

Study J-1307

January 29, 2001

**Second Supplement to Memorandum 2001-21****Law Library Board of Trustees: Deletion of References to Municipal Court  
(Second Revised Staff Draft Recommendation)**

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The trial courts in Kings County are scheduled to unify on February 8, eliminating the last municipal courts in California. The staff has revised the proposal on *Law Library Board of Trustees* to reflect that development and incorporate the revisions recommended in the First Supplement to Memorandum 2001-21. The new draft is attached for the Commission and interested parties to review.

Respectfully submitted,

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#J-1307

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

*Second Revised Staff Draft* RECOMMENDATION

Law Library Board of Trustees

February 2001

California Law Revision Commission  
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## SUMMARY OF RECOMMENDATION

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

- (1) Reflect trial court unification by eliminating the references to municipal courts.
- (2) Permit the judges of a superior court to select either four or five law library trustees at their discretion, without regard to the number of judge trustees authorized as of January 1, 1998.
- (3) Clarify which attorneys may serve on a law library board.
- (4) Increase flexibility as to the size of a law library board.
- (5) 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.

The Commission also proposes to expand the scope of a special provision that permits reduction of the size of the law library board in some counties (Bus. & Prof. Code § 6301.5).

This recommendation was prepared pursuant to Resolution Chapter 91 of the 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.<sup>1</sup>  
2 Although other provisions apply in some counties, Business and Professions Code  
3 Section 6301 is the main provision governing selection of the board.<sup>2</sup> 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 Section 6301 sets forth different criteria for selection of a law library board  
9 depending on the number of municipal courts in the county.<sup>3</sup> As of February 8,  
10 2001, however, municipal courts will no longer exist in California.<sup>4</sup>

11 In a county in which there is no municipal court, the law library board of trustees  
12 includes either four or five superior court judges, depending on the number of  
13 judge trustees authorized as of January 1, 1998.<sup>5</sup> In specified circumstances, a  
14 member of the bar of the county may serve in place of a judge trustee.<sup>6</sup> The board  
15 also includes the chair of the board of supervisors<sup>7</sup> and a member of the bar of the  
16 county appointed by the board of supervisors.<sup>8</sup> At the chair's request, the board of  
17 supervisors may appoint another supervisor or a member of the bar of the county  
18 to serve in place of the chair.<sup>9</sup> The board does not include any laypersons (persons  
19 who are neither judges, attorneys, nor members of the board of supervisors).

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

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. Section 6301(b).

4. The municipal and superior courts in Kings County are scheduled to unify on that date. The trial courts in all other counties have already unified.

5. Section 6301(a)-(b). Three 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 in place of judge trustees. Section 6301(a).

7. Section 6301(c).

8. Section 6301(d).

9. Section 6301(c).

## PROPOSED REFORMS

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

### 8 **Trial Court Unification**

9 In 1998, California voters approved a constitutional amendment providing for  
10 trial court unification on a county-by-county basis.<sup>10</sup> Since then, the municipal and  
11 superior courts in fifty-seven counties have unified. The trial courts in Kings  
12 County are scheduled to unify on February 8, 2001, eliminating the last municipal  
13 courts in the state.

14 Section 6301 should be amended to reflect these developments. The references  
15 to municipal courts should be deleted as obsolete.

### 16 **Use of Historical Reference Point**

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

24 As January 1, 1998, becomes more distant, however, use of this historical  
25 reference point may cause confusion and become inappropriate. Section 6301  
26 should be amended to eliminate this benchmark and permit the judges of a unified  
27 superior court to select either four or five judge trustees at their discretion, without  
28 regard to the number of judge trustees authorized as of January 1, 1998. This  
29 would not significantly alter the existing balance of power on law library boards.<sup>11</sup>

### 30 **Attorney Members**

31 Section 6301 permits a “member of the bar of the county” to serve on a law  
32 library board in specified circumstances, but does not define this term. It is unclear  
33 whether an attorney must reside in the county, belong to a county bar association,

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10. 1996 Cal. Stat. res. ch. 36 (“SCA 4”), which appeared on the ballot as Proposition 220.

