

**GOVERNANCE IN THE PUBLIC INTEREST TASK FORCE
WRITTEN RESPONSES TO REQUEST FOR INFORMATION**

Number	Name & Contact Information	Response to Request for Information	
1	Stanley Shimotsu, Acting Chief Deputy Public Defender Los Angeles County Public Defenders (213) 974-0318 sshimotsu@pubdef.lacounty.gov	Email	
2	Rochelle Gelt 7108 Kilty Avenue West Hills, CA 91307 rochellegelt@yahoo.com	Email	
3	Henry Coopersmith SBN: 43966 HJCLaw@aol.com	Email	
4	Robert Suhajda SBN: 220009 Robert90701@aol.com	Email	
5	Dr. Jonathan H. Levy, PhD SBN: 158032 Hilton Head Island, South Carolina	Email	
6	Frederick J. Northrop, Esq. SBN: 142614 Last & Faoro 520 South El Camino Real, Suite 430 San Mateo, CA 94402 (650) 696-8367 fnorthrop@mac.com	Email	
7	Priya Sanger, President The Bar Association of San Francisco 301 Battery Street, Third Floor San Francisco, CA 94111 (415) 982-1600 www.sfbar.org	Letter	

Anderson, Amy

From: Stanley Shimotsu [sshimotsu@pubdef.lacounty.gov]
Sent: Monday, January 10, 2011 4:37 PM
To: Anderson, Amy
Cc: 'Ronald L. Brown'
Subject: State Bar of California Governance in the Public Interest Task Force

To:
Amy Anderson
Office of the General Counsel
180 Howard St.
San Francisco, CA 94105

Dear Ms. Anderson:

Thank you for the opportunity to provide the Los Angeles County Public Defender's insight into the issues presented by the Governance in the Public Interest Task Force.

We do not believe that the inquiry into the structural underpinnings of the Board of Governors is critical at this point in time to the Legislature's desire to receive recommendations to enhance the protection of the public. We can easily answer questions 2 through 7 by telling you that the current structure and selection/election process is adequate and does not need to be changed.

Question 8 is more relevant. The Bar needs to do a much better job of opening itself to public scrutiny. The Bar's operation and decision-making process is still rather opaque. Most lawyers feel that they are not really a part of the Bar (other than as mandated by law), and their interests are not considered by the Bar.

The Bar has the ability and means to open itself to its members and the general public. The public is better served, and better protected, when the Bar is fully transparent, communicates its decision-making processes, and invites input from the "lawyer on the street" as well as the "person on the street." We urge the task force to consider transparency as an important issue to be investigated and addressed as part of the report to the Legislature.

Consequently a question arises as to whether the public is protected through a change in the governance structure; therefore how one defines "public protection" is essential. Defining what is meant by "public protection" is important because political ideology may color a person's viewpoint. For example, there are those who maintain a philosophical opposition to class-action lawsuits. This philosophy would lead to the

argument that the public needs to be “protected” from those types of lawsuits and the lawyers who prosecute them. To avoid this type of ideologically-based discussion, “protection” should be objectively quantified to the extent practicable.

The Bar has done admirable work in many areas, including mandatory continuing legal education, substance abuse programs, evaluation of judicial candidates, and diversity initiatives. On the other hand, there is always concern about the Bar’s discipline system. A fair and transparent discipline system is critical to the protection of the public. Even though the attorney discipline system needs serious improvement, we believe that it is the Bar that must undertake to improve the discipline system (with appropriate input from interested persons) and that attorney discipline must remain with the Bar. The discipline system must be strictly non-partisan, based upon quantifiable standards of attorney performance. Although the Bar does have a political component, the Bar has maintained the discipline system as solidly non-partisan. This must continue and the Bar is in the best position to maintain the integrity of the discipline system.

The average lawyer wants nothing to do with the Bar beyond paying the mandatory dues and doing the mandatory CLE. The average lawyer fears the Bar’s discipline system, not because they are bad lawyers or are misbehaving, but because it is widely perceived as being arbitrary and tending to go after the wrong people. The perception is that the bar targets the little guy who cannot afford the cost of mounting a full defense.

