan 6, 2011 4:43 PM
129	The same as the current criteria for lawyer-	Jan 6, 2011 10:14 PM
130	Lawyers should be active members of the bar and members of the public should be generally competent to serve (age, education, experience, and independence from the legal profession), but otherwise no specific qualifications required.	Jan 8, 2011 6:59 PM
131	except for 1 newly admitted, at least 5 years in practice	Jan 8, 2011 10:29 PM
132	see question 2 plus add legal resident of state of California for a minimum of three years	Jan 9, 2011 10:19 PM
133	Member of the State Bar	Jan 10, 2011 4:27 AM
134	We would like to see greater diversity, which could be a qualification for the Board. For example the Board of Governors of the American Bar Association has certain positions designated or allocated to under represented segments of the attorney population. Thus, a certain number of positions reflect both racial and gender equality.  The diversity we would hope to achieve is not limited to race or gender, because we would like to see more government lawyers, lawyers who are involved in the legal aid community, and the small and solo practitioners.	Jan 11, 2011 12:37 AM
135	For the non-lawyers, the existing qualifications plus experience running a substantial business, non-profit, or governmental body; for the lawyers, at least 10 years in practice.	Jan 12, 2011 11:28 PM
136	Have been in practice for at least 5 years, in good standing with the State Bar.	Jan 12, 2011 11:36 PM
137	For lawyers, being out at least 5 years and a demonstrated commitment to improving the profession and to access to justice.	Jan 13, 2011 1:05 AM
138	Each board member should be a licensed practicing attorney in good standing with the Bar.	Jan 13, 2011 1:45 AM
139	Qualified should include knowledge of rules and regulations governing moving large sums of money from one place to another.	Jan 13, 2011 10:44 PM
140	Business & Professions Code 6020 & State Bar Protocol; Internal Revenue Service Protocol; Supreme Court Joint Investigation & Enforcement Task Force of Non-Members of The State Bar perferably to monitor State Bar Activities.	Jan 13, 2011 10:44 PM

## 5. What size should the board be?

Response Text		
1	Ten to twenty members.	Dec 20, 2010 10:23 PM
2	At least twelve members.	Dec 20, 2010 10:27 PM
3	5	Dec 20, 2010 10:27 PM
4	20 or fewer	Dec 20, 2010 10:27 PM
5	Not more than 21 members.	Dec 20, 2010 10:28 PM
6	I do not have a view on this.	Dec 20, 2010 10:29 PM

## 5. What size should the board be?

	Response Text	
7	15 members. 8 professional members, and 7 nonprofessional members. This board size adheres more closely to the other professional boards in CA, and provides more protection of non-member interests.	Dec 20, 2010 10:31 PM
8	8 members	Dec 20, 2010 10:31 PM
9	Anything about 15 is too big. The 9 to 12 range is good.	Dec 20, 2010 10:31 PM
10	15-20	Dec 20, 2010 10:31 PM
11	10-20 individuals	Dec 20, 2010 10:31 PM
12	Present make up appears appropriate	Dec 20, 2010 10:32 PM
13	No more that 10 members	Dec 20, 2010 10:33 PM
14	9-11	Dec 20, 2010 10:33 PM
15	Five members	Dec 20, 2010 10:36 PM
16	Smaller than it is.	Dec 20, 2010 10:38 PM
17	A size appropriate to reflect a diversity of perspectives.	Dec 20, 2010 10:39 PM
18	Same size or smaller.	Dec 20, 2010 10:39 PM
19	15 to 25	Dec 20, 2010 10:41 PM
20	No more than 19 individuals. Anything larger would be unwieldy.	Dec 20, 2010 10:43 PM
21	Silly - can't answer without knowing how current board operates, its problems, communication, meeting frequency and logistics. Without this info, only someone on the board now could have an informed opinion.I	Dec 20, 2010 10:43 PM
22	The current size is fine.	Dec 20, 2010 10:46 PM
23	current size	Dec 20, 2010 10:48 PM
24	Not fewer than 21.	Dec 20, 2010 10:48 PM
25	Twenty-five to thirty-five	Dec 20, 2010 10:51 PM
26	Minium 5, maximum 9.	Dec 20, 2010 10:51 PM
27	7 members	Dec 20, 2010 10:54 PM
28	2 judges, 2 lawyers, 3 members of the public.	Dec 20, 2010 10:57 PM
29	23. The odd number would eliminate deadlocks.	Dec 20, 2010 10:59 PM
30	five persons	Dec 20, 2010 11:02 PM
31	The present size seems adequate,if not a bit large.	Dec 20, 2010 11:03 PM
32	About 8-12?	Dec 20, 2010 11:03 PM
33	I can't say that either a larger or smaller Board would be better.	Dec 20, 2010 11:04 PM
34	Does not really matter, as long as it is an odd number, so votes will not stalemate.	Dec 20, 2010 11:11 PM
35	Current size is OK	Dec 20, 2010 11:16 PM
36	One from each county of California.	Dec 20, 2010 11:20 PM
37	No particular opinion.	Dec 20, 2010 11:22 PM
38	Five	Dec 20, 2010 11:26 PM
39	9 is an appropriate size for getting things done. More than that is chaos.	Dec 20, 2010 11:28 PM
40	20 to 30 members	Dec 20, 2010 11:31 PM
41	Much smaller.	Dec 20, 2010 11:32 PM
42	7-10 maximum	Dec 20, 2010 11:39 PM
43	Large enough to ensure diversity of the composition of the board by race, ethnicity, sexual orientation, geography, and type of practice.	Dec 20, 2010 11:39 PM
44	No moer than eleven members	Dec 20, 2010 11:44 PM
45	15 members	Dec 20, 2010 11:52 PM

## 5. What size should the board be?

	Response Text	
46	The same number as the members of the Supreme Court in order to be effective	Dec 20, 2010 11:53 PM
47	Large enough to be representative and to accommodate some inevitable absences.	Dec 21, 2010 12:00 AM
48	From not less than 15 members to as many as 30 members.	Dec 21, 2010 12:01 AM
49	Haven't thought that one out yet. Probably depends on the duties.	Dec 21, 2010 12:06 AM
50	No opinion.	Dec 21, 2010 12:17 AM
51	The current size is sufficient, with consideration for additional members as stated in 4 above.	Dec 21, 2010 12:20 AM
52	current size is Ok.	Dec 21, 2010 12:22 AM
53	Not more than 15	Dec 21, 2010 12:27 AM
54	It should probably be smaller. The board, like most of California's governing authorities, has become bloated and should be trimmed. The 'right' number - maybe 15, with 6 active lawyers elected by district, 2 judges, the CYL appointee, 1 elected office-holder (e.g. Secretary of State), and 5 political appointees (reduce the governor's by 1).	Dec 21, 2010 12:29 AM
55	12	Dec 21, 2010 12:42 AM
56	13. 8 Attorneys;5 public members.	Dec 21, 2010 12:43 AM
57	5	Dec 21, 2010 12:45 AM
58	It should be not so large as to be cumbersome and an odd number to avoid ties, if there is some kind of voting scheme. Fifteen people, 7 non-lawyers and 8 lawyers, would probably be a good size.	Dec 21, 2010 12:46 AM
59	15-20	Dec 21, 2010 12:57 AM
60	based on state population, e.g. onre rep per million people	Dec 21, 2010 1:13 AM
61	An argument can be made that with the explosion of the number of attorneys in the state, a board that was the right size when the attorney population was much smaller (and less diversified) is no longer representative. But as I have observed it the Board is already so large as to be cumbersome, and a larger board would be even less efficient. I'd keep it about where it is.	Dec 21, 2010 1:20 AM
62	The board would probably need to be large to be sufficiently representative. IN that case, perhaps it would be better to be regionalized -- northern, central and southern. Each region would have leaders that would form a smaller body that would consider overall recommendations from the regions.	Dec 21, 2010 1:27 AM
63	No more than 11 members	Dec 21, 2010 3:12 AM
64	Less than 25.	Dec 21, 2010 3:23 AM
65	10	Dec 21, 2010 4:15 AM
66	The current size or a few less.	Dec 21, 2010 4:19 AM
67	2 members	Dec 21, 2010 4:30 AM
68	The board looks appropriate in its current size.	Dec 21, 2010 4:55 AM
69	~65 (see above)	Dec 21, 2010 5:31 AM
70	The current size or one or two more members at most	Dec 21, 2010 5:48 AM
71	Seven or nine persons, just like the Cal or US Supremes.	Dec 21, 2010 5:58 AM
72	Seven Board Members	Dec 21, 2010 12:18 PM
73	9	Dec 21, 2010 12:34 PM
74	22 may be too large.	Dec 21, 2010 3:21 PM
75	Nine should provide more efficient operation.	Dec 21, 2010 4:05 PM
76	Present size is ok.	Dec 21, 2010 4:38 PM

