

The State Bar of California Governance in the Public Interest Task Force



Governance Task Force Charge

Pursuant to Business and Professions Code section 6001.2, subdivision (b), the State Bar of California's Governance in the Public Interest Task Force ("Governance Task Force") is charged with making recommendations for enhancing and ensuring that public protection is the highest priority in the licensing, regulation and discipline of attorneys.

Governance Task Force Mission Statement

- ▶ Review Policy Setting and Governance Model of the Board of Governors
- ▶ Make recommendations to advance public protection in the following areas:
 - Board Structure and Composition
 - Election Process for Lawyer Members

Current Board of Governors Size and Composition

23 members:

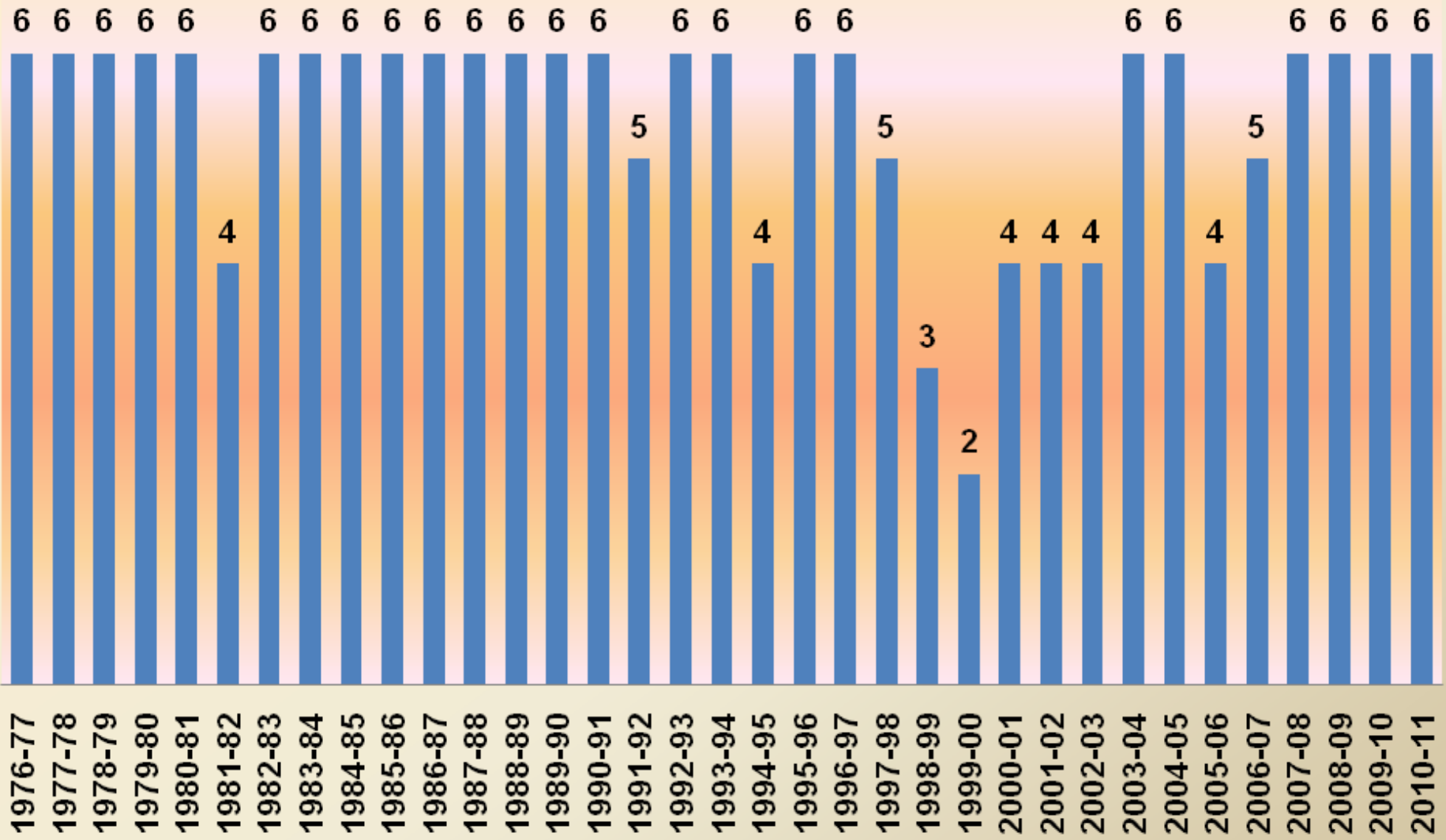
- ▶ 16 attorney members
- ▶ 1 attorney member from CYLA
- ▶ 6 public members
 - 4 appointed by the Governor
 - 1 appointed by the Senate Committee on Rules
 - 1 appointed by the Speaker of the Assembly

Size and Composition of Board?

