

## POSITION STATEMENT OF CALIFORNIA YOUNG LAWYERS ASSOCIATION

### **Introduction and Summary of Position**

On September 2010, the Governance in the Public Interest Task Force (“Task Force”), charged with improving the public protection function of the State Bar, was created by then-governor Arnold Schwarzenegger. The Task Force’s initial report to the Supreme Court, the Governor, and the Senate and Assembly Judiciary committees is due May 15, 2011. Thereafter, a report is required every three years. The purpose of the report is to provide “recommendations for enhancing the protection of the public and ensuring that protection of the public is the highest priority in the licensing, regulation, and discipline of attorneys.” (Business & Professions Code § 6001.2). In support of the Task Force’s initial report, the California Young Lawyers Associations (“CYLA”) submits its comments as follows.

Unlike the many bar associations or groups, CYLA is a mandatory membership. That is, once a new attorney becomes a member of the State Bar, they are automatically a member of CYLA. A member of CYLA is described as an attorney who is under the age of 36 or engaged in the practice of law for five (5) years or less. Presently, CYLA’s membership is 44,000 attorneys, and it is unlikely that CYLA’s membership will drastically decrease anytime in the near future.

In 1977 – 78, the State Legislature established CYLA’s membership on the State Bar’s Board of Governors (“BOG” or the “Board”) by providing that one of the seats on the BOG be reserved for a CYLA member. (Business & Professions Code § 6013.4). Each year, CYLA’s board selects one of its members to serve as the CYLA representative on the BOG.

CYLA recommends that the BOG should continue to include attorney members and that, regardless of whether the BOG members are elected or appointed, one seat should be retained for a CYLA representative as this member will: (1) provide an unique perspective of a new attorney and their interactions with the public; (2) promote tools and ideas necessary for the protection of the public; and (3) effectuate the goals of the Legislature and the State Bar by ensuring that newer members of the profession are represented at the state-wide level. In fact, the CYLA board’s mission and charge includes “facilitating the development of programs and services that would assist young lawyers in their profession and leadership advancement and programs that benefit the public.” This includes developing and implementing “regular public service projects that utilize the skills of the state’s young lawyers that would measurably benefit the public.”

The CYLA looks forward to addressing the questions posed by the Task Force, if any.

### **History of the CYLA Seat on the Board of Governors**

Between 1975 and 1979, then-Governor Jerry Brown led the effort to reformulate and diversify the BOG’s membership by adding non-attorney (public) members, who were appointed by the Governor and Legislature, to the Board. Included in this reform was the addition of CYLA’s representation on the BOG by statutory amendment. (Business & Professions Code § 6103.4). Specifically, Business &

Professions Code § 6103.4 provides that “one member of the board shall be elected by the California Young Lawyers Association, from the membership of that association.”

With the exception of this one seat, new lawyers - who make up a sizeable proportion of the State’s attorneys - have no direct representation on the BOG. This includes involvement in any business of the State Bar, including its function to evaluate judicial candidates. Indeed, pursuant to Government Code section 12011.5, the membership of the group that evaluates judicial candidates for the Bar *must* be proportional with the BOG makeup. This statute specifically refers to Business and Professions Code section 6013.4. This is one example of the Legislature’s view of the importance of CYLA to provide a voice to evaluate proposed judicial candidates, in furtherance of public protection, on behalf of the Bar.

### **CYLA Representation On The BOG Furthers Public Protection**

Presently, the model of governance followed by the Bar emulates the model created by the American Bar Association (“ABA”). The ABA Board of Governors currently has 38 members, two of whom *must* be representatives from the Young Lawyers Division, which is the equivalent arm of CYLA. The ABA has recognized the need and value of its newer members serving as part of its governing body, in part because of the different perspective and interactions with the public, represented through its Young Lawyers Division. The CYLA encourages the State Bar to continue to do the same.

