

**ALTERNATIVE PROPOSAL
FOR REFORMING THE STATE
BAR'S GOVERNANCE MODEL
(March 2, 2011)**

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HYBRID MODEL -- COMBINES SOME ELEMENTS OF AN APPOINTIVE MODEL WITH ELECTIONS

- Board size 22, plus President
- 13 elected lawyer members
- 3 appointed Supreme Court members (lawyers)
- 4 appointed Gubernatorial members (non-lawyers)
- 2 appointed Legislative members (non-lawyers)

RECONFIGURED ELECTORAL DISTRICTS

- 5 Districts, plus CYLA -- total of 13 elected lawyer members
- District boundaries based roughly on boundaries of the 6 District Courts of Appeal
 - New 1st District: based on 2nd appellate District (includes Los Angeles, Ventura and Santa Barbara) -- 4 members
 - New 2nd District: based on 4th appellate District (includes Orange County, San Diego and Riverside) -- 3 members
 - New 3rd District: based on combined 1st and 6th appellate districts (includes Bay Area, Contra Costa, Monterey) -- 3 members
 - New 4th District: based on 3rd appellate district (includes Sacramento) -- 1 member
 - New 5th District: based on 5th appellate district (includes Fresno) -- 1 member
 - 1 CYLA Rep
- More flexible than current District configurations because Supreme Court appointments allow the Court to “fill in the gaps” based on changing demographic conditions in the State

Supreme Court Appointment Process

- If this new Governance model is acceptable to the Supreme Court, we would recommend that the Court establish a Merit Screening Committee (same model that President Hebert has proposed)
- The extent of the Supreme Court's involvement in BOG selection, and thus the potential risk of politicized attacks on the Court as a result of BOG actions, is minimized with only 3 appointments.
- Because this model provides greater insulation from politicized attacks, it is more protective of judicial independence than the proposed 100% appointive model.

Board Structure, Member Terms, and Member Qualifications

- Elected lawyer members would serve for 3-year terms
- 3 year terms of elected lawyer members would continue to be staggered, and elected lawyers would continue to be ineligible to stand for election in back-to-back terms
- All 9 appointed members would also serve for 3-year terms, but would be eligible for one reappointment
- Since all 9 appointed members would be eligible for reappointment, we would have greater continuity of experience and expertise than in the current structure
- Add new requirement that the oath of office for each new member shall include an acknowledgement that he or she represents the people of the State of California, not any particular constituency
- Minimum criteria for board member qualifications applicable to both elected and appointed members

Modified BOG Committee Structure and New BOG Practices :

Part I (Board Book Revisions)

“Virtual” Separation of Regulatory and Non-Regulatory Functions

- Mandate that at least 50% non-lawyer members and at least one Supreme Court member sit on the two committees with the greatest the involvement in the Bar’s regulatory activities (RAD and MOC)
- This feature responds to concerns about lawyer self-interest by giving non-lawyer members of the board greater influence over the Bar’s regulatory functions

Modified BOG Committee Structure and New BOG Practices: Part II (Board Book Revisions)

- Create a new standing committee called the Public Information and Outreach Committee
 - Addresses perception problems by improving public information and education about what the Bar does and how it assists the public
 - Make concrete recommendations, and to the extent possible implement them, to improve the Bar's public education efforts and the Bar's cooperation with other regulatory and public agencies
- Create a true Executive Committee to replace the current Board Operations Committee
 - 9 members – including the President and the Executive Director, and must include a minimum of 3 public members
 - The composition of ExComm would further address perceptions of undue lawyer self-interest on the board
 - The President would make appointments annually, but unlike the current Board Operations Committee structure, appointments would be merit-based, not seniority-based
 - The ExComm feature of the proposed Hybrid Model is designed to address concerns about the size of the board. Most large boards (20+) rely heavily on an Executive Committee.
 - The new ExComm structure would promote continuity and effectiveness, since appointments would be driven by the experience and specific skill-sets of appointees

Modified BOG Committee Structure and New BOG Practices: Part III (Board Book Revisions)

- Objective: Promote and instill a greater sense of shared mission in board members and improve communication with key governmental stakeholders
- Adopt and follow a continuous process of educating board members about the Bar and its mission
- Formalize the intensive orientation process that we held this year and make it a major focus of the Planning Committee's work every year
 - Planning Committee to organize and put on a full day session for new members before they are sworn in
 - Planning Committee to update and continue to refine the orientation course materials from year-to-year
- At each year's Planning retreat, require that the following two meetings always be on the agenda
 - Strategic Planning Progress Meeting: Monitor and evaluate progress toward achievement of goals in the Strategic Plan and develop recommendations to ensure that we remain focused on the Bar's mission as set forth in the Strategic Plan
 - Supreme Court Liaison Meeting: Throughout the year, use the three Supreme Court appointees as a mechanism to "funnel" policy issues to the Supreme Court for input and reaction, and use the annual Planning retreat as an occasion to discuss how we are responding to any guidance that the Court may have provided
- Hold at least one Board meeting per year in Sacramento and set aside agenda time for the full board to meet with and hear directly from Legislators or Legislative staff members on any topic of interest or concern to them

Transition to New Governance Model

- Effective 12/31/2011, all current electoral districts would be eliminated and 5 new Districts would be created, according to the boundaries proposed above.
- When the term of any elected BOG member expires, the election for his or her successor would be held according to the new District boundaries for the termed out member's place of practice (e.g. the election for a termed out District 4 BOG member would be held according to new District 3 boundaries)
- After a sufficient number of new BOG members in a given new District is elected so that the allotment of members for the new District is full (e.g. 3 new BOG members are elected to seats in new District 3), no successor would be elected for any termed out member residing within that new District, leaving an "orphan seat"
- If this new governance Model is acceptable to the Supreme Court, the Court would begin appointing new members for each "orphan seat" (beginning 12/31/2012) until its allotment of 3 appointments is full
- Gradual transition: A complete transition to a full complement of elected lawyer members from the new Districts and new Supreme Court appointed members would take 3 years, beginning in 2012
- Minimize disruption by implementing transition gradually: No scheduled election would need to be cancelled, and no sitting member of the BOG would be forced off the BOG prior to the expiration of his or her 3-year term.

Heightened Priority Given to Public Protection

- Adopt President Hebert's proposed changes to relevant statutory language requiring that heightened priority be given to public protection
- Despite the ambiguity of the concept of public protection, all of the many uses of this concept capture the basic ideas of absolute client loyalty and fiduciary duty
- Since the ideas of absolute client loyalty and fiduciary duty are matters of first principle in legal ethics, this concept deserves to be codified in our statutory mission

Task Force Work Plan Over The Next Two Years: 2011 – 2012 Interim Report (due May 15, 2012)

- How we can further improve the efficiency and effectiveness of the discipline system?
- How does our current system for seeking annual authorization of licensing fees affect the discipline system?
- Should we change the method for selection of the President, and if so, how?

Task Force Work Plan Over The Next Two Years: 2012 – 2013 Final Report (due May 15, 2013)

- What is the status of the changes made to the Bar's governance structure in 2011 and what impact have those changes had so far?
- Has experience demonstrated that we need to go further, increase the number of Supreme Court appointed members, and decrease the size of the board?
- Should we retain the Bar's current integrated form, combining both regulatory and non-regulatory functions?