

Memorandum 2001-21

Law Library Board of Trustees (Revised Staff Draft Recommendation)

At the December meeting, the Law Revision Commission directed the staff to make the following revisions in its proposal on *Law Library Board of Trustees*:

- (1) The proposed amendment of Business and Professions Code Section 6301 should be revised to permit any member of the State Bar (as opposed to any “member of the bar of the county”) to serve on a law library board, in the circumstances already specified. The proposed definition of a “member of the bar of the county” should be stricken from the draft.
- (2) Business and Professions Code Section 6301.5 should be revised to provide that in any county where there are three or fewer superior court judges, the board of supervisors, with the concurrence of the superior court judges, may reduce the law library board to not less than three members.

These revisions are intended to promote flexibility and local autonomy in selection of law library boards. A revised staff draft recommendation incorporating these revisions is attached. Any comments on the new draft should be submitted by January 19, 2001, if possible, so that the Commission can take them into consideration and perhaps finalize a recommendation at its meeting scheduled for February 1-2, 2001.

Respectfully submitted,

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#J-1307

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Revised Staff Draft RECOMMENDATION

Law Library Board of Trustees

December 2000

California Law Revision Commission
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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, improve clarity,
3 and build rel of the bar of the county” to the general public, the Law Revision
4 Commission proposes to revise this provision to:

- 5 (1) Reflect trial court unification by first specifying how to select a board
6 in a county with a unified superior court, then stating how to select a
7 board in a county in which the courts have not unified.
- 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) Clarify which attorneys may serve on a law library board.
- 12 (4) Increase flexibility as to the size of a law library board.
- 13 (5) Permit laypersons to serve on the law library board in place of a judge
14 or in place of the chair of the board of supervisors, in specified
15 circumstances.

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

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 enhance clarity and ease of use,
5 improve the functioning and fund-raising capabilities of law library boards, and
6 promote effective relations between law libraries and the general public, the Law
7 Revision Commission recommends revision of these criteria.

EXISTING LAW

8 In a county with a unified superior court,³ 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, 1998.⁴ In specified circumstances, a
11 member of the bar of the county may serve in place of a judge trustee.⁵ The board
12 also includes the chair of the board of supervisors⁶ and a member of the bar of the
13 county appointed by the board of supervisors.⁷ At the chair's request, the board of
14 supervisors may appoint another supervisor or a member of the bar of the county
15 to serve in place of the chair.⁸ The board does not include any laypersons (persons
16 who are neither judges, attorneys, or members of the board of supervisors).

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. 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.

4. 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."

5. 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).

6. Section 6301(c).

7. Section 6301(d).

8. Section 6301(c).

PROPOSED REFORMS

1 Section 6301 should be revised to: (1) separate the criteria for selection of a
2 board in a county with a unified superior court from the criteria for selection of a
3 board in a county with a municipal court, (2) eliminate use of the historical
4 benchmark (January 1, 1998) in determining how many trustees the judges of a
5 unified superior court may select, (3) clarify which attorneys may be selected to
6 serve on a law library board, (4) increase options regarding the size of the law
7 library board, and (5) increase diversity by permitting laypersons to serve on law
8 library boards in specified circumstances.

9 **Trial Court Unification**

10 In 1998, California voters approved a constitutional amendment providing for
11 trial court unification on a county-by-county basis.⁹ Since then, the municipal and
12 superior courts in fifty-seven counties have unified. Only Kings County still has a
13 municipal court, and it is seeking preclearance of unification under the Voting
14 Rights Act.

15 Section 6301 should be reorganized to reflect these developments. Because most
16 counties now have a unified superior court, the provision should first state how a
17 law library board is constituted in a county with a unified superior court. Next, a
18 separate paragraph should explain how a law library board is constituted in a
19 county with a municipal court. If Kings County unifies, it will be easy to delete
20 this paragraph and limit the provision to unified superior courts.

21 **Use of Historical Reference Point**

22 The number of judge trustees in a unified superior court now depends on the
23 number of judge trustees authorized as of January 1, 1998. Three superior court
24 judges (or one superior court judge and two members of the bar of the county
25 appointed by the superior court judges) are to be selected pursuant to Section
26 6301(a). One or two additional superior court judges may be selected pursuant to
27 Section 6301(b), “so that the number of judges elected shall not exceed the number
28 of judge trustees authorized as of January 1, 1998.”

29 As January 1, 1998, becomes more distant, however, use of this historical
30 reference point may cause confusion and become inappropriate. Section 6301
31 should be amended to eliminate this benchmark and permit the judges of a unified
32 superior court to select either four or five judge trustees at their discretion, without
33 regard to how many judge trustees were authorized as of January 1, 1998. This
34 would not significantly alter the existing balance of power on law library boards.¹⁰

9. 1996 Cal. Stat. res. ch. 36 (“SCA 4”), which appeared on the ballot as Proposition 220.

10. 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).

