

TO: Members of Planning, Program Development and Budget Committee and  
Its Subcommittee on Governance Transition Plan  
Starr Babcock, Lawrence Yee, Francisco Gomez

FROM: Michael Wagaman

DATE: October 3, 2011

RE: Potential Implementation Plan for SB 163 (Updated)

## INTRODUCTION

Pursuant to Section 6009.7 of the Business and Professions Code, the State Bar of California (Bar) has to prepare a plan to shift from a 23 member board to a 19 member board by October 31, 2014. An initial examination of the current and new board make-up and district boundaries reveals several challenges. The purpose of this memo is to outline these challenges and one potential solution to begin discussion and debate.

## NEW BOARD MAKE-UP

SB 163 makes several changes to the make-up of the board:

- 1) The President would no longer serve as a separate member on the Board with a one year term (serving an additional 4<sup>th</sup> year when elected from among the members of the Board in the third year and final year of office);
- 2) Instead of having 15 attorney members elected by multi-member California State Bar districts, 6 attorney member will be elected by single-member Court of Appeals districts;
- 3) CYLA would no longer have an automatic member of the Board; and,
- 4) 7 attorney members will be appointed, 5 by the Supreme Court and 2 by the Legislature.

			Current	New
TOTAL			23	19
PRESIDENT	ELECTED		1	0
	TOTAL		1	0
ATTORNEY MEMBERS	ELECTED	BY DISTRICT (CURRENT)	15	0
		BY DISTRICT (APPELATE)	0	6
		CYLA	1	0
	APPOINTED	COURT	0	5
		LEGISLATURE	0	2
	TOTAL		16	13
PUBLIC MEMBERS	APPOINTED	GOVERNOR	4	4
		LEGISLATURE	2	2
	TOTAL		6	6

The Legislation requires existing members serve their full term. While this goal applies to current members, consistent with this principle this memo outlines transition options where all board members would serve full terms. Alternatively the Board could consider transition option where some members are elected to one or two year terms during the transition period. However, this option would be complicated due to the restriction that the Board not exceed 23 members in any one year. For example if all six members elected by Appeals Districts were added in the first year and only five members elected by the old districts dropped off the size of the Board would be 24 unless other changes were also made.

## PRESIDENT

SB 163 deletes from section 6011 of the Business and Professions Code, which provides that the President is the 23rd member of the Board, and the transition for this separate office on the Board will occur at the end of the current President's term.

		2011	2012	2013	2014
PRESIDENT	ELECTED	1	0	0	0
	TOTAL	1	0	0	0

## DISTRICT ELECTED ATTORNEY MEMBERS

SB 163 specifies that no member of the Board shall have their term shortened. Thus the schedule for phasing out members elected by the California State Bar districts is predetermined, with the total number on the Board reducing by 5 each year from 15 to 0. Assuming the Bar wants to continue its current tradition of electing an equal number of members each year, the schedule for phasing in members elected by Court of Appeals districts is also predetermined, with the total number on the Board increasing by 2 each year to 6.

			2011	2012	2013	2014
ATTORNEY MEMBERS	ELECTED	BY DISTRICT (CURRENT)	15	10	5	0
		BY DISTRICT (APPELATE)	0	2	4	6

The critical question is which Court of Appeals districts should elect each year. Again the Bar has a fair degree of flexibility. However, it may wish to consider the purpose of the district elected members. Under the old system, the purpose appears to have been to guarantee *equal* representation (i.e. "one person, one vote"). Under the new system, the purpose appears to be to guarantee *minimum* representation (i.e. "every person gets a vote").

Given this new goal, a potential guiding principle during the transition period may be to minimize the number of attorney members who end up having no elected representative on the Board. In other words, minimizing the number of attorney members who have the term of the board member they last elected by the old districts end before the first election conducted under the new districts.