## 5. What size should the board be?

	Response Text	
77	Much smaller. 15 is unwieldy. 5 is plenty.	Dec 21, 2010 5:03 PM
78	7 members	Dec 21, 2010 5:12 PM
79	the size depends on the number o fcomplaints filed against attorneys each year. The minimum size to assure a good cross-section of representation, would be no less than 9 members. Preferrably 15 or so.	Dec 21, 2010 5:25 PM
80	7-9	Dec 21, 2010 5:25 PM
81	As small as possible	Dec 21, 2010 5:31 PM
82	Big enough to contain a diversity of ideas, yet not so big as to be bogged down.	Dec 21, 2010 6:07 PM
83	3	Dec 21, 2010 6:12 PM
84	The Board is too large to make really effective prompt decisions or recommendations. In my opinion 7 to 9 voting members would be an appropriate size. Othre non-voting members could participate in discussions, provide points of view etc.	Dec 21, 2010 6:28 PM
85	7 - 9	Dec 21, 2010 6:46 PM
86	5 people	Dec 21, 2010 7:04 PM
87	Some odd number in the vicinity of 9 or 11. There are presently too many.	Dec 21, 2010 7:05 PM
88	Not sure of size, but might want to consider having active sub-committees that do the work and take recommendation to the board	Dec 21, 2010 7:17 PM
89	No change save for a judicial officer.e	Dec 21, 2010 7:25 PM
90	7	Dec 21, 2010 8:51 PM
91	irrelvant. Altering the makeup and size of the board has NOTHING to do with improving public protection.	Dec 21, 2010 9:27 PM
92	15	Dec 21, 2010 9:32 PM
93	Unsure, but something more representative of the amount of active members	Dec 21, 2010 10:40 PM
94	More than about 7 and they won't get anything done.	Dec 21, 2010 10:59 PM
95	Current size is a good one.	Dec 21, 2010 11:38 PM
96	12 plus president	Dec 22, 2010 12:08 AM
97	8-10. A board of more than 12 is unnecessary and less efficient.	Dec 22, 2010 1:46 AM
98	10-15. If too large, then too difficult to do anything because consensus is harder to achieve. If too small, then too much power is consolidated in the hands of the few. Think UN Security Council.	Dec 22, 2010 4:45 AM
99	three members	Dec 22, 2010 3:39 PM
100	15	Dec 22, 2010 9:42 PM
101	The State Bar should decide this issue	Dec 23, 2010 5:32 AM
102	12 to 15 members.	Dec 23, 2010 11:47 AM
103	12	Dec 23, 2010 8:08 PM
104	9	Dec 24, 2010 8:53 PM
105	No opinion.	Dec 26, 2010 5:20 PM
106	The present size is satisfactory.	Dec 26, 2010 7:01 PM
107	9	Dec 26, 2010 10:03 PM
108	9 or 11.	Dec 27, 2010 4:54 PM
109	Unsure.	Dec 28, 2010 7:30 AM
110	Seems fine as it is now.	Dec 29, 2010 7:15 PM
111	7-9 members should be plenty.	Dec 29, 2010 9:30 PM
112	13	Jan 1, 2011 11:07 PM

## 5. What size should the board be?

Response Text		
113	as is	Jan 3, 2011 8:03 PM
114	The current size is probably about right.	Jan 4, 2011 12:00 AM
115	The size of the Board should be commensurate with the task. Generally, the smaller the better.	Jan 4, 2011 1:20 AM
116	Board is probably too large now and unwieldy. Issue is how to winnow the numbers down and still get things done and have sufficient district representation. Should the board be set up like the House of Representatives or the Senate, in other words, should larger districts have more representation, or should all districts be the same?	Jan 4, 2011 1:34 AM
117	30	Jan 4, 2011 1:50 AM
118	Substantially larger than now so that attorneys in rural areas, e.g., eastern contra costa county, are not swamped by attorneys in large urban areas whose practices and interests differ substantially. I should think 45 to 60 members would be about right.	Jan 4, 2011 2:21 AM
119	15 members	Jan 4, 2011 5:15 AM
120	I think the Bar should be completely eliminated so smaller is better.	Jan 4, 2011 5:23 AM
121	Regional panels of 6-8 members, no fewer than 5 hearing any matter	Jan 4, 2011 8:19 AM
122	Twenty to Fifty	Jan 4, 2011 3:29 PM
123	9 members	Jan 4, 2011 6:57 PM
124	11 total - 6 lawyers 5 lay people	Jan 4, 2011 9:17 PM
125	Managable.	Jan 4, 2011 11:26 PM
126	Current Size is fine.	Jan 5, 2011 1:23 AM
127	As currently mandated by the applicable sections of the CA B&P Code	Jan 5, 2011 3:12 AM
128	The present size of the board is adequate.	Jan 5, 2011 8:21 PM
129	15-20	Jan 6, 2011 12:27 AM
130	12 members. Just like a Jury	Jan 6, 2011 2:43 AM
131	The same--I think with the Committee structure it cannot be ran efficiently with fewer Board members; I also don't think a larger Board is conducive to management of the State Bar activities.	Jan 6, 2011 4:43 PM
132	Current size is fine. If only lawyers are on the board, the number of districts could be enlarged.	Jan 6, 2011 10:14 PM
133	The existing 23 seems reasonable. The board should be sized to effectively represent stakeholders but not be too large to be ineffective or overly political.	Jan 8, 2011 6:59 PM
134	ok as is	Jan 8, 2011 10:29 PM
135	20-30	Jan 9, 2011 10:19 PM
136	We are concerned that the Board is too large. We suggest 18 to 20 members is more efficient.  We are opposed to changing the relative proportions of lawyer and public members.	Jan 11, 2011 12:37 AM
137	No bigger than it is now.	Jan 12, 2011 11:28 PM
138	No opinion	Jan 12, 2011 11:36 PM
139	I don't have an opinion about this.	Jan 13, 2011 1:05 AM
140	The number is not important, just as long as each unique region of California is represented.	Jan 13, 2011 1:45 AM
141	10 members	Jan 13, 2011 10:44 PM

## 5. What size should the board be?

### Response Text

142	Enough Internal Revenue Service Personnel to monitor the increasing number of state bar private corp. & public members' corp. monetary activities, with the Supreme Court Task Force to assist Judicial Branch of Government	Jan 13, 2011 10:44 PM
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## 6. How long should the terms of the members (and of the president) be?

### Response Text

1	President - two years. members - two to three years	Dec 20, 2010 10:23 PM
2	Five years.	Dec 20, 2010 10:27 PM
3	4 years	Dec 20, 2010 10:27 PM
4	3 or 4 years for members, 2 years for president	Dec 20, 2010 10:27 PM
5	2 years. Maybe 3.	Dec 20, 2010 10:28 PM
6	Between 4 and 8 years would be about right.	Dec 20, 2010 10:29 PM
7	4-year terms, with a 2 term limit.	Dec 20, 2010 10:31 PM
8	3 years	Dec 20, 2010 10:31 PM
9	Terms of members - 2 possible terms of three years each; for President a two-year term.	Dec 20, 2010 10:31 PM
10	3 year terms, but able to serve for two terms	Dec 20, 2010 10:31 PM
11	Up to 3 years, with rolling terms	Dec 20, 2010 10:31 PM
12	Present make up appears appropriate	Dec 20, 2010 10:32 PM
13	At least 4 years.	Dec 20, 2010 10:33 PM
14	3 years	Dec 20, 2010 10:33 PM
15	Two years.	Dec 20, 2010 10:36 PM
16	Current terms are OK.	Dec 20, 2010 10:38 PM
17	3 years is fine.	Dec 20, 2010 10:39 PM
18	Members -- three years, rotating off one third each year. President should be one year.	Dec 20, 2010 10:39 PM
19	3 to 5 years	Dec 20, 2010 10:41 PM
20	3-year terms.	Dec 20, 2010 10:43 PM
21	current terms seem okay	Dec 20, 2010 10:43 PM
22	The present terms are fine with one exception: all attorney members should serve the same period of time, The president should serve for 2 years. One year is too short to oversee long-term projects or trends or solutions to identified problems.	Dec 20, 2010 10:46 PM
23	3years staggered among the entire body	Dec 20, 2010 10:48 PM
24	Two years with one-half replaced every year	Dec 20, 2010 10:51 PM
25	3 years, with staggered terms..	Dec 20, 2010 10:51 PM
26	4 years	Dec 20, 2010 10:54 PM
27	Judges: 2 years, lawyers: 2 years, public: 3 years	Dec 20, 2010 10:57 PM
28	2 years.	Dec 20, 2010 10:59 PM
29	four years	Dec 20, 2010 11:02 PM
30	Three years staggered terms.	Dec 20, 2010 11:03 PM
31	2-4 years	Dec 20, 2010 11:03 PM

## 6. How long should the terms of the members (and of the president) be?

	Response Text	
32	Actually I thought the terms for both the President and CYLA lawyers to be too short. 2 years for both appears to be more realistic.	Dec 20, 2010 11:04 PM
33	No opinion on specific number of years. Should be long enough to get expertise, not so long as to stultify.	Dec 20, 2010 11:11 PM
34	there is no need for a "President" (pompous). There needs to be an egalitarian board with a single mission in mind - true protection of the public against attorney abuse.	Dec 20, 2010 11:11 PM
35	Current terms are fine	Dec 20, 2010 11:16 PM
36	one year	Dec 20, 2010 11:20 PM
37	No particular opinion	Dec 20, 2010 11:22 PM
38	2 years	Dec 20, 2010 11:26 PM
39	2 or 3 years. Most people get burned-out serving on committees longer than that.	Dec 20, 2010 11:28 PM
40	Current term lengths are OK	Dec 20, 2010 11:31 PM
41	No opinion	Dec 20, 2010 11:32 PM
42	The term of the president should be for two or three years, not one. One year is not enough time for any president to accomplish anything.	Dec 20, 2010 11:32 PM
43	10 years	Dec 20, 2010 11:39 PM
44	Each Member should have a four year staggered term; i.e. one third of the members should be elected each year so that at least two-thirds of the members will be withing their four year terms.	Dec 20, 2010 11:44 PM
45	Four years	Dec 20, 2010 11:52 PM
46	Two years with no more than two terms	Dec 20, 2010 11:53 PM
47	Four years. (My understanding/impression is that three years is too short and the effect is that it leaves too much discretion and power to the staff, as opposed to the Board. State Bar staff is great, but the policy decisions should be made by the Board.)	Dec 21, 2010 12:00 AM
48	Attorney members 3 years (without consecutive terms); public members 1 year. As it is now.	Dec 21, 2010 12:01 AM
49	Two years, renewable.	Dec 21, 2010 12:06 AM
50	President's term should be one year. Members should rotate (3 years maybe) so that at any time 1/3 of the board is up for election.	Dec 21, 2010 12:17 AM
51	The current length of service is adequate, though longer periods allow for greater stability in governance.	Dec 21, 2010 12:20 AM
52	Current length is OK.	Dec 21, 2010 12:22 AM
53	3 years, staggered terms.	Dec 21, 2010 12:27 AM
54	3 year terms for most is fine. The judges could be 3 years, or until retired more than ... 5(?) years, whichever comes first. The CYL electee should be 3 years or until no longer eligible for CYL, whichever comes first.	Dec 21, 2010 12:29 AM
55	3 years	Dec 21, 2010 12:42 AM
56	Board members: 5 years. President should serve one full year as President-elect.	Dec 21, 2010 12:43 AM
57	3-4 years	Dec 21, 2010 12:45 AM
58	The terms should be 2 years, with staggered appointments, to ensure some kind of continuity. There should be no term limits.	Dec 21, 2010 12:46 AM
59	2-3 years	Dec 21, 2010 12:57 AM
60	3 yearsm one option to extend three years at discretion of board	Dec 21, 2010 1:13 AM