1 **Attorney Members**

2 Section 6301 permits a “member of the bar of the county” to serve on a law
3 library board in specified circumstances, but does not define this term. It is unclear
4 whether an attorney must reside in the county, belong to a county bar association,
5 have a law office in the county, satisfy some combination of these criteria, or meet
6 other criteria to be eligible to serve.

7 This ambiguity should be eliminated. The provision should afford the flexibility
8 to select highly capable members.¹¹ The proposed law would achieve this by
9 permitting any member of the State Bar (as opposed to any “member of the bar of
10 the county”) to serve on the board in the circumstances already specified by
11 statute. Further requirements are unnecessary, because the selection process should
12 suffice to eliminate attorneys who would not be responsive to the needs of the
13 county or available to effectively serve on the board.

14 **Size of the Board of Trustees**

15 Existing law requires a six-member board in some counties and a seven-member
16 board in other counties.¹² As opposed to a six-member board, a seven-member
17 board helps to prevent deadlock and makes it easier to obtain a quorum.¹³ To make
18 these benefits widely available, the proposed legislation would allow each county
19 governed by Section 6301 to have either a six- or a seven-member board, as best
20 meets the needs of the county.

21 The proposed legislation would further enhance flexibility by expanding the
22 scope of a special provision (Section 6301.5) permitting reduction of the size of
23 the board in some counties. At present, this statute only applies in a county where
24 there is no county bar association and too few eligible attorneys to constitute a
25 board of six or seven members.¹⁴ The statute should be revised to provide that in
26 any county where there are three or fewer superior court judges, the board of
27 supervisors, with the concurrence of the superior court judges, may reduce the law

11. Overly rigid criteria may exclude the best-qualified persons from serving. For example, restricting membership to attorneys who reside in the county may prevent a senior partner of a prominent local law firm from serving on the board. Similarly, requiring an attorney trustee to belong to the local bar association may exclude a smart but independent-minded practitioner from serving.

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

13. 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.

14. Section 6301.5 provides:

In any county in which there is no county bar association if the board of supervisors determines that there is not a sufficient number of members of the State Bar residing, and with their principal places of office for the practice of law, in the county eligible for appointment to the board of library trustees by the board of supervisors pursuant to subdivision (d) of Section 6301 for the constitution of a six-member or seven-member board of library trustees, the board of library trustees may consist of not less than three members.

1 library board to not less than three members.¹⁵ As under current law, reduction of
2 the size of the board pursuant to this provision would be optional, not mandatory.

3 **Diversity of the Board**

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

13 Including a member of the general public on a law library board may broaden
14 the board's perspective, helping to ensure that the law library effectively serves the
15 public. It may also increase public awareness of the law library, the services that it
16 provides, and the support that it needs. In particular, a lay member may help the
17 library supplement existing funding by encouraging private donations or county
18 assistance.¹⁷ Because law libraries traditionally depend on civil filing fees for
19 funding,¹⁸ and the number of civil cases has decreased in recent years, availability
20 of funding sources such as these may be crucial to maintaining full library
21 services.

22 Despite these potential benefits, the proposed law would not require each law
23 library board to include a member of the general public. Instead, it would broaden
24 the range of persons who could serve in place of a judge. Any resident of the
25 county or member of the bar of the county could be chosen. Similarly, any resident
26 of the county could be appointed to serve in place of the chair of the board of
27 supervisors, not just another supervisor or a member of the bar. To ensure that
28 judges, attorneys, and the board of supervisors continue to be represented on the
29 law library board, a maximum of two laypersons could serve on the board at the
30 same time. The proposed law thus authorizes diversification of the board to
31 include laypersons, but permits flexibility in the composition of the board,
32 allowing each county to structure its board according to its needs.

This provision appears to remain useful in some small counties. See Letter from Tony Nevarez, Legislative Representative for Council for California County Law Libraries, to Barbara Gaal (Jan. 21, 1999) (on file with California Law Revision Commission).

15. Where the board of supervisors and the superior court judges agree to reduce the size of the board, their agreement may also address the composition of the board.

16. 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.

17. 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).

18. See Code Civ. Proc. §§ 6321, 6322, 6322.1.

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 (a) Except as otherwise provided by statute, a board of law library
5 trustees is constituted as follows:

6 (a) (1) In a county where there are no more than three judges of the superior
7 court, each of those judges is ex officio a trustee; in a county where there are more
8 than three judges of the superior court, the judges of the court shall elect three of
9 their number to serve as trustees. However, where there are no more than three
10 judges of the superior court, the trustee. The judges may at their option select only
11 one of 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 State Bar.

14 (2) In a county where there are more than three judges of the superior court, the
15 judges of that court shall elect at least four and no more than five of their number
16 to serve as trustees.

17 (3) Any judge of the superior court who is an ex officio or elected member may
18 at the judge's option designate a resident of the county or a member of the bar of
19 the county State Bar to act for the judge as trustee.