- ▶ Most regulatory bodies in California are more effective under 20 members
 - Boards focused on fund-raising are greater than 20
 - Executive branch agencies have 15 or so members
- ▶ Concerns raised if Board has too few members
 - The board needs enough members to staff committees, do its work
 - If appointing authorities do not exercise power, risk of falling below optimal size

Number of Public Members

■ Number of Public Members



Proposed Board of Governors Size and Composition

< 23 Board Members:

- ▶ < 17 attorney members
- ▶ 6 public members (same appointing authorities)

Composition/Ratio of Board?

- ▶ Should ratio of attorney to public members change?
- ▶ To increase public-to-attorney member ratio, could either
 - (a) keep the board the same size, but increase number of public members, or
 - (b) shrink board by decreasing the number of attorney members

Composition: Majority Attorney Members?

- ▶ Separation of powers: Keep from politicizing the licensing, regulation or discipline of attorneys
- ▶ State Bar is the administrative arm of a separate, independent branch of government
- ▶ Supreme Court makes final decisions on admission, regulation and discipline
- ▶ Other licensing boards actually hear and decide licensee discipline (e.g., Medical Board). Bar Board does not
- ▶ Bar Board has an independent Trial Counsel and State Bar Court

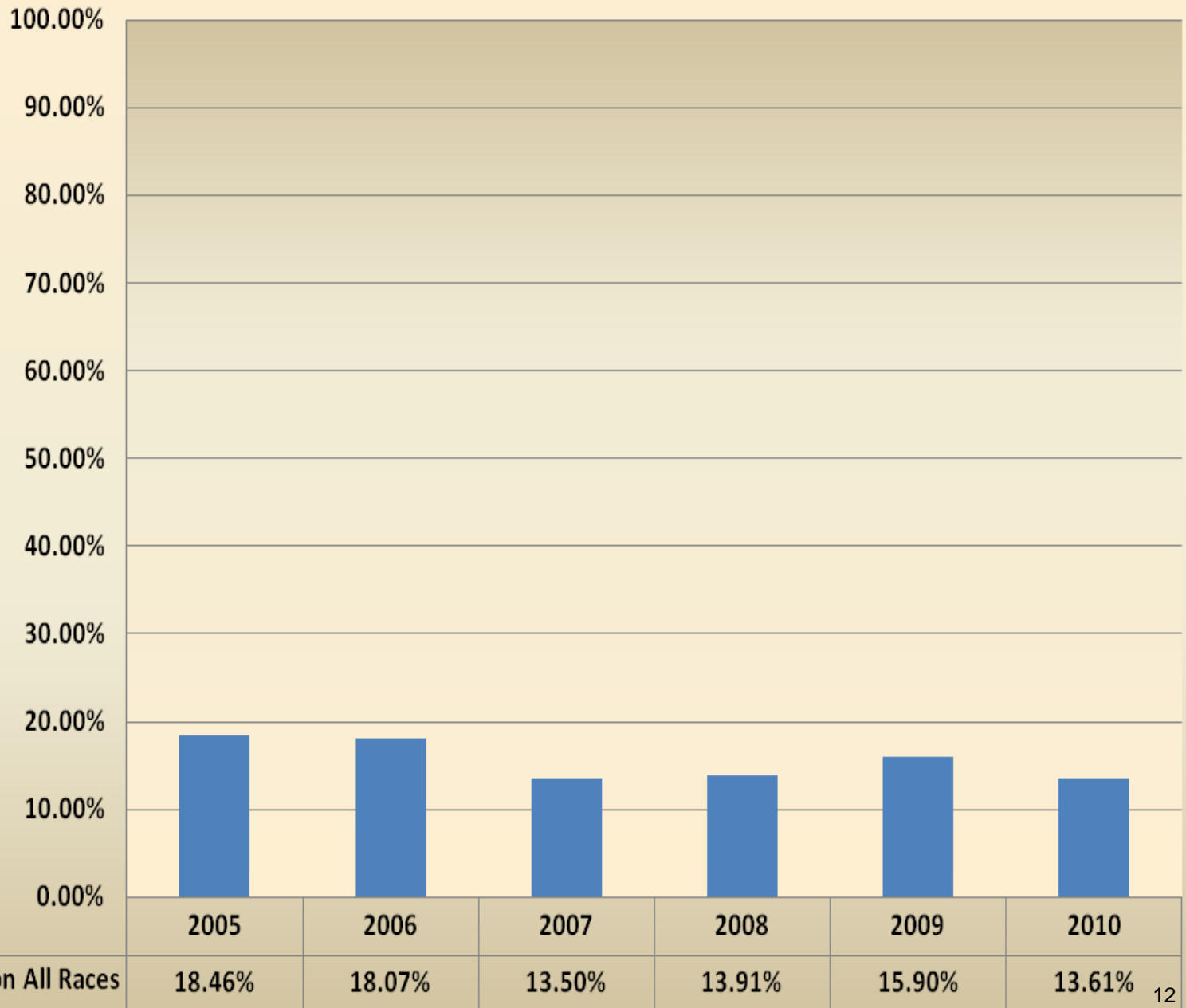
Current Board of Governors Member Selection Process