## 6. How long should the terms of the members (and of the president) be?

	Response Text	
61	The member terms are about right. I see no reason why an attorney member should not be allowed to run for an additional term or terms. The job is difficult, and it takes time to get up to speed. Experience and expertise should be rewarded, not discarded. For the same reason the term of the president should be longer, recognizing that the role is demanding and can make a heavy inroad on a law practice.	Dec 21, 2010 1:20 AM
62	4 to 6 years, so that people are no rotating off just when they get good at what they are doing.	Dec 21, 2010 1:27 AM
63	Not less than two years, not more than four.	Dec 21, 2010 3:12 AM
64	Three terms for members and two years for the president who should be selected from amongst the members after at least one year of service on the board	Dec 21, 2010 3:23 AM
65	2 years for both	Dec 21, 2010 4:15 AM
66	The members should serve at least two years, the President only one.	Dec 21, 2010 4:19 AM
67	1 year	Dec 21, 2010 4:30 AM
68	2-3 years	Dec 21, 2010 4:55 AM
69	Two years for members; officers 1 or 2 years. (See above.)	Dec 21, 2010 5:31 AM
70	Current limits are fine.	Dec 21, 2010 5:48 AM
71	Members: three years; President - one year, with possible second term of one year by vote of members of board.	Dec 21, 2010 5:58 AM
72	3 years	Dec 21, 2010 12:18 PM
73	TWO YEARS. PRESIDENT, ONE YEAR UNLESS HE OR SHE HAS PERFORMED OUTSTANDING SERVICE AND RESULTS	Dec 21, 2010 12:34 PM
74	2 years for members, 1 for President.	Dec 21, 2010 3:21 PM
75	Three years is fine.	Dec 21, 2010 4:05 PM
76	One single term of 7-years.	Dec 21, 2010 4:38 PM
77	2 years staggered	Dec 21, 2010 5:12 PM
78	Three to four years, with staggered start times, so there is a continuity of knowledge re committee procedures, etc.	Dec 21, 2010 5:25 PM
79	president 2 years members 3-4 years	Dec 21, 2010 5:25 PM
80	1 year	Dec 21, 2010 5:31 PM
81	President should be at least two years, so as to protect the institution from being too blown about by the whims of each passing president; terms perhaps three or four years, staggered, for the same reason.	Dec 21, 2010 6:07 PM
82	7 staggered years	Dec 21, 2010 6:12 PM
83	The current terms seem appropriate. I am not clear why lawyers cannot serve consecutive terms.	Dec 21, 2010 6:28 PM
84	2 - 4 yrs	Dec 21, 2010 6:46 PM
85	4 years	Dec 21, 2010 7:04 PM
86	2 years	Dec 21, 2010 7:05 PM
87	3 years - with one additional term being allowed	Dec 21, 2010 7:17 PM
88	Three years.	Dec 21, 2010 7:25 PM
89	3 years	Dec 21, 2010 8:51 PM
90	irrelevant	Dec 21, 2010 9:27 PM
91	Same as at present, except CYLA or other designated interest group members should be two years, and President should be two years.	Dec 21, 2010 9:32 PM

## 6. How long should the terms of the members (and of the president) be?

Response Text		
92	3 to 5 years	Dec 21, 2010 10:40 PM
93	4 years	Dec 21, 2010 10:59 PM
94	One year.	Dec 21, 2010 11:38 PM
95	3 years with president serving a 4th year	Dec 22, 2010 12:08 AM
96	4 years	Dec 22, 2010 12:22 AM
97	1-2 years.	Dec 22, 2010 1:46 AM
98	5yrs for members (that way they have to be serious to sign up for it on unpaid or low-pay status - I actually have no idea whether members get paid or not, but I should think they should not get paid much); 2yrs for president (renewable for one term on board vote).	Dec 22, 2010 4:45 AM
99	staggered 3 year terms	Dec 22, 2010 3:39 PM
100	4 years	Dec 22, 2010 9:42 PM
101	About 3 years	Dec 23, 2010 5:32 AM
102	2 years, renewable maximum 6 years.	Dec 23, 2010 11:47 AM
103	2 to five years, but the president limit 1 to 2 years	Dec 23, 2010 8:08 PM
104	4 years	Dec 24, 2010 8:53 PM
105	No opinion.	Dec 26, 2010 5:20 PM
106	The present length of terms is satisfactory	Dec 26, 2010 7:01 PM
107	3 years for Board members, 1 year for President.	Dec 26, 2010 10:03 PM
108	2 years, with the president's term being 1 year. Term limits of a maximum of 6 years and 3 years, respectively.	Dec 27, 2010 4:54 PM
109	Four years.	Dec 28, 2010 7:30 AM
110	Term seems appropriate as it stands.	Dec 29, 2010 7:15 PM
111	Rotating 3 year terms.	Dec 29, 2010 9:30 PM
112	See above.	Jan 1, 2011 11:07 PM
113	as is, with additional term for officers. One of the problems is that the Bar becomes a staff driven organization due to the weakness of the board. The president's term is practically over when he starts, should be at least a one year vp position, where there can be some continuity in shaping an agenda and carrying it through with several presidents and vp's (or president elects).	Jan 3, 2011 8:03 PM
114	I question if perhaps the terms should be longer. It takes too long to figure out what is going on--it is only the last year or so that any board member has a clue.	Jan 4, 2011 12:00 AM
115	Three years seems an adequate term for members; one year for the president.	Jan 4, 2011 1:20 AM
116	I think the board member terms should stay at three years. I think the president's term should be 2; one year is not sufficient to accomplish anything worthwhile.	Jan 4, 2011 1:34 AM
117	2 years	Jan 4, 2011 1:50 AM
118	1 year.	Jan 4, 2011 2:21 AM
119	4 years	Jan 4, 2011 5:15 AM
120	Don't know.	Jan 4, 2011 5:23 AM
121	2-4 years	Jan 4, 2011 8:19 AM
122	3-6 years	Jan 4, 2011 3:29 PM
123	members 3 years	Jan 4, 2011 6:57 PM
124	two years but they can be re-nominated or re-elected for another two years	Jan 4, 2011 9:17 PM
125	2 years, 4 years	Jan 4, 2011 11:26 PM
126	Current Terms are fine.	Jan 5, 2011 1:23 AM

## 6. How long should the terms of the members (and of the president) be?

Response Text		
127	As currently mandated by the applicable sections of the CA B&P Code	Jan 5, 2011 3:12 AM
128	The present terms of members is adequate.	Jan 5, 2011 8:21 PM
129	3 years for both	Jan 6, 2011 12:27 AM
130	3year terms. The President should also have a 3 year term unless a 3/4 members think they should leave sooner..	Jan 6, 2011 2:43 AM
131	3 years term; non-renewable for everyone (including public members), 1 year term for President--even though consideration should be given to a "president elect" which would essentially give the President a year of training.	Jan 6, 2011 4:43 PM
132	Three years is reasonable, but lawyers should be able to serve consecutive terms. The president should not have to leave the board.	Jan 6, 2011 10:14 PM
133	The current terms are reasonable.	Jan 8, 2011 6:59 PM
134	2 years renewable once,with the exception of the Chairman of the Board which should continue as is	Jan 9, 2011 10:19 PM
135	2 years - 1 term	Jan 10, 2011 4:27 AM
136	We believe the current terms are sufficient. The Bar is a complex organization with a multimillion dollar budget that requires a certain level of sophistication, training and experience.	Jan 11, 2011 12:37 AM
137	Four years (plus one year for the President)	Jan 12, 2011 11:28 PM
138	3 or 4 years	Jan 12, 2011 11:36 PM
139	Presidents should definitely serve 2 years at least. One year means little continuity.	Jan 13, 2011 1:05 AM
140	Each board member and the president should serve a two-year term.	Jan 13, 2011 1:45 AM
141	3 years	Jan 13, 2011 10:44 PM
142	Per protocol of Business & Professions Code 6020 & State Bar Protocol; Internal Revenue Service located at Internal Revenue Service Permanently; Supreme Court Joint Investigation & Enforcement Task Force 3 years rotation.	Jan 13, 2011 10:44 PM

## 7. How should the president and other officers be selected?

Response Text		
1	By internal vote	Dec 20, 2010 10:23 PM
2	By a majority of the board.	Dec 20, 2010 10:27 PM
3	I don't know.	Dec 20, 2010 10:27 PM
4	no opinion	Dec 20, 2010 10:27 PM
5	President should be elected by all members of the Bar.	Dec 20, 2010 10:28 PM
6	It is probably best to have the Board members elect their officers. This affords the Board the opportunity to know who among them has the time and skill set to be most effective in these roles. A vote of the membership, by contrast, would potentially be a popularity (or name-recognition) contest.	Dec 20, 2010 10:29 PM
7	Selected by a vote from board members.	Dec 20, 2010 10:31 PM
8	among the board of bar governors once selected	Dec 20, 2010 10:31 PM
9	Succession planning.	Dec 20, 2010 10:31 PM
10	election from the whole board	Dec 20, 2010 10:31 PM
11	President could be elected from general board	Dec 20, 2010 10:31 PM

