

Alternative Governance Proposal

March 2, 2011

The Legislature's Mandate to the Governance Task Force

- The GTF is tasked with submitting a report of “recommendations for enhancing protection of the public and ensuring that ***public protection*** is the highest priority ***in the licensing, regulation, and discipline*** of attorneys”
 - Also “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”

The Legislature's Perceived Problems with the State Bar

- Inadequate public protection
 - Board approved only a “scaled-back” Find-a-Lawyer program in response to local bars
 - “Nearly voted to oppose” legislation prohibiting advance fees in loan mod cases
 - Scott Drexel’s term not renewed because “aggressively pursue attorney misconduct”
 - Malpractice insurance disclosure rule was “considerably scaled back”
 - (These are straight from bill analysis of AB 2764)

Potential Explanations for Problems Perceived by Legislature

- Lawyers elected from districts of one or more counties are beholden to local bar associations at the expense of the interests of the non-lawyer public
- Super-majority of lawyers on board results in decisions protecting lawyers at the expense of the interests of the non-lawyer public
 - Would appointed lawyers be any different?
 - Are lawyers elected by other lawyers either especially “pro-lawyer” or are they perceived to be that way

Data on Problems Perceived by Legislature

- Of _____ recorded votes from 2007 to present on matters opposed by a large number of local bar associations, _____ failed
- Of _____ recorded votes from 2007 to present, _____ (i.e., _____%) were unanimous
- Of _____ recorded votes from 2007 to present, a majority of the public members were in the minority on only _____ occasions
 - [List matters here]

Alternative Explanations for Problems Perceived by Legislature

- These votes are outliers or isolated examples
- Non-lawyer members did vote (or would vote) the same way
- Personnel decisions are subject to all kinds of speculation or spin

Where does this “Perception” come from?

- Absence of actual evidence
- No public opinion survey presented
- No indication of perception by more than a small number of legislators
 - Most legislators are unfamiliar with the State Bar

