

John Robert Byrnes
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April 4, 2011

Dear President Boll,

I hereby resign as a member of the finance committee. The basic reason for my resignation is my concern that the committee does not perform the function that members of the bar as a whole expect it to—thoroughly review all bar expenditures and insure that the members' money is prudently spent. This function is particularly important in view of the fact that a substantial portion of the bar's funds is extracted from some members involuntarily as a result of mandatory dues. In my opinion, members of the bar cannot and should not assume that the use of their money is carefully reviewed by the finance committee for the reasons I have set out below.

I have been through two entire budget cycles and, having observed the same system operate virtually identically both times, have formed certain conclusions. My basic conclusion is that the way in which the budget is prepared and presented is intended to preclude effective review by the finance committee.

The budget is presented as a dense sheet of numbers showing prospective income and expenditures for the coming year. No detailed written explanation of increases in expenditures or decreases in income is provided. This system has been used to justify salary increases every year since fy 2003-2004. No one on the finance committee including the current president, past president, or president elect is allowed to know the actual salary of any bar employee without special permission of the Executive Committee.¹ Actual expenditures for salary, payroll tax and benefits have increased 46% from fy 2003 through fy2011 and are anticipated to increase 5.5% for fy2012.²

¹Salary "bands" are provided which show general groups of employees by job titles and roughly how many employees within a band are near the top of their band. The President, who is the CEO of the organization, may view specific salary information only if approved by vote of the Executive Committee. The President must also provide a "business reason" with his or her request. The salary of the Executive Director is known to the Executive Committee because it approves his salary and annual bonus.

²FTEs during that time increased from 83.5 to 98.2 or 18%.

Such explanations of budget issues as may be provided in response to specific questions are provided by the Executive Director based upon anecdotal evidence which is not subject to objective review.³

This method of budget presentation and discussion resulted in a situation this year that at least bordered on dishonest manipulation. The budget for capital expenditures totaling around \$840,000 was presented before the rest of the budget was presented. Most of this amount (more than \$600,000) was for a revamp of the bar IT system. This was approved without discussion of the overall budget effect. A few weeks later the full budget was provided showing a projected accrued loss of around \$350,000. The total cost of salary increases (including payroll tax and increase in benefit costs) is approximately \$360,000. Combining this increase with the cost of the computer improvements alone, the increase in costs was more than \$1,000,000. The total net projected deficit, excluding the capital budget, was \$363,728.⁴

A cash flow budget was also included at this time which (in addition to the "direct expenditures" budget) included the capital budget and showed a negative cash flow of \$887,514.

I am unable to understand how a capital budget can be presented for approval in advance of the cash flow budget without disclosing the drastic effect on the overall financial picture.

This dire budget projection was alleviated only by a reduction in expenditures combined with a substantial invasion of the cash reserves previously established by the finance committee and approved by the Board of Governors. To meet the former goal, the staff presented a list of possible cuts. Virtually all of these cuts are made from projects supported by various Sections and Divisions

³Some of the anecdotal evidence is contradicted by written responses provided by other bar staff. For example the Executive Director justified proposed salary increases of 3% for next year (in the face of no increases for government employees and others) on the basis that there were years when bar employees did not receive raises and others did. Documentation provided to the committee by the staff shows that, to the contrary, bar staff has received an increase every year since fy2003-2004. Increases for the Executive Director are decided in private by the Executive Committee based in part on his contract, which is also secret. I estimate that his current compensation package is between \$240,000-\$260,000.

⁴This budget included as an expense accrued depreciation of \$521,000. No information relating to how this was amount was calculated was provided.

of the bar.⁵ For example, items on the possible cuts list included things like eliminating bar payment for the 50 year member recognition luncheon and other programs popular with the membership.

I have listed a few recommendations for improving the process in future years. I would be happy to discuss these further.