## 7. How should the president and other officers be selected?

	Response Text	
12	Present make up appears appropriate	Dec 20, 2010 10:32 PM
13	by the board itself	Dec 20, 2010 10:33 PM
14	by board	Dec 20, 2010 10:33 PM
15	Contested elections.	Dec 20, 2010 10:36 PM
16	President and other officers should be elected by the State Bar members, not by the board.	Dec 20, 2010 10:38 PM
17	By the nominating committee.	Dec 20, 2010 10:39 PM
18	By the board, from among the board.	Dec 20, 2010 10:39 PM
19	By the Board	Dec 20, 2010 10:41 PM
20	By vote among members in good standing of the State Bar, and/or by appointment of the Board President in case of a vacancy.	Dec 20, 2010 10:43 PM
21	Board vote - current system seems okay	Dec 20, 2010 10:43 PM
22	The officers should be selected by practicing members of the bar.	Dec 20, 2010 10:46 PM
23	By the board itself	Dec 20, 2010 10:48 PM
24	Yearly.	Dec 20, 2010 10:48 PM
25	The board members would elect by secret ballot.	Dec 20, 2010 10:51 PM
26	The members of the Board should select all officers from its own membership once per year.	Dec 20, 2010 10:51 PM
27	by vote of the board	Dec 20, 2010 10:54 PM
28	The president should always be a member of the public.	Dec 20, 2010 10:57 PM
29	Random selection after a pool of qualified individuals is selected. This would eliminate a favored person being selected.	Dec 20, 2010 10:59 PM
30	president should be appointed by the governor	Dec 20, 2010 11:02 PM
31	By the members	Dec 20, 2010 11:03 PM
32	Nom Committee and then voting by membership	Dec 20, 2010 11:03 PM
33	Election by the Board itself appears to be appropriate.	Dec 20, 2010 11:04 PM
34	Vote of other board members.	Dec 20, 2010 11:11 PM
35	why do we need to create another hierarchical model?	Dec 20, 2010 11:11 PM
36	Current process is acceptable	Dec 20, 2010 11:16 PM
37	Nomination by the board.	Dec 20, 2010 11:20 PM
38	On the basis of a representative cross-section of the Bar the the Public.	Dec 20, 2010 11:22 PM
39	vote of the members	Dec 20, 2010 11:26 PM
40	By vote of the other 8 members of the Board.	Dec 20, 2010 11:28 PM
41	By the governed attorneys	Dec 20, 2010 11:31 PM
42	elected by members of the bar	Dec 20, 2010 11:32 PM
43	Annually	Dec 20, 2010 11:39 PM
44	I think it would be acceptable for the president to be a public member.	Dec 20, 2010 11:39 PM
45	The Members should elect the President and other officers.	Dec 20, 2010 11:44 PM
46	By a majority vote of the members selected.	Dec 20, 2010 11:52 PM
47	By election of the Board members themselves.	Dec 20, 2010 11:53 PM
48	Election by members of the Board, as is done now, seems fine. It has the advantage of having the leadership have the support of the Board members, which has certain advantages.	Dec 21, 2010 12:00 AM
49	Vote of members of the Board.	Dec 21, 2010 12:01 AM

## 7. How should the president and other officers be selected?

	Response Text	
50	By the board members themselves.	Dec 21, 2010 12:06 AM
51	By the other members of the board.	Dec 21, 2010 12:17 AM
52	The current system is acceptable.	Dec 21, 2010 12:20 AM
53	current method is OK.	Dec 21, 2010 12:22 AM
54	By the State Bar Board of Governors.	Dec 21, 2010 12:27 AM
55	If the active lawyers don't make up more than 50% of the board, then vote of the entire board should be sufficient.	Dec 21, 2010 12:29 AM
56	internal board election at first meeting, held every 3 years.	Dec 21, 2010 12:42 AM
57	By the Board....I fear the escalation of costs and polarization of positions if this were to turn into an electoral contest.	Dec 21, 2010 12:43 AM
58	Direct election by all bar members. You all seem to operate in secrecy. I have been a bar member for 10 years and never once was I asked to vote for you.	Dec 21, 2010 12:45 AM
59	The president should be elected by popular vote. The other officers should be appointed by the president.	Dec 21, 2010 12:46 AM
60	Secret ballot by mail	Dec 21, 2010 12:57 AM
61	by the board	Dec 21, 2010 1:13 AM
62	By the Board, from its members.	Dec 21, 2010 1:20 AM
63	Internally by the members.	Dec 21, 2010 1:27 AM
64	By the members of the Bar.	Dec 21, 2010 3:12 AM
65	By vote of the board	Dec 21, 2010 3:23 AM
66	By vote of the board after first meeting.	Dec 21, 2010 4:15 AM
67	I believe by election by all Bar Members -- not by appointment.	Dec 21, 2010 4:19 AM
68	no opinion	Dec 21, 2010 4:30 AM
69	I would like to see part of the input and review from some of our best Judges and a move away from a political contest.	Dec 21, 2010 4:55 AM
70	See above.	Dec 21, 2010 5:31 AM
71	Current system is fine.	Dec 21, 2010 5:48 AM
72	By vote of the seven or nine member board.	Dec 21, 2010 5:58 AM
73	The president should be elected by registered voters in the geographical district, the other officers can be selected by vote of the elected board	Dec 21, 2010 12:18 PM
74	ON MERIT AND NOT ON POLITICAL ASSOCIATIONS OR POTENTIAL PECUNIARY BENEFITS TO THEM SELVES.	Dec 21, 2010 12:34 PM
75	By the Board.	Dec 21, 2010 3:21 PM
76	President of the Baord should be selected by the Board of Governors from persons on the public interest Board	Dec 21, 2010 4:05 PM
77	By the members of the board.	Dec 21, 2010 4:38 PM
78	voted in by the 7 members of the board	Dec 21, 2010 5:12 PM
79	The President or Chairman should be appointed.	Dec 21, 2010 5:25 PM
80	president elected by direct vote of members, all others appointed by board	Dec 21, 2010 5:25 PM
81	From within the board in accordance with rules they establish.	Dec 21, 2010 5:31 PM
82	I honestly don't know; perhaps once the board is in place, the board would elect its own officers. There has to be a blend of energy and experience; the wrong leadership would be so costly.	Dec 21, 2010 6:07 PM
83	See 3 above, with the Presidency rotating annually	Dec 21, 2010 6:12 PM
84	The current method seems appropriate.	Dec 21, 2010 6:28 PM

## 7. How should the president and other officers be selected?

	Response Text	
85	by the Board	Dec 21, 2010 6:46 PM
86	From the 5 members	Dec 21, 2010 7:04 PM
87	Vote of bar membership along with the annual dues statement.	Dec 21, 2010 7:05 PM
88	Board should select	Dec 21, 2010 7:17 PM
89	By vote of Governors.	Dec 21, 2010 7:25 PM
90	by the board	Dec 21, 2010 8:51 PM
91	irrelevant	Dec 21, 2010 9:27 PM
92	Same as at present.	Dec 21, 2010 9:32 PM
93	by a vote of the board members	Dec 21, 2010 10:40 PM
94	President elected by members, officers elected by Board	Dec 21, 2010 10:59 PM
95	By vote of the committee at large.	Dec 21, 2010 11:38 PM
96	elected by the other board members	Dec 22, 2010 12:08 AM
97	By nomination and vote of the board.	Dec 22, 2010 1:46 AM
98	Board vote.	Dec 22, 2010 4:45 AM
99	WHO SAID THERE WOULD BE A PRESIDENT? Board memebers should be selected by the members of the bar. Cut costs and time wasting - we don't need any other officers.	Dec 22, 2010 3:39 PM
100	vote of governors	Dec 22, 2010 9:42 PM
101	After the individuals are selected, the group itself should elect its own officers	Dec 23, 2010 5:32 AM
102	by the sitting board.	Dec 23, 2010 11:47 AM
103	democratically	Dec 23, 2010 8:08 PM
104	A vote of all State Bar members for State Bar President would be undesirable, in that it would prevent lawyers without deep pockets from running for president, would lead to political posturing and demagoguery.	Dec 24, 2010 7:26 PM
105	by the board	Dec 24, 2010 8:53 PM
106	Selection by the Board.	Dec 26, 2010 5:20 PM
107	The present process is satisfactory.	Dec 26, 2010 7:01 PM
108	By vote of the Board	Dec 26, 2010 10:03 PM
109	By the Board.	Dec 27, 2010 4:54 PM
110	By nomination and vote.	Dec 28, 2010 7:30 AM
111	The president selection seems fine.	Dec 29, 2010 7:15 PM
112	By the Board, at its organizational meeting following the election.	Dec 29, 2010 9:30 PM
113	Let the board select an expedient way through one of several provided for suggestion.	Jan 1, 2011 11:07 PM
114	not aware of process now, but a group of aware governors (perhaps in 2nd or 3rd year term; perhaps a board governance committee) should make recommendations, then entire board votes	Jan 3, 2011 8:03 PM
115	President and officers should be elected by the entire board.	Jan 4, 2011 12:00 AM
116	Officers should be selected by the Board.	Jan 4, 2011 1:20 AM
117	Vote of the State Bar members, which obviously has a cost associated with it.	Jan 4, 2011 1:34 AM
118	By the board	Jan 4, 2011 1:50 AM
119	By all attorneys admitted to practice in the state of California.	Jan 4, 2011 2:21 AM
120	Best qualified via an internal vote with rotating president.	Jan 4, 2011 5:15 AM
121	Voted upon by bar members.	Jan 4, 2011 5:23 AM

