

## Statement of Qualifications, Proposals & Priorities

For Position of President, California State Bar

**Michael G. Colantuono**

July 2017

My fellow Trustees:

As our rules provide, I write to set forth my qualifications, proposals and priorities for the office of President.

**Qualifications and Experience.** I have served on the Board for five years and in that time have assisted and led a number of important initiatives. I served as your Treasurer, Stakeholders Chair, and Chair and Vice Chair of the Audit Committee. I served on the Governance Task Force which recommended our current committee structure. I have a deep background in government leadership and experience in Sacramento which can help maintain the Bar's improved relationships there under Jim's leadership — respecting, of course, the roles assigned to the Chief Justice, our Executive Director, Jennifer Wada and others.

**My Values.** I want to mention briefly three values I bring to this work: First is a commitment to public service. I want to lead the Board from the perspective of one who serves it, assists in reaching its goals, and helps it to be effective. You are not here to “implement my vision;” I want to help the Board define and accomplish its own.

Second, I am committed to building on Jim's success in restoring cordial relationships among Boardmembers. Our rules call on our President to manage conflict and lead the Board to consensus, while respecting differing points of view and encouraging healthy debate. I will happily take on this work. There is a stronger value implicit in these, however — trust. I will work to gain your trust and to maintain trust among us and would be honored to have the level of trust Jim earned in the last year. This requires honest, frequent and even-handed communication and a respectful ear (and a bit less talking by me), and an effort to make all feel valued, included and heard. It is, frankly, time-consuming and requires both skill and patience. I'm committed to it and, with your help, think we can maintain the substance — and public perception — of a cohesive, committed, effective Board.

Finally, I am committed to preventing harm to the public rather than merely punishing it. This is the philosophy some have labeled as being “smart on crime” rather than “tough on crime.” It means identifying the warning signs and root causes of the behaviors by lawyers and those who provide unauthorized legal services that harm clients and devising means to act on those warning signs and to address those root causes to prevent harm rather than merely punish wrong-doers.

**Proposals.** I do not have a proposal I wish to sell or impose. I want to listen, lead the whole Board, and speak for all of you when necessary. Doing that means I need to listen more than I speak on these issues, try to find a center of our discussion, and speak to and for consensus.

There are three things I think we can do to make things better for the Bar and for those of us who volunteer to help lead it:

- Manage our Board dialog more effectively;
- Maintain our improved relationships in Sacramento;
- Generate positive press for the Bar and its good work emphasizing substantive policy-making.

A few comments on each:

**Board leadership.** If you elect me your President, I intend to meet with this year’s Executive Committee to discuss how to structure our committee and Board meetings and how to deploy your talents in leading the Bar. I also want input from each of you. Our current meeting schedule is a poor fit for the requirements of Bagley-Keene. We might want to trade shorter, monthly meetings for our current eight, two-day meetings per year, so we can separate committee and Board discussions (perhaps with some committees meeting only in odd-numbered months while the Board and others meet most months) and allow Boardmembers to participate in discussions of topics first raised in committees on which they do not serve. I am not wedded to any solution, but I do think we can use our time more effectively and look forward to discussing with all of you how to do so.

I also intend to generally abstain from voting except to break ties. If I am to serve all of you and to lead the Board from the center, I must put my energy into effective meeting management to allow all to be heard respectfully, to identify the bases of consensus, and to help achieve it. I can leave policy advocacy to other Trustees.

Here are other ideas for enhancing our Board leadership I'd like to discuss in the coming months:

Continue Jim's practice of appointing **liaisons** for particular topics to assist the Board in sustaining focus on key issues and to allow nimble input to our management within the constraints of Bagley-Keene. These might include **litigation oversight**, **personnel**, **communications**, and the ongoing **IT projects**.

I will step up **communication to Trustees**, using President's reports at meetings and well as emails between meetings and, as appropriate, confidential communications from our counsel. I think providing more information to the Trustees about what the Bar is doing — and why — can maintain trust and more fully engage Trustees. We have relied heavily on the Executive Committee this year, partly due to the difficulty of scheduling special meetings. Monthly, shorter meetings can be better involve all Trustees.