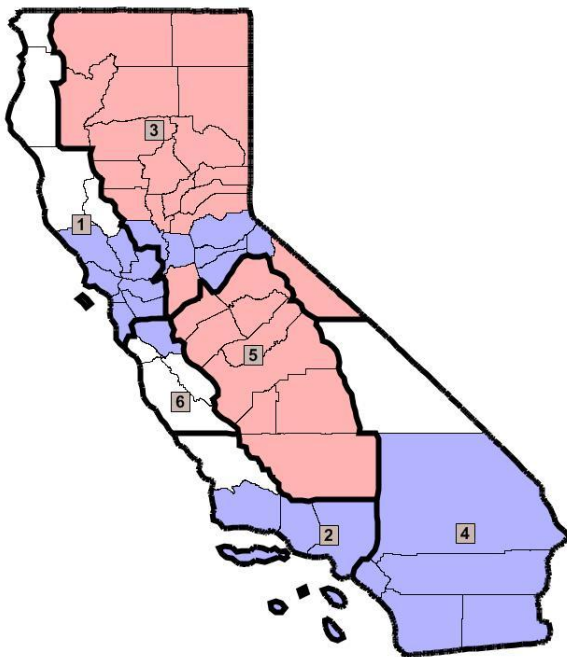
This option has the advantage of being an objective standard for determining this potentially sensitive issue. It does present some challenges. First, it is not possible to avoid having some areas without elected representation during the transition period while maintaining staggered elections. Second, the analysis is

complex as the Bar would have members elected by three different sets of district boundaries on the Board at the same time (members elected in 2010 based on the pre-redistricting boundaries, members elected in 2011 based on the post-redistricting boundaries and members elected in 2012 based on the Court of Appeals boundaries). These changes are outlined in Appendix 1. Appendix 2 has maps of all three sets of district boundaries.

## 2012

If no new board members were elected in 2012, there would be 12,570 attorney members without representation. Approximately 2/3rds of these are from Appeals Districts 3 and 5. Thus these would have elections in 2012 and every three years thereafter. Notably this would leave 2% of attorney members without elected representation for the following year. Most of these would be along the north and central coasts.

District	Attorney Members Unrepresented
1	749
2	888
3	4,049
4	51
5	4,721
6	2,112
Total	12,570

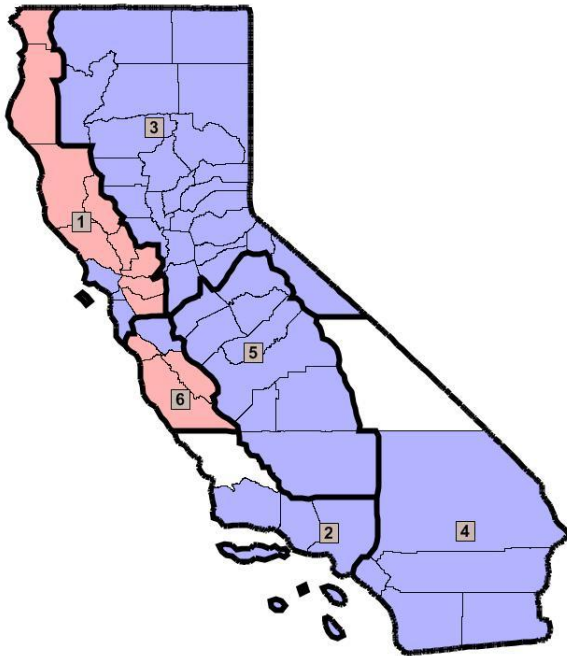


*\* Blue areas would already have representation on the Board. Red areas would add representation based on Appeals district elections. White areas would be left without elected representation.*

## 2013

Assuming elections are conducted in Appeals Districts 3 and 5, there would be 20,083 attorney members without representation in 2013. Approximately 95% of these are from Appeals Districts 1 and 6. Thus these would have elections in 2013 and every three years thereafter. This would leave 0.05% of attorney members (Inyo and San Luis Obispo) without elected representation for the following year.