## 7. How should the president and other officers be selected?

Response Text		
122	Election by the panels	Jan 4, 2011 8:19 AM
123	Board vote	Jan 4, 2011 3:29 PM
124	President should be selected by direct vote of the Active Bar membership.	Jan 4, 2011 6:57 PM
125	by vote of the board	Jan 4, 2011 9:17 PM
126	By election.	Jan 4, 2011 11:26 PM
127	Current selection methods subject to my Answer to Question 3, above are fine.	Jan 5, 2011 1:23 AM
128	As currently mandated by the applicable sections of the CA B&P Code	Jan 5, 2011 3:12 AM
129	The present selection process of the board's president is adequate.	Jan 5, 2011 8:21 PM
130	By the Board of Governors	Jan 6, 2011 12:27 AM
131	Members of the board should pick the president. Officers should apply and be chosen by the out going board.	Jan 6, 2011 2:43 AM
132	This needs to be changed since the current process of the sitting Board electing the President promotes a focus on deal making; essentially 12 people can elect our President--too few of number. I would explore the feasibility of a Statewide election by members of the Bar.	Jan 6, 2011 4:43 PM
133	Nominating committee allowing open nominations and elected by the membership.	Jan 6, 2011 10:14 PM
134	The current method of election is reasonable.	Jan 8, 2011 6:59 PM
135	elected annually by the Board	Jan 9, 2011 10:19 PM
136	Same	Jan 10, 2011 4:27 AM
137	The President Elect, should be directly elected by the majority of voting lawyers in California. The current process is flawed. Direct election is democratic and more transparent, and results in greater accountability.  We strongly believe a position of President Elect should be established, and that he or she should succeed automatically to become President the next year, without election. This would assure a smooth transition of power, provide a year's opportunity for the President Elect to train for the office, and avoid the necessity of the President Elect to campaign for office the year preceding his or her assumption of office.	Jan 11, 2011 12:37 AM
138	As they are now. At-large election is far too expensive and time-consuming	Jan 12, 2011 11:28 PM
139	By the board	Jan 12, 2011 11:36 PM
140	I don't feel strongly about this. Election by the Board seems like a good idea.	Jan 13, 2011 1:05 AM
141	The President and officers should be voted on by the members of the State Bar.	Jan 13, 2011 1:45 AM
142	They need to have knowledge of the high conflict cases held hostage in San Diego Family Law Court for over 10 years without any issues resolves but litigants were billed over \$500,000. No compliance with the California Rules of the Court.	Jan 13, 2011 10:44 PM
143	Per State Bar of California Regular Protocol.	Jan 13, 2011 10:44 PM

## 8. What changes or other governance models may enable the board to better

Response Text		
1	Limit the Board's scope of authority to admission and discipline. Cut out all the other activities unless and until all discipline backlogs have been cleared.	Dec 20, 2010 10:23 PM
2	Focus more on actual malfeasance vs. book keeping errors.	Dec 20, 2010 10:27 PM

## 8. What changes or other governance models may enable the board to better

	Response Text	
3	Summarily disbar attorneys who steal from clients.	Dec 20, 2010 10:27 PM
4	no opinion	Dec 20, 2010 10:27 PM
5	Discipline seems excessively lax -- I am often shocked and embarassed by what lawyers do without getting a lengthy suspension or disbarment, particularly the repeat offenders who screw over multiple clients.	Dec 20, 2010 10:28 PM
6	A public agenda.	Dec 20, 2010 10:29 PM
7	Vertical prosecution scheme in terms of discipline.	Dec 20, 2010 10:31 PM
8	participation by state bar counsel at each meeting	Dec 20, 2010 10:31 PM
9	Non-profit governance models are generally good to look to.	Dec 20, 2010 10:31 PM
10	unknown	Dec 20, 2010 10:31 PM
11	More community feedback to board members	Dec 20, 2010 10:31 PM
12	Present make up appears appropriate	Dec 20, 2010 10:32 PM
13	Only that their be some diversity on the board - look at GO 156 from the CPUC only that it represents some percentage that would represent the constituency we would like to protect	Dec 20, 2010 10:33 PM
14	unk	Dec 20, 2010 10:33 PM
15	Uncertain.	Dec 20, 2010 10:36 PM
16	The board should have a mix of attorneys from small law firms and large law firms.	Dec 20, 2010 10:38 PM
17	Unsure of what the current problems may be.	Dec 20, 2010 10:39 PM
18	Get rid of the association with elected officials.	Dec 20, 2010 10:39 PM
19	I have no opinion.	Dec 20, 2010 10:41 PM
20	Increase public access to the Board.	Dec 20, 2010 10:43 PM
21	Silly - See 5 above	Dec 20, 2010 10:43 PM
22	None.	Dec 20, 2010 10:46 PM
23	Keep in mind that attorneys by profession may be the last a best profession to give protection to those injured, damaged or aggrieved, so in addition to discipline, encouraging pro bono representation is a means by which attorneys can serve better to protect the public.	Dec 20, 2010 10:48 PM
24	Use subcommittees designated by problem areas; e.g., IOLTA vioilations, competency, loan modification fraud, probate fraud (trusts and estates), moral turpitude by problem area( drugs, DUI, etc.)	Dec 20, 2010 10:48 PM
25	I wish you'd get off the notion of public protection. It's raised like a shield to protect the Bar's reason for existence.	Dec 20, 2010 10:51 PM
26	Determine whether the MCLE actually improves ethics. Educate the public about unscrupulous lawyer and those practicing without a license.	Dec 20, 2010 10:57 PM
27	The board should establish a method of direct complaint by members of the bar about unethical conduct of other attorneys. The current system does not work. It depends entirely upon a judge making findings of misconduct and precludes any other examination on the merits.	Dec 20, 2010 10:59 PM
28	The State Bar as such should be disbanded and the licensing and disciplinary functions taken over by an agency in the Dept of Consumer Affairs. How can anyone trust lawyers to regulate admission to the profession and to discipline themselves. The existing State Bar could continue as a strictly voluntary bar association. There would then be no restrictions on lobbying or public advocacy.	Dec 20, 2010 11:02 PM
29	I am unable to comment based upon lack of information on other governance models.	Dec 20, 2010 11:03 PM

## 8. What changes or other governance models may enable the board to better

	Response Text	
30	Truthfully the board may do this already but hold meetings throughout CA, both So and No so all may attend.	Dec 20, 2010 11:03 PM
31	The only possible model that comes to mind is to expensive and unpromising to recommend and that is having the attorneys nominate and vote on attorney members. However I see the political implications of such a proceeding making that process totally unworkable. Likewise having public elections seems likewise unworkable so, I don't know but if anything comes to mind I will be happy to let you know.	Dec 20, 2010 11:04 PM
32	Any attorney who is convicted of a felony should be disbarred - no ifs, ands, or buts. And anyone who is disbarred should never be allowed to reinstate. There are plenty of ethical attorneys to serve the public, and if a person is bright enough to pass the Bar, he or she is bright enough to find other work once disbarred. I am disgusted to see attorneys reinstated who have violated the public trust. Why ever?	Dec 20, 2010 11:11 PM
33	do away with present model - simply create the enforcement arm and stop wasting time and money.	Dec 20, 2010 11:11 PM
34	I have no suggestions in this regard	Dec 20, 2010 11:16 PM
35	Don't know.	Dec 20, 2010 11:20 PM
36	Some mechanism to insure a more democratic or representative body of governors and board members should be established.	Dec 20, 2010 11:22 PM
37	proactive investigations	Dec 20, 2010 11:26 PM
38	When the Bar decides not to take action concerning a complaint against a lawyer, the complainant should be informed of all the reasons why no action was taken. When the complainant gets a letter stating only that the complaint was investigated and the Bar has determined that no action is going to be taken, the complaining party is left frustrated and thinks that the lawyers are just covering up for one another.	Dec 20, 2010 11:28 PM
39	See my answers to questions 1, 2 and 3.	Dec 20, 2010 11:32 PM
40	Oversight over state bar enforcement activities	Dec 20, 2010 11:39 PM
41	The Board should have a Committee of at least tow Members plus a staff of sufficient size to receive suggestions and complaints from the Public and to consider the suggestions and complaints.	Dec 20, 2010 11:44 PM
42	Lawyers who file repetitive plaintiffs' cases - such a ADA cases - should be immediately investigated.	Dec 20, 2010 11:52 PM
43	I advocate the practice of the Guilds where they are self regulated and dedicated to the reputation of the legal profession	Dec 20, 2010 11:53 PM
44	Principal change is to abandon elections. As I told Jon Streeter when he asked, although I know many lawyers, my vote is still often an uninformed vote. We should have more of a screening process that is organized by the Supreme Court, with input by the Governor's Office and Attorney General..	Dec 21, 2010 12:00 AM
45	Perhaps a somewhat smaller Board would be more efficient. If the Board has a number of committees, perhaps the number of members is satisfactory.	Dec 21, 2010 12:01 AM
46	Speedy client complaint resolution. 90 days complaint to resolution.	Dec 21, 2010 12:06 AM
47	Main goal should be openness. Perhaps publishing the non-confidential board minutes. The public should be encouraged to contact members of the board for to report any misconduct or any ideas to improve the practice of law in California.	Dec 21, 2010 12:17 AM

## 8. What changes or other governance models may enable the board to better

	Response Text	
48	My concern is that insufficient emphasis has been placed on enforcement by the Bar with respect to violations of ethics by elected and other officials who use their positions as attorneys with prosecutorial powers to harm members of the public by abusing their power, seeking to prevent persons from gaining access to defense attorneys, advocating for the waiver of the attorney-client privilege and bringing unwarranted civil or criminal cases in order to manipulate or affect civil or political matters.	Dec 21, 2010 12:20 AM
49	There should be an ombudsman to investigate complaints.	Dec 21, 2010 12:22 AM
50	More outreach by task forces of the Bar to the rank-and-file State Bar Members.	Dec 21, 2010 12:27 AM
51	Split lawyers 50% from large firm, 50% from firm 5 persons or smaller.	Dec 21, 2010 12:42 AM
52	It is critical that the Board and Board officers avoid the "staff domination" that characterized the prior Executive Director, and resulted in unnecessary conflicts with the Legislature and the membership of the Bar.	Dec 21, 2010 12:43 AM
53	Not sure.	Dec 21, 2010 12:46 AM
54	Involvement of Judicial Council	Dec 21, 2010 12:57 AM
55	Other than my concern that good people are being "termed out" prematurely, my belief is that the governance model of the Board is well suited to all of its responsibilities, including the interest of public protection as I have defined it. To use the vernacular, it ain't broken, don't try to fix it.	Dec 21, 2010 1:20 AM
56	Not sure how to answer that question. In my practice (estate planning, and exempt organizations), I find that most clients don't have the first idea how to get the best value from their attorney's time/efforts/knowledge. I'm not sure what the board of governors might do about this directly, except to suggest that public outreach might be something to consider. It seems that the abject destitute and the wealthy may have the most exposure to attorney services. The former because they are provided free legal services through legal aid or the public defender and the latter because they can afford the high hourly rates that private attorneys charge. For everyone else, hiring an attorney is an agonizing economic choice. The horror of escalating legal bills causes many clients I encounter to make poor use of my time in ill conceived efforts to control my billing. It usually makes my work more difficult. Assuming I can even figure out what is happening (and I don't inadvertently give the client a less than stellar product because I didn't know what s/he really needs), my choice is to "eat" the time and get cross-wise of the partners, write down the time and try to explain to the client why the work really cost that much (or shouldn't have, if s/he had been clear about the project in the first place), or grovel for a write down with the management committee. While the board is at it, maybe they could do something about how the business of law is a misery for those of us who would really just like to practice law. Sorry ... I digress.	Dec 21, 2010 1:27 AM
57	Empower them to enact disciplinary rules that can be easily and swiftly enforced.	Dec 21, 2010 3:12 AM
58	More frequent surveys of attorneys' opinions and public opinions as to appropriate discipline. The discipline seems to be all over the board for similar violations. The State Bar Court needs better direction to avoid such results.	Dec 21, 2010 3:23 AM
59	Lawyers & judges should NOT be on the board. Consider the board of the San Francisco SPCA as an example.	Dec 21, 2010 4:15 AM
60	I don't know.	Dec 21, 2010 4:19 AM
61	no opinion	Dec 21, 2010 4:30 AM
62	Other than my prior responses I can't add to this.	Dec 21, 2010 4:55 AM
63	Keep the investigatory function essentially separate as now.	Dec 21, 2010 5:31 AM
64	I'm not familiar enough with other systems to make a suggestion.	Dec 21, 2010 5:48 AM