In criminal law, a perception is that the Bar rarely disciplines errant prosecutors. The October, 2010, study “Preventable Error: A Report on Prosecutorial Misconduct in California 1997-2009” plainly states that although protection of the public is one of the primary purposes of the disciplinary system, the Bar “has not been achieving these purposes in the case of prosecutorial misconduct.” The study reports that the Bar rarely publicly disciplines prosecutorial misconduct and that “the facts of disciplinary failure are undeniable.”

This is not to say that prosecutorial misconduct is rampant – in fact it is not. The vast majority of prosecutors, like the vast majority of attorneys in general, are competent, ethical, honorable professionals doing their very best. But prosecutorial misconduct does exist and, when it occurs, results in unfair prosecutions, unlawful convictions, and the loss of freedom.

The discipline process needs to be re-examined with the understanding that it may have to be changed. The discipline process has been perceived as being unfair in many respects. Bar prosecutors are seen as going after low-level offenders while not being as aggressive toward big-firm lawyers and public prosecutors. Attorneys are perceived as being disciplined for matters having little or no connection to the practice of law or for matters which need correction, not discipline. The fact that lawyers have to pay for their own prosecutions causes some (if not many) to accept discipline simply because they cannot afford to pay for their trial – this does not achieve justice and is unseemly. In addition, the punishment imposed is often seen as arbitrary, lacking proportionality to the offense.

We are hopeful that the task force will broaden its inquiry and consider the matters discussed in this letter. Once again, thank you for the opportunity to provide this insight.

Stanley Shimotsu
Acting Chief Deputy Public Defender
Executive Office
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Anderson, Amy

From: Rochelle Gelt [rochellegelt@yahoo.com]
Sent: Thursday, December 16, 2010 9:47 AM
To: Anderson, Amy
Subject: Cal Bar Task Force Recommendations

Dear Amy,

I first want to thank you all, for understanding that input for a reconstruction of the California Bar Association panel is needed drastically. Litigants who feel attorneys violated their oaths, committed perjury, and acted in a manner that is unethical, have little to no confidence in the current handling of complaints by the Bar. I do not mean to disrespect the current Bar Members, or the Board in any way, it's just that I feel business as usual will continue to lead us down the path, that far too many are complaining about now. More so, maybe the current handling of the complaints have desensitized the board, so the infractions, seem less and less actionable. That just creates more corruption.

As a forefront to my recommendations I would just like to tell a brief story about my own history with the Bar. This was a Family Law case. I sent in complaints against our appointed minors counsel, opposing counsel and the two Commissioners who heard our case.

Our minors counsel committed perjury, used threats to get me to sign a stipulation under duress by telling me if I did not sign, she would recommend the court give custody to the father, she spoke to one of the commissioners over the phone and without a hearing (no witnesses) where she admitted to this conversation on transcript in the other Commissioners courtroom. (there was more)

Opposing counsel committed perjury, had a conflict of interest in that his minor son was a classmate of our child. He attempted on several occasions to approach our child, once with a cell phone in hand, which appeared to our child to be an attempt to put the father and the child on the phone together. (All on transcript) There was more as well.

These were unfounded, or unsubstantiated by the bar as some kind of violation. My complaint was even misread, and misquoted, so the response made no sense to me. I wondered if anyone actually even read the complaint. The last complaint I sent, was during email communications with minors counsel, of which I had more proof to send of unethical behavior, but when I sent the second half, it was "untimely" and I was told to file with the appeals board. Why should litigants have to go to such lengths, educate themselves of the laws, that these attorneys should know as their career? Seriously skewed system.

However now, I now suffer from major panic and anxiety attacks, and depression. Thousands of litigants who have suffered as a direct result of attorney abuse, and legal abuse, suffer this. WHY?

My recommendations are as follows.