1. Allow the Finance Committee to hire its own accountant to advise it on all options available and to explain in detail the policy implications of the financial reports. Many members of the Finance Committee lack significant understanding of accounting and budgeting matters. The staff is not a disinterested party regarding issues such as hiring outside consultants, funding of reserves, hiring freezes, employee salary and benefit increases, and other options. In addition, they are required to support the Executive Director's aversion to transparency in all matters of bar management.
2. Require the Executive Director to submit his budget in a proscribed format including written justification for all expenditures. All changes in management direction or policies affecting the budget should be set out in full.
3. Require that all staff expenditures comply with the same procedure required of the divisions and boards in requesting money. The divisions and committees have to go through a fairly elaborate process involving approval by both the Strategic Planning Committee and, to a lesser extent, the Finance Committee, before the expenditure of funds is approved. Why should staff expenditures be held to a lesser standard? All expenditures, both internally and for committee and section expenses should be held to the same standard of supporting bar goals. Absent such a requirement, many members will continue to believe that the principal function of the organization is to support the staff. Each legitimate function should be supported by some objective criteria, wherever possible.
4. Carefully review the budget for the CLE division including pricing levels, alternatives to present operations and similar subjects. The operation of this division results in considerable untaxed profit to the bar. It's operations and cost should be carefully investigated by the CLE committee and the Finance Committee. (It should be noted that the financial results achieved by this division indicate that at least one-half of the in state bar membership did not attend a single day long seminar.) Consideration should also be given to giving free or substantially reduced cost passes to recent grads. Although the analysis I requested showed a nominal cost for this service, it was not included in the budget.

⁵For example the staff recommendations did not include modifying or eliminating the proposed salary hikes nor did they include any restrictions on filling vacancies that may arise during fy 2012. The 2012 budget includes staff perks such as "Kitchen expense"- \$11,000; "employee welfare"- \$16,000; "professional membership expense"- \$31,200.

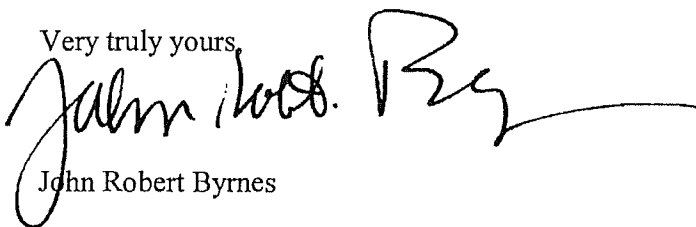
5. Carefully review all staffing levels and assignments. It is extremely difficult to review staffing assignments and costs, particularly when staff salaries are unknown. General assignments are made with little ability to review by any objective criteria. The staffing level of this organization has grown from 83.5 FTEs to 98 FTEs since fy 04. The cost including salary, payroll tax and benefits has increased from \$4,852,284 to projected \$6,878,680 for fy12. Of that amount salary increases averaged 3.4% per year. Health insurance costs increased 77%. Few members would say that this increase has resulted in comparable benefit to the membership, the Courts or the public. The audit committee should review the extent to which budgeted funds were spent in accord with the approved budget. A staff time budget was prepared at my request but not discussed at any meeting. The only way that bar expenses can be controlled is by insuring that staff time is spent on matters important to the membership. In the absence of more rigorous staff time accounting standards, it is extremely to difficult to determine the extent to which staff time is spent on priority matters and whether the overall staffing levels of the organization are appropriate.

6. Consider more active review of the budgets of the Board of Bar Examiners and the Office of Lawyer Regulation and the \$50 assessment. These costs have risen over time to a point where they almost equal the dues paid to the organization. The bar should insist on an opportunity to review and comment on these expenditures, since they are paid by the membership, without duplicating the activities of the boards and committees involved.

The members expect and deserve fiscal responsibility and accountability. I decline to participate in a flawed process that does not meet the members' needs or expectations. The members expect more than a rubber stamp. My comments are not intended as a criticism of any of the members of the committees I served on and I hope they will not be considered by them as such.

Thank you for giving me the opportunity to serve on this committee.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Robert Byrnes". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John Robert Byrnes