

Memorandum 2000-70**Law Library Board of Trustees (Comments on
Revised Tentative Recommendation)**

In April, the Commission approved a revised tentative recommendation on Law Library Board of Trustees, which has been circulated to interested parties (including law library boards, superior and municipal courts, county bar associations, and boards of supervisors). The Commission received the following comments on that proposal:

Exhibit p.

1. Sharon E. Borbon, Law Library Director, Frank J. Creede, Jr. Public Law Library (Fresno County) (Sept. 20, 2000)	2
2. Hon. M. Kathleen Butz, Secretary, Nevada County Board of Law Library Trustees (August 31, 2000)	3
3. William C. Harrison, President, Solano County Board of Law Library Trustees (May 17, 2000)	4
4. Karen M. Lutke, Director, San Mateo County Law Library (May 26, 2000)	5
5. Karen M. Lutke, Director, San Mateo County Law Library (Sept. 28, 2000)	6
6. Janice M. Milliken, Law Librarian, Stanislaus County Law Library (September 14, 2000)	7
7. Tony Nevarez, Legislative Representative, Council of California County Law Librarians (September 25, 2000)	8
8. Maryruth Storer, Law Library Director, Orange County Law Library (September 29, 2000)	10
9. Samuel Torres, Jr., Former Trustee, Santa Cruz County Law Library (September 20, 2000)	11

These comments are discussed and analyzed below. A draft of a final recommendation, incorporating revisions recommended in this memorandum, is attached for the Commission to review and approve if acceptable.

EXISTING LAW

Although other provisions apply in some counties, Business and Professions Code Section 6301 is the main provision governing selection of a law library board of trustees. It establishes elaborate criteria for selection of the board.

In a county with a unified superior court, the board includes either four or five superior court judges, depending on the number of judge trustees authorized as of January 1, 1998. In specified circumstances, a member of the bar of the county may serve in place of a judge. The law library board also includes the chair of the board of supervisors and a member of the bar of the county appointed by the board of supervisors. At the chair's request, the board of supervisors may appoint another supervisor or a member of the bar of the county to serve on the law library board in place of the chair.

In a county where the municipal and superior courts have not unified, the law library board includes three superior court judges (or members of the bar of the county selected by superior court judges) and either one or two municipal court judges (or members of the bar of the county selected by municipal court judges), depending on the number of municipal courts in the county. Otherwise, the composition of the board is the same as in a county with a unified superior court. As in a county with a unified court, the board does not include any laypersons (persons who are neither judges, attorneys, or members of the board of supervisors).

(For the full text of Section 6301, see Exhibit p. 1.)

RECAP OF REVISED TENTATIVE RECOMMENDATION

The revised tentative recommendation would amend Section 6301 to:

- (1) Permit laypersons to serve on the law library board in place of a judge or in place of the chair of the board of supervisors, in specified circumstances.
- (2) Permit the judges of a unified superior court to select either four or five law library trustees at their discretion, without regard to how many judge trustees were authorized as of January 1, 1998.
- (3) Permit each county to which the statute applies to have either a six- or a seven-member board, as best meets the needs of the county.

The Commission received input on each aspect of its proposal.

PERMITTING LAYPERSONS TO SERVE AS LAW LIBRARY TRUSTEES

Most of the comments focused on the concept of allowing lay residents of a county to serve on the law library board in place of a trial court judge or in place of the chair of the board of supervisors. The idea of permitting lay trustees was first advanced by Judge Quentin Kopp, who serves on the board of San Mateo County Law Library. Reaction was generally but not universally favorable.

Unqualified Support

Samuel Torres, Jr., former trustee of Santa Cruz County Law Library, writes that lawyers and non lawyers should be trustees. (Exhibit p. 12.) He explains that “the library patron is more likely a non lawyer than in earlier years.” (*Id.*) In part, this is because the “movement to self-representation in all forms of legal matters has grown over the years.” (*Id.*) Also, lawyers “now use alternative sources of legal research materials, mostly electronic, which reside in their offices rather than law libraries.” (*Id.*) Because the “non lawyer public is now the majority library user,” this group should be represented on the law library board. (*Id.*) The “composition of law library Boards of Trustees should reflect the library’s patrons.” (*Id.*)

Several law libraries, writing before the September meeting of the Council of California County Law Libraries (“CCCLL”), also expressed unqualified support for the proposal to permit laypersons to serve on the board. The Nevada County Law Library simply informed the Commission that it supports the proposed approach. (Exhibit p. 3.) The Solano County Law Library wrote that it “strongly supports” the proposal. (Exhibit p. 4.) “Including a member of the general public on a law library board will increase public awareness of the law library and may well help the library supplement existing financing.” (*Id.*)

The San Mateo County Law Library expounded at length on the benefits of adding laypersons to law library boards:

The historical policy of permitting the appointment only of judges and lawyers as trustees to county law library boards disregards the interests of the public at large in county law libraries and discourages efforts to secure general fund money from county boards of supervisors. As proposed, the Revised Tentative Recommendation would broaden the representation of the public on county law library boards and reflect the extent of actual library users. A fairly represented user constituency may improve the ability of county law libraries to obtain general fund financing from

their respective counties or special funding from civil filing fees. A major problem of county law libraries is funding. The statutory source of funding emanates from civil filing fees. Decline in civil action filing has reduced county law library funding in the past several years. A county board of supervisors is more likely to appropriate general fund county money to the county law library if the power of the board and the court exists to appoint at least one law library trustee who is representative of the general public.

(Exhibit p. 5.)

