



THE STATE BAR OF CALIFORNIA

180 HOWARD STREET, SAN FRANCISCO, CA 94105-1639

Tel: (415) 538-2275 Fax: (415) 538-2305 E-mail: Elizabeth.parker@calbar.ca.gov

Date: June 11, 2016

To: Members, State Bar Board of Trustees

From: Elizabeth Parker, Chief Executive Officer

Re: Informational Discussion on the Governance in the Public Interest Task Force,
Scheduled for June 14, 2016

At the suggestion of several Trustees, the Board of Trustees June 14, 2016 meeting will include a status report from the Task Force on Governance in the Public Interest (Governance Task Force). This statutorily mandated Task Force is required to submit “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” every three years. The Task Force report does not require Board approval and will be delivered directly to the Supreme Court, the Governor, and the Assembly and Senate Committees on the Judiciary. See Bus. and Prof. Code, Section 6001.2 (a). The current report was due on May 15, 2014 and the Task Force is eager to complete its work by the end of July, so that it can be of potential use in the current Fee Bill discussions.

This memo summarizes the work done to date and possible directions of future discussion, to prepare the Board for its discussion with the Task Force on June 14.

The current Task Force was formed, and its seven members selected according to the prescribed statutory formula (Pasternak, Krinsky, Lee, Mangers, Mendoza, Meyers, and Moore), at the October 12, 2015 Board of Trustees meeting; it has met five times, with two additional meetings planned. The Task Force initially identified twelve questions for consideration at its December 9, 2015 meeting (see attached); these were expanded at its May 26, 2016 meeting and an outline of issues being advocated prepared to facilitate discussion (see attached).

To help the work of the Task Force, State Bar staff are reviewing past studies and updating relevant information to compare the State Bar of California to other jurisdictions and regulatory bodies. The Task Force has now heard testimony from 27 witnesses and continues to receive written comments and recommendations, notably that of Trustees Mangers, Mendoza and Corcoran. These materials are on the Governance Task Force website. (<http://www.calbar.ca.gov/AboutUs/BoardofTrustees/GovernanceinthePublicInterestTaskForce.aspx>). A record of testimony is being created and recent Task Force sessions have also been webcast and are viewable on the website.

Observations drawn from this “record in process” follow.

I. National Comparisons to Other State Bar Organizations

A. Organizational Structure

- Bar organizations first appeared in the late 1800’s; unified bars came into fashion in many states the early 20th century. Today the U.S. has 32 mandatory or unified state bar organizations and 21 voluntary associations.
 - Of 32 unified bars surveyed, 22 moved from a voluntary to a unified structure between 1923 and 1989; ten originated as unified bars.
 - California was created as a unified bar by statute in 1927.
 - States with established strong local voluntary Bar organizations (e.g. Illinois and New York) have not joined the trend towards unification.
 - The bars in 18 voluntary states studied were all created before the unification movement (only two created after 1900).
 - In contrast, most Western States, newcomers with less powerful local bars, adopted the unified structure.
- Three Bar organizations have abandoned a mandatory for a voluntary structure (Nebraska, Puerto Rico and briefly, Wisconsin); thus experience in managing such a transition is limited and predictions on membership loss are difficult.
 - Wisconsin changed structure on several occasions, but is now a unified bar; its brief move to a voluntary structure resulted in an 8% loss of membership (88%), impacting government and inactive members.
 - The Nebraska Bar Executive Director described her experience with Deunification: a loss of focus on access, diversity and the legal system, but improved support for the Bar’s associational work.
 - Nationally voluntary bar associations average 47% participation by licensed members.
- Bar organizations vary in function and structure; many State Supreme Courts handle admissions and discipline. No state combines as many functions under one umbrella structure as does California.
- With over 250,000 lawyers, 185,000 active, California is also the largest mandatory state bar (cf. Texas with 112,000 lawyers).
 - Among all bars, New York is slightly larger than California; discipline is handled by 4 appellate courts in New York.
- Declining interest by younger lawyers and competing bar organizations is challenging the membership of voluntary bar organizations.

- California has 280 local bar associations.
- Three of the nation's nine largest local bar associations are in California (LA, Orange County and San Diego).

B. Comparison to Governance Models in 32 Unified State Bars

- Governing boards average 33 members (the median is 21); with a high of 160 (Georgia) and low of 5 (Indiana).
- The governing boards of ten bars have public members; California's six public members (32%) are proportionally the largest, followed by Arkansas (25%) and Oregon (22%).
- Of all state bars, California is one of four which does not involve non-lawyers in discipline (three are unified and one is voluntary).
- Most unified bars have governing boards that are member-elected or board appointed (Arizona includes a Supreme Court appointee).
- Only California and North Carolina have non-judicial appointees (i.e. by the legislature and governor).
- All State Bar organizations, except California, appear to operate with a slate of officers; only the president-elect (or equivalent) is elected each year, with automatic succession to the presidency. Most presidents serve one year terms, but continue for one subsequent year as "past president."