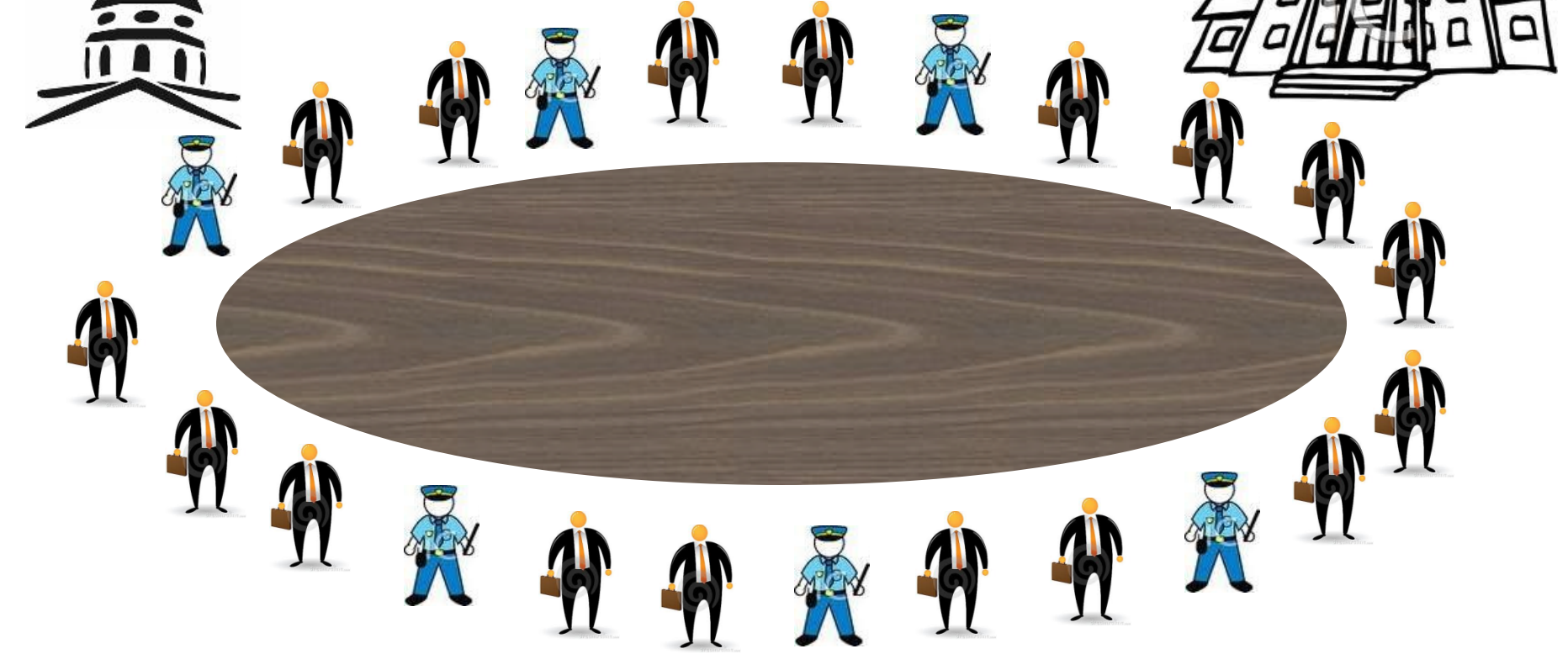
Governance Problems Known to the Board

- Loyalties to local bar associations sometimes compromise duty to broader lawyer population and public (not just Find-a-Lawyer but on issues that ***don't*** make it to the agenda, e.g., MCLE)
- Board sometimes lacks broader non-lawyer skill sets (e.g., finance, PR, political)
- Most new members lack sufficient understanding of State Bar upon election/ appointment to the board
