

RESOLUTION 08-02-2006

DIGEST

California State Bar: Election of President

Amends Business and Professions Code section 6021 to require that the membership elect the State Bar President.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Business and Professions Code section 6021 to require that the membership elect the State Bar President. This resolution should be approved in principle because the membership has an inherent interest in determining the leadership of the State Bar.

In California, the Board of Governors determines who will serve as the State Bar President. Becoming the president is only possible if one has served on the board and is elected by a majority of the board members. This is not the case in all state bar associations. For example, members of state bar associations in Alabama, Florida, Georgia, Texas and Wisconsin elect their president through association-wide elections.

Permitting the general membership to elect the bar president would help assure diversity in terms of geography, background, practice areas, ethnicity and gender for matters impacting state-wide legal affairs. Election by the general membership would also help assure that the president would be accountable to the members and would balance the board’s power to affect the agenda of the state bar.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend section 6021 of the Business and Professions Code as follows:

- 1 § 6021
- 2 Within the period of 270 days next preceding the annual meeting, the board, at a
- 3 meeting called for that purpose, shall elect the ~~president~~, vice presidents and treasurer for the
- 4 ensuing year. The president shall be elected by a vote of the membership of the State Bar.
- 5 The president shall be elected from among those members of the board whose terms on the
- 6 board expire that year, or if no such member is able and willing to serve, then from among
- 7 the board members who have completed at least one or more years of their terms. The board
- 8 shall adopt bylaws providing for the time, place, and method of election of the president.
- 9 The other officers shall be elected from among the board members who have at least
- 10 one or more years to complete their respective terms.

11 The newly elected president, vice presidents, and treasurer shall assume the duties of
12 their respective offices at the conclusion of the annual meeting following their election.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Provides that the president of the State Bar is to be elected by the Board of Directors.

This Resolution: Would require that the president be elected by a vote of the membership of the State Bar.

The Problem: Many members of the State Bar are compelled to pay dues as a condition of law practice. The president is an important legal figure in the state and should be responsive to the membership. The present system causes candidates for president to look inward at the Board of Directors rather than outward toward the members who pay dues. It is worth noting that the presidents of the bar associations of other states, including Florida and Texas, are elected by the membership at large.

In accordance with CDCBA rules, BASF timely offers this resolution for consideration. Consistent with traditional CDCBA practice, the Proponent reserves the right to timely withdraw or amend the resolution

IMPACT STATEMENT

This resolution does not impact any other law, statute or rule.

AUTHOR AND PERMANENT CONTACT: James J. Brosnahan, Morrison & Foerster LLP, 425 Market Street, San Francisco, CA 94105; (415) 268-7189; jbroshahan@mfo.com.

RESPONSIBLE FLOOR DELEGATE: James J. Brosnahan

COUNTERARGUMENTS

STATE BAR OF CALIFORNIA BOARD OF GOVERNORS

The Board of Governors opposes this Resolution because, whatever its surface appeal or intentions, it almost certainly will have major unintended negative consequences. These include:

- 1) The Resolution will undercut the State Bar's efforts to promote diversity in all aspects of the legal profession, by restricting diversity in the office of President of the State Bar, and ultimately in the Board of Governors itself.

- Under this proposal, the field of presidential candidates almost certainly will be narrowed to Board members who can afford a statewide campaign (i.e., the wealthiest attorneys) and/or those from major metropolitan areas who may be able to wage a successful campaign simply by focusing on their local constituency.
 - Solo practitioners, small firm attorneys, and government attorneys (three groups that include a high percentage of minorities and other underrepresented groups), as well as others without the necessary financial resources, will be significantly disadvantaged in seeking the Presidency because of the high costs of a statewide campaign.
 - Board members from less populated areas (e.g., the most Northern part of the state and the Central Valley) and rural areas will be significantly disadvantaged, given the simple distribution of the population of attorneys and their relative voting power, thereby reducing geographic diversity.
 - Because some members who run for a seat on the Board of Governors may do so with the idea of ultimately running for State Bar President, the proposed change will potentially result in a less diverse Board overall, limiting candidates for Board membership to those who perceive some reasonable chance of being elected President.
- 2) The Resolution will disenfranchise the public members of the Board of Governors by eliminating their input into the selection of President. This is directly contrary to the decisions of the Legislative and Executive branches of the State, who created the public member positions on the Board of Governors for the specific reason of giving the public some input into the direction and actions of the State Bar, including the choice of its President. Under the current system, public Board members have a vote for President that is equal to the vote of the other Board members. Under this proposal, the public members would have no vote at all.
- 3) The proposed statewide election would result in additional economic costs to the State Bar, requiring the use of funds that could be better spent on providing direct member services.

ORANGE COUNTY BAR ASSOCIATION

This resolution should be disapproved because it will have a very negative effect on the State Bar's central and important goal of promoting diversity at all levels of the practice of law, including the office of the Presidency. For example, solo practitioners, small firm lawyers, government attorneys and minorities will be significantly disadvantaged in seeking the Presidency because of the costs of a popular campaign. It will also be far more difficult to achieve geographic diversity as between North, South, Central Valley and other areas as well as rural attorneys versus urban attorneys because of the simple numbers of population distribution.

This resolution will also directly reverse the decisions of the Legislative and Executive branches of State Government by disenfranchising the public members of the Board of Governors. The Legislature and the Governor's Office created the public member positions on the Board of Governors for the specific reason of giving the public some input into the direction and actions

of the State Bar, including the choice of a President.

Finally, the approval of this Resolution will cost the State Bar substantial amounts of money which could be better spent on member services. Adding unnecessary costs to the State Bar might put upward pressure on dues, an issue of considerable importance to members of the State Bar.

SAN DIEGO COUNTY BAR ASSOCIATION

Contested presidential election campaigns are extremely expensive and time-consuming. As they, they limit the pool of candidates to the rich and/or idle, and do not necessarily result in the choosing of the best candidate or reflect on the merits of the record of service of the candidates.