District	Attorney Members Unrepresented
1	17,032
2	888
3	0
4	51
5	0
6	2,112
Total	20,083

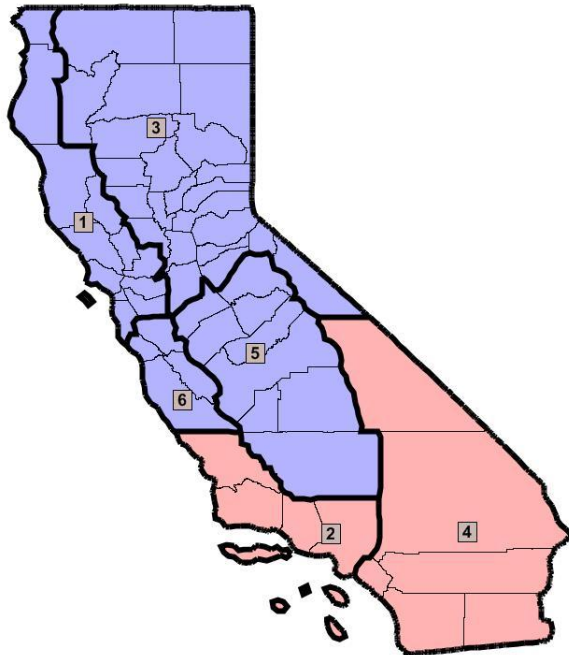


*\* Blue areas would already have representation on the Board. Red areas would add representation based on Appeals district elections. White areas would be left without elected representation.*

## 2014

Assuming elections are conducted in Appeals Districts 3 and 5 in 2012 and Districts 1 and 6 in 2013, there would be 104,029 attorney members without representation. These would all be from Districts 2 and 4 which would have elections in 2014 and every three years thereafter.

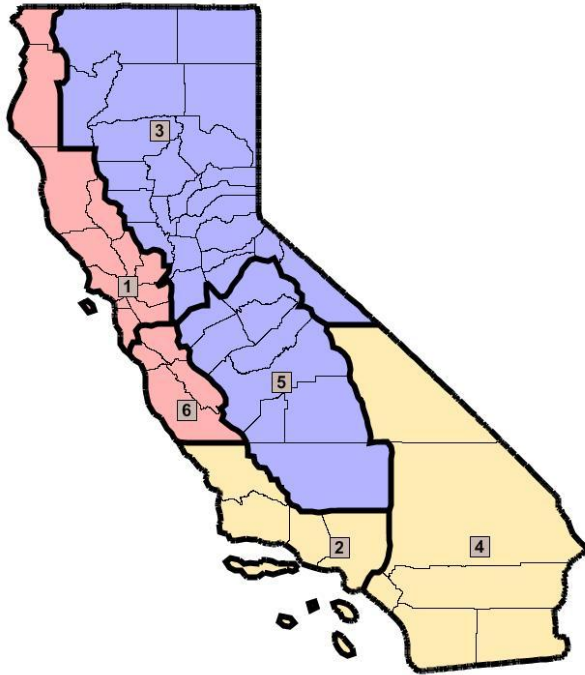
District	Attorney Members Unrepresented
1	0
2	63,347
3	0
4	41,029
5	0
6	0
Total	104,376



*\* Blue areas would already have representation on the Board. Red areas would add representation based on Appeals district elections. White areas would be left without elected representation.*

## Summary

In addition to minimizing attorney members without elected representation, this option also creates some geographic consistency to the election of board members, with inland areas electing first, followed by coastal areas, and finally southern areas.



*\* Blue areas would elect in 2012 and every three years thereafter. Red areas in 2013 and every three years thereafter. Yellow areas in 2014 and every three years thereafter.*

#### Other Alternatives

The alternative outlined above is most consistent with the apparent goal of the new districts to guarantee *minimum* representation. However it is not the only transition option. Some other alternatives the Board may wish to consider:

- **Sequential Numbering:** This system would have districts up in consecutive numeric order. For example Districts 1 and 2 in year one, Districts 3 and 4 in year two and Districts 5 and 6 in year three. The primary advantage of this system is that in the future it will be very easy to keep track of. The primary disadvantages are that it will leave larger gaps in elected representation during the transition period and there will not be geographic consistency of who votes when. For example District 1 is goes to the Oregon border while District 2 is dominated by Los Angeles.
- **Geographic:** As noted above, there is some geographic consistency in the pairings under the primary alternative. However, these pairings are not the only ways the state could be divided. For example District 3 could be paired with District 5 to keep the Inland districts together. Alternatively District 3 could be paired with District 1 to keep the Northern California districts together. The Board could even decide to deliberately not sequence districts in the same geographic areas together in the same year to avoid, for example, all the elected Board members from Northern California being elected in the same year. The Board could decide to give these geographic considerations preeminence over goals of guaranteeing minimum representation. Again, this would likely leave larger gaps in elected representation during the transition period.
- **Random:** Clearly the decision of who votes when is complex and has potential political implications. To avoid any accusations of bias in its decision-making, the Board could decide to set the sequencing of the elections randomly. There are multiple methods for doing this that would ensure complete

transparency. As such a system would be random, there is no way to predict its impact on other goals such as minimizing attorney members with no elected representation during the transition period or maintaining geographic consistency.