It is only appropriate that the Board represents an adequate cross-section of the profession and/or general public. CYLA brings a different and important perspective to the governing body and has made and will continue to make meaningful contributions to the governance of the profession, including the protection of the public. For example, CYLA co-authored “The California Guide to Opening and Managing a Law Office,” a publication targeted for solo practitioners, (many of whom are new attorneys) who may need assistance with the profession and its interaction with the public. CYLA also regularly provides free (or low cost) educational programming, including on issues of ethics and substance abuse. Lastly, CYLA’s representative on the BOG is able to bring issues specifically affecting the newest members of the Bar directly to the attention of the BOG, thus ensuring that they are appropriately addressed. For example, in 2008, CYLA, in support of the Find a Lawyer project, commented on the unique relationship between new lawyers and the benefits to the public. (See attached letter from CYLA dated November 4, 2008.)

Further, the Bar serves not only as the regulatory board for its attorneys, but is also the industry association for California lawyers. As such, the BOG is distinct from its counterparts in other professions, such as the Medical Board, Dental Board, and Board of Psychology. Accordingly, given its differing purposes, the BOG should not strive to be identical to the boards of other professions. The BOG makeup should continue to include attorney members and should include the perspectives, voices, and ideas of its newer members, in addition to those of its more experienced practitioners. Further, in contrast to other regulatory boards that belong to the executive branch of government, the State Bar is part of the judicial branch. Consequently, the BOG assists the California Supreme Court in the exercise of its statutory and inherent authority over the admission and discipline of California attorneys. (See, e.g., *Obrien v. Jones* (2000) 23 Cal.4th 40; *In re Attorney Discipline System* (1998) 19 Cal.4th 582.)

Discipline must be administered to all members of the bar in a fair and equal fashion, which includes the opinions and perspectives of *all* members of the Bar.

Former United Nations Secretary General Kofi Annan stated that “no one is born a good citizen; no nation is born a democracy. Rather, both are processes that continue to evolve over a lifetime. Young people must be included from birth. A society that cuts off from its youth severs its lifeline.” Similarly, one’s admission to the Bar is akin to their “birth” as an attorney. New attorneys desire to have both the guidance of and the opportunity to participate in the governance of the State Bar. In fact, these twin needs were recognized and codified in 1978 when the CYLA was provided a seat on the BOG. CYLA urges this Task Force to recognize and recommend the need for a continued seat on the BOG so newer attorneys will be provided with a direct avenue to identify and respond to issues pertaining to the protection of the public. Public protection will be better served if newer attorneys are directly involved in the governance of the profession.

Currently, the attorney members of the BOG are elected. While any member in good standing of the California Bar may run for a seat, it is unlikely that a new attorney would be able to obtain a seat on the Board. A newer attorney will not have the contacts necessary to secure adequate votes. Also, a newer attorney, faced with the financial burdens of having recently attended law school and the time constraints of building a practice, is also unlikely to have the resources or time necessary to undertake the daunting task of launching a campaign (especially one with little hope of success). Even if the attorney members of the BOG were appointed, a newer attorney is unlikely to be chosen for appointment over a more experienced attorney without the explicit requirement that the BOG include a CYLA representative.

This concern is highlighted by the BOG President’s recent proposal to the Task Force. Not only does this proposal seek to eviscerate CYLA’s representation on the Board by characterizing CYLA as a mere “constituent group” and recommending that no seats should be reserved for such groups, if enacted, the President’s plan would expressly prevent CYLA representation on the BOG as it seeks to impose the requirement that to be eligible for appointment to the BOG, an attorney must have been in practice for a “minimum of five consecutive years”. (See, Proposal to Task Force, presented on 2/8/2011, Slides 27 and 31). Under this proposal, the vast majority of CYLA members would not be eligible. These comments only highlights the disconnect between newer and more experienced attorneys, and why CYLA’s seat should be preserved. Thus, new attorneys would have no representation on the BOG, and would not have access to contribute to the governance of the profession, including the furtherance of public protection. Lastly, the President’s proposal also minimizes and marginalizes the efforts and contributions of new attorneys for the greater public. Simply stated, public service and public interest are not attributes that are developed only with age or “experience.” Here, only the public will be harmed by removing CYLA’s voice.