- Three-year terms (which include only 5 “real” meetings/year) force loss of members just as they’re able to be effective and recognize necessary changes
- Some members fear taking major action, especially in third year, will cost them votes for president

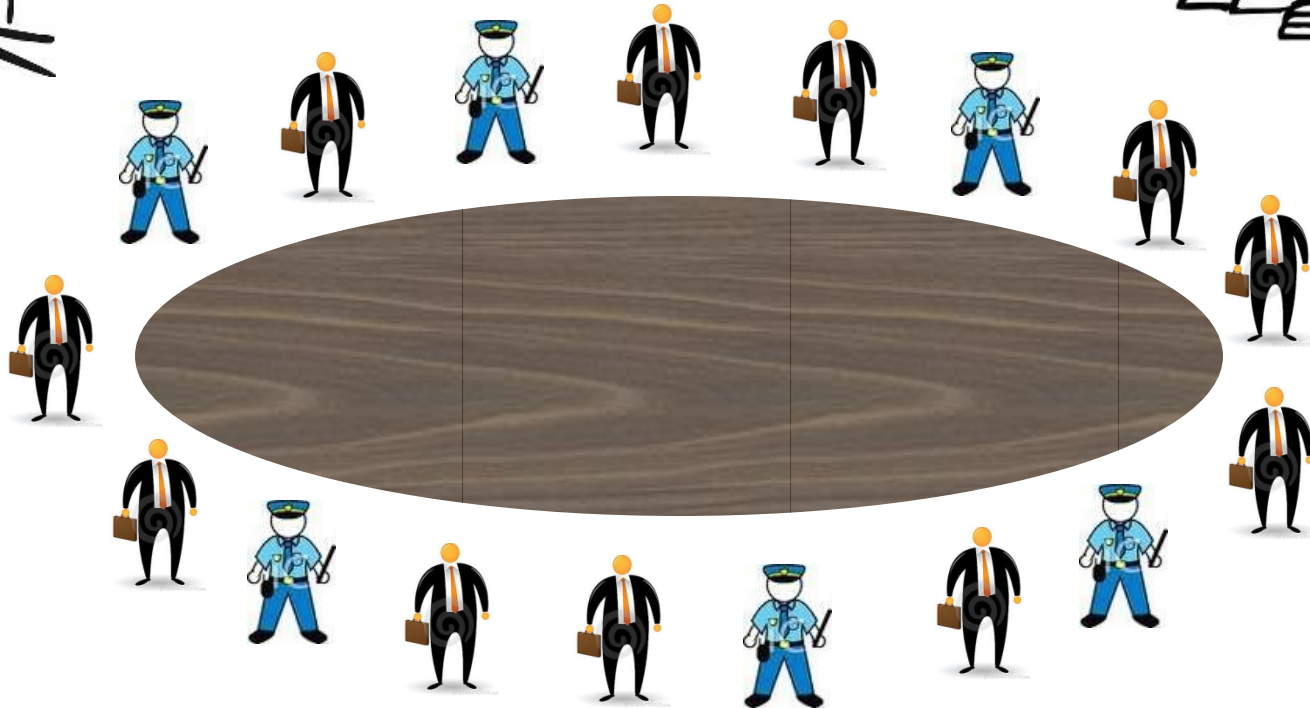
Potential Solutions for Governance Problems Known to the Board