**Maintaining our relationships in Sacramento.** It is no secret that the Bar and its leaders did not have an easy time in the Legislature last year. Things improved dramatically this year and I want to build on Jim's success. While I have developed relationships there over my 28 years in government, I cannot do this single-handedly. We can do it collectively, though, and I have ideas on how to do so and am eager to hear yours. First, we must recognize that our meetings are now webcast. That means every word we speak at a Board meeting can be used to further or hinder our aspirations in the Capitol immediately and into the indefinite future. The internet never forgets.

We must be thoughtful about what we say to the Legislature and what we say about it. Lawyers have instinctive respect for the judicial branch and its leader, the Chief Justice. Many of us have deep relationships in that branch. By contrast, our democratic tradition teaches us to be skeptical of legislators. We cannot voice that

skepticism in our Board meetings without aggravating a relationship crucial to the Bar. We can leverage the relationships many of us have in the Legislature to ensure clear, respectful communication that reflects our shared desire to lead, protect, and enhance the Bar. It may be useful to formalize this effort by appointing two Trustees as **legislative liaisons** to work with our staff and lobbyist.

The **fee bill** must make it to the Governor's desk by August. We must give thought to the role we wish to play in those discussions and the points we should defer to other leaders of the state and our profession. If you elect me President, I will take my role as your spokesperson seriously and ground it in a commitment to continue rebuilding relationships that matter greatly to the Bar and its ability to serve California. The Hippocratic Oath is helpful here — first, do no harm.

**Substantive policy-making.** We have, of necessity, spent much of our energy these past few years addressing internal management issues, litigation, and external controversy. We have not devoted as much time and energy to substantive policy as we wish and, quite frankly, what policy-making we have had time for has been imposed on us by the Supreme Court (the Rules of Professional Conduct revision) or the Legislature (class. and comp. studies, workforce planning, spending plan, etc.). Most of us enjoyed the recent discussion of the Rules of Professional Conduct and it generated press coverage devoted to substantive policy, not to conflict or political drama. We can do more of this.

I suggest every committee of the Board take on a significant policy issue in the coming year with the goal to bring meaningful action to the Board by the end of the Board year. While these policies must reflect the interests of committee chairs and members, let me identify some that might be worthy of our attention. These discussion will generate positive press attention; show the Court, the Legislature, the Governor and the public that the Board is effectively engaged in the work we are charged with; and, quite frankly, will be more fun than some of the work we have faced recently.

Here are my suggestions, I look forward to yours:

EXECUTIVE COMMITTEE: Many of my ideas for the work of this Committee are expressed above. However, this Committee might also give focused attention to the Bar's need to upgrade its technology. In particular, we should look to automate the record-keeping for member records and compliance — if we can outsource data entry to attorneys and CLE providers, we can make the Bar more efficient.

In addition, we are happy with our senior management team, but know they have had a collective baptism of fire. The Board needs to consider ways to support them professionally and personally while ensuring effective oversight of their work. We must also engage in some succession planning, as many key leaders can be expected to retire within a few years. Ex. Comm. may be the right venue for this effort.

REGULATION AND DISCIPLINE: Now that we have a new Chief Trial Counsel, we must help him succeed with particular focus on the case management system and implementation of the coming new Rules of Professional Conduct.

Some argue the Bar imposes heavier discipline on solo practitioners and others who lack the resources to retain the most effective respondents' counsel. They wonder whether this creates a two-tiered discipline system that treats wealthier, big-firm attorneys more leniently than others. They fear this creates racial disparities. We should address these concerns by seriously studying them, perhaps with academic support. Wide-spread concerns about the American justice system's treatment of people of color have arisen from events in Ferguson, Baltimore, Minnesota, and, elsewhere. Bar regulators are not immune from these concerns and we should take the critique seriously if only to ensure ourselves — and the public — it is not true or that we have done all we can to address the implicit bias common in our society.

We have also discussed the challenges for legal services regulators arising from information technology and globalization. Of concern, too, are the demographics of the legal profession, with the number of California lawyers soon to peak and to begin to fall. The rising number of lawyers over the past 50 years has brought us additional revenues each year and economies of scale. The future may see declining revenues and need to downsize the Bar. Commonly discussed strategies for dealing with

globalization include regulating in-state activity as best we can and encouraging reciprocity among regulators.