- 1) All complaints filed against attorneys should be visible to the public, via their Cal Bar web page. Currently the Bar only shows actions filed, not the number of complaints. That is not truthful reporting, and is more misleading in searching attorney history's. The number is important, and needs to be reported.
- 2) There should be some kind of action taken against attorneys, who within a year, have five or more complaints filed. Perhaps a suspension or place them under probation for 60 days. If the complaints all have the same tone, more than likely, these attorneys have been guilty of misrepresenting cases or acting against the oath.
- 3) Current, sitting Judges should not be sitting on the Cal Bar panel. There is a clear conflict of interest, as some attorneys could be appearing before them, or involved in special groups, that the Judges are also a party to. (AFCC, CRC, Etc.) The panel should not have current attorneys either, as they may favor friends who come up in a complaint.
- 4) Richard J. Fine should be the president. His knowledge of the law, the fact that he is not affiliated any longer with the Bar, and his constant commitment to Truth and Justice would ensure an Unbiased, and proper running of the Panel. (Now I know there will be much resistance about this recommendation, but bias aside, Dr. Richard I. Fine would not have allowed the current confidence level in the Bar, to have become what it has.) He is your man, like it or not.
- 5) Litigants, citizens, and retirees, should be a part of the panel. Just as in a Jury, the President of the Bar, can explain the

laws, (or have a pre-printed, approved form) what is a violation and what to look for in the complaints. Then like a jury, a vote is taken for guilty or not.

6) Law students (who have not passed the bar), college students, or students studying criminal justice, psychology, etc., also who have not graduated should also take part on the panel. They could be given school credits, in lieu of payments for their work.

No one, currently involved in the Judicial System, a current member of Cal Bar, nor anyone appointed by the Governor should be on this panel. Bring it back to the power of the people. This current choosing of the panel isn't working, and thus, could be the main reason you are looking for suggestions now.

7) A panel of 15, including the president, should be sufficient and diverse enough to ensure a clear, unbiased, investigating team.

8) Complaints should be viewed and resolved within 60-90 days. The current continuances in court dates are running about that time, if not more, so if a violation is found, these attorneys could be taken off these cases, and replaced, which in turn might help the courts who are over worked, and overwhelmed. I believe attorneys like to drag out cases for profit. This, might stop that.

9) A transcriptionist or reporter, may be helpful in logging the meetings, to ensure true, accurate accounts, and conversations in the complaint processes. (Or video documentations of all meetings.)

Those are my thoughts on the revamping of the Cal Bar panel. I hope they are helpful and spark new life into a stale, dark system, that has perhaps aided corrupt attorneys to continue to abuse their power in our Judicial System.

Thank you all so much,
Sincerely,

Rochelle Gelt
7108 Kilty Ave
West Hills, CA 91307

Anderson, Amy

From: HJCLaw@aol.com
Sent: Thursday, December 30, 2010 1:58 PM
To: Anderson, Amy
Subject: commentts on state bar

It seems like I pay a lot of money and receive less back in benefit that I pay in. Henry Coopersmith

Anderson, Amy

From: Robert90701@aol.com
Sent: Monday, December 20, 2010 5:10 PM
To: Anderson, Amy
Subject: Re: State Bar Governance Council

Thank you for the acknowledgment.

In a message dated 12/20/2010 2:54:38 P.M. Pacific Standard Time, Amy.Anderson@calbar.ca.gov writes:

Thank you for your response to the Governance in the Public Interest Task Force. Your comments will be distributed to the Governance Task Force.

Regards,

Amy Anderson

AMY C. ANDERSON, ADMINISTRATIVE ASSISTANT TO STARR BABCOCK & CATHY TORNEY

|STATE BAR OF CALIFORNIA |OFFICE OF GENERAL COUNSEL|

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From: Robert90701@aol.com [<mailto:Robert90701@aol.com>]
Sent: Friday, December 17, 2010 4:04 PM
To: Anderson, Amy
Subject: State Bar Governance Council

Dear Ms. Anderson:

Fill a lawsuit on behalf of the members of the State Bar
to prevent Legal Zoom from practicing law.

Sincerely yours,

Robert Suhajda, 220009

Anderson, Amy

From: Dr. Jonathan Levy [jonlevy@hargray.com]
Sent: Friday, December 17, 2010 3:56 PM
To: Anderson, Amy
Subject: State Bar Governance comment

The State Bar disenfranchises its second largest constituency, members residing outside California who make up nearly 20% of the the total members. As the practice of law is becoming increasingly multijurisdictional, non California resident members should be given a seat on the board.