Qualified Support

At its September meeting, CCCLL extensively debated the concept of lay trustees. The group eventually reached a consensus, deciding to support the Commission's proposal with addition of the following language at the end of proposed Section 6301:

- (e) Notwithstanding the above, no more than two (2) trustees shall be residents of the county who are not members of the bench or bar of the county.

(Exhibit p. 9.) This language "is intended to limit the public members on the various law library boards to two members out of a concern that the boards not become public member boards, without judges or attorney members." (*Id.* at 8.)

Importantly, CCCLL is a statewide coordinating body comprised of representative librarians from the 58 county law libraries. To the best of our knowledge, its position is acceptable to San Mateo County Law Library (Exhibit p. 6), Orange County Law Library (Exhibit p. 10), and most other law libraries in the state.

Apparently, however, the Fresno County Law Library disagrees with CCCLL's approach. (Exhibit p. 2.) Instead, it would permit the board of supervisors to appoint a layperson, but would not allow a judge to make such an appointment. (*Id.*) It does not explain the basis for this proposed distinction.

Opposition

The Stanislaus County Law Library appears to be another voice of dissent. It was not represented at CCCLL's September meeting, and has not yet considered the approach approved at that meeting. When it considered the revised tentative recommendation in May, however, its members could "find no benefit" to the proposal to appoint a public member. (Exhibit p. 7.) They explain:

Existing law allows “members of the bar” to be appointed and we maintain that these library patrons are members of the public. The Chair of the Board of Supervisors in his or her capacity represents the public constituency and their appointment is made in the best interests of the residents of the county. We also suggest that in smaller counties it may be problematic to locate an interested party, making an appropriate selection difficult. All meetings of the county law library boards of trustees comply with the Brown Act and as such provide an open forum for public involvement.

(*Id.*)

The Stanislaus County Law Library Board will be meeting on October 4 to consider CCCLL’s approach. We understand, however, that the board is unlikely to change its position. We will report its decision at the Commission’s meeting.

Analysis

At present, laypersons may attend and participate in law library board meetings, but they cannot vote and their perspectives and talents may differ from those who can. By permitting laypersons to serve as trustees, the Commission’s proposal would give them a more effective voice and a greater stake in law library boards, consistent with their increasing use of law libraries. This, in turn, may enable the boards to obtain additional funding and better serve their patrons. Shortage of interested laypersons would not be a problem, because selection of lay trustees would be permissive, not mandatory.

As CCCLL points out, however, limiting the number of lay trustees to two would help ensure that judges and lawyers continue to serve as law library trustees. While laypersons now frequent law libraries, judges and lawyers remain important users. **It seems reasonable to modify the Commission’s proposal as CCCLL requests.** This approach may not be satisfactory to all interested parties, but it represents a balance of interests, it would partially address Fresno County’s concern about appointment of laypersons in place of judges, and it has CCCLL’s support, which is likely to be crucial to any reform of Section 6301.

NUMBER OF JUDGE TRUSTEES IN A COUNTY WITH A UNIFIED SUPERIOR COURT

Under existing law, the number of judge trustees in a unified superior court depends on the number of judge trustees authorized as of January 1, 1998. Three superior court judges (or one superior court judge and two members of the bar of

the county appointed by the superior court judges) are to be selected pursuant to Section 6301(a). One or two additional superior court judges may be selected pursuant to Section 6301(b), “so that the number of judges elected shall not exceed the number of judge trustees authorized as of January 1, 1998.”

The revised tentative recommendation would eliminate this reliance on the number of judge trustees authorized as of January 1, 1998. It would permit the judges of a unified superior court to select either four or five law library trustees at their discretion, without regard to how many judge trustees were authorized as of January 1, 1998.

This aspect of the Commission’s proposal did not draw as much attention as the concept of permitting laypersons to serve on law library boards. It was acceptable to most of those who commented, but there was one negative response.

Support

Several letters express support for the revised tentative recommendation, without specifically mentioning this aspect of the proposal. These include the letters from Nevada County Law Library (Exhibit p. 3), Solano County Law Library (Exhibit p. 4), and San Mateo County Law Library (Exhibit pp. 5-6). Most importantly, CCCLL voted to support the revised tentative recommendation without requesting any change in this aspect of the proposal. (Exhibit pp. 8-9; see also Memorandum 2000-30, p. 1.)

Fresno County Law Library specifically comments that its board supports the elimination of the January 1, 1998 historical reference point. (Exhibit p. 2.) Stanislaus County Law Library concurs. (Exhibit p. 7.) “Use of this historical reference point may well cause confusion and delay as time passes.” (*Id.*) The board’s preference is to draft the amendment to the effect that “the number of judges shall not exceed five.” (*Id.*)

Opposition

Samuel Torres, Jr., opposes this aspect of the Commission’s proposal, because it “will solidify the influence of the courts in the operation of law libraries.” (Exhibit p. 12.) “In light of the transformation of judges from local employees to state employees and the focus of law libraries toward the non lawyer patron,” he believes that the courts should have fewer appointments. (*Id.*)

His views are based on personal experience. He served on the Santa Cruz Law Library Board, as a member selected by the Board of Supervisors. In that capacity he observed that

the power of the courts under existing law to appoint a majority of the trustees was used during a period of time to facilitate specific needs of the courts unrelated to law library needs. The specific issue was the location of the law library in the county building, court annex. The courts wished to use that space for their own staff needs. The courts' desire to occupy the library space was thwarted until the judges appointed themselves instead of local attorneys as a majority of the Board of Trustees. The law library did relocate as a consequence.