I have another idea. Before the development of the modern administrative state, there was a need to ensure consumers of newly mass-marketed products that their purchases would be safe and effective. The private sector responded with privately funded agencies to provide that assurance — like Underwriters Laboratories (“the UL label”), the “Good Housekeeping Seal of Approval,” and the Insurance Services Office funded by insurers to provide advice, standardization and information. If the California State Bar makes itself an effective regulator — as we know it can — it might market its services of oversight, consumer protection and quality control to legal services providers around the world. That can allow us to maintain economies of scale and our current organizational heft, even as we regulate fewer California attorneys. This is a big idea that will take years to come to fruition, but we can begin discussing it now.

Similarly, before the Brexit vote, Britain sought to grab a large share of the market for legal services in the English-speaking world by changing how it regulates law practice, allowing non-attorney funding of law firms, and the like. It sought to add legal services to insurance and financial services as markets in which it leads the world. Post-Brexit, Britain may no longer be as competitive in the legal services market. This might be an opportunity for California. Again, this is a big idea that will take time and, likely, legislation, but we can begin considering it now.

We also need to respond to continued legislative and public concerns about the unauthorized practice of law (UPL) as it affects all Californians, but especially vulnerable immigrant communities. This might be a task for RAD, a new subcommittee, or Board liaisons. We need to ensure our focus on this issue and I look forward to your ideas on how to do so.

We know that Client Trust Accounting failures are an early warning sign of professional misconduct. RAD has considered audits of these accounts and run into practical obstacles. It may be that legislation is required to allow us to take this on. We may not have the resources to take this on soon even with that authority. However, this

is worthy of discussion. Moreover, seeking legislative authority to more effectively prevent harm to clients is a healthy conversation to have with the Legislature.

Finally, the backlog study will require RAD's attention, too, especially if we are to start designating some complaints as "complex" and not subject to the usual 180-day backlog standard.

AUDIT AND PLANNING & BUDGET: While Audit's core functions are few and distinct (the annual fiscal audit, the biannual State audit, review of Board and management expenses, etc.), the Planning & Budget Committee will have responsibility for related financial management issues. Thus, I state my ideas for this area of policy-making jointly.

I think we should develop simplified metrics for the Board's finance and management functions comparable to those RAD is developing for our discipline system. These are not a substitute for focused attention to all the reports and details our staff provides, but can help all Boardmembers — including newer Trustees and those unexperienced in government accounting — to maintain watchful eyes on the Bar.

Of course, P&B will have much important work to do to follow up on the recent classification and compensation studies, the work force planning review, the spending plan and the ongoing bargaining with our employee groups. It can also attend to our Client Security Trust Fund and respond to the Legislature's concerns that more funding is required to serve the clients protected by the Fund.

The successful fledging of the sections as a separate organization must receive attention, too, perhaps in P&B or the Programs Committee.

PROGRAMS: The ongoing studies of the pass standard for the Bar, the possible elimination of non-accredited law schools, and the closure of Whittier Law School and the risk of other closures all raise profound questions about our role in regulating admission to the profession. These are, initially, questions for the Committee on Bar Examiners, but there is a role for our Programs Committee, too. The effort to audit CLE

compliance and the performance of CLE providers are worthy of continuing attention by this committee, too.

The transition to electronic reporting of CLE attendance is a worthy project for the committee, too. It can play a role in RAD's effort to identify warning signs of impending professional failures and to develop educational programs to address them.

Pursuit of a diverse profession that provides equal access to justice to all of California's diverse communities must remain a priority for the Bar and the profession. We should try to build on successes in the past two years to further increase funding for legal services. The Programs Committee might make renewed effort to diversify the applicant pool for the various boards and commissions for which the Board has appointment responsibility. Outreach to communities of color, rural attorneys, women, the LGBTQ community, veterans and the disabled could make a meaningful difference in how the Bar serves California.

**CONCLUSION.** I would be honored to be your President. Within the constraints of our open meeting rules, I would be happy to discuss these ideas and to hear yours. Thank you for your consideration of these ideas and of my candidacy!

Sincerely,

Michael G. Colantuono