### **Method of Appointment**

Today, CYLA’s Board is comprised of twenty members appointed by the BOG. Nine of these seats are designated for representation of each of the nine State Bar districts. The remaining eleven seats are

filled by appointments at large. Following the submission of applications of interested members, the BOG appoints CYLA's Board. In turn the CYLA Board selects one of its members to serve as the CYLA representative on the BOG.

The CYLA posits that the current system of electing its representative to the BOG is a positive model that furthers the needs of the Bar and the public for the reasons already discussed. At the same time, CYLA welcomes other methods for appointing its representative to the BOG, such as approval or selection by the Supreme Court.

### **Conclusion**

Thus, CYLA recommends that the BOG should continue to have attorney members and that one seat should be retained for a CYLA representative as this member will: (1) provide an unique perspective of a new attorney and their interactions with the public; (2) promote tools and ideas necessary for the protection of the public; and (3) effectuate the goals of the Legislature and the State Bar by ensuring that newer members of the profession are represented at the state-wide level.

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**THE STATE BAR OF CALIFORNIA**

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November 4, 2008

Ms. Judy Johnson  
Executive Director  
The State Bar of California  
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Dear Ms. Johnson:

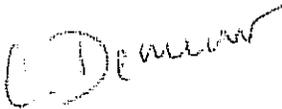
The California Young Lawyers' Association (CYLA) generally supports the Find a Lawyer project (FAL) proposed by the Board of Governors and offers the following comments.

Contrary to some concerns expressed by the Executives of California Lawyer Associations and other commenters, CYLA does not view FAL as a substitute for or competitor to formal Lawyer Referral Service (LRS) programs. Rather, the FAL concept appears to complement existing basic attorney information on the State Bar website that can benefit young attorneys who seek to build their legal profiles. FAL would also complement existing LRS programs by providing access to information about lawyers to whom the public may be referred via LRS programs. Not only would FAL allow young lawyers to establish a more detailed profile with the State Bar (allowing the State Bar to gather additional information about its members), but FAL would allow young lawyers to make such a profile available to the public. Such benefits are symbiotic as well, allowing the public to learn information about young lawyers – including areas of practice and experience – that may not be available elsewhere.

CYLA, however, submits that posting and viewing Information on FAL should be available free of charge. Some State Bar information on FAL indicates FAL could operate as a non-dues revenue generator for the State Bar. CYLA is unaware of how revenue could or would be generated from FAL, but objects to charging fees to State Bar members to post information or charging fees to attorneys or members of the public to view the information for the following reasons. First, charging fees to post information, except perhaps a nominal fee to cover

administrative costs, would unfairly disadvantage lawyers, including young lawyers, who cannot afford this service. If only lawyers who pay a posting fee are able to receive what will be perceived by the public as a State Bar endorsement or recognition by posting information on FAL, lawyers who do not pay for this recognition may be placed at an economic disadvantage by their own State Bar. Second, fee-based information listing services such as Martindale Hubble already exist for this purpose. Charging fees to post this information would appear to place the FAL program closer to prohibited advertising activities and the State Bar should not compete with these services; rather the State Bar should allow its members to post this information without cost. Finally, charging fees to view the information posted would defeat any informational purpose of the FAL project. Because one purpose of FAL is to provide information "for consumers searching for information about California lawyers and other legal resources," charging the public or other lawyers to view this information would be counterproductive to this purpose.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Cristele Demuro".

Christele Demuro, Esq.  
President, California Young Lawyers Association

cc: The State Bar of California  
"Find A Lawyer" Task Force Members