(*Id.* at 11.) In reciting this particular incident, Mr. Torres does not mean "to say that judge trustees do not generally exercise good judgment for the benefit of the law library." (*Id.*)

Analysis

Mr. Torres is correct that law library boards are dominated by judge trustees (or attorneys selected by judges), who may at times place the interests of the court system ahead of the interests of the law library. As he acknowledges, however, this probably does not occur often. Moreover, the proposed reform would not significantly alter the existing balance of power on law library boards. Existing law permits a unified superior court to have either four judge trustees (if four or more judge trustees were authorized as of January 1, 1998) or five judge trustees (if five judge trustees were authorized as of January 1, 1998). The proposed amendment would only permit an increase in the number of judge trustees in some counties: Those in which four as opposed to five judge trustees were authorized as of January 1, 1998. But even in those counties, judge trustees already constitute a majority of the board: They hold four of six positions on the board, rather than five of seven positions. (See Section 6301(d).)

In light of the support expressed (particularly by CCCLL and by the law libraries that specifically commented on this aspect of the Commission's proposal), **the staff recommends proceeding with the proposal to permit the judges of a unified superior court to select either four or five law library trustees at their discretion**, without regard to how many judge trustees were authorized as of January 1, 1998. It may be appropriate to monitor this situation, however, to assess whether such a large contingent of judge trustees is needed

now that the courts in most counties have unified and the judge trustees are all from the same court.

Although Stanislaus County Law Library would draft the amendment to the effect that “the number of judges shall not exceed five,” **we would leave the wording as is.** That language has been approved by CCCLL and there does not appear to be any problem with it. We will need to revisit Section 6301 once all municipal courts are eliminated. At that point, the drafting could be greatly simplified, perhaps along the lines suggested by Stanislaus County Law Library. This step may occur fairly soon, because Monterey County was recently precleared for unification and only Kings County’s preclearance application remains pending.

SIZE OF THE BOARD

Section 6301(d) calls for a board of six members in some counties and seven members in other counties. As opposed to a six-member board, a seven-member board helps to prevent deadlock and makes it easier to obtain a quorum. The Commission’s proposal would revise Section 6301(d) such that each county to which the statute applies could have either a six- or a seven-member board, as best meets the needs of the county.

This proposal drew no opposition. Fresno County Law Library specifically commented that it supports the idea. (Exhibit p. 2.) Stanislaus County Law Library welcomes the proposed revision:

We also support the appointment of a seven-member board. Since unification, this Board of Trustees has operated as a six-member board, which on occasion has presented difficulty in meeting quorum requirements due to scheduling conflicts. Certainly, there is an advantage in meeting that requirement if a large membership exists.

(Exhibit p. 7.) CCCLL, Nevada County Law Library, Solano County Law Library, and San Mateo County Law Library do not mention this reform in their letters, but express support for the revised tentative recommendation. Mr. Torres does not discuss the matter. In light of this overall positive response, **the Commission should proceed with its proposed reform of Section 6301(d).**

NEXT STEP

A draft of a final recommendation is attached for the Commission's review. We have incorporated CCCLL's requested revision and expanded the preliminary part to explain the proposal more fully than in the revised tentative recommendation. **If the draft is acceptable (as is or with revisions), the next step is to approve it as a final recommendation for printing and submission to the Legislature.** Should Monterey County and Kings County unify before the proposal is introduced, or while it is pending in the Legislature, the staff will consult the Commission on how to modify the proposal to reflect the elimination of the municipal courts.

Respectfully submitted,

Barbara S. Gaal
Staff Counsel

Exhibit

Bus. & Prof. Code § 6301. Composition of law library board of trustees

6301. A board of law library trustees is constituted as follows:

(a) In a county where there are no more than three judges of the superior court, each of the judges is ex officio a trustee; in a county where there are more than three judges of the superior court, the judges of the court shall elect three of their number to serve as trustees. However, where there are no more than three judges of the superior court, the judges may at their option select only one of their number to serve as a trustee, and in that event they shall appoint two additional trustees who are members of the bar of the county.

Any judge who is an ex officio or elected member may at the judge's option designate a member of the bar of the county to act for the judge as trustee.

(b) In a county with one or two municipal courts the judges of the court or courts shall elect one of their number to serve as trustee. In a county with three or more municipal courts the judges of the courts may elect two of their number to serve as trustees. In a county in which there is no municipal court, the judges of the superior court may elect one or more of their number to serve as trustee, in addition to the trustees elected pursuant to subdivision (a), so that the number of judges elected shall not exceed the number of judge trustees authorized as of January 1, 1998. Any judge who is an elected member may at the judge's option designate a member of the bar of the county to act for the judge as trustee.

(c) The chair of the board of supervisors is ex officio a trustee, but the board of supervisors at the request of the chair may appoint a member of the bar of the county or any other member of the board of supervisors of the county to serve as trustee in place of said chair. The appointment of the person selected in lieu of the chair of the board of supervisors shall expire when a new chair of the board of supervisors is selected, and the appointment shall not be subject to the provisions of Section 6302.

(d) The board of supervisors shall appoint as many additional trustees, who are members of the bar of the county, as may be necessary to constitute a board of six members in any county where one member is elected pursuant to subdivision (b), or of seven members in any county where two members are elected to serve as trustees pursuant to subdivision (b).

FRANK J. CREEDE, JR. PUBLIC LAW LIBRARY

1100 Van Ness, Room 600
Fresno, California 93721
(559) 237-2227
Fax (559) 442-4960

Sharon E. Borbon
Library Director

September 20, 2000

Board of Trustees:
Hon. Ralph Nunez, President
Hon. Carlos A. Cabrera
Hon. Stephen J. Kane
Hon. James M. Petrucelli
Hon. Edward Sarkisian, Jr.
Judy Case, Supervisor
Katherine Hart, Esq.