## 8. What changes or other governance models may enable the board to better

Response Text		
65	I guess you mean 'governance' not 'goverance' ?	Dec 21, 2010 5:58 AM
	Transparency. Public hearings. Publication of results of adjudications in newspapers of general circulation (right next to the DUI reports or general police blotter).	
66	Improved communication channels between the board and the public it serves	Dec 21, 2010 12:18 PM
67	THEY MUST BE AVAILABLE. CONTACTING THE BAR, NOW IS ANTIQUATED. MANAGEMENT AND STAFF MUST BE AVAILABLE TO THE PUBLIC. NOT ON VACATION, SICK LEAVE, AT SEMINARS, ON FLOATING HOLIDAYS. THEY MUST BE AVAILABLE AND ON PHONE CONTACT. THEIR HOURS MUST ACCOMMODATE WORKING PEOPLE. PROVIDING WRITTEN MATERIAL TO THE PUBLIC, WRITTEN IN NON LEGALIZE IS ALSO IMPORTANT.	Dec 21, 2010 12:34 PM
68	See Number 1, above.	Dec 21, 2010 3:10 PM
69	None.	Dec 21, 2010 3:21 PM
70	See above.	Dec 21, 2010 4:05 PM
71	Less influence from the legislature and other activist groups.	Dec 21, 2010 4:38 PM
72	attorney discipline	Dec 21, 2010 5:12 PM
73	A web site should include information on how to file a complaint, a template for the complaint, allow the complaint to be filed electronically, The web site should also list attorneys on suspension and what for...it should provide educational opportunities for attorneys to explore what may or may not be a conflict of interests and what to do about it.	Dec 21, 2010 5:25 PM
74	reduce opeartional costs. reduce size of board. reduce scope of operations.	Dec 21, 2010 5:25 PM
75	none	Dec 21, 2010 5:31 PM
76	The Bar should stop taking positions on any political issues other than the administration of justice. Leave politics out of the State Bar; make it only about serving the public and assisting members of the Bar be better lawyers and advocates.	Dec 21, 2010 6:07 PM
77	The Board may not intervene directly in any disciplinary activity at all: its purpose is to ensure that the disciplinary procedures are efficacious and swift, and to recommend amendation of rules and procedures to the State Bar itself and the legislature.	Dec 21, 2010 6:12 PM
78	See above. While the policing aspect is very necessary for public protection, the Bar members need support and resources as well. For example, if a public officer seeks an opinion regarding a conflict of interest from the FPPC the official is protected from further prosecution by that opinion. Something like that regarding ethical matters would be invaluable.	Dec 21, 2010 6:28 PM
79	Split the Bar	Dec 21, 2010 6:46 PM
80	Stop protecting lawyers and stop cutting deals. I am appalled at the conduct it takes to get disbarred - attorneys should be disbarred promptly after a fair hearing shows they breached their fiduciary duty and/or zealous advocacy obligations to their clients. It is a privilege to practice, not a right.	Dec 21, 2010 7:04 PM
81	Get the bar and all county bars out of the politics business - no more lobbying or making interest statements on any political issues.	Dec 21, 2010 7:05 PM
82	See comments regarding sub committees	Dec 21, 2010 7:17 PM
83	Is there a problem or is this an exercise in search of a problem. The President's letter only states that the Legislature has established a committe to address the issur of how to improve the protection of the public by further regulating lawyers. Are there any new hard evidence that this exercise is justified? The Legislature should spend its time addressing the budget and avoiding a financial collapse,	Dec 21, 2010 7:25 PM

## 8. What changes or other governance models may enable the board to better

Response Text		
84	initial administrative settlement confer	Dec 21, 2010 8:51 PM
85	<p>A huge change would be to require that the current billable hours model be forbidden. Minimum billable hours mean that attorneys handle too many cases at once and don't have the time to adequately represent their individual clients to the best level possible. Currently, attys do steerage class legal work in an environment that demands first class premier level workmanship and everyone seems to think this is satisfactory. It is NOT satisfactory as we all know, but, until the system demands better the public will get poor quality representation while everyone else pats each other on the back in congratulations.</p> <p>Another improvement for the protection of the public is to stop allowing employment discrimination during atty hiring. Allowing "ABA only" or similar hiring restrictions limits employment opportunities to those not fortunate enough to go to top tier law schools. These types of restrictions limit the opportunities that minorities have access to due to their educational and financial situation. Yet, the St Bar does NOTHING about this blatant discrimination against qualified attorneys who kick the asses of those "silver spoons" who barely make the grade after multiple attempts. Discrimination based on economic or social limits is still discrimination.</p> <p>Make the Bar Exam TOUGHER. We have too many attys who barely pass the exam who don't know how to tie their shoes let alone file a proper pleading. Better public protection comes from attorneys who know their legal business rather than how much money they can make.</p>	Dec 21, 2010 9:27 PM
86	No governance changes other than as related to prior answers. A more public presentation of information regarding the performance (positive) and discipline (negative) of lawyers would serve the interest of public protection and of the Board.	Dec 21, 2010 9:32 PM
87	??	Dec 21, 2010 10:40 PM
88	more focus on drugs and excessive use of alcohol	Dec 22, 2010 12:08 AM
89	Solicit ideas to improve public protection from state bar members, and consider the most viable ideas in a board meeting.	Dec 22, 2010 1:46 AM
90	You spelled governance wrong, but I think more members with regular contacts with the public who need protecting would be good. Also, more board contact with public who need protecting or their representatives. The law is a complex arena, and the public needs the bar to provide a service to them of at least explaining the legal system's basics to them, giving them the warning signs of unethical attorneys, and directing them to where they may obtain counsel in a small pamphlet (no more than 3-4 pages) as well as online.	Dec 22, 2010 4:45 AM
91	drop inactive enrollment immediately. educate the public about the role lawyers in problem solving. lawyers that steal client funds should be disbarred for life	Dec 22, 2010 3:39 PM
92	tougher standards that require longer suspensions and disbaring instead of the sympathy currently shown	Dec 22, 2010 9:42 PM
93	I have no opinion on this	Dec 23, 2010 5:32 AM
94	The Board should develop these.	Dec 23, 2010 11:47 AM
95	publish minutes of meetings, seek input from members on agenda items	Dec 23, 2010 8:08 PM
96	For better continuity, there should be a President-Elect selected a year before the presidential term begins.	Dec 24, 2010 7:26 PM
97	not sure	Dec 24, 2010 8:53 PM
98	Prompt availability of advisory opinions about ethical issues.	Dec 26, 2010 5:20 PM
99	No changes appear to be necessary.	Dec 26, 2010 7:01 PM
100	Get out of the CLE business and do not expand specialization any further.	Dec 26, 2010 10:03 PM

## 8. What changes or other governance models may enable the board to better

Response Text		
101	Smaller size; minimize politicizing the profession.	Dec 27, 2010 4:54 PM
102	Not sure.	Dec 28, 2010 7:30 AM
103	Remove the persons placed on the Board for the sole purpose of satisfying personal or political agendas.	Dec 29, 2010 9:30 PM
104	I have some ideas that would get very fast public input by means of current technology and social media to guide the board and prioritize public input.	Jan 1, 2011 11:07 PM
105	see #6	Jan 3, 2011 8:03 PM
106	Decreasing the board's involvement in things other than public protection--making the bar simply a licensing body would do it. But I doubt that is appropriate. There are other functions the bar performs that are valuable.	Jan 4, 2011 12:00 AM
107	Require all attorneys to have malpractice insurance; be less lenient in penalizing/sentencing attorneys who have been proven in the State Bar Court to have harmed a client; Create special bankruptcy court rules relating to attorneys that will preclude them from avoiding malpractice lawsuits by simply filing for bankruptcy.	Jan 4, 2011 12:51 AM
108	I don't know of any.	Jan 4, 2011 1:20 AM
109	Much more transparency in the workings of the board and what it does. It needs to serve the interests of lawyers as well. Just as the public needs to be protected from unscrupulous lawyers, there are unscrupulous members of the public as well. The vast majority of lawyers don't get the credit they deserve, and the State Bar does nothing to promote to the public all the good that lawyers do. If the purpose of the State Bar is going to be purely the protection of the public, then who will speak for the lawyers of California?	Jan 4, 2011 1:34 AM
110	I don't know.	Jan 4, 2011 2:21 AM
111	Better control over attorney's who blatantly use the legal system for personal gain through publicity.	Jan 4, 2011 5:15 AM
112	The bar should be eliminated completely or made voluntary.	Jan 4, 2011 5:23 AM
113	Act to enforce sanctions against those who abuse the litigation process - judges who refuse to sanction attorneys or parties without counsel should be addressed. I'm tired of following the rules while others don't do so and judges don't care. Civility and honesty are often ideas of the past.	Jan 4, 2011 8:19 AM
114	There is a decided lack of vision in this area. So far, the push has been for disclosure and an easing of the ability to punish attorneys. Of far more impact to the public is the lack of access to legal services at reasonable cost. This issue is not being addressed in part because the State does not want the Bar to get involved in political issues even though it has no problem in getting involved in Bar issues. Examples of problems not being addressed are the failure to keep the dollar values of small claims and economic litigation in pace with inflation, the increasing backlog of cases in the courts, the push by corporations for arbitration, the unlicensed practice of law by paralegals, and the difficulty in providing unbundled legal services.	Jan 4, 2011 3:29 PM
115	Become a VOLUNTARY BAR and separate from the legislatures' current absolute control over the Bar.  OR, shift Bar management to the Calif Dept of Consumer affairs -- DROP the current model of pretending to represent, and create a separate lawyers' bar -- see New York State model	Jan 4, 2011 6:57 PM
116	Fewer board members can get more done; get the politics out of the State Bar, stop wasting time on the cause-of-the-moment	Jan 4, 2011 9:17 PM
117	The most important thing it can do to better serve the interest of public protections is to streamline the litigation process and make justice more affordable and user friendly.	Jan 4, 2011 11:26 PM

