



October 11, 2016

Chief Justice Tani Cantil-Sakauye and Associate Justices
Office of the Clerk
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: *In re Attorney Discipline* – Docket No. S237081

***AMICUS CURIAE* LETTER REGARDING REQUEST OF THE STATE BAR OF
CALIFORNIA FOR SPECIAL REGULATORY ASSESMENT**

To the Chief Justice and the Associate Justices of the California Supreme Court:

Consumers for a Responsive Legal System (“Responsive Law”) would like to thank the Supreme Court of California for the opportunity to present this *amicus curiae* letter. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible and accountable to the people. We have testified to dozens of state bar associations and legislatures as well as to the American Bar Association on regulatory issues affecting users of the legal system.

Based on the Court’s request, we are submitting this letter to express the viewpoint of consumers of legal services. As a consumer advocacy organization, our primary concern in matters of bar organization is that governance structures create checks on lawyer self-interest and serve the public interest.

This court requested that the SBC formulate a policy to address “proposed Board actions that implicate antitrust concerns,”¹ but the SBC’s request for a Special Regulatory Assessment gave no acknowledgment of this directive. Although the Special Regulatory Assessment requested by the State Bar of California (SBC) cites public protection rationales, it neglects to address antitrust liability concerns expressed in the FTC guidelines issued in the wake of the United States Supreme Court decision in *North Carolina Board of Dental Examiners v. Federal Trade*

¹Supreme Court of California Order to the State Bar, *Re: S237081 – In re ATTORNEY DISCIPLINE SYSTEM*, September 8, 2016.

*Commission.*² These guidelines make clear both a need for public oversight over legal services' regulation, and a necessity that the structure of a governing board ensures market participants do not control the board's decisions.³

Tellingly, the SBC's failure to respond to the Court's request for a proposal addressing the shortcomings of its current governance structure illuminates the need for external oversight of that governance structure, and it underscores the wisdom of *Dental Examiners'* holding that a governance structure should vest the ultimate authority to regulate an industry in the public, not in active market participants of the industry itself. **For this reason, we urge the Court to tie the Special Regulatory Assessment requested by the SBC to a requirement that the Bar submit a proposal for reform of its governance structure that would impose active state supervision of any potentially anticompetitive actions taken by the SBC.**

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Gordon", with a long horizontal flourish extending to the right.

Tom Gordon
Executive Director

² 135 S. Ct. 1101 (2015).

³ FTC Staff Guidance on Active Supervision of State Regulatory Boards Controlled by Market Participants, pp. 8-9 (October 2015).