- **Equal Representation:** As noted before the purpose appears to have been to guarantee *equal* representation (i.e. “one person, one vote”). The Board could elect to sequence the District in the manner most consistent with this goal. However, during the transition period, districts will inevitably become less balanced no matter how the elections are sequenced as they are not an equal number of attorney members in each Appeals District. Put more simply, if the Board chooses this as its primary goal in sequencing the elections it will be swimming upstream against the statutory restrictions placed on it by SB 163. The Board would also need to agree on what constitutes equal representation during the transition period. Most of the standard measures of equal representation are designed to measure equality AFTER the transition is complete not DURING the transition period.

## APPOINTED ATTORNEY MEMBERS

The Bar has a great degree of flexibility in its recommendation to the Supreme Court and the Legislature on when they may want to add the appointed attorney members. However, there are some factors it may want to consider. The major legal restriction is the size of the Board cannot exceed 23 during the transition period. Assuming the President and CYLA representative drop off and the number of district elected members drops by three as outlined above, this would reduce the size of the Board by five in the first year. This in turn means that no more than five of the seven new appointed members could be appointed in the first year.

Consistent with the goal of staggered terms, the Board may want to have the Supreme Court appoint one member in one year and two members in each of the other years. Alternatively, the Board may wish to recommend that the Court appoint two in one year, two in the second, and one in the third. If it is not feasible for the Court to appoint any members in 2012, the Court may wish to instead appoint two members in one year and three years in another year. This memo outlines the first option though the Board should include recommendations that the Court consider either of the latter.

To make sure the two new members being added by the legislative appointment to the Board each year is somewhat consistent with the current system for appointment of public members in which the Legislature has two appointments every three years, the Board may want to have the two new Legislative appointees made in the same year when the Legislature has no public member appointments. This would also stagger the terms such that the Legislative attorney member appointments do not occur in the same year as the Legislative public member appointments. As the Legislative public member appointments are current up in 2013, these could occur in 2012 or 2014. This memo assumes the appointments occurring in 2012 though the Board could recommend delaying them to 2014.

			2011	2012	2013	2014
ATTORNEY MEMBERS	APPOINTED	COURT	0	1	3	5
		LEGISLATURE	0	2	2	2
	TOTAL		0	3	5	7

## SUMMARY

			2011	2012	2013	2014
TOTAL			23	21	20	19
PRESIDENT	ELECTED		1	0	0	0
	TOTAL		1	0	0	0
ATTORNEY MEMBERS	ELECTED	BY DISTRICT (CURRENT)	15	10	5	0
		BY DISTRICT (APPELATE)	0	2	4	6
		CYLA	1	0	0	0
	APPOINTED	COURT	0	1	3	5
		LEGISLATURE	0	2	2	2
	TOTAL		16	15	14	13
PUBLIC MEMBERS	APPOINTED	GOVERNOR	4	4	4	4
		LEGISLATURE	2	2	2	2
	TOTAL		6	6	6	6

*\* President would be elected based on the new rules beginning in 2012.*

*\* Appeals Districts 3 and 5 would elect in 2012, 1 and 6 in 2013 and 2 and 4 in 2014.*

*\* The Legislature would appoint two attorney members in 2012.*

*\* The Court would appoint one attorney member in 2012, two in 2013 and two in 2014.*

## RECOMMENDATIONS

The Board should consider:

- 1) When it wants to change the method for electing the President;
- 2) What principles it wants to use to guide the schedule for Court of Appeals district elections; and,
- 3) When it wants to phase in the appointed attorney members.