- If chosen by election, lawyers should be elected based on statewide, electronic-only vote of 166,000+ lawyers
- Ideally, candidates for board seats would have solid understanding of State Bar — but impractical to draft standards
 - Provide more extensive orientation from July 1 election results to September swearing-in
 - Hold elections earlier so that newly-elected members can attend several meetings before joining board
- Lengthen member terms
 - Avoids politics of members seeking a second term
- Have president-elect chosen at **start** of final year

Current Board Size and Composition — 23 (17 lawyers, 6 public members)



Proposed Board Size and Composition — 17 (11 lawyers, 6 public members)



Beware the Law of Unintended Consequences

- Re-elections could compromise independence
 - This weighs in favor of longer terms instead
 - Does re-appointment face the same problem?
- Current system forecloses protest from lawyers that they have no say in the system that regulates them

Challenges for Proposed Merit Screening Committee

- How will the committee members themselves be selected? Does this just kick the political can down the road?
- Will applicants' viewpoints be a factor?
- New “perception” problem of cronyism or board being an “insider’s club”

Alternative Proposal

Term — 4 years

Size — 23

- Remains the same in absence of evidence of problem with current size
 - Consider demands of subcommittees on current board members' time

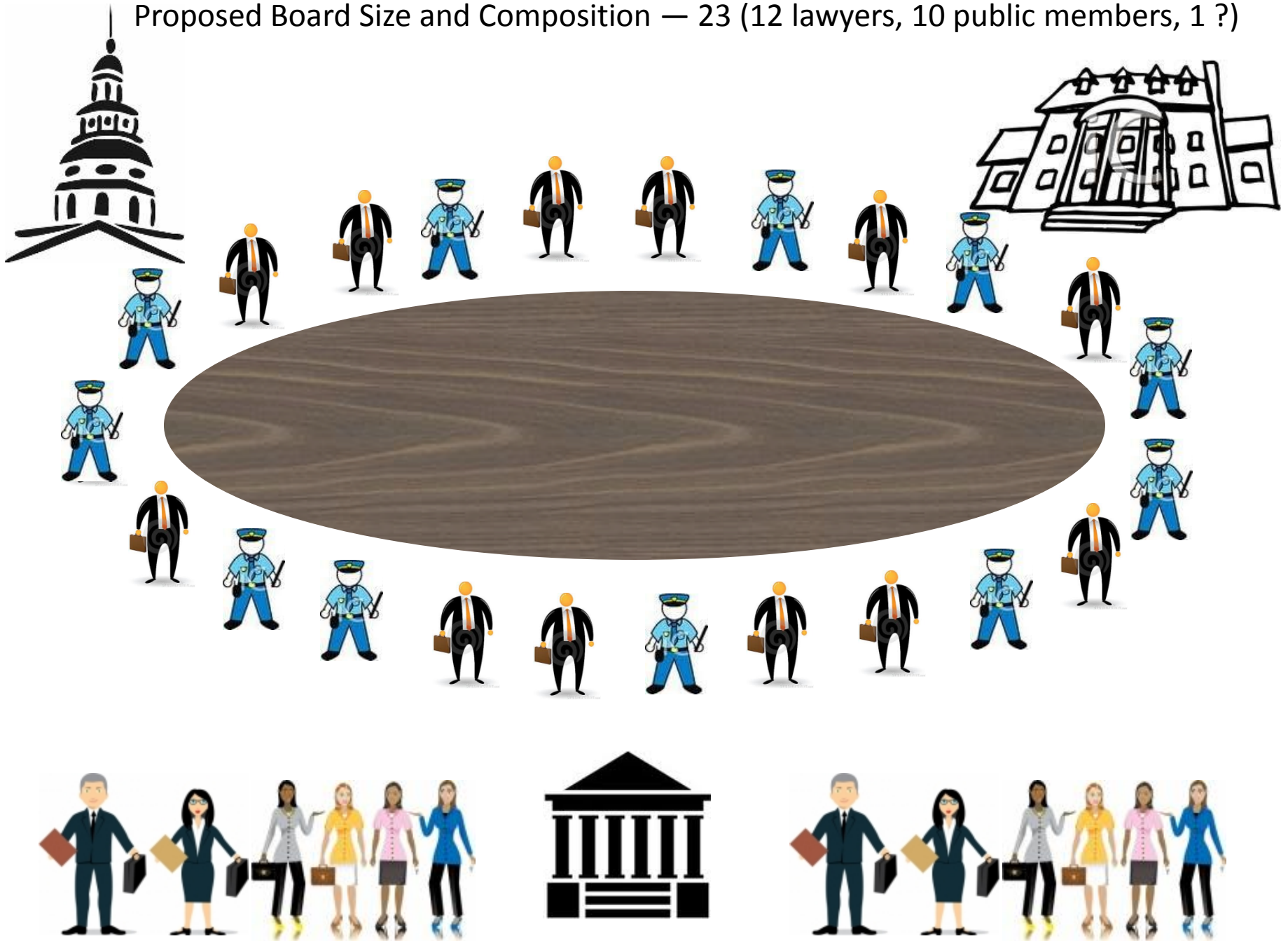
Composition — 12 lawyers, 10 appointed, 1 president

- More public members to balance 17:6 ratio to either 13:10 or 12:11 if president elected is public member
- More public members bring broader skill sets (e.g., finance, PR, political)

Method of selection

- Lawyer members elected by vote of entire membership each year through electronic ballot
 - Eliminates parochialism, saves \$, increases annual turnout
- 4 new public members selected by a fearless Chief Justice from among interested, knowledgeable citizens

Proposed Board Size and Composition — 23 (12 lawyers, 10 public members, 1 ?)



Virtues of Alternative Proposal

- Employs least unpredictable means to address known and some perceived problems
- Eliminates parochialism among lawyers now elected statewide
- Changes lawyer:public ratio from 17:6 to either 12:11 or 13:10
 - Increases range of skills available to board
- Avoids appearance of lawyer “cronyism” in Supreme Court appointments
- New member education and president-elect provisions may be done through board rule

More Pressing Changes Needed to Protect the Public

Admission

- Zero practical training required for admission vs. 885 hours to be a barber (or 70 hours for a manicurist)
- License to practice in all areas of law, regardless of education or training (e.g., bankruptcy, wills, securities)

Regulation

- Only 4 hours of ethics every three years

Discipline

- 3,200+ cases under investigation, 400+ in backlog, 900+ in notice open inventory