

To: Governance Task Force

From: Dennis Mangers, Task Force Public Member

Date: March 15, 2011

**Governance Task Force proposals**

First, let me say once again that I continue to consider it an honor to serve as a public member of the Board of Governors of the State Bar of California and the Governance Task force.

As you know I have attended all of the meetings of the Governance Task Force and the public hearings as well. I have read all of the testimony submitted and listened carefully to the ideas and concerns expressed by our public and attorney member colleagues.

I also took the opportunity to review the legislative staff analysis generated around the consideration of the fee bill of last year. And when I visited with legislative leaders and Assembly and Senate staff with purview over the Bar, no one from the legislative perspective was prescriptive about what they thought the Task Force or I as a public member ought to report or recommend to the Legislature this May.

I gathered, therefore, that I should simply attend closely to the process and follow my own instincts as a public member, committed first and foremost to public protection. This is what I have done, and as I promised at our last meeting, I am forwarding to you now my current suggestions for how your draft might be strengthened. I hope this will contribute to the conversation at our next meeting on March 25<sup>th</sup>.

**COMPOSITION OF THE BOARD**

I suggest that you reduce the proposed number of members of the Board to 15, 9 attorney members, with no seats reserved for any specific constituent group and 6 public members.

There is no justification for maintaining the current dominance of professional over public members when no other professional oversight board in California has over 15 members and two thirds of them have fewer than ten. All of the other Boards have narrow ratios of professional to public members.

**EXAMPLES:**

The California Board of Accountancy has 15 members, all appointed, no elected, and a ratio of 8 public members to 7 professionals.

The California State Board of Pharmacy has a total of 13 members, all appointed and no elected, and a ratio of 7 professionals to 6 public members.

The Veterinary Medicine Board has 7 members, all appointed, none elected, and a ratio of 4 professionals to 3 public members.

The Medical Board, to which the State bar is most often compared, has 15 members, all appointed, no elected, with a ratio of 8 professionals to 7 public members.

Thus far, I have heard of no reason why attorneys or their profession are so unique that their oversight Board should be so top heavy with their own members.

#### MANNER OF SELECTION

I strongly endorse your suggestion that all professional members of the Board be appointed by the State Supreme Court through the process you've proposed. There does not appear to be any compelling reason to keep the State Bar as the only major professional oversight body in California that continues to have elected professionals as opposed to an appropriate mix of appointed professionals and public members.

Both the ratio of professionals to public members and the manner by which the attorney members are elected by local constituencies will continue to cause the public and their legislative representatives to question whether the Bar is truly devoted to the to the protection of the public or the protection and welfare of its own members.

#### RAD AND MOC

I believe that it would underscore the Board's commitment to public protection if the two committees most responsible for overseeing the regulatory functions of the Bar had a majority of public members and were each chaired by a public member. Members Streeter, Davis and Kieve alluded to this possibility in their respective alternative proposals and I endorse this sensible recommendation. Surely with long-term staff as a resource and with the counsel of the professional members, the public members could be effective partners in the oversight of the most critical functions of the Bar.

#### TITLE OF MEMBERS

I recommend that you add to your draft, a proposal to change the name of the Board from "Board of Governors" to "Board of Directors or Trustees". The elitist tone of the word "Governor" makes us appear somewhat pretentious and seem less accessible than a democratic institution ought to be. While some might think this a superficial change, if done in the context of broader reform, it would appear consistent and appropriate.

## MANNER OF SELECTION OF THE PRESIDENT, TERM AND CHARGE

It seems to me that the practice every year of having a full blown campaign among third year members for the Presidency is an unnecessary distraction from the important work of the organization. I recommend a two year term for the President and that he or she is appointed by the Supreme Court. Further, I think the practice of each President coming in with pet projects should cease and instead each President, through his or her tenure, should be charged to lead the Board through the implementation of a solid three to five year plan designed to improve the disciplinary process and other aspects of public protection. Each President should be committed to leading his or her colleagues in the effort to achieve identified objectives in the plan.

## ETHICS CLE

One of the best ideas to emerge in our discussions of late is for the bar to offer 25 hours of free CLE relative to ethics. This should be institutionalized as soon as possible as one of the strong signals that the Board is responding to the shocking conduct of some unscrupulous attorneys in the recent mortgage scandal. This, of course, needs to be done in the context of an unmistakably strong disciplinary response to those found guilty of misconduct, so that the CLE offerings are seen as a proactive element of a larger response.

## BAGLEY-KEENE

To my mind there is no justification for the State Bar to exempt itself from Bagley Keene. Some have suggested minor modifications to tailor the provisions to the realities of how the Board functions, and our colleague John Streeter is guiding his committee through a thoughtful analysis in that regard. We should adopt Bagley Keene with as few exceptions as possible and with an easily defensible rationale for each variance so we are not accused of creating Bagley Keene "light".

## PUBLIC PROTECTION CHARGE

There should be no equivocation on the adoption of your proposed statutory change to the board's charge. But we should recognize that without the significant reforms discussed here, such words may ring hollow.

## UNIFIED BAR

Finally, while I told you earlier that the issue of an integrated Bar may take more time and discussion to address than our current time-line may permit, I am currently of the mind that it is probably impossible to be seen as credible watchdogs for the public if regulatory and disciplinary functions continue to be inextricably intertwined with traditional trade association

functions. No one on the Board has yet made a credible case for why attorneys should be the only California professionals who operate in this fashion. Advocacy for legislative objectives of the profession, services for members such as group insurance, travel, etc should be provided by a separate trade association funded by the voluntary contributions of participating members.

It is time to change the perception that the Bar is an “old boys club” that has the privilege of collecting mandatory dues from all practitioners and then inter-weaves it’s regulatory and disciplinary functions with the “good of the industry” activities that may or may not inure to the benefit of the public.

Most of the easily defensible public protection activities of the Bar could be retained and could be justifiably supported by the mandatory dues. Others, such as those cited recently by member Michael Tenenbaum, should shift to a typical trade association as California’s physicians have done.

While some have suggested recently that the Legislature might be willing to settle for less from our Task Force, I strongly recommend that we use this opportunity to propose bold, and some would say, overdue, leadership in reforming the governance of the people’s Bar.

I understand that sometimes a case can be made for incremental change, but how long should it take when virtually every other profession in the State has either done these things voluntarily or otherwise with no discernable negative consequences.

I hope you will carefully consider amending your draft to include these elements.

Respectfully,

Dennis Mangers, Public Member