- ▶ Attorney members elected from 9 districts
- ▶ CYLA attorney member elected by CYLA Board
- ▶ Public members appointed

Selection Process?

- ▶ Chronic low voter turnout
- ▶ Perception among the public and in the legislature that the current election process results in lawyers on the Board who report to and represent lawyer constituents in their districts, not the public of this state

% Member Participation All Races



■ % Member Participation All Races

Proposed Board of Governors Member Selection Process

< 23 members:

- ▶ < 17 attorney members appointed by the Supreme Court
 - No seats reserved for any constituent groups
- ▶ 6 public members (no change in appointing authorities)

Current Qualifications: Attorney and Public Members

Elected Attorney Members

- ▶ Active members of the Bar
- ▶ Principal office within their district

Appointed Public Board Members

- ▶ Non-Lawyers
- ▶ Governor appointees - confirmed by Senate
- ▶ Legislative appointees - screened by Legislature

Merit Screening Process?

- ▶ For attorney members, the Bar advances the public interest through merit-based screening
 - A merit screening process should advance applicants who understand the Bar's public protection mission

Merit Screening Committee?

- ▶ Appointment process through a third-party, independent method to screen applicants.
- ▶ Merit Screening Committee relieves the Supreme Court of burden of screening all applicants.
- ▶ Presenting three qualified applicants to the Court for each vacancy gives the Court ability to shape the Board in terms of experience, background, geography, etc.

Proposed Method of Selecting Attorney Members – Screening Process

- ▶ Establishment of a Merit Screening Committee (MSC) to solicit, receive, screen, and evaluate all applications for attorney appointments to the Board of Governors
- ▶ The MSC to serve at the pleasure of the Supreme Court
- ▶ Adoption of rules by the Supreme Court to create and populate the MSC

Current Board Structure Terms of Members

Attorney Members

- ▶ 3-year terms
- ▶ Terms are staggered
- ▶ Attorney members must wait 3 years before running for the Board for a second term

Public Members

- ▶ 3-year terms
- ▶ Public members may be reappointed for multiple terms by the same or different appointing authorities.

New Terms?

- ▶ Power of the Court to re-appoint attorney members gives the Board continuity it now lacks
- ▶ No change in public member terms
 - Public members can already be re-appointed by the same or different appointing authority, so continuity possible

Proposed Board Structure: Member Terms

Attorney Members

- 3-year terms
- Staggered
- The Supreme Court would retain authority to re-appoint an attorney member for a second term

Public Members

- No change

Current Selection: Method and Term of the President

- ▶ Members in their 3rd year eligible to run for President
- ▶ Board members elect the president at a specially set meeting
- ▶ The President's term begins at the annual meeting
- ▶ The President serves until the following annual meeting

President Selection Process and Term?