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4739

Law Revision Commission
RECEIVED

SEP 25 2000

File: 5-1307

Re: Law Library Board of Trustees

Dear Commissioners,

The Fresno County Law Library Board of Trustees has reviewed the revised tentative recommendation relating to the composition and diversity of the law library board of trustees. The matter of appointing public members to the Board was given careful consideration during our business meeting of May 17, 2000. Submission of our position was delayed until the meeting of the Conference of California County Law Library Trustees and Librarians held September 15, 2000.

Please be advised the Fresno County Law Library Board of Trustees **supports** the appointment of a public member by the Board of Supervisors as stated in Section 6301(c). However, we are **opposed** to making that option available to a judge as recommended in Section 6301(a) and Section 6301(b).

All other recommendations regarding the size of the board and elimination of the January 1, 1998 historical reference point are acceptable and receive the support of our Board.

Therefore, the Fresno County Law Library Board of Trustees respectfully requests these comments be entered into public record and considered at the time the Commission adopts a final recommendation.

Sincerely,

Sharon E. Borbon
Law Library Director

SEB/lb



NEVADA COUNTY LAW LIBRARY

201 Church St., Ste. 9, Nevada City, CA 95959 • Phone/Fax (530) 265-2918 • lawlibrary@co.nevada.ca.us

Law Revision Commission
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August 31, 2000

SEP - 5 2000

File: J- 1307

BOARD OF TRUSTEES

PRESIDENT
Stephen Greenberg, Esq.

California Law Review Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

PRESIDENT PRO TEM
Bruce Conklin
Board of Supervisors

RE: Business & Professions Code § 6301

TREASURER
Comm. Sean Dowling

Dear Commissioners:

The Board of Trustees of the Nevada County Law Library supports the *revised Tentative Recommendation*, Business and Professions Code § 6301 on the composition of a law library board.

At its regular monthly meeting on August 23, 2000, the Board of Trustees approved a motion to support the Commission's recommendation that each law library board have the ability to broaden its composition to include a member of the general public. By further motion, duly passed, the Board of Trustees authorized me to write this letter of support to the Commission.

Our Board of Trustees respectfully request that this statement of support of the *revised Tentative Recommendation* of the Business and Professions Code § 6301 be considered, and that the Commission adopt this Recommendation.

Sincerely,

M. Kathleen Butz

M. Kathleen Butz
Nevada County Superior Court Judge
Secretary, Board of Trustees

COURT EXECUTIVE OFFICER

Paula Carli

HOURS:

Monday-Friday
8:00 am - 5:00 pm

LAW LIBRARIAN HOURS:

Monday - Friday
9:00 am - 1:00 pm

cc: Stephen Greenberg, President - Board of Trustees
Nevada County Board of Supervisors
Nevada County Judicial Officers
Paula J. Carli, Court Executive Officer

Superior Court of California County of Solano

Chambers of
WILLIAM C. HARRISON
Presiding Judge
Department Two

Hall of Justice
600 Union Avenue
Fairfield, CA 94533
(707) 435-2424
FAX (707) 435-2573

May 17, 2000

Law Revision Commission
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JUL 17 2000

California Law Review Council
4000 Middlefield Road, Room D-1
Palo Alto, CA. 94303-4739

File: J-1307

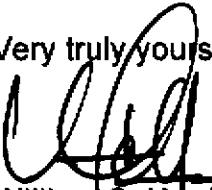
Dear Commissioners:

The Solano County Board of Law Library Trustees strongly supports the Revised Tentative Recommendation, Business and Professions Code, Section 6301 on the Law Library Board of Trustees.

Including a member of the general public on a law library board will increase public awareness of the law library and may well help the library supplement existing financing.

Thus, the Solano County Board of Law Library Trustees respectfully requests that this Statement of Support of the Revised Tentative Recommendation of Business and Professions Code Section 6301 be considered, and that the Commission adopt its Revised Tentative Recommendation

Very truly yours,



William C. Harrison, President
Board of Law Library Trustees
Solano County

SAN MATEO COUNTY LAW LIBRARY

710 HAMILTON STREET

REDWOOD CITY, CALIFORNIA 94063

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May 26, 2000

Law Revision Commission
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California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335

MAY 30 2000

File: 51307

RE: *Revised Tentative Recommendation B&P §6301, Law Library Board of Trustees*

Dear Honorable Members,

The Board of Law Library Trustees, San Mateo County, supports the California Law Revision Commission Revised Tentative Recommendation of Business and Professions §6301, Law Library Board of Trustees. The historical policy of permitting the appointment only of judges and lawyers as trustees to county law library boards, disregards the interests of the public at large in county law libraries and discourages efforts to secure general fund money from county boards of supervisors. As proposed, the Revised Tentative Recommendation would broaden the representation of the public on county law library boards and reflect the extent of actual library users. A fairly represented user constituency may improve the ability of county law libraries to obtain general fund financing from their respective counties or special funding from civil filing fees. A major problem of county law libraries is funding. The statutory source of funding emanates from a fraction of civil filing fees. Decline in civil action filings has reduced county law library funding in the past several years. A county board of supervisors is more likely to appropriate general fund county money to the county law library if the power of the board and the court exists to appoint at least one law library trustee who is representative of the general public. To this end, the Board of Law Library Trustees, San Mateo County, believes greater discretionary power must be given to county boards of supervisors and the court. The Board of Law Library Trustees, San Mateo County, supports the Revised Tentative Recommendation that would add or allow appointment of a member of the general public to the boards of county law libraries.