C. Functional Comparisons

- In all states the Supreme Court (or equivalent) is responsible for attorney admission, regulation and discipline.
- California is one of two states where the Legislature sets the annual licensing fee; in all other states, the Supreme Court or the State Bar sets the fee.
- California has the only fully professional discipline system; all others rely to some extent on volunteers; courts in 13 of the unified bars are responsible for discipline; in all others, discipline is conducted by the Bar.
- Only California has an independent State Bar Court; other states rely on their State Supreme Courts to adjudicate attorney discipline.
- California is unusual in accrediting law schools outside the accreditation process of the American Bar Association.
- Compared with other large states (mandatory and voluntary), the State Bar of California manages the largest number of program areas; these include admissions, discipline, a client security fund, mandatory fee arbitration, continuing education, legal services, legal specialization, special admissions, lawyer assistance programs, judicial nominees evaluation, ethics hotline, member records, law school accreditation and access and fairness initiatives.
- In other states responsibility for such program areas is shared by the Bar, Court and independent special purpose non-profit organizations (i.e. bar foundations).

D. National Trends (as reported by the American Bar Association for 2016)

- From 2006-2016, attorneys increased by 17.8% nationally (18.9% in California); there was a 1.1% increase from 2015 to 2016 (1.0% in California); in 2016 nationally licensed attorneys totaled 1.3M, with 167,690 active attorneys members of the California Bar.
- Women have increased in the profession since 2000, but Black, Hispanic and Asian Pacific Americans have each increased nationally by only 1% (totaling 5%, 4%, and 3% respectively).
- From 2011 to 2013 JD enrollment declined by 12%.
- From 1980 to 2005 attorneys in private practice grew from 68% to 75%. During this time 49% of attorneys in private practice were solo practitioners; those in firms of over 50 lawyers, accounted for 20% of private practitioners.
- In 2005 there were 47,652 law firms in the U.S. Law firms of 2-5 lawyers constitute 75% of the market; firms over 50 lawyers are 2% of the market.

II. Comparisons to Other California Professional Regulatory Bodies

Initial review of nine California professional regulatory Boards (Accountancy, Architects, Dental, Engineers, Medical, Pharmacy, Psychology, Registered Nurses and the Commission on Judicial Performance) produced modestly useful comparisons:

- The nine governing boards range in size from nine to 15 members (four);
- Three boards have a majority of public members (Accountancy, Engineers and Judicial Performance).
- The Legislature and Governor appoint all members, with the exception that the Judicial Branch appoints three of the 11 members of the Commission on Judicial Performance.
- Board members may serve up to two four-year terms, with a one-year term for the President, unlimited as to the number of successions.
- With the exception of the Commission, all Boards are under the Department of Consumer Affairs, with budgets set annually by the Governor.
- Other than the Commission on Judicial Performance, the Boards do not manage all aspects of their discipline systems directly and their functional areas in support of public protection appear to be less comprehensive than those of the State Bar of California.

III. Next Steps: Review of Issues Advocated in the Context of Other Issues for Consideration

The Task Force work has focused on issues of governance and, more recently, de-unifying the State Bar, an approach strongly endorsed by several Task Force members. Such questions cannot, however, be considered in isolation of their practical impact on the State Bar's public protection activities, particularly in light of statutorily mandated fundamental reviews of State Bar operations now on-going.

On May 15, 2016 the State Bar's new senior leadership team released four studies in response to the 2015 State Audit (i.e. Workforce Planning, Classification and Compensation Review, Backlog Review and Spending Plan). These studies point to the need for significant reorganization in several of the State Bar's discipline related areas, as well as the importance of reviewing all State Bar activities to ensure that resources will be available to meet statutorily prescribed performance objectives in all of the State Bar's public protection work.

To ensure that these questions receive the attention necessary to inform any particular approach, staff urged the Task Force to consider four questions:

1. What problem are we trying to solve?
2. How does any given proposed intervention solve the problem?
3. What are the cost and operational implications of the proposed interventions?
4. How will we define and measure success?

To facilitate a discussion about the impact of these questions on choices presented to the Task Force, staff prepared two charts, one *Advocated Issues* by others and a second; *Other Issues for Consideration* (see attachment). These were presented to the Task Force for preliminary consideration on May 26, 2016 and will be used to focus the Task Force discussion on June 14, with a view towards forming a structure on which the final report can be designed. They are equally relevant to the full Board's discussion of the Task Force work on June 14.