## 8. What changes or other governance models may enable the board to better

	Response Text	
118	I believe posting on the State Bar's Website disciplinary charges lodged but not yet adjudicated against Members of the Bar is wrong because it is contrary to the Presumption of Innocence, a bedrock of American Jurisprudence. I also believe that Private Reprovals and other Non-Public Disciplinary Actions taken by the Office of the General Counsel of the State Bar against Members of the State Bar should continue to be confidential and should Never be publicly disclosed against the affected State Bar Member on the State Bar's Website. I believe these suggestions will encourage Lawyers to self-police and correct their own less serious mistakes.	Jan 5, 2011 1:23 AM
119	None. The current applicalbe sections of the CA B&P code are efficient and to not need any "enhancement." Please do not mess with something that is already working well for the protection of the CA Public. Changing and/or making the CA B&P Code more complicated is not going to result in any additional protection for the public against the well-meaning, hard working attorneys of this State.	Jan 5, 2011 3:12 AM
120	Additional education and outreach to underserved communities on the role of the board of governors would be helpful.	Jan 5, 2011 8:21 PM
121	Effective oversight requires Board members who have the time, interest and knowledge/experience to appropriately exercise their oversight responsibilities	Jan 6, 2011 12:27 AM
122	I would change the number of members and balance the board with more members of the public. I would also allow for more victim in put. I would change the compliant form. It limits the victims abilty to complain which prevents justice.	Jan 6, 2011 2:43 AM
123	Change to the State Bar Act to mandate reporting of other lawyers' unethical behavior; increase the ability of the courts to impose sanctions (similar to Rule 11 in Federal Court), increase educational requirements for lawyers on ethics issues.	Jan 6, 2011 4:43 PM
124	See above.	Jan 6, 2011 10:14 PM
125	No suggested changes other than to ensure adequate representation of the bar and public stakeholders in the composition of the board.	Jan 8, 2011 6:59 PM
126	There should be better efforts to enforce such things as medical records privacy, financial records, telephone, etc privacy all for the common good.	Jan 8, 2011 10:29 PM
127	Board should have a small staff for writing an annual report to the State and for handling documentation related to issues being addressed by the Board	Jan 9, 2011 10:19 PM
128	Retool the investigative and prosecutors office.	Jan 10, 2011 4:27 AM
129	We would also suggest that the Board meetings be streamed live on the Internet. The American Bar Association's House of Delegates is live streamed, and that leads again to a greater transparency.	Jan 11, 2011 12:37 AM
130	The vountary Sections should be split off from the regulatory body and become a voluntary trade association. The regulatory body should, of course, allow the Sections to take their voluntary dues receipts and reserves with them and all copyrights and other assets.	Jan 12, 2011 10:45 PM
131	None	Jan 12, 2011 11:28 PM
132	The more I think about it, the more it may make sense to divide the bar into two separate entities -- allowing the licensing, regulation and discipline to remain under the oversight of the legislature, and allowing the rest to be spun off into a voluntary bar association controlled by its members.	Jan 12, 2011 11:36 PM
133	Appointment of members	Jan 13, 2011 1:05 AM
134	The San Fernando Valley Bar Association proposes that the San Fernando Valley be a separate district for purpose of representation on the State Bar Board of Governors.	Jan 13, 2011 1:45 AM

## 8. What changes or other governance models may enable the board to better

Response Text		
135	Attention to resolving the cases within the 5 year period or provide a trial. When a certain amount of money has been spent and no resolution reached it should go to another step for more assistance. This would prevent the attorneys from working in collusion deciving the Court and deliberately delaying resolution.	Jan 13, 2011 10:44 PM
136	Take away the monopoly that attorneys'/lawyers' have over their private & public corporation that has affected United States of America Citizens entitlement to laws passed by "Acts of Congress" & State Legislature.	Jan 13, 2011 10:44 PM

## 9. Would you like to speak at one of the public hearings the Governance Task

Response Text		
1	no	Dec 20, 2010 10:23 PM
2	No.	Dec 20, 2010 10:27 PM
3	No.	Dec 20, 2010 10:27 PM
4	no thank you.	Dec 20, 2010 10:27 PM
5	No thank you.	Dec 20, 2010 10:28 PM
6	No.	Dec 20, 2010 10:29 PM
7	Barry Jardini, Human Rights/Fair Housing Commission 1112 I St., Ste 250 Sacramento, CA 95814 (916)444-6903  Will not be available to speak at one of the public hearings.	Dec 20, 2010 10:31 PM
8	no thank you	Dec 20, 2010 10:31 PM
9	No.	Dec 20, 2010 10:31 PM
10	no	Dec 20, 2010 10:31 PM
11	No	Dec 20, 2010 10:31 PM
12	no	Dec 20, 2010 10:32 PM
13	January 27, 2011 San Francisco if you need me to speak.	Dec 20, 2010 10:33 PM
14	no	Dec 20, 2010 10:33 PM
15	No.	Dec 20, 2010 10:36 PM
16	Yes. In Los Angeles, January 20, 2011. Douglas A. Crowder, tel. 800-455-1592	Dec 20, 2010 10:38 PM
17	NO.	Dec 20, 2010 10:39 PM
18	No	Dec 20, 2010 10:39 PM
19	Not at this time.	Dec 20, 2010 10:41 PM
20	No thanks.	Dec 20, 2010 10:43 PM
21	No	Dec 20, 2010 10:43 PM
22	no	Dec 20, 2010 10:46 PM
23	I'm working, trying to support my small firm, so I must pass.	Dec 20, 2010 10:48 PM
24	Billing fraud, transparency. LA. sliberto@libertolaw.com	Dec 20, 2010 10:48 PM
25	No as it would likely be a waste of my time.	Dec 20, 2010 10:51 PM
26	No	Dec 20, 2010 10:57 PM

## 9. Would you like to speak at one of the public hearings the Governance Task

Response Text		
27	I am of the opinion that little will be done to change the current method of attorney discipline to better protect the public. I see little or no benefit to speaking to the Governance Task Force other than the comments made here. Lonnie Reed, Esq. Bar 155544 Post Office Box 20576 Sedona, AZ 86341 (800) 755-2993	Dec 20, 2010 10:59 PM
28	No.	Dec 20, 2010 11:02 PM
29	No	Dec 20, 2010 11:03 PM
30	No.	Dec 20, 2010 11:04 PM
31	No, thank you. I am sure there are many eloquent speakers who share my views.	Dec 20, 2010 11:11 PM
32	no	Dec 20, 2010 11:11 PM
33	No, thanks	Dec 20, 2010 11:16 PM
34	Not at this time.	Dec 20, 2010 11:20 PM
35	Not necessarily. Thank you. Sam Rudolph [510] 886-4876	Dec 20, 2010 11:22 PM
36	no	Dec 20, 2010 11:26 PM
37	No	Dec 20, 2010 11:31 PM
38	No	Dec 20, 2010 11:32 PM
39	No.	Dec 20, 2010 11:39 PM
40	No thank you.	Dec 20, 2010 11:44 PM
41	No.	Dec 20, 2010 11:52 PM
42	NO	Dec 20, 2010 11:53 PM
43	No	Dec 20, 2010 11:53 PM
44	Not particularly, but I am happy to have my views shared in whatever manner anyone considers helpful.	Dec 21, 2010 12:00 AM
45	NO	Dec 21, 2010 12:01 AM
46	I am willing to speak about how too many lawyers of other ethnic backgrounds take advantage of their own people due to language constraints, either out of incompetence or venality. I see this regularly in my practice.  My office is in LA, and I can be contacted at: <a href="mailto:steve@schwaberlaw.com">steve@schwaberlaw.com</a>	Dec 21, 2010 12:06 AM
47	No.	Dec 21, 2010 12:17 AM
48	Yes, but I don't have a ready source of transportation, live in San Diego, and thus cannot attend the meeting. I do wonder why a meeting is set for SF and Los Angeles, but not San Diego.	Dec 21, 2010 12:20 AM
49	No.	Dec 21, 2010 12:27 AM
50	No thanks.	Dec 21, 2010 12:29 AM
51	No thank you.	Dec 21, 2010 12:42 AM
52	No, thank you.	Dec 21, 2010 12:43 AM
53	No	Dec 21, 2010 12:57 AM
54	I would not. Thank you for this opportunity to be heard.	Dec 21, 2010 1:20 AM
55	No thank you.	Dec 21, 2010 1:27 AM
56	No thank you.	Dec 21, 2010 3:12 AM
57	unable to due to calenadar conflicts.	Dec 21, 2010 3:23 AM