On behalf of the Board of Law Library Trustees, San Mateo County, I respectfully ask that our support of Revised Tentative Recommendation of Business and Professions §6301, be recorded into the record and that the Commission pursue enactment of its Revised Tentative Recommendation.

Sincerely yours,

Karen M. Lutke,
Director

CC: Board of Law Library Trustees, San Mateo County
Charles Dyer, San Diego County Public Law Library, and President, Council of California County Law Librarians
Tony Nevarez, Legislative Representative, CCCLL

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REDWOOD CITY, CALIFORNIA 94063

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FAX: (650) 367-8040

September 28, 2000

Ms. Barbara Gaal
California Law Revision Commission
40000 Middlefield Road, Room D-1
Palo Alto, CA 94303

VIA FAX 650-494-1827

RE: Support of Council of California County Law Librarians motion to amend Tentative Recommendation Business & Professions 6301

Dear Ms. Gaal,

The Board of Law Library Trustees, San Mateo County, supports the motion adopted by the Council of California County Law Librarians at the September 15, 2000 meeting to limit the number of public members to "... no more than two (2) trustees shall be residents of the county who are not members of the bench or bar of the county." On behalf of the Board of Law Library Trustees, San Mateo County, I respectfully ask the Commission to amend Tentative Recommendation Business & Professions 6301.

The Trustees continue to support of the Commission's Tentative Recommendation Business & Professions 6301 that would add or allow appointment of a member of the general public to the boards of county law libraries. On behalf of the Board of Law Library Trustees, San Mateo County, I respectfully ask that our support of Tentative Recommendation of Business and Professions 6301, be recorded into the record and that the Commission pursue enactment of its Tentative Recommendation.

Sincerely yours,

Karen M. Lutke
Director

CC: Board of Law Library Trustees, San Mateo County
Annette Heath, Kern County Law Library, and President, CCCLL
Charles Dyer, San Diego County Public Law Library, Chair, CCCLL Legislative Committee
Tony Nevarez, Esq., Legislative Representative, CCCLL

STANISLAUS COUNTY LAW LIBRARY

1101 13th Street Modesto, CA 95354-0907
209.558.7759 FAX 209.558.8284

James J. Milam, President Michael H. Krausnick, Secretary Janice K. Milliken, Law Librarian

Law Revision Commission
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California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

SEP 19 2000

September 14, 2000

File: 51307

Dear Commissioners,

On behalf of the Stanislaus County Law Library Board of Trustees, I write today to comment on the Revised Tentative Recommendation regarding Business & Professions Code § 6301. By way of providing some historical perspective, the Stanislaus County courts unified in July 1998. At that time, the composition of the law library board changed from a seven-member board to a six-member board due to the interpretation of BP §6301(b). Currently four Superior Court judges serve as Trustees, County Counsel is the designee from the Board of Supervisors (and serves as secretary), and a local sole practitioner presides.

We support the elimination of the use of the date January 1, 1998. Use of this historical reference point may well cause confusion and delay as time passes. Our preference is to draft the amendment to allow wording to the effect that "...the number of judges shall not exceed five".

We also support the appointment of a seven-member board. Since unification, this Board of Trustees has operated as a six-member board, which on occasion has presented difficulty in meeting the quorum requirements due to scheduling conflicts. Certainly, there is an advantage in meeting that requirement if a larger membership exists.

In our discussion regarding the appointment of a public member, we find no benefit to the revised proposed legislation. Existing law allows "members of the bar" to be appointed and we maintain that these library patrons are members of the public. The Chair of the Board of Supervisors in his or her capacity represents the public constituency and their appointment is made in the best interests of the residents of the county. We also suggest that in the smaller counties it may be problematic to locate an interested party, making an appropriate selection difficult. All meetings of the county law library boards of trustees comply with the Brown Act and as such provide an open forum for public involvement.

Therefore, the Stanislaus County Law Library Board of Trustees respectfully requests that these comments be entered into public record and considered at the time the Commission adopts its recommendation.

Sincerely,

Janice K. Milliken
Law Librarian

TONY NEVAREZ

Attorney at Law

Legislative Representative

1023 H STREET, SUITE A
SACRAMENTO, CA 95814

September 25, 2000

(916) 444-2458 • (916) 444-6909 (Fax)

Ms. Barbara Gaal
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303

VIA TELECOPY
(650) 494-1827

RE: LAW REVISION COMMISSION PROPOSAL
MEMORANDUM 2000-30

Dear Ms. Gaal:

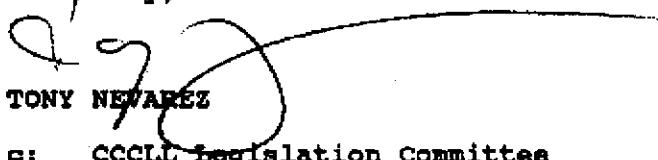
Attached hereto is the actual motion adopted by the Council of California County Law Librarians at the September 2000 meeting. This motion is intended to amend the Law Revision Commission's tentative recommendation on the Board of Trustees' makeup.

The language is intended to limit the public members on the various law library boards to two members out of a concern that the boards not become public member boards, without judges or attorney members.

I have enclosed the actual resolution as I believe it accurately reflects the CCCLL consensus.

I will also advise as to who will be in attendance at the San Francisco meeting.

Sincerely,


TONY NEVAREZ

c: CCCLL Legislation Committee

COUNCIL OF CALIFORNIA COUNTY LAW LIBRARIANS

From the minutes of the meeting, the following resolution was approved.