Dr. Jonathan H Levy, PhD
Member No 158032
Hilton Head Island, South Carolina

Anderson, Amy

From: Frederick Northrop [fnorthrop@mac.com]
Sent: Tuesday, January 04, 2011 7:08 AM
To: Anderson, Amy
Subject: State Bar Governance Model

The suggestion that attorneys are over-represented on the Board can be seen in two ways. In comparison to other regulatory boards, I have to agree that the Bar is somewhat more responsive to attorney concerns. The problem is that other boards are a perverse simulation of justice. I fear that bending to political expediency will accelerate the Bar's move in this direction.

I suppose my complaint about the injustice of administrative procedure deserves some explanation. I have represented people in licensing cases. The typical complaint in these cases is a long-winded diatribe. Many of the asserted facts are never proved in court, yet the trier is presented with and expected to read it in detail. The contractor/doctor/whatever simply answers that s/he wants a hearing. The licensee is not expected to and is discouraged from presenting anything like an answer. Accordingly, the procedure is more like criminal practice and, like criminal practice, the trier of fact is frequently a veteran of the very agency who is prosecuting the licensee.

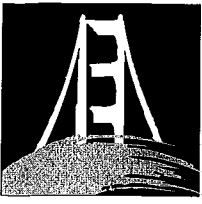
I have frequently-enough found that evidence in the case has been destroyed by the time the accusation is filed and that the board or agency has not given the licensee notice. The result here is that I am faced with an expert without a chance to have my own expert review the underlying evidence. The situation is worse in some professions. I have known doctors to be "convicted" without being allowed to even hear the complaining witnesses testimony or to cross-examine that witness.

The injustice continues as the agency frequently treats the decision as merely advisory and puts a suspension or cancellation into immediate effect while the licensee is forced to attempt to get through a writ or appeal without a livelihood. It is small wonder that licensees often take pitiful offers and smaller wonder that I advise them to do so, if they can keep their license.

Individuals being denied the opportunity to pursue their profession deserve real due process. Quite frankly, I think if political representation is increased, local bars should withdraw and the State Bar change its name.

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THE BAR ASSOCIATION OF
SAN FRANCISCO

January 21, 2011

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State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Request for Information from the State Bar of California Governance in the
Public Interest Task Force

Dear Mr. Hebert:

The Bar Association of San Francisco (BASF) would like to thank the State Bar of California (State Bar) for the opportunity to provide our perspective on the important issue of State Bar governance, especially in the context of public protection. BASF serves as a statewide and national model for its programs that serve the public by providing access to affordable, qualified and insured attorneys for representation in civil, criminal and juvenile law matters. We therefore welcome this opportunity to lend our experience and perspectives on public protection and offer recommendations to better ensure that the State Bar's governance structure itself places public protection as its highest priority. We do not offer recommendations on all the questions that follow; we responded only to those for which we believed we had meaningful input. We recommend that the Governance in the Public Interest Task Force (Task Force) look to the governance structures of like professional organizations, and the American Bar Association, and consult with consumer protection experts in the field, to develop and enforce identifiable measures designed to protect the public through governance structure, as well as rules specifically designed to protect the public in meaningful and effective ways beyond the State Bar's current model of governance and/or rules.

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

Public protection requires the creation and effective enforcement of a governance structure and regulations, including the Rules of Professional Conduct, designed to ensure the protection of the public through the receipt of ethical, competent, and professional legal representation each time a member of the public consults or retains an attorney for legal services. While such efforts to protect



the public should include broad considerations regarding the qualifications of those who comprise the Board of Governors and staff the State Bar, specific examples of public protection should include the effective regulation of online search engines which are functioning as lawyer referral equivalents and, in light of evolving forms of legal services, the means by which such services are provided. The State Bar should also effectively regulate against deceptively advertised services.

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

- a. Given the complexity of legal issues surrounding the rules of professional responsibility, professional conduct, and discipline, the Board of Governors should continue with a majority of attorney members – independent of what the total number of members is if changed from 22. We recommend that attorney members comprise a two-thirds majority.
- b. State Bar governance will benefit from diverse perspectives that include not only smaller populations but minority or underrepresented attorneys. We recommend outreach to organizations representative of this attorney base.
- c. The Board of Governors should continue to include public members, but with affirmative qualifications required, such as experience with or background in consumer protection issues.