## 9. Would you like to speak at one of the public hearings the Governance Task

Response Text		
58	NO!	Dec 21, 2010 4:15 AM
59	No, thanks.	Dec 21, 2010 4:19 AM
60	no	Dec 21, 2010 4:30 AM
61	Thanks for the opportunity for input.	Dec 21, 2010 4:55 AM
62	I don't think so.	Dec 21, 2010 5:31 AM
63	No, thank you.	Dec 21, 2010 5:48 AM
64	No.	Dec 21, 2010 5:58 AM
65	yes,on January 20, 2011 in Los Angeles	Dec 21, 2010 12:18 PM
66	JOSEPH DESCALA, JR P.O. BOX 747 SAN ANSELMO, CA 94979-0747 415 453 9391/CELL 415 297 9391	Dec 21, 2010 12:34 PM
67	No	Dec 21, 2010 3:21 PM
68	Only if you need a speaker and believe my suggestions merit further consideration. If I were to speak, SF on 01/27 would be more convenient for me.	Dec 21, 2010 4:05 PM
69	No.	Dec 21, 2010 4:38 PM
70	no	Dec 21, 2010 5:25 PM
71	no	Dec 21, 2010 5:25 PM
72	No thanks.	Dec 21, 2010 5:31 PM
73	No thank you. We totally lack credibility with the public and, frankly, even with ourselves. So much money goes into the Bar, with so very little to show for it. We should stop taking political positions and using the "clout" of the Bar for our own purposes, de-politicize it completely, and make it work to assist the PUBLIC, not ourselves.	Dec 21, 2010 6:07 PM
74	No. David Woolley -- dwoolley@lawyer.com	Dec 21, 2010 6:12 PM
75	If I did I'd tell them at all this misses the mark in my view. The Bar Assoc. should work as hard to serve its members as it does the public. It does virtually nothing for its membership. It advocates political positions that are not shared by membership. Only the legal requirements of an integrated bar permit its survival. The publications of the Assoc. drip with liberal slant and racial bigotry, smoothly but transparently packaged as "concern." Governance models? Your time would be better spent on building airplane models. Here's your \$410.	Dec 21, 2010 6:13 PM
76	I would recommed that you contact Partick Faulkner, current President of the County Counsels Association of California, or Jennifer Henning, its Executive Director. Both can be reached at 91-327-7535 [this is Jennifer's number].	Dec 21, 2010 6:28 PM
77	no	Dec 21, 2010 6:46 PM
78	No	Dec 21, 2010 7:04 PM
79	I am available if my voice would be helpful, but I have no particular dog in this hunt and am not seeking to speak out. (415) 665-0400.	Dec 21, 2010 7:05 PM
80	No	Dec 21, 2010 7:17 PM
81	Perhaps.	Dec 21, 2010 7:25 PM
82	no	Dec 21, 2010 8:51 PM
83	And exactly how does this allow for those attorneys with good ideas but few financial resources to get their ideas out? It doesn't but it certainly makes everyone involved feel good to hold a "public hearing." It is meaningless beyond mere pagentry.	Dec 21, 2010 9:27 PM
84	No, thank you.	Dec 21, 2010 9:32 PM
85	No thank you.	Dec 21, 2010 10:40 PM

## 9. Would you like to speak at one of the public hearings the Governance Task

Response Text		
86	No	Dec 21, 2010 10:59 PM
87	No	Dec 21, 2010 11:38 PM
88	no	Dec 22, 2010 12:08 AM
89	No	Dec 22, 2010 12:22 AM
90	No.	Dec 22, 2010 1:46 AM
91	Absolutely not.	Dec 22, 2010 4:45 AM
92	no.	Dec 22, 2010 3:39 PM
93	no	Dec 22, 2010 9:42 PM
94	no.	Dec 23, 2010 5:32 AM
95	Yes, E mail: condorgrup@aol.com. 858-569-6454 January 20, 2011; in Los Angeles. F. Tepedino Bar # 64658	Dec 23, 2010 11:47 AM
96	not available in January	Dec 23, 2010 8:08 PM
97	no	Dec 24, 2010 8:53 PM
98	No.	Dec 26, 2010 5:20 PM
99	no	Dec 26, 2010 7:01 PM
100	no	Dec 26, 2010 10:03 PM
101	No	Dec 27, 2010 4:54 PM
102	No. Preparing to take the bar. Otherwise, I would.	Dec 28, 2010 7:30 AM
103	No thanks.	Dec 29, 2010 7:15 PM
104	No.	Dec 29, 2010 9:30 PM
105	No.	Jan 1, 2011 11:07 PM
106	no, but i am willing to speak with anyone at any time about these issues.	Jan 3, 2011 8:03 PM
107	NO.	Jan 4, 2011 12:00 AM
108	No. I can't conveniently be in either location.	Jan 4, 2011 1:20 AM
109	No	Jan 4, 2011 1:50 AM
110	No.	Jan 4, 2011 2:21 AM
111	no	Jan 4, 2011 5:15 AM
112	No.	Jan 4, 2011 5:23 AM
113	No	Jan 4, 2011 8:19 AM
114	Cannot make either date, sorry.	Jan 4, 2011 3:29 PM
115	Yes, but I work in San Diergo and I cannot take off a day for a 3 minute window. Too bad you chose to limit bar access to the hearings.  I suggest hearings from 4 pm to 9 pm all around the state	Jan 4, 2011 6:57 PM
116	no thank you	Jan 4, 2011 9:17 PM
117	NO	Jan 4, 2011 11:26 PM
118	No.	Jan 5, 2011 1:23 AM
119	No thank you, too busy with my practice.	Jan 5, 2011 3:12 AM
120	Not available to speak.	Jan 5, 2011 8:21 PM
121	No	Jan 6, 2011 12:27 AM
122	Thank you, for asking. Lets see if the board changes at all in the next three years. Then it may be worth it. For now some uneducated, poor, black woman would not be listened too anyway.	Jan 6, 2011 2:43 AM

## 9. Would you like to speak at one of the public hearings the Governance Task

Response Text		
123	No	Jan 6, 2011 4:43 PM
124	No thank you.	Jan 6, 2011 10:14 PM
125	No thanks.	Jan 8, 2011 6:59 PM
126	No.	Jan 10, 2011 4:27 AM
127	Yes, on January 20 in Los Angeles.  Stephen L. Raucher President, Beverly Hills Bar Association Reuben Raucher & Blum 10940 Wilshire Blvd. 18th Floor Los Angeles, CA 90024 (310) 777-1990 slr@rrbattorneys.com	Jan 11, 2011 12:37 AM
128	Not available - will be in trial. Why not have the public hearings on a Saturday when folks are more likely to be able to participate?	Jan 12, 2011 11:28 PM
129	Probably will not be able to attend, but for the record: Lisa A. Runquist - 818-609-7761 17554 Community St., Northridge, CA 91325	Jan 12, 2011 11:36 PM
130	no thanks	Jan 13, 2011 1:05 AM
131	The San Fernando Valley Bar Association requests that our President, Seymour I. Amster, speak at the January 20 hearing in Los Angeles. Mr. Amster can be contacted through SFVBA Executive Director Liz Post at epost@sfvba.org or (818) 227-0490, ext. 101.	Jan 13, 2011 1:45 AM
132	January 20, 2011 Eileen Lasher 619-847-8094	Jan 13, 2011 10:44 PM
133	Yes! I would like to speak on January 27, 2011, in San Francisco, California, my contact information is Name Royal Edward Glaude, located at 8096 Juniper Avenue, Newark, California 94560 E-mail royalnrs2004@yahoo.com	Jan 13, 2011 10:44 PM

**Anderson, Amy**

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**From:** roy torres [rttorresca@yahoo.com]  
**Sent:** Tuesday, January 11, 2011 10:07 PM  
**To:** Anderson, Amy  
**Subject:** Survey question responses and desire to speak on 1-20-11

Ms. Anderson:

Thank you for your timely response.

With respect to those 9 questions contained on the State Bar's website under [surveymonkey.com](http://surveymonkey.com) under the heading "Governance in the Public Interest Task Force Request For Information." I reply as follows:

1. Serious, not just lip service, oversight by Legislative creatures (with true enforcement authority) having the power to sanction, and if need be disbar, and/or bring civil and/or criminal charges against those licensed members of the State Bar that have clearly violated some facet of their oath of the legal profession, and/or as officers of the court.
2. through 7. It would appear based on simple research that there is already a 23 member Board of Governors that is well established and structured by process. These questions, 2 through 7, appear meaningless. Unless I am misunderstanding, these questions are like asking how the Congress of the United States should select its members. These questions are already answered in the text of the Constitution. Certainly, after decades, the State Bar cannot seriously be considering the restructuring of its governing board.
8. Fewer attorneys, more laypersons.
9. I would very much care to speak at the Public Hearing in Los Angeles on January 20, 2011. I can be contacted at [rttorresca@yahoo.com](mailto:rttorresca@yahoo.com). Thank you.

Roy Torres

## Anderson, Amy

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**From:** Tonja Jarrett [tjarrett@kcaib.com]  
**Sent:** Thursday, December 16, 2010 10:34 AM  
**To:** Anderson, Amy  
**Subject:** Task Force - Request to Speak

Ms. Anderson,

As a member of the public, I am deeply concerned by the Governance within the State Bar Association. I and my family have been directly impacted by what we perceive to be the deficiencies within the State Bar, and I would very much like to speak at the Los Angeles event.

I have a daughter who is in the Family Law nightmare in Los Angeles County. Numerous complaints to the State Bar go uninvestigated, unheard, and little weight is given when actual irrefutable evidence is given to the State Bar into the misconduct of an attorney who is destroying families.

The establishment of an independent oversight board is critical for the Public Confidence to be restored into the Judicial System, and the way that the State Bar interacts with those who are attempting to bring valid complaints.

I can best be reached on my cell phone: 818-693-2224.

### **Tonja Jarrett; CIC,CISR**

Vice President  
Personal Lines Manager



### **KAERCHER CAMPBELL & ASSOCIATES INSURANCE BROKERAGE**

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