

LETTER TO THE EDITOR

To the Editor:

In May, outgoing president Gene Leverty lectured members on “Being Accountable.” When will the same apply to the Nevada Bar?

The bar’s mission is “to govern the legal profession, to serve our members, and to protect the public interest.” Clearly, the middle clause “to serve our members” has been subordinated.

Nevada’s cost to practice is among the nation’s highest. To earn a living, lawyers *must* join and pay. But don’t fault even captive members for expecting a modicum of mission statement customer service.

So when will the board be accountable to members? When will it become more transparent? When will it publicly report board meeting minutes and votes? When will it *detail* expenditures, especially those “not necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services?” *Keller v. State Bar of Cal.*, 496 U.S. 1 (1990).

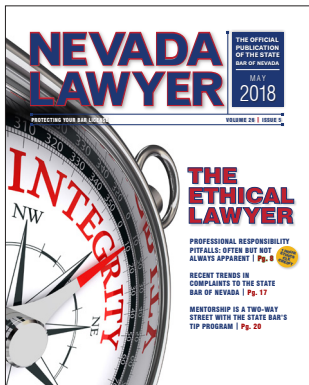
Member service takes a backseat because as a quasi-governmental agency, the bar acts *both* as regulator protecting the public’s interests *and* as trade association looking out for lawyers’ interests. But because the two interests aren’t the same, there’s a conflict. So lawyers get perturbed. The public gets mixed up. Even the bar’s confused about whether it’s a regulator or a trade association.

Recent trends highlight the confusion. Now playing catch-up on its backlog of complaints, the bar overcompensates and becomes exceptionally prosecutorial. With member irresponsibility now presumed, the board prioritizes ‘constant vigilance’ to punish lawyers. Any wonder members see ‘us vs. them’?

As other examples, consider the board’s petition imperiling lawyer First Amendment rights by adopting ABA Model Rule 8.4(g). Or its just-denied random trust account audit petition that besides painting all lawyers with the same malfearing broad brush -- ignored a tremendous cost.

In 2016 -- using its same broad brush -- the board secured court approval for another MCLE hour in “substance abuse, addictive disorders, and/or mental health issues.” But as Justice Kristina Pickering stated in her dissent, it will cost members over \$1 million dollars annually with no evidence of effectiveness. This past March the board again increased practice costs via a mandatory non-refundable \$100 advertising filing fee.

And without knowing the extent of client harm from uninsured lawyers, the board seeks mandatory malpractice insurance for all private practice



lawyers. No matter such insurance only covers mistakes -- not intentional, illegal acts like diverting money from client trust accounts.

Leverty concludes, “Me, me, me,” arguments won’t help solve public protection issues “and the honor of the legal profession.” But “you, you, you” arguments are equally ineffective.

Fortunately, there’s a remedy. Follow Nebraska’s lead in 2013; California in 2017; and what Arizona’s trying to accomplish. Separate the Nevada Bar’s regulatory functions from its trade association role.

Transfer regulation, licensing and discipline to the Nevada Supreme Court. The bar can then exist as an entirely voluntary association no longer conflicted by a regulatory mission. The court’s regulatory arm then makes the public interest paramount while the voluntary association becomes fully accountable to members.

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