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

In an effort to help ensure that the Board of Governors reflects diverse perspectives and that attorney membership is representative of diverse areas of practice, we recommend that half the lawyer members be elected by State Bar district to achieve geographic representation and half the lawyer members be appointed by the State Supreme Court.

For Supreme Court appointments, we recommend that the appointment process be publicized, and that any lawyer seeking appointment shall submit an application to serve, accompanied by up to three (3) recommendations. We believe that limiting the number of recommendations will help to level the playing field among practitioners who are interested in serving and that the application process will help to ensure that appointed members bring to the State Bar public protection perspectives.



We recommend implementing the same appointment process by the State Supreme Court for non-lawyer members, with the same requirements: an application and up to three (3) recommendations. We believe that approach will help to achieve the goal of diverse public membership and introduce a means by which to measure candidates' qualifications and views regarding public protection.

Our recommendations for the qualifications of the members, lawyer and non-lawyer, follow under question 4.

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

Both appointed lawyer and non-lawyer members should possess identifiable qualifications beyond a simple interest to serve. Collectively, we recommend appointments that ensure diverse viewpoints and practice area backgrounds. With respect to lawyer members, we recommend selection with an emphasis on individuals whose experience and practice areas demonstrates their interest in and qualifications for protecting consumers. We also urge that one consideration in the appointment of lawyer members be a candidate's experience with, and demonstrated commitment to, the free legal representation of low-income and disadvantaged individuals and communities. Similarly, public members should also be diverse and include those who possess a demonstrated background in consumer advocacy, consumer protection, or advocacy for or reform of laws to protect the public. Such non-lawyer individuals could be found through community based organizations that focus on issues such as consumer fraud, protection or advocacy.

Guidelines should be adopted to limit potential conflicts of interest for both lawyer and non-lawyer members.

5. What size should the board be?

The ratio of elected and appointed lawyer and non-lawyer members is more important than any particular board size. Similarly, the diversity and qualifications of members are more important than any particular board size. As already stated in response to question 2, we believe that, given the complexity of legal issues surrounding the rules of professional responsibility, professional conduct, and discipline, the board should continue with a majority of attorney members and that attorney members should comprise two-thirds of the board. Based upon our recommendation that half of the lawyer members be elected and half be



appointed by the State Supreme Court and that all non-lawyer members also be appointed by the Supreme Court, the ratio of elected lawyer members, appointed lawyer members, and appointed non-lawyer members would be one-third for each group.

In establishing a board size, we recommend that the Task Force compare the State Bar board to the boards of like organizations and that the Task Force seek input from experts who can recommend the size appropriate to achieve the goals of the Task Force.

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

The term limit of three (3) years for members seems appropriate. However, while this term limit applies to both the lawyer and non-lawyer public members, public members are allowed to serve a consecutive term, or multiple consecutive terms, if re-appointed, while the lawyers are prohibited from doing so. Both lawyer and public members should be prohibited from serving consecutive terms, but should be allowed to serve another term at a later time, once a specified waiting period has been completed.

We recommend that the term of the presidency remain at one year.

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

We recommend that the selection process for State Bar president be the same as it currently exists, assuming that the manner in which Board members are elected and appointed is adopted under the recommendations set forth above.

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

First and most importantly, we encourage governance that takes as its touchstone the protection of the public at large and the public as clients. We are convinced that in protecting the public, the profession will, in fact, best protect itself.

Second, to better serve the interest of public protection through its governance, the Board of Governors should continue its efforts to bring the California Rules of Professional Responsibility into accordance with the ABA Model Rules.



THE BAR ASSOCIATION OF
SAN FRANCISCO

Finally, as noted previously, we recommend that the State Bar engage a consultant to recommend governance structures that would be effective in achieving the goal of public protection. We also believe that it is essential for the State Bar to consult like professional organizations, as well as experts on consumer protection.

Sincerely,

A handwritten signature in black ink that reads "Priya S. Sanger". The signature is written in a cursive, flowing style.

Priya Sanger
President