TO: The Trustees, Los Angeles County Bar Association

FROM: The Ad Hoc Committee on the Exercise of the Association's Purview

RE: Purview Limitations

Background:

In May 1990, the Association's President, Harry Hathaway, appointed an Ad Hoc Committee to consider whether there should be any general principles to guide Officers and Trustees of the Association in limiting the scope of their activities due to purview considerations. The Committee consisted of Knox M. Cologne III, Chair, James H. Aguirre, Donald P. Baker, Lee S. Edmon, Eudon Ferrell, Fred J. Fujioka, Gavin Miller, Joan Patsy Ostroy, Matthew S. Rae, Jr., Gregory B. Wood and Laurie D. Zelon.

The Committee began with an extensive review of the U.S. Supreme Court decision Keller v. State Bar, 110 S. Ct. 2228, and concluded that while the case does not directly impact the Los Angeles County Bar Association, it indirectly focused on the purpose for which an organization is founded. Also, by limiting to some degree the ability of the California State Bar to take positions on controversial issues, it leaves it up to voluntary bar associations to deal with such issues, if appropriate.
During the next thirteen months, the Committee met numerous times as a full Committee and as various Subcommittees. We examined the practices of other voluntary bar associations with respect to purview limitations and related issues. We note the results of a June 20, 1991 survey conducted by the National Caucus of Metropolitan Bar Leaders on whether associations should take positions on controversial matters, a copy of which is attached to this report as Exhibit "A." We also began considering a number of issues including (i) whether there should be any principles, procedures or guidelines for officers and trustees with respect to purview limitations, (ii) who should decide purview issues, and (iii) how can Officers and Trustees be assured that members of the Association with minority viewpoints have an opportunity to present their views for consideration. Attached as Exhibit "B" is a list of some of the issues we discussed. However, we ultimately concluded that some of these issues were beyond the purview of the Ad Hoc Committee. After many months of discussion and debate, the Committee reached a unanimous consensus on the recommendations set forth below.

Recommendations:

1. The Board of Trustees should not adopt specific guidelines on the exercise of purview. There are inherent difficulties and
impracticalities in attempting to limit the actions of future Boards of Trustees which have a responsibility to determine what action is or is not in the best interest of the Association and which would know the context in which issues arise. Therefore, attempting to place limits on future Boards of Trustees is not appropriate or well advised.

2. Officers and Trustees should consider, from a purview perspective, the appropriateness of any proposed discussion or action in light of Association purposes and the views of the members. In the discussion part of this report, the Committee suggests some general principles worth bearing in mind by Officers and Trustees but we do not recommend that they be adopted or considered as guidelines.

3. In order to ensure that Officers and Trustees have an opportunity to hear minority viewpoints prior to taking any action, we recommend the Board of Trustees adopt a variation of the former two-meeting rule. We believe that 25% of the Trustees present and voting should have the right to put over to the next scheduled meeting any
action item unless the majority of the Trustees present and voting find that the need for action is of such urgency that action by the Trustees cannot be delayed until the next scheduled meeting.

Discussion:

The question of whether there should be any principles, procedures or guidelines for Officers and Trustees in the exercise of purview was viewed by the Committee as the fundamental issue under consideration. The Committee believes that it should be essentially up to each Board of Trustees to determine the principles, procedures and guidelines, if any, which it should utilize to establish self-restraining limits on the matters which it should consider, discuss and act upon, subject, of course, to any legal limits and limits in the Association's articles and bylaws. The Committee believes that there are inherent difficulties and impracticalities in attempting to limit the actions and discussions of future Boards of Trustees. It is the Committee's view that attempts at placing such limits on future Boards of Trustees are not appropriate or well advised.

Even where the limitation is expressed in terms of "guidelines" or "recommendations," so that it is clear that such limits are in no way mandatory, the Committee believes
that such efforts to recommend limits may be viewed as inappropriately designed to influence future behavior of future Boards of Trustees. In virtually all circumstances, a Board of Trustees faced with what it perceives to be a specific problem or challenge is likely to be in a better position to determine the appropriateness of proposed discussion or action than would be a group of persons operating in a different time and without knowledge of the specifics of that problem or challenge.

Nevertheless, the Committee believes its views as to pertinent questions that can be asked when purview issues are raised may be helpful to present and future Boards of Trustees in weighing actions where the Board might itself question the appropriateness of its role and thereby might be assisted by a statement of principles that it might consider relevant. We believe the following general principles are worth bearing in mind in situations where an issue of purview is raised:

1. The Trustees as directors of a nonprofit corporation are fiduciaries, with duties generally to protect the interests of the corporation and its members, and to further the purposes of the organization. In this sense, the concept of purview is closely related to the concept of purpose, and purview limitations involve the
concept of institutional self limitation to purpose-oriented activity.

