

Advocated Issues

Issue Identified by Deunification Advocates'	Issue Area	Advocates' Explanation of the Problem	Evidence of the Problem Exists?	Advocates' Identified Solutions	Solution Addresses Problem?	Metrics Available to Define Success?	Impacts Public Protection Mission?	Budget Implications
Current structure limits Bar Sections	Structure & Governance	The Bar's current structure does not serve Section members well: overhead costs are too high; Bagley Keene poses problems; members cannot freely advocate for the profession; Prop 209 limits diversity-related activity		Establish and support an independent professional association	Unknown: success of a voluntary bar is speculative	Unclear: participation rate in the voluntary bar might be a measure	Possibly: Nebraska found deunification in structure shifted emphasis of the voluntary bar to members away from public service	Significant: Sections would need to create new support systems; State Bar would lose their support; costs of personnel
Short-term, diffuse, volunteer leadership	Structure & Governance	Systemic dysfunction of the Bar/inability or unwillingness to institute lasting structural reform	Possible lack of consistent follow through; changing priorities	Modify governance structure to extend terms and allow for multiple terms	Unknown	No	Yes	None
Dual regulatory and associational mission	Structure & Governance	Systemic dysfunction of the Bar/inability or unwillingness to institute lasting structural reform	Unclear	Deunify the Bar	Unknown	No	Disagreement on this issue	Significant
Board of Trustees spends too much time on associational matters	Structure & Governance	Time spent on associational matters dilutes focus on regulation and	Unclear	Deunify the Bar	Likely: in a deunified bar, no time spent on associational matters	No	Disagreement on this issue	Significant
Board of Trustees spends too much time in closed session on personnel, litigation and real estate matters	Structure & Governance	Time spent on personnel, litigation, and real estate matters dilutes focus on regulation and discipline	No	Deunify the Bar	Unlikely; discussions regarding personnel, litigation, and real estate matters will need to continue under a deunified	No	Disagreement on this issue	Significant
Elected Board of Trustees	Structure & Governance	Elections suggest associational activity/focus; the profession cannot effectively regulate itself	No evidence of elected members' interference, but an appearance of conflict exists	Modify governance structure to eliminate Trustee elections	Likely	No	Disagreement on this issue	None
Board factionalism	Structure & Governance	Factionalism and dissention inspired by aspirations of attorney Trustees to become President	Yes	Reduce Board size, establish non-attorney majority, eliminate Board leadership elections	Unknown	No	No	None
Presidential signature projects	Structure & Governance	Presidential signature projects preclude attention to the Bar's	Unclear	Eliminate Presidential signature projects	Likely	Yes: signature projects can be eliminated	Disagreement on this issue	Dependent on nature of signature project
Impact of Bagley-Keene	Structure & Governance	The Board of Trustees has not effectively or proactively reformed its operations in light of Bagley-Keene, with a particularly negative impact on the Regulation and	Yes	Deunify the Bar	Unlikely; regulatory body will continue to be subject to Bagley-Keene	No	No	Significant
Cyclical crisis pattern and lawsuits	Operations & Practice	Negative audits, lawsuits, termination of Executive Director, withdrawal of Chief Trial Counsel nomination and inability to institute	Yes	Deunify the Bar	Unknown	No	Disagreement on this issue	Significant
Ineffectively managed non-attorney complaints	Discipline	Complaints regarding non-attorneys have been neglected by the Office of the Chief Trial Counsel	Yes	Appoint Discipline Monitor Deunify the Bar	Unknown	No	Yes	Significant
Disparate prosecution	Discipline	More vigorous prosecution of those without resources, which tend to be solo practitioners, small-town lawyers and lawyers of color	No: several studies have been conducted reaching the opposite conclusion	Appoint Discipline Monitor Deunify the Bar	Unknown	Yes: prosecution rates by practice type can be studied, as has been done previously	Yes	Significant
Discipline System controlled by Board of Trustees creates conflict of interest	Structure & Discipline	Decisions regarding prosecution are controlled by competitors of the accused	No	Establish a non-attorney majority Board; move OCTC under the Attorney General's Office	Likely	Yes	Yes	Significant
State Bar Court is housed within the State Bar	Structure & Discipline	State Bar Court housed with the prosecuting agency, leading judges to be partial to prosecution	No	Move State Bar Court under Superior Court; move Review Department under Appellate Court	Likely	Yes	Yes	Unknown; possibly significant
Anti-Trust Issues	Structure & Governance	Control of Board by market participants creates anti-trust issues as identified in North Carolina Dental	Yes; North Carolina antitrust litigation	Establish non-attorney Board majority	Likely	Yes	No	None

Other Issues for Consideration

Other Issues for Consideration	Issue Area	Explanation of the Issue	Issue Source	Impact of Deunification
Mandate to implement Workforce Planning Recommendations	Discipline	The Bar must implement recommendations implicating extensive restructuring of multiple Departments by December 31, 2016	Legislature	Deunification will consume resources that could otherwise be focused on recommendation implementation
Mandate to implement Compensation Study Recommendations	Operations & Fiscal Management	The Bar must implement recommendations regarding discipline-system compensation by December 31, 2016	Legislature	Deunification will consume resources that could otherwise be focused on recommendation implementation
Need to adequately fund discipline system	Discipline	Legislatively mandated spending plan identifies funding needs associated with workforce planning and compensation analysis recommendation implementation, and staffing to achieve backlog goals, of between \$1.5 and \$10 million	Legislature	Requirement that the Bar transfer Section reserves to voluntary association, support the transition of the professional association, and maintain all existing staff will negatively impact ability to adequately fund discipline system
Address 2015 State Audit Recommendations	Operations & Discipline	A number of recommendations issued addressing both fiscal and discipline-system management	Legislature	Deunification will consume resources that might otherwise be focused on recommendation implementation
Address 2016 State Audit Recommendations	Operations & Fiscal Management	A number of recommendations issued addressing fiscal management of the Bar	State Auditor	Deunification will consume resources that might otherwise be focused on recommendation implementation
Role of a unified bar in advancing evolution of the practice	Structure & Governance	Voluntary bars may focus primarily on protecting members; unlike unified bars, they oppose new technology that benefit the public, 85% of whom lack access to lawyers	ABA Rocket Lawyer, North Carolina antitrust litigation	Anti-competitive forces may become stronger