MINUTES OF THE COUNCIL OF CALIFORNIA COUNTY LAW LIBRARY TRUSTEES AND LIBRARIANS MEETING

Friday - September 15, 2000
U.S. Grant Hotel- Regency Room
San Diego, California

Upon motion by Judge Quentin Kopp, and second by Judge Michael Harris, it was unanimously

RESOLVED: That the following subdivision (e) shall be added to the proposed Business and Professions Code section 6301, "(e) Notwithstanding the above, no more than two (2) trustees shall be residents of the county who are not members of the bench or bar of the county."

Yours very truly,



Anne Bernardo
CCCLL Secretary

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ORANGE COUNTY LAW LIBRARY

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MARYRUTH STORER
DIRECTOR

JUDGE LINDA LANCET MILLER, PRESIDING
BARBARA H. EVANS, ESQ.
JUDGE FRANK F. FASEL
JUDGE RICHARD D. FYBEL
FRANZ E. MILLER, ESQ.
JUDGE WILLIAM M. MONROE
JUDGE JAMES V. SELNA

September 29, 2000

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303

via FAX (650) 494-1827

RE: Tentative Recommendation, Business & Profession Code §6301

Dear Commissioners:

At their September 27, 2000 meeting, the Board of Trustees of the Orange County Law Library voted to support the position taken by the Conference of California County Law Library Trustees and Librarians on September 15, 2000 on this tentative recommendation. That position was to add language to §6301 which would limit to no more than two the number of trustees who were not members of the bench or bar of the county. The Orange County trustees felt that this limit would still allow expanded public representation while keeping the traditional connection to the legal community.

The Board of Trustees respectfully requests that this statement of support for the position of the Conference of California County Law Library Trustees and Librarians be considered, and that the Commission adopt a revised recommendation incorporating such language.

Very truly yours,

Maryruth Storer

Maryruth Storer
Law Library Director

cc: Council of California County Law Librarians



County of Santa Cruz

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September 20, 2000

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Law Revision Commission
RECEIVED

SEP 22 2000

Re: Law Library Board of Trustees

File: 5-1307

Dear Commission:

I wish to offer the following comments to your Commission as it considers changes to the manner in which county law libraries are governed. Having served as a Santa Cruz County law library trustee for many years as a member selected by the Board of Supervisors, I have first hand knowledge of the operation of at least one Board of Trustees.

I served at the selection by the Board of Supervisors. The Board of Trustees for many years was fairly representative of the lawyers who practiced in Santa Cruz County. There were members of the public law office, such as myself, members from the private bar, both criminal and civil practice, and judge members. Although there were no public members (non lawyers) on the Board, it was felt that our stewardship of the law library emphasized the needs of the public users as well as the community lawyers.

However, the power of the courts under existing law to appoint a majority of the trustees was used during a period of time to facilitate specific needs of the courts unrelated to law library needs. The specific issue was the location of the law library in the county building, court annex. The courts wished to use that space for their own staff needs. The courts' desire to occupy the library space was thwarted until the judges appointed themselves instead of local attorneys as a majority of the Board of Trustees. The law library did relocate as a consequence. This is not to say that judge trustees do not generally exercise good judgement for the benefit of the law library.

It would appear that the judges/courts under current law exercise substantially more power than there constituents would justify. It is understandable that the judges were permitted to appoint several trustees because law libraries were originally located in the courthouses throughout California. It may have been perceived that judges would be able to appoint suitable lawyer trustees because of their daily contact with the local bar. And the typical law library patron was a lawyer. Today however, the library patron is more likely a non lawyer than in earlier years. The movement to self-representation in all forms of legal matters has grown over the years. Lawyers now use alternative sources of legal research materials, mostly electronic, which reside in their offices rather than law libraries. The non lawyer public is now the majority library user in my experience.

I believe that the composition of law library Boards of Trustees should reflect the library's patrons. Lawyers and non lawyers should be trustees. The lawyers should be representative of the lawyers who practice, small and large firms, private and public, civil and criminal. I agree that trustees must be selected who have ability to maintain the financial stability of the law library and who will exercise good business sense. I support your proposal number 1. I do not support your proposal number 2 which will solidify the influence of the courts in the operation of law libraries. I agree that the confusing allotment of judge trustees under the current B&P Code Section 6301 should be simplified. In light of the transformation of judges from local employees to state employees and the focus of law libraries towards the non lawyer patron, I believe that the courts should have fewer trustee appointments.

My views are of course not the views of the Office of County Counsel, but those of a former trustee. Thank-you for the opportunity to comment.

Very truly yours,

SAMUEL TORRES, JR., COUNTY COUNSEL

By: HARRY A. OBERHELMAN III
HARRY A. OBERHELMAN III
Assistant County Counsel

#J-1307

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft RECOMMENDATION

Law Library Board of Trustees

October 2000

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335 FAX: 650-494-1827

SUMMARY OF RECOMMENDATION

1 Existing law (Bus. & Prof. Code § 6301) establishes elaborate criteria for
2 selection of a law library board of trustees. To promote flexibility and build
3 relations between law libraries and the general public, the Law Revision
4 Commission proposes to revise these criteria to:

- 5 (1) Permit laypersons to serve on the law library board in place of a judge
6 or in place of the chair of the board of supervisors, in specified
7 circumstances.
- 8 (2) Permit the judges of a unified superior court to select either four or five
9 law library trustees at their discretion, without regard to how many
10 judge trustees were authorized as of January 1, 1998.
- 11 (3) Permit each county to which the statute applies to have either a six- or a
12 seven-member board, as best meets the needs of the county.

