



SACRAMENTO COUNTY BAR ASSOCIATION

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December 19, 2011

Ms. Pat Bermudez
Office of General Counsel
California State Bar
180 Howard Street
San Francisco, CA 94105

Re: Sacramento County Bar Association Public Comment regarding Random Process for Sequencing Elections Under Revised State Bar Districts Effective Jan. 1, 2012

Dear Ms. Bermudez:

The Sacramento County Bar Association ("SCBA") opposes the proposal by the Board of Governor's Committee on Planning, Program Development and Budget ("Committee") to use a random process for sequencing elections under the revised State Bar Districts effective January 1, 2012. That approach represents a calculated effort by the Board of Governors ("Board") to avoid making the difficult decisions about who votes when, including which areas of the state may not have an elected representative on the Board during the transition to a 19-member governing body as required by Senate Bill 163 (ch. 417, stats. 2011) ("SB 163"). Attorney members' right to an elected representative on the Board is too important to be left to chance. Instead, the Board should sequence elections based on the order that best minimizes the number of attorneys who will not be represented by an elected Board member during implementation of SB 163.

Additionally, the Board should consider the potential benefits, if any, of staggering attorney member elections so that three attorney members are elected at a time instead of just two. The Board should also include in its SB 163 implementation plan information about the timing and sequence for the appointment of five attorney members by the California Supreme Court and two attorney members by the Legislature. The Committee does not appear to have considered either of these important factors in reviewing proposals for sequencing of attorney member elections.

1. The Board Should Reject the Random Process Proposal and Instead Use a Minimum Guaranteed Representation Approach to Sequencing Attorney Member Elections

The impetus for the Committee's proposal is the requirement that the State Bar develop a plan to implement the requirement in SB 163 that one attorney member be elected to the Board from each of the six Court of Appeal districts. Previously, 15 attorney members were elected to the Board from nine multi-member State Bar districts. The Committee's consultant noted in memoranda dated October 3, 2011 and October 18, 2011, the new method for electing attorney members required by SB

163 reflects the Legislature's determination that every attorney in California be represented by one elected attorney member on the Board.

The State Bar's plan for implementing SB 163's provisions should focus on carrying out this fundamental legislative policy choice. The Committee considered five proposals for sequencing attorney member elections to implement SB 163, including the random process approach and a "minimum guaranteed representation" approach. Only the minimum representation approach furthers the Legislature's intent by determining the sequencing of elections based on what order best minimizes the number of attorneys who will not be represented by an elected member of the Board during the three-year period for transitioning to a 19-member governing body.

It is true that even the proposal based on the minimum guaranteed representation approach does not entirely eliminate the possibility that some attorneys will not be represented on the Board during the transition period. However, the Committee's consultant noted that the number of unrepresented attorneys would be far smaller under that approach than any of the other approaches the Committee considered, including the random approach. The minimum guaranteed representation approach is thus the best approach for creating immediate consistency with the Legislature's fundamental policy determination that every attorney in California should be represented by one elected attorney member on the Board.

Under the random process approach, the sequence of elections would be determined by drawing lots. The random process approach would thus achieve consistency with the Legislature's policy determination only by chance, and it would just as likely result in large numbers of attorneys being left without any elected representative on the Board during the transition period. The SCBA recognizes that determining the best way to transition from the existing multi-member State Bar districts (including both pre-2010 and newly redistricted) to single-member districts based on Court of Appeal districts requires the Board to address complex and potentially sensitive issues over who votes when. As leaders of the State Bar, however, it is the Board's responsibility to address difficult issues head on. The Board should not abdicate that responsibility by leaving the resolution of this difficult task to blind luck. Whether a lawyer has a representative voice on the body that oversees, and creates policies for, their profession should not be left to chance – even for a brief period of time.

2. The Board Should Consider Whether Electing Three Attorney Members at a Time Would Provide Additional Benefits

While the minimum guaranteed representation approach is clearly the best way to sequence attorney member elections for purposes of implementing SB 163, we believe that a possibility exists that even that approach might be improved. Specifically, all of the proposals the Committee considered were based on the assumption that two new attorney members will be elected annually to the Board. SB 163 does not require that elections be staggered in that manner; rather, that structure appears to be based on the pre-SB 163 practice of staggering elections so attorney members are elected to the Board every year. Since SB 163 changes the legislative policy underlying how attorney members are elected to the Board – i.e., from a proportional representation model to a "everyone gets a vote" model – it is appropriate to ask whether the manner in which elections are staggered should be changed as well. The Committee does not appear to have considered this during its work.

The Board should consider whether there are any benefits to holding elections for three attorney members in each of the first two years of the transition period, and then every three years thereafter. For example, would such an approach further reduce the number of attorney members who are unrepresented during the transition period? Would electing members in this manner reduce the State Bar's costs by reducing the number of State Bar elections?

3. *The Board's SB 163 Implementation Plan Should Include Information on the Timing and Sequence for Appointment of Attorney Members by the California Supreme Court and the Legislature*

Finally, we observe that the Committee's proposed implementation plan for SB 163 fails to include any information regarding the timing and sequence by which the California Supreme Court will appoint five attorney members to the Board and the Legislature will appoint two attorney members to the Board. The SCBA urges the Board to obtain the Court's and the Legislature's views about the timing and sequence of their respective appointments, and include that information in the Board's implementation plan for SB 163.

In summary, the SCBA opposes the proposal to determine the sequence of attorney member elections through a random process approach. We strongly urge the Board to instead sequence elections based on a guaranteed minimum representation approach that is consistent with the fundamental legislative policy underlying SB 163. In so doing, we also urge the Board to consider the potential benefits of electing three attorney members in each of the first two years of the transition period, and then every three years thereafter, instead of electing two attorney members to the Board every year. We also urge the Board to include in its SB 163 implementation plan information on the timing and sequence for appointment of attorney members by the California Supreme Court and the Legislature.

Thank you very much for the opportunity to comment on this matter. Should you require additional information, please direct your inquiries to 2012 President June Coleman (jcoleman@kmtg.com), or the SCBA's Governance Committee Chair Richard Miadich (richard@olsonhagel.com).

Very truly yours,



Michael J. Levy