

RESOLUTION 11-01-06

DIGEST

Notary Public: Exemption of California Lawyers from Educational Requirements

Amends Government Code section 8201 to exempt California lawyers from the educational requirements for notaries.

**RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE**

History:

No similar resolutions found.

Reasons:

This resolution amends Government Code section 8201 to exempt California lawyers from the educational requirements for notaries. This resolution should be disapproved because it carves out the exception for California lawyers without establishing a legitimate need for an exception.

The resolution is based on the assumption that a State Bar member is “perfectly capable of understanding his duties and functions as a notary public” without taking the initial required six-hour course of study and the three-hour refresher course prior to reappointment. While this might be true of many attorneys in California, there are certainly other groups, including paralegals, which might also fall in this category. In addition, the responsibilities of California notary publics is not a required subject for the California Bar Exam, and there is no reason to think that most members of the bar ever studied this topic or read the code sections that govern it.

Removing the course requirement for California lawyers may result in an increase in the number of notaries public available to Californians, if the current requirements are really a barrier to entry, but proponents have not substantiated that there is a shortage. The resolution seems to target the inconvenience of the exam, but it is an inconvenience that falls equally on all applicants. A better solution might be to have the notary public course work qualify for CLE credit.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Government Code Section 8201 to read as follows:

- 1 § 8201
- 2 As used in this chapter:
- 3 (a) Every person appointed as notary public shall meet all of the following
- 4 requirements:
- 5 (1) Be at the time of appointment a legal resident of this state, except as otherwise
- 6 provided in Section 8203.1.
- 7 (2) Be not less than 18 years of age.

8 (3) For appointments made on or after January 1, 2005, have satisfactorily completed
9 a six-hour course of study approved by the Secretary of State pursuant to Section 8201.2
10 concerning functions and duties of a notary public. Members in good standing of the
11 California State Bar are exempt from this requirement.

12 (4) Have satisfactorily completed a written examination prescribed by the Secretary
13 of State to determine the fitness of the person to exercise the functions and duties of the
14 office of notary public. All questions shall be based on the law of this state as set forth in the
15 booklet of the laws of California relating to notaries public distributed by the Secretary of
16 State.

17 (b)(1) Commencing January 1, 2005, each applicant for notary public, unless
18 exempt, shall provide satisfactory proof that he or she had completed the course of study
19 required pursuant to paragraph (3) of subdivision (a) prior to approval of his or her
20 appointment as a notary public by the Secretary of State.

21 (2) Commencing January 1, 2005, an applicant for notary public who holds a
22 California notary public commission, and who has satisfactorily completed the six-hour
23 course of study required pursuant to paragraph (1) at least one time, shall provide
24 satisfactory proof when applying for reappointment as a notary public that he or she has
25 satisfactorily completed a three-hour refresher course of study prior to reappointment
26 as a notary public by the Secretary of State. Members in good standing of the California
27 State Bar are exempt from this requirement.

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

PROPONENT: Contra Costa County Bar Association

STATEMENT OF REASONS

Existing Law: As of January 1, 2005, all persons seeking to be a notary public in the State of California must take a six-hour course concerning the functions and duties of a notary public. In addition, there is a requirement that the applicant for a renewal of the notary commission satisfactorily complete a 3-hour refresher course on the same material prior to reappointment.

This Resolution: Deletes the requirement that members in good standing of the State Bar of California be required to take the original six-hour course or the refresher course in order to be commissioned as a notary. As a member of the State Bar of California an applicant for a commission as notary is perfectly capable of understanding his duties and functions as a notary public without taking a six-hour course. In addition, the removal of this requirement should increase the number of notaries available to notarize documents for the citizens of the State of California.

The Problem: As currently enacted the education requirement to obtain a notary commission discourages attorneys from obtaining this commission. In addition to the six-hour course an attorney must take at least 3 hours out of his or her day in order to take the test which is required by the statute. Most attorneys have a notary commission as a service to their clients and it does not represent a significant source of revenue for them. To add these additional requirements will discourage attorneys from obtaining a notary commission.

IMPACT STATEMENT

This resolution does not affect any other laws.

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RESPONSIBLE FLOOR DELEGATE:

COUNTERARGUMENTS

ORANGE COUNTY BAR ASSOCIATION

The resolution seeks to grant members in good standing of the California State Bar with the vocational training of an appointed notary public. The Orange County Bar Association opposes this resolution. While members in good standing of the California State Bar are capable of doing many things, we should not be so arrogant as to eschew training and education in those areas that are avocations and not native to the practice of law.

SAN DIEGO COUNTY BAR ASSOCIATION

The duties of a Notary Public require a high level of attention to detail which is unique to that office. It is essential that the public be assured that notary publics follow explicitly the applicable laws governing the duties of a notary public. This can only be achieved by ensuring that all have received the same level of training. The education which lawyers receive in law school and as continuing legal education typically does not focus on the specific requirements imposed upon notary publics. The importance of ensuring that there is a system of qualified notary publics outweighs any minor inconvenience which may result from having to take the course and exam.