LAW LIBRARY BOARD OF TRUSTEES

1 Each county in the state is to have a law library governed by a board of trustees.¹
2 Although other provisions apply in some counties, Business and Professions Code
3 Section 6301 is the main provision governing selection of the board.² It establishes
4 elaborate criteria for selection of the trustees. To improve the functioning of law
5 library boards, enhance their fund-raising capabilities, and promote effective
6 relations between law libraries and the general public, the Law Revision
7 Commission recommends revision of these criteria.³

EXISTING LAW

8 In a county with a unified superior court,⁴ the law library board of trustees
9 includes either four or five superior court judges, depending on the number of
10 judge trustees authorized as of January 1, 1998.⁵ In specified circumstances, a
11 member of the bar of the county may serve in place of a judge trustee.⁶ The board
12 also includes the chair of the board of supervisors⁷ and a member of the bar of the
13 county appointed by the board of supervisors.⁸ At the chair's request, the board of
14 supervisors may appoint another supervisor or a member of the bar of the county

1. Bus. & Prof. Code § 6300. Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

2. For a special provision governing the composition of the law library board in San Diego County, see Section 6301.1. For a provision authorizing a board of less than six members in a county in which there is no county bar association, see Section 6301.5. For a provision grandfathering pre-1941 legislation establishing a law library and board of law library trustees in a county, see Section 6363. See also Section 6364 ("It is discretionary with the board of supervisors of any county to provide by ordinance for the application of the provisions of this chapter to the county.").

3. This recommendation was prepared pursuant to Resolution Chapter 91 of the Statutes of 1998 and Government Code Section 70219.

4. Where the municipal and superior courts are not unified, the law library board consists of three superior court judges (or members of the bar of the county selected by superior court judges) and either one or two municipal court judges (or members of the bar of the county selected by municipal court judges), depending on the number of municipal courts in the county. Section 6301(a)-(b). Otherwise, the composition of the board is the same as in a county with a unified superior court. As in a county with a unified court, the board does not include any laypersons.

5. Section 6301(a)-(b). Three superior court judges (or one superior court judge and two members of the bar of the county appointed by the superior court judges) are to be selected pursuant to Section 6301(a). One or two additional superior court judges may be selected pursuant to Section 6301(b), "so that the number of judges elected shall not exceed the number of judge trustees authorized as of January 1, 1998."

6. Any judge who is a member of the board may, at the judge's option designate a member of the bar of the county to act for the judge as trustee. Section 6301(a)-(b). In a county with no more than three superior court judges, the judges may at their option appoint two members of the bar of the county to serve on the board. Section 6301(a).

7. Section 6301(c).

8. Section 6301(d).

- 1 to serve in place of the chair.⁹ The board does not include any laypersons (persons
2 who are neither judges, attorneys, or members of the board of supervisors).

PR OPOSE D R EFOR M S

3 The criteria for selecting trustees should be revised to: (1) increase diversity by
4 permitting laypersons to serve on law library boards in specified circumstances,
5 (2) eliminate use of the historical benchmark (January 1, 1998) in determining
6 how many trustees the judges of a unified superior court may select, and (3) give
7 counties the option of having either a six- or a seven-member board.

8 Diversity of the Board

9 At present, laypersons may attend and participate in law library board meetings,
10 but they cannot vote and their perspectives and talents may differ from those who can.
11 Although laypersons are a significant proportion of law library users, they
12 have no direct voice in library operations.¹⁰ Laypersons also indirectly benefit
13 from law libraries, because prosecutors, public defenders, private attorneys, and
14 courts are able to share books and other legal resources, instead of maintaining
15 their own collections and passing along the cost to clients or the public. The lay
16 public may be oblivious to these benefits, however, and thus disinterested in
17 supporting law libraries.

18 Including a member of the general public on a law library board may broaden
19 the board's perspective, helping to ensure that the law library effectively serves the
20 public. It may also increase public awareness of the law library, the services that it
21 provides, and the support that it needs. In particular, a lay member may help the
22 library supplement existing funding, as by encouraging private donations or
23 county assistance.¹¹ Because law libraries traditionally depend on civil filing fees
24 for funding,¹² and the number of civil cases has decreased in recent years,¹³
25 availability of funding sources such as these may be crucial to maintaining full
26 library services.

27 Despite these potential benefits, the proposed law would not require each law
28 library board to include a member of the general public. Instead, it would broaden
29 the range of persons who could serve in place of a judge. Any resident of the
30 county or member of the bar of the county could be chosen. Similarly, any resident
31 of the county could be appointed to serve in place of the chair of the board of

9. Section 6301(c).

10. In the past, law libraries typically served judges and attorneys. Increasingly, however, law library patrons are laypersons. This is probably due to the trend towards self-representation, as well as attorneys' increasing reliance on electronic research materials rather than library resources.

11. As compared to lay trustees, judge trustees may be less effective at fund-raising, because they are subject to ethical restrictions. See, e.g., Cal. Code of Judicial Ethics, Canon 4C(3)(d).

12. [Insert cite.]

13. [Insert cite.]

1 supervisors, not just another supervisor or a member of the bar. To ensure that
2 judges, attorneys, and the board of supervisors continue to be represented on the
3 law library board, a maximum of two laypersons could serve on the board at the
4 same time. The proposed law thus authorizes diversification of the board to
5 include laypersons, but permits flexibility in the composition of the board,
6 allowing each county to structure its board according to its needs.