## APPENDIX 1: DISTRICT COMPARISON

### PRE 2010 STATE BAR REDISTRICTING

Distribution of State Bar Election District counties in the 6 CA Appellate Districts

State Bar Districts	# seats	1 <sup>st</sup> Appellate District	2 <sup>nd</sup> Appellate District	3 <sup>rd</sup> Appellate District	4 <sup>th</sup> Appellate District	5 <sup>th</sup> Appellate District	6 <sup>th</sup> Appellate District
District 1	1	Del Norte, Humboldt, Lake & Mendocino		Butte, Colusa, Glenn Lassen, Modoc, Nevada, Placer Plumas, Shasta Sierra, Siskiyou Sutter, Tehama Trinity & Yuba			
District 2	1	Napa, Solano & Sonoma		Alpine, Amador Calaveras, El Dorado Sacramento, Yolo		Tuolumne	
District 3	2	Alameda & Contra Costa					Santa Clara
District 4	2	Marin San Francisco					
District 5	1			Mono & San Joaquin	Inyo	Fresno, Kern Kings, Madera, Mariposa, Merced, Stanislaus & Tulare	Monterey, San Benito, Santa Cruz
District 6	1		San Luis Obispo Santa Barbara & Ventura		Riverside, San Bernardino		
District 7	5		Los Angeles				
District 8	1				Orange		
District 9	1				Imperial & San Diego		

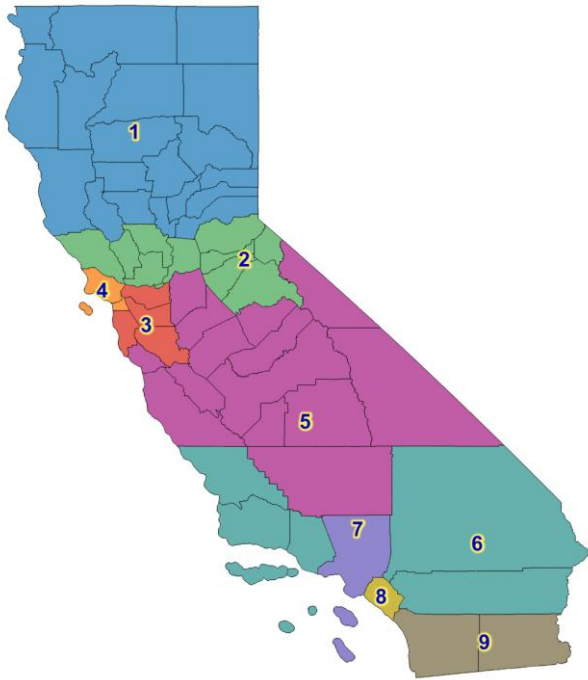
**POST 2010 STATE BAR REDISTRICTING**  
**Distribution of State Bar Election District counties in the 6 CA Appellate Districts**

State Bar Districts	# seats	1 <sup>st</sup> Appellate District	2 <sup>nd</sup> Appellate District	3 <sup>rd</sup> Appellate District	4 <sup>th</sup> Appellate District	5 <sup>th</sup> Appellate District	6 <sup>th</sup> Appellate District
<b>District 1</b>	1	Del Norte, Humboldt, Lake & Mendocino		Butte, Colusa Glenn, Lassen Modoc, Nevada Placer, Plumas Shasta, Sierra Siskiyou, Sutter Tehama, Trinity & Yuba			
<b>District 2</b>	1	Napa, Solano & Sonoma		Sacramento & Yolo			
<b>District 3</b>	1	Alameda & Contra Costa					
<b>District 4</b>	2	Marin, San Francisco & San Mateo					
<b>District 5</b>	1		San Luis Obispo	Alpine, Amador Calaveras, El Dorado, Mono & San Joaquin	Inyo	Fresno, Kern Kings, Madera, Mariposa, Merced Stanislaus, Tulare & Tuolumne	Monterey, San Benito & Santa Cruz
<b>District 6</b>	1						Santa Clara
<b>District 7</b>	4		Los Angeles				
<b>District 8</b>	2		Santa Barbara & Ventura		Orange		
<b>District 9</b>	2				Imperial, Riverside San Bernardino & San Diego		