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

29 (c) (4) The chair of the board of supervisors is ex officio a trustee, but the board
30 of supervisors at the request of the chair may appoint a member of the bar of the
31 county or State Bar, any other member of the board of supervisors of the county
32 county, or a resident of the county to serve as trustee in place of said the chair. The
33 appointment of the person selected in lieu place of the chair of the board of
34 supervisors shall expire when a new chair of the board of supervisors is selected,
35 and that appointment shall not be subject to the provisions of Section 6302.

36 (d) (5) The board of supervisors shall appoint as many additional trustees, who
37 are members of the bar of the county State Bar, as may be necessary to constitute a
38 board of six members in any county where one member is elected pursuant to
39 subdivision (b), or of seven members in any county where two members are

1 ~~elected to serve as trustees pursuant to subdivision (b) at least six and not more~~
2 ~~than seven members.~~

3 (b) No more than two (2) law library trustees may be residents of the county who
4 are not judges of the county or members of the State Bar.

5 (c) In a county with a municipal court, a board of law library trustees is
6 constituted as described in subdivisions (a) and (b), except as follows:

7 (1) The judges of the municipal court shall elect one of their number to serve as
8 trustee. Any municipal court judge who is an elected member may at the judge's
9 option designate a resident of the county or a member of the State Bar to act for
10 the judge as trustee.

11 (2) If the county has more than three judges of the superior court, the judges of
12 the superior court shall elect three of their number to serve as trustees.

13 **Comment.** Section 6301 is amended to consolidate the requirements for selection of a law
14 library board in a county with a unified superior court. Subdivisions (a) and (b) state those
15 requirements; subdivision (c) states the requirements for selection of a law library board in a
16 county with a municipal court.

17 Section 6301 is also amended to permit a resident of the county to serve on a law library board
18 in place of a judge or in place of the chair of the board of supervisors. To ensure that judges,
19 attorneys, and boards of supervisors continue to be represented on law library boards, the number
20 of lay trustees serving at the same time is limited to two.

21 Section 6301 is further amended to permit the judges of a unified superior court to select either
22 four or five of their number to serve on the law library board, at their discretion. Formerly, the
23 number of judge trustees in a county with a unified superior court depended on how many judge
24 trustees were authorized as of January 1, 1998. See 1998 Cal. Stat. ch. 931, § 3.

25 To further promote flexibility, Section 6301 is amended to permit a law library board to consist
26 of either six or seven members. Formerly, the size of the board depended on the number of judge
27 trustees, which in turn depended on the number of municipal courts in the county or the number
28 of judge trustees authorized as of January 1, 1998. See 1998 Cal. Stat. ch. 931, § 3.

29 Finally, Section 6301 is amended to clarify that an attorney need not belong to a county bar
30 association to serve on a law library board. It is also unnecessary for the attorney to reside in the
31 county or regularly practice law in the county. It is sufficient if the attorney is a member of the
32 State Bar. The local trial judges and the board of supervisors thus have broad discretion to select
33 capable attorneys to serve as trustees, yet eliminate unsuitable candidates in the selection process.

34 For a special provision governing the composition of the law library board in San Diego
35 County, see Section 6301.1. For a provision authorizing a board of less than six members in a
36 county with three or fewer judges, see Section 6301.5. For a provision grandfathering pre-1941
37 legislation establishing a law library and board of law library trustees in a county, see Section
38 6363. See also Section 6364 (discretion of board of supervisors in applying chapter).

39 Section 6301 is also amended to make technical changes.

40 **Bus. & Prof. Code § 6301.5. (amended). Board of law library trustees in county with three**
41 **or fewer judges**

42 SEC. 2. Section 6301.5 of the Business and Professions Code is amended to
43 read:

44 6301.5. In any county in which there is no county bar association if the board of
45 supervisors determines that there is not a sufficient number of members of the
46 State Bar residing, and with their principal places of office for the practice of law,
47 in the county eligible for appointment to the board of library trustees by the board

1 of supervisors pursuant to subdivision (d) of Section 6301 for the constitution of a
2 six-member or seven-member board of library trustees, the board of library
3 trustees may consist of where there are three or fewer judges of the superior court,
4 the board of supervisors, with the concurrence of the judges of the superior court,
5 may reduce the number of law library trustees to not less than three members.

6 **Comment.** Section 6301.5 is amended to apply to any county where there are three or fewer
7 judges of the superior court. Reduction of the size of the board pursuant to this provision is
8 optional, not mandatory. Where the board of supervisors and the judges of the superior court
9 agree to reduce the size of the board pursuant to this provision, the agreement may also address
10 the composition of the board.

11 For the composition of a law library board generally, see Section 6301. For a special provision
12 governing the composition of the law library board in San Diego County, see Section 6301.1. For
13 a provision grandfathering pre-1941 legislation establishing a law library and board of law library
14 trustees in a county, see Section 6363. See also Section 6364 (discretion of board of supervisors
15 in applying chapter).