7 **Use of Historical Reference Point**

8 The number of judge trustees in a unified superior court now depends on the
9 number of judge trustees authorized as of January 1, 1998. Three superior court
10 judges (or one superior court judge and two members of the bar of the county
11 appointed by the superior court judges) are to be selected pursuant to Section
12 6301(a). One or two additional superior court judges may be selected pursuant to
13 Section 6301(b), "so that the number of judges elected shall not exceed the number
14 of judge trustees authorized as of January 1, 1998."

15 As January 1, 1998, becomes more distant, however, use of this historical
16 reference point may cause confusion and become inappropriate. Section 6301
17 should be amended to eliminate this benchmark and permit the judges of a unified
18 superior court to select either four or five judge trustees at their discretion, without
19 regard to how many judge trustees were authorized as of January 1, 1998.¹⁴ This
20 would not significantly alter the existing balance of power on law library boards.¹⁵

21 **Size of the Board of Trustees**

22 Existing law requires a six-member board in some counties and a seven-member
23 board in other counties.¹⁶ As opposed to a six-member board, a seven-member
24 board helps to prevent deadlock and makes it easier to obtain a quorum.¹⁷ To make
25 these benefits widely available, the proposed legislation would allow each county
26 to have either a six- or a seven-member board, as best meets the needs of the
27 county.

14. Under the proposed amendment, three judges would be chosen pursuant to Section 6301(a) and either one or two judges would be selected pursuant to Section 6301(b), at the discretion of the superior court judges.

15. The proposed amendment would only permit an increase in the number of judge trustees in some counties: Those in which four as opposed to five judge trustees were authorized as of January 1, 1998. Even in those counties, judges (or attorneys selected by judges) already constitute a majority of the board: They hold four of six positions on the board, rather than five of seven positions. See Section 6301(d).

16. See Section 6301(d); but see *supra* note 2 (special provisions governing size of board in some counties).

17. If a board has six members, only two can be absent for the board to transact business. If the board has seven members, a quorum is present even if three members are absent.

PROPOSED LEGISLATION

1 Bus. & Prof. Code § 6301 (amended). Board of law library trustees

2 SECTION 1. Section 6301 of the Business and Professions Code is amended to
3 read:

4 6301. A Except as otherwise provided by statute, a board of law library trustees
5 is constituted as follows:

6 (a) In a county where there are no more than three judges of the superior court,
7 each of the judges is ex officio a trustee; ~~in trustee. In~~ a county where there are
8 more than three judges of the superior court, the judges of the court shall elect
9 three of their number to serve as trustees. However, where there are no more than
10 three judges of the superior court, the judges may at their option select only one of
11 their number to serve as a trustee, and in that event they shall appoint two
12 additional trustees who are residents of the county or members of the bar of the
13 county.

14 Any judge who is an ex officio or elected member may at the judge's option
15 designate a resident of the county or a member of the bar of the county to act for
16 the judge as trustee.

17 (b) In a county with one or two municipal courts the judges of the court or courts
18 shall elect one of their number to serve as trustee. In a county with three or more
19 municipal courts, the judges of the courts may elect two of their number to serve
20 as trustees. In a county in which there is no municipal court, the judges of the
21 superior court may elect one or ~~more two~~ of their number to serve as trustee, in
22 addition to the trustees elected pursuant to subdivision (a), ~~so that the number of~~
23 ~~judges elected shall not exceed the number of judge trustees authorized as of~~
24 ~~January 1, 1998.~~ Any judge who is an elected member may at the judge's option
25 designate a resident of the county or a member of the bar of the county to act for
26 the judge as trustee.

27 (c) The chair of the board of supervisors is ex officio a trustee, but the board of
28 supervisors at the request of the chair may appoint a member of the bar of the
29 ~~county or any other member of the board of supervisors of the county county, any~~
30 ~~other member of the board of supervisors of the county, or a resident of the county~~
31 to serve as trustee in place of said the chair. The appointment of the person
32 selected in lieu place of the chair of the board of supervisors shall expire when a
33 new chair of the board of supervisors is selected, and the appointment shall not be
34 subject to the provisions of Section 6302.

35 (d) The board of supervisors shall appoint as many additional trustees, who are
36 members of the bar of the county, as may be necessary to constitute a board of six
37 members in any county where one member is elected pursuant to subdivision (b),
38 or of seven members in any county where two members are elected to serve as
39 trustees pursuant to subdivision (b) at least six and not more than seven members.

1 (e) Notwithstanding any other provision of this section, no more than two (2)
2 trustees shall be residents of the county who are not members of the bench or bar
3 of the county.

4 **Comment.** Subdivisions (a) and (b) of Section 6301 are amended to permit a resident of the
5 county to serve on the law library board in place of a judge. Subdivision (b) is also amended to
6 permit the judges of a unified superior court to select either four or five judge trustees at their
7 discretion (three pursuant to subdivision (a) and either one or two pursuant to subdivision (b)),
8 without regard to how many judge trustees were authorized as of January 1, 1998.

9 Subdivision (c) is amended to permit a resident of the county to serve on the law library board
10 in place of the chair of the board of supervisors.

11 Subdivision (d) is amended to permit flexibility in the size of a law library board.

12 Subdivision (e) is added to ensure that judges, attorneys, and boards of supervisors continue to
13 be represented on law library boards.

14 For a special provision governing the composition of the law library board in San Diego
15 County, see Section 6301.1. For a provision authorizing a board of less than six members in a
16 county in which there is no county bar association, see Section 6301.5. For a provision
17 grandfathering pre-1941 legislation establishing a law library and board of law library trustees in
18 a county, see Section 6363. See also Section 6364 (discretion of board of supervisors in applying
19 chapter).

20 Section 6301 is also amended to make technical changes.