

**RESOLUTION 09-07-2007**

**DIGEST**

California State Bar: Election of State Bar President

Amends Business and Professions Code section 6021 to provide for the direct election of the President of the State Bar by members of the State Bar.

**RESOLUTIONS COMMITTEE RECOMMENDATION  
DISAPPROVE**

History:

Similar to Resolution 08-02-2006, which was disapproved.

Reasons

This resolution amends Business and Professions Code section 6021 to provide for the direct election of the President of the State Bar by members of the State Bar. This resolution should be disapproved because election of the State Bar President by members of the State Bar would be costly and provide no particular additional benefit to the members.

The resolution provides for communication to the members by the State Bar on behalf of candidates at reasonable cost. This provision would open the election up to those not of independent means. Shifting the cost of the election to the State Bar means either increasing the membership dues or restricting the existing budget. If the direct election could demonstrably provide a benefit to the members, perhaps the sacrifice necessary to fund it would be justified.

The resolution is based on what may be a false premise, e.g., that the current system does not ensure that the president is representative of the dues-paying members of the State Bar. The existing system is one that has been created by the elected representatives of the State of California, the Legislature, and the executive who signed into law that which is the current law regarding State Bar practice. The assumption that the President is the representative of the dues-paying members of the State Bar limits the focus of the role of the Board of Governors and its officers who, ostensibly, serve the interests of the people of the State of California – not merely dues-paying members, but also consumers of legal services, those who are the victims of the legal system and all other citizens and non-citizens who benefit from or are harmed by the work of attorneys.

**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~~ the members shall elect the president, ~~vice presidents and~~
- 4 ~~treasurer~~ for the ensuing year. The president shall be elected from among the ~~those~~

5 members of the board ~~whose terms expire that year, or if no such member is able and willing~~  
6 ~~to serve, then from among the board members who have completed at least one or more~~  
7 ~~years of their terms.~~ If for two consecutive years, the president is a resident of a county  
8 south of the Tehachapi Mountains, no member who likewise resides south of the Tehachapi  
9 Mountains shall be eligible to serve as president in the next succeeding year. The same rule  
10 shall apply in reverse if the president for two consecutive years is a resident of a county  
11 north of the Tehachapi Mountains.

12 The board shall enact rules providing means for candidates for president to  
13 communicate with the members at reasonable cost and providing for limits on campaign  
14 expenditures for candidates for president.

15 Following the election of the president, ~~The~~ other officers shall be elected by the  
16 board from among the board members who have at least one or more years to complete their  
17 respective terms.

18 The newly elected president, vice presidents, and treasurer shall assume the duties of  
19 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 for election of the president of the State Bar by the Board of Governors.

This Resolution: Would provide for the election of the president of the State Bar by the members of the State Bar

The Problem: The current election of the President of the State Bar does not insure that the President, and important legal figure in the state, is representative of the dues-paying members of the State Bar. Under the current system, whereby the members of the Board of Governors elect the President, candidates for that office campaign inwardly among the board members, rather than outwardly toward the members who the President symbolically will come to represent. By having the members of the State Bar elect their president, campaigns will focus on matters of importance to the membership, rather than on lobbying other members of the Board of Governors. Unlike a similar resolution which was not approved at the 2006 Conference, this resolution contains safeguards against the President always being a well-financed candidate from the most populous part of the state. Likewise, to insure a commitment to the State Bar, as now, candidates must first be elected to the Board of Governors and gain the experience that comes with serving on the board. This arrangement also could result in more public and highly contested campaigns for district elections to the Board of Governors.

IMPACT STATEMENT: This resolution does not impact any other law statute or rule.

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RESPONSIBLE FLOOR DELEGATE: James J. Brosnahan

## **COUNTERARGUMENTS**

### **STATE BAR BOARD OF GOVERNORS**

This resolution is similar to resolution 08-02-06 from 2006. The Board of Governors opposed that resolution, and the resolution was disapproved at the 2006 Conference. In response to issues raised in 2006, the 2007 resolution contains a revised proposal, but fundamental issues still remain.

In opposing the 2006 resolution, the Board of Governors commented that the resolution would have disenfranchised the public members of the Board by eliminating their input into the selection of the State Bar 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. The 2007 resolution has not addressed this issue and, under this resolution, the public members would have no vote at all.

In opposing the 2006 resolution, the Board of Governors also commented that the field of presidential candidates would almost certainly 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. The 2006 resolution, it was argued, would have therefore 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. The 2007 resolution has made some changes to address the geographic and economic concerns, but the proposal is still problematic.

With respect to the geographic issue, the 2007 resolution proposes amending the Business and Professions Code to add language that would create a rule of rotation, based on whether the State Bar President is, for two consecutive years, a resident of a county either north or south of the Tehachapi Mountains. The proposed language would address a north/south issue, but would not deal with the fact that Board members from major metropolitan areas would have an advantage over Board members from less populated areas, given the simple distribution of the population of attorneys and their relative voting power.

With respect to the economic issue, the 2007 resolution proposes amending the Business and Professions Code to require the Board to "enact rules providing means for candidates for president to communicate with the members at reasonable cost and providing for limits on campaign expenditures for candidates for president." Campaign finance restrictions are a potential quagmire, and could plunge the Board into unresolved areas that continue to be the subject of ongoing controversy in other arenas.

Finally – as with the 2006 resolution – 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**

A similar resolution was disapproved last year, and this resolution should be disapproved this year. Three primary arguments were made in opposition to last year's resolution, and although this year's offering attempts to address two of the arguments, it fails to do so adequately, and never cures the third. First, the direct election of the President will favor metropolitan and heavily attorney-populated areas to the near exclusion of rural communities and practitioners in less populated areas. The resolution's solution of alternating at least every two years north and south of the Tehachapi Mountains (assuming anyone knows where that is) does not address this issue. Second, the time commitment and cost of a State-wide popular vote campaign would be counter to the State Bar's efforts at diversity at all levels of the practice, including the presidency. The State Bar's equivalent of McCain-Feingold would be expensive (and would likely require an increase of dues, or the allocation of existing dues level revenues away from member services and public protection) and would be difficult to enforce. Third, the resolution does not address the effect of 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 input into the direction and actions of the State Bar, including the choice of a President.

### **SAN DIEGO COUNTY BAR ASSOCIATION**

The State Bar is not a democracy and it was never created to be one. It is a governing organization to maintain high standards in the legal profession. It must do so on a limited budget. The presidency of that organization cannot be converted to a system wherein he who has the gold to wage a large campaign makes the rules.