



PRESIDENT'S PAGE

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Licensees (Formerly Known as Lawyers) Fight Back

Since the State Bar was ordered to split its regulatory and disciplinary functions from its education and association functions in 2017, we have experienced a growing sense that the State Bar is an entity from which California lawyers must be protected. The Orange County Bar Association, under the leadership of my predecessors, Nikki Miliband and Deirdre Kelly, has taken a leading role among local bar associations in representing our members in connection with the many potentially damaging changes proposed by the State Bar. In 2020, the OCBA will continue to both monitor the State Bar's proposals and speak out however and whenever necessary.

One of the first shots across the bow by the State Bar's leadership was its proposal to triple licensing and related fees, from \$383 to \$813—an increase of \$430. Not surprisingly, there was a loud outcry from lawyers across the state. In fairness to the State Bar, they had not raised fees in two decades, so some increase may have been inevitable and even warranted. But the scope of the proposed increase seemed almost punitive. At a minimum, the proposal was tone deaf to the economic struggles of many California lawyers—particularly those lawyers who devote their practices to underserved client populations. These are the very lawyers who likely would be most impacted by the fee increase. Thus, the fee increase was likely to cause a decrease in the legal services conferred on low income clients. In other words, access to justice—one of the pillars the State Bar claims to adhere to—would be negatively impacted by the State Bar's proposal. This is something the OCBA noted in its pointed public comment letter.

Fortunately, the State Bar may not raise fees on its own; it requires a legislative act. Also fortunately, the State Auditor reviewed the State Bar's proposed fee increase and found it excessive and unnecessary. It apparently was not lost on the State Auditor that the State Bar owns its building in the Embarcadero District in San Francisco, which by its own admission is worth over \$200 million. Thus, the State Bar is hardly in dire economic straits. The result was that the legislature approved an increase of *only* \$161 (from \$383 to \$544)—not an insignificant increase, but at least well below what the State Bar initially proposed. That said, stay tuned for more proposed fee increases next year and in subsequent years.

Another significant shot across the bow was the State Bar's recommended changes to the practice of law, which included allowing (a) nonlawyers to practice law in certain areas, (b) nonlawyers to share fees and even own law firms, and (c) artificial intelligence providers to serve clients directly, without the involvement of a lawyer. And to hammer home the point that, in the State Bar's view, nonlawyers or even computers could do the work of lawyers, the State Bar began referring to lawyers as "licensees," rather than "lawyers" or "attor-

neys," on its website.

Again, the OCBA was outspoken in its criticism of the proposals, holding a fiery town hall meeting with members of the State Bar task force charged with analyzing the proposed changes, and sending a nineteen-page letter that most likely got the attention of State Bar officials. Whether in the end anything we say will change the mind of the State Bar remains to be seen. But the good news is that most of these changes require legislative action as well as approval of the California Supreme Court. Stay tuned.

Finally, no discussion of the State Bar would be complete without mentioning the recent bar exam debacle. To set the context, California's bar exam passage rate has been well below 50% for several years, which was drawing criticism from many sectors. Several days before the July bar exam, someone at the State Bar "inadvertently" sent to a number of law school deans a list of the subjects that were to appear on the upcoming test. The State Bar's leadership quickly huddled and decided that the proper solution was to send out the same list of subjects to all individuals signed up to take the exam. Coincidentally, the son of the State Bar's Executive Director, Leah Wilson, was one of those individuals taking the test. Not surprisingly, the State Bar's passage rate for the July 2019 exam skyrocketed. But not to worry—the State Bar commissioned a study by a psychometrician, who determined that the increase was unrelated to the fact that the answers—I mean subjects—were emailed out in advance. And who could doubt the conclusion of a psychometrician?

Following the exam, the Supreme Court hired a law firm to investigate the incident, who concluded that the initial disclosure of the exam subjects to the law school deans was an inadvertent act by a State Bar staff person. In the same report, the Supreme Court sharply criticized the State Bar's handling of the incident, stating that the State Bar's "harried response reflected an agency ill-prepared to handle an administrative emergency."

On December 13, 2019, Leah Wilson unexpectedly announced her resignation as Executive Director of the State Bar. Whether her departure means the State Bar drama we have been living through these past few years comes to an end is anyone's guess. Whatever happens, though, the OCBA will be right there to inform and stand up for our members as best we can.



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