11. 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 have a law office in the county, satisfy some combination of these criteria, or meet  
2 other criteria to be eligible to serve.

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

#### 10 **Size of the Board of Trustees**

11 Existing law requires a six-member board in some counties and a seven-member  
12 board in other counties.<sup>13</sup> As opposed to a six-member board, a seven-member  
13 board helps to prevent deadlock and makes it easier to obtain a quorum.<sup>14</sup> To make  
14 these benefits widely available, the proposed legislation would allow each county  
15 governed by Section 6301 to have either a six- or a seven-member board, as best  
16 meets the needs of the county.

17 The proposed legislation would further enhance flexibility by expanding the  
18 scope of a special provision (Section 6301.5) permitting reduction of the size of  
19 the board in some counties. At present, this statute only applies in a county where  
20 there is no county bar association and too few eligible attorneys to constitute a  
21 board of six or seven members.<sup>15</sup> The statute should be revised to provide that in  
22 any county where there are three or fewer superior court judges, the board of  
23 supervisors, with the concurrence of the superior court judges, may reduce the law  
24 library board to not less than three members.<sup>16</sup> As under current law, reduction of  
25 the size of the board pursuant to this provision would be optional, not mandatory.

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12. 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.

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

14. 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.

15. 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.

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).

1 **Diversity of the Board**

2 At present, laypersons may attend and participate in law library board meetings,  
3 but they cannot vote and their perspectives and talents may differ from those who  
4 can. Although laypersons are a significant proportion of law library users, they  
5 have no direct voice in library operations.<sup>17</sup> The public also indirectly benefits  
6 from county law libraries because prosecutors, public defenders, private attorneys,  
7 and courts are able to share books and other legal resources, instead of maintaining  
8 their own collections and passing along the cost to clients or the public. The lay  
9 public may be oblivious to these benefits, however, and thus uninterested in  
10 supporting law libraries.

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

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

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16. 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.

17. 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.

18. 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).

19. See Bus. & Prof. Code §§ 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, members of the State Bar, or members of the board of  
5 supervisors.

6 **Comment.** Section 6301 is amended to reflect elimination of the municipal courts as a result of  
7 unification with the superior courts pursuant to Article VI, Section 5(e), of the California  
8 Constitution.

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

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

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

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

26 For a special provision governing the composition of the law library board in San Diego  
27 County, see Section 6301.1. For a provision authorizing a board of less than six members in a  
28 county with three or fewer superior court judges, see Section 6301.5. For a provision  
29 grandfathering pre-1941 legislation establishing a law library and board of law library trustees in  
30 a county, see Section 6363. See also Section 6364 (discretion of board of supervisors in applying  
31 chapter).

32 Section 6301 is also amended to make technical changes.

33 **Bus. & Prof. Code § 6301.5. (amended). Board of law library trustees in county with three**  
34 **or fewer superior court judges**

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

37 ~~6301.5. In any county in which there is no county bar association, if the board of~~  
38 ~~supervisors determines that there is not a sufficient number of members of the~~  
39 ~~State Bar residing, and with their principal places of office for the practice of law,~~  
40 ~~in the county eligible for appointment to the board of library trustees by the board~~  
41 ~~of supervisors pursuant to subdivision (d) of Section 6301 for the constitution of a~~  
42 ~~six-member or seven-member board of library trustees, the board of library~~  
43 ~~trustees may consist of where there are three or fewer judges of the superior court,~~  
44 ~~the board of supervisors, with the concurrence of the judges of the superior court,~~  
45 may reduce the number of law library trustees to not less than three members.

46 **Comment.** Section 6301.5 is amended to apply to any county where there are three or fewer  
47 judges of the superior court. Reduction of the size of the board pursuant to this provision is  
48 optional, not mandatory. Where the board of supervisors and the judges of the superior court

1 agree to reduce the size of the board pursuant to this provision, the agreement may also address  
2 the composition of the board.

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

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