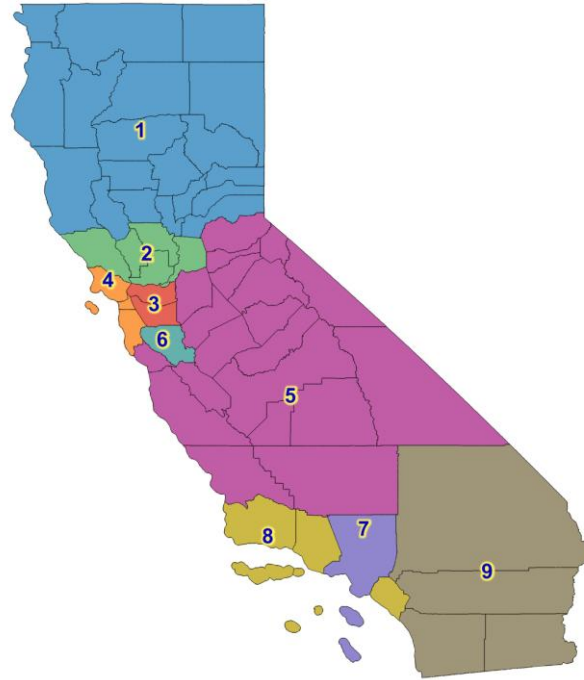
PRE-REDISTRICTING (OLD) STATE BAR OF CALIFORNIA DISTRICTS AND POST-REDISTRICTING (NEW) Distribution of State Bar Election District counties in the 6 CA Appellate Districts												
State Bar Districts	1 <sup>st</sup> Appellate District		2 <sup>nd</sup> Appellate District		3 <sup>rd</sup> Appellate District		4 <sup>th</sup> Appellate District		5 <sup>th</sup> Appellate District		6 <sup>th</sup> Appellate District	
	NEW	OLD	NEW	OLD	NEW	OLD	NEW	OLD	NEW	OLD	NEW	OLD
<b>District 1</b>	Del Norte Humboldt Lake Mendocino	Del Norte Humboldt Lake Mendocino			Butte Colusa Glenn Lassen Modoc Nevada Placer Plumas Shasta Sierra Siskiyou Sutter Tehama Trinity Yuba	Butte Colusa Glenn Lassen Modoc Nevada Placer Plumas Shasta Sierra Siskiyou Sutter Tehama Trinity Yuba						
<b>District 2</b>	Napa Solano Sonoma	Napa Solano Sonoma			Sacramento Yolo	Alpine Amador Calaveras El Dorado Sacramento Yolo				Tuolumne		
<b>District 3</b>	Alameda Contra Costa	Alameda & Contra Costa										Santa Clara
<b>District 4</b>	Marin San Francisco San Mateo	Marin San Francisco										

PRE-REDISTRICTING (OLD) STATE BAR OF CALIFORNIA DISTRICTS AND POST-REDISTRICTING (NEW) Distribution of State Bar Election District counties in the 6 CA Appellate Districts												
State Bar Districts	1 <sup>st</sup> Appellate District		2 <sup>nd</sup> Appellate District		3 <sup>rd</sup> Appellate District		4 <sup>th</sup> Appellate District		5 <sup>th</sup> Appellate District		6 <sup>th</sup> Appellate District	
	NEW	OLD	NEW	OLD	NEW	OLD	NEW	OLD	NEW	OLD	NEW	OLD
District 5			San Luis Obispo		Alpine Amador Calaveras El Dorado Mono San Joaquin	Mono San Joaquin	Inyo	Inyo	Fresno Kern Kings Madera Mariposa Merced Stanislaus Tulare Tuolumne	Fresno Kern Kings Madera Mariposa Merced Stanislaus Tulare	Monterey San Benito Santa Cruz	Monterey San Benito Santa Cruz
District 6				San Luis Obispo Santa Barbara Ventura				Riverside San Bernardino			Santa Clara	
District 7			Los Angeles	Los Angeles								
District 8			Santa Barbara Ventura				Orange	Orange				
District 9							Imperial Riverside San Bernardino San Diego	Imperial San Diego				

## APPENDIX 2: DISTRICT MAPS



**PRE-REDISTRICTING (OLD)  
STATE BAR OF CALIFORNIA DISTRICTS**



**POST-REDISTRICTING (NEW)  
STATE BAR OF CALIFORNIA DISTRICTS**



**CALIFORNIA  
COURT OF APPEALS DISTRICTS**