

Second Supplement to Memorandum 2001-38

AB 1103 (Papan): Law Library Board of Trustees

The Fresno County Law Library Board of Trustees (“Fresno Board”) opposes AB 1103 (Papan), which would implement the Commission’s recommendation on *Law Library Board of Trustees*. (Exhibit p. 1.) This supplement discusses the board’s opposition.

POSITION OF THE FRESNO BOARD

The Fresno Board “is not in opposition to having as many as two members of the public appointed but the manner in which that would be accomplished.” *Id.* The board explains:

As provided by the statute a judge is elected to serve as trustee by the judges of the superior court of that county. It is our opinion the position of trustee *does not belong to the individual judge* who is elected. In the event the judge decides not to accept and serve as elected then the selection of the alternate or replacement *should revert to the judges of the county as the electing body.*

Id. (emphasis added).

The Fresno Board further explains that “public representation on the Board is important.” *Id.* The board “supports the appointment of a public member by the Board of Supervisors as stated in Section 6301(c).” *Id.* But it is “opposed to making that option available to a judge as recommended in Section 6301(a) and Section 6301(b).” *Id.* According to the board, “should the Legislature feel further public participation is warranted an additional position should be created thereby increasing the size of the Board.” *Id.*

ANALYSIS

The Fresno Board already raised this argument (in less detail) in the course of the Commission’s study. (First Supplement to Memorandum 2001-21, pp. 1-2 & Exhibit p. 1.) As we pointed out at the time, the Commission’s proposal merely tracks existing law with respect to who has power to select trustees. *Id.* at 2. The

proposal would expand the range of persons who may be selected (to include both laypersons and attorneys), but it would not change the selection process.

Specifically, Business and Professions Code Section 6301 currently provides:

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 those 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.**

....

(Emphasis added.)

As shown in bold below, AB 1103 simply tracks that existing language:

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

(a) (1) In a county where there are no more than three judges of the superior court, each of those 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 trustee. 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 residents of the county or members of the bar of the county~~ State Bar.

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

(3) Any judge of the superior court who is an ex officio or elected member may at the judge's option designate a resident of the county or a member of the bar of the county State Bar 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.~~

The Fresno Board does not explain in any detail why it considers this existing scheme improper. **Absent further explanation, the staff is inclined to leave AB 1103 as is.** We will discuss this matter further when the Commission meets.

Respectfully submitted,

Barbara S. Gaal
Staff Counsel

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Law Revision Commission
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Board of Trustees:
Hon. Edward Sarkisian, Jr.
Hon. Stephen J. Kane
Hon. Debra Kazanjian
Hon. Ralph Nunez
Hon. James M. Petrucelli
Deron Koligian, Supervisor
Katherine Hart, Esq.

May 14, 2001

The Honorable Lou Papan
District 19
State Capitol #3173
Sacramento, California 95814

File: _____

RE: AB 1103 / Opposition

Dear Mr. Papan:

The Fresno County Law Library Board of Trustees first expressed disagreement to AB1103 upon receiving the proposed language from the Law Revision Commission. The matter was given careful consideration and our Board unanimously agreed to oppose the bill as currently written.

Our position is not in opposition to having as many as two members of the public appointed but the manner in which that would be accomplished under your bill. As provided by the statute a judge is elected to serve as trustee by the judges of the superior court of that county. It is our opinion the position of trustee does not belong to the individual judge who is elected. In the event the judge decides not to accept and serve as elected then the selection of the alternate or replacement should revert to the judges of the county as the electing body.

In the course of our discussion it was agreed that public representation on the Board is important. In Fresno County we are fortunate to have excellent participation from the Board of Supervisors. Their contribution as trustee has always been from the viewpoint of the general public in addition to the county government. Also the attorney representative from the bar association has provided significant input during committee meetings. It is our position that should the Legislature feel further public participation is warranted an additional position should be created thereby increasing the size of the Board.

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).

Thank you for your kind attention to this matter. If I may offer further explanation regarding the position of the Fresno County Law Library Board of Trustees please do not hesitate to contact me.

Sincerely,

Hon. Edward Sarkisian, Jr.
Trustee President

cc: Board of Trustees