- ▶ Elected from among other Board members?
- ▶ The Supreme Court appoints the President?
- ▶ Nominated by the Board from among Board members and confirmed by the Supreme Court?

Request for Information
Question 1:
Define Public Protection

Public Protection is . . . Answer

Enhancing the availability of high-quality legal services to the people of this State, and ensuring that the people of the State are served by the legal profession in a manner consistent with the highest standards of professional competence and ethical conduct

Public Protection is . . . Examples

- ▶ Quality in admissions, regulation (lawyers, law schools), discipline and continuing legal education
- ▶ Ethics hotline; Client Security Fund
- ▶ Independent Trial Counsel and State Bar Courts
- ▶ Legal Services Trust Fund Commission
- ▶ Support for legal services to the poor
- ▶ Access to Justice/Pipeline Diversity/Public Education
- ▶ Overseeing and supporting State Bar sections
- ▶ Advocating for judicial branch, fair and impartial courts, and administration of justice
- ▶ Fee arbitration, LRS's, LAP

Request for Information
Question 2:
Who should serve on the Board?

Who Should Serve on the Board . . .

Answer

- ▶ < 17 qualified attorney members
- ▶ 6 qualified public members
- ▶ No seats reserved for any constituent groups

Request for Information

Question 3: Selection Process

Selection process . . .

Answer

- ▶ Qualified attorney members should be appointed by the Supreme Court
- ▶ Qualified public members should be appointed under the present system by the same appointing authorities

Request for Information Question 4: Qualifications

Qualifications . . . Answer

- ▶ Attorney members should be members of the Bar who have been active for at least five consecutive years at the time of appointment and demonstrate some or all of the following attributes:
 - Commitment to public protection, impartiality, freedom from bias, industry, integrity, honesty, broad legal experience (e.g., litigation and non litigation experience; legal work for a business or nonprofit entity; experience as a law professor or other academic position; legal work in any of the three branches of government and; legal work in dispute resolution), professional skills, past bar leadership, intellectual capacity, judgment, community respect, commitment to equal justice, temperament, communication skills, adding diversity to the Board, with “diversity” being defined broadly

Request for Information

Question 5:

Size of Board

Size of Board: Answer

- ▶ The Board should have < 23 members
 - < 17 attorney members
 - 6 public members

Request for Information

Question 6: Terms

Terms of Members: Answer

- ▶ The attorney members should serve for 3-year terms.
- ▶ The attorney members' terms should be staggered.
- ▶ The Supreme Court should have the authority to re-appoint an attorney member for a second term
- ▶ The terms of the public members should be unchanged

Request for Information

Question 7: Selection Process

Selection Process: Answer

- ▶ Attorney members should apply for appointment
- ▶ Their applications should be screened by a Merit Screening Committee, which serves at the pleasure of the Supreme Court
- ▶ The Merit Screening Committee should vet the applications, choose a subset of applicants to interview, and send to the Supreme Court for selection the names of three applicants who would be qualified to serve on the Board
- ▶ Public member selection process should be unchanged

Request for Information
Question 8: Other changes to
advance public protection

Other Changes to Advance Public Protection: Answer

- ▶ Necessary Statutory Changes: Amend the State Bar Act to make public protection the primary purpose of the Bar board
- ▶ To Consider: More continuing legal education, especially in ethics and law practice management

Current Statutory Charge of the Bar

B&P Code Section 6031(a)

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

Heightened “Public Protection” Charge

- ▶ New charge that makes explicit that public protection is the Board’s highest priority
- ▶ New charge that allows for the Board to advance other interests as part of its overall public protection mission
- ▶ The State Bar Act should expressly state that public protection is paramount over other interests advanced by the Bar

Proposed Statutory Change to Bar's Charge

At the beginning of Section 6031(a), add the following language:

- ▶ “Protection of the public and improving the quality of legal services available to the people of this State shall be the highest priority for the board in exercising its licensing, regulatory and disciplinary functions.”
- ▶ At the end of Section 6031(a), add the following language: “Whenever protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”
- ▶ This proposed amendment is taken from Medical Board Act (B&P Code Section 2001.1) and *Keller*.