2. The only statement of purpose of the Association is that set forth in the Articles of Incorporation adopted many years ago. That statement should be reviewed to determine if it accurately reflects the purpose and goals of the Association at the time the purview issue is raised. In that review, the draft mission statement prepared by the Advisory Planning Committee in 1985 but never adopted might be considered. A copy of that statement is attached to this report as Exhibit "C." Also, the legislative guidelines adopted by the Board of Trustees on October 13, 1982 and attached to this report as Exhibit "D" provide a useful prospective. In any event, as most statements of purpose are quite general, situations may arise where it is not at all clear that a given matter falls within or without such statement of purpose. In such situations, the Board of Trustees must exercise its own discretion in determining whether the matter under consideration falls within the purposes of the Association.
3. Without attempting to articulate a statement of purposes for the Association, it is obvious that there are primary purposes — i.e., those related to the professional concerns of the membership and the profession generally, including (i) administration of justice support and improvement, (ii) the furthering of professional competence and responsibility, (iii) improving the image of lawyers in the Community, and (iv) strengthening of the Association. Other general purposes concern Community welfare in ways that are not law related or are law related in a rather tenuous way and that do not differentiate between the needs and interests of lawyers and the needs and interests of the Community as a whole. Sometimes these more general purposes are perceived sufficiently important to call for Association action. In these situations where the relationship between the purposes of the Association and the proposed action appears on a fair judgment to be tenuous so that there is substantial disagreement as to whether this relationship does or does not, in fact, exist, costs and risks for the Association and the impact on the Association’s effectiveness in representing the interests of its members on other matters
should be considered and a number of questions might be asked such as:

(a) To what extent can it be fairly argued that a significant law-related principle is involved? If so, the costs and risks of taking the action may seem more clearly appropriate.

(b) Is a significant portion of the membership likely to be offended by the proposed action? Is the proposed action likely to split the membership ideologically, or be perceived by significant numbers as "ideological," so that a group within the Association might be seen as seeking to use the prestige of the Association to further its own particular aims? An affirmative answer could call for greater care and restraint, if only in the way questions and action alternatives are posed.

(c) Is the proposed Association action likely to be effective in achieving its own purpose?
(d) Might there be a better forum for
debating the proposed action or a forum
likely to have access to better
information?

(e) Will the Community (broadly speaking)
view the proposed action as appropriate
for the Association?

(f) Will the proposed action and related
discussion distract the Board of
Trustees from actions on and discussions
of issues more closely related to its
more fundamental purposes and will such
action and related discussion undermine
the influence of the Association over
such issues?

The foregoing should not be perceived to be a checklist
or to encompass all appropriate questions for consideration
by a Board of Trustees. The Committee does not believe that
the mere fact a matter might be deemed "controversial"
should be a reason for restraint or avoidance, since many
controversial positions taken by Association Boards of
Trustees in the past have proved to have been correct and
ultimately strengthening to the Association. Once the
Trustees have taken into account various points of view, the
degree to which the matter might be perceived to be
controversial should not preclude the Trustees from taking
action.

The Committee does believe, however, that in the event that a substantial minority of the Board of Trustees believes that an agenda item raises an issue concerning which there is a substantial division among the membership, or a minority viewpoint which needs to be heard, and as to which there is no time deadline that would prohibit a deferral of Trustee action for a limited time, there should be a mechanism which would ensure that minority viewpoints are heard and considered prior to final action by the Trustees. The Trustees should be especially sensitive in acting too rapidly on any issue where there is perceived to be a substantial division within the Association. Also, minority viewpoints deserve serious and sensitive consideration and should be afforded the opportunity to express their views, which views should be taken into account in reaching any final decision.

The Trustees presently refer matters out to sections and committees with expertise in the subject matter of the issue at hand. Late or emergency additions to the agenda, which might avoid the referral procedure, should be given the most careful scrutiny and deferred for the purpose of referral, if possible.

The Committee accordingly recommends that the Trustees adopt a rule which would permit 25% of the members of the Board of Trustees present and voting to request that a
matter be deferred for consideration to the next regularly scheduled Trustees meeting unless a majority of the Trustees present and voting believe that the timing of the issue is so critical as to demand immediate action. In determining whether the timing is so critical, the good faith of the proponent should be carefully considered with special attention to the question of why the matter could not have been brought before the Board of Trustees in sufficient time to permit both referral to appropriate sections and committees and the invocation of the two-meeting rule. The Committee believes that the adoption of such a rule will increase the likelihood that diverse views will be heard and that whatever action the Trustees take, Association members holding minority views will believe that the process protects their right to inform the Trustees of their views prior to any final action.

Respectfully submitted,

THE AD HOC COMMITTEE ON THE EXERCISE OF PURVIEW

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