

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Law Library Board of Trustees

February 2001

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

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

Cite this report as *Law Library Board of Trustees*, 30 Cal. L. Revision Comm'n Reports 429 (2000). This is part of publication #209 [*2000-2001 Recommendations*].

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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

DAVID HUEBNER, Chairperson
JOYCE G. COOK, Vice Chairperson
BION M. GREGORY
SENATOR BILL MORROW
SANFORD M. SKAGGS
ASSEMBLY MEMBER HOWARD WAYNE

February 1, 2001

To: The Honorable Gray Davis
Governor of California, and
The Legislature of California

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 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 81 of the Statutes of 1999 and Government Code Section 70219.

Respectfully submitted,

David Huebner
Chairperson

LAW LIBRARY BOARD OF TRUSTEES

EXISTING LAW

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

PROPOSED REFORMS

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

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.”).

Trial Court Unification

In 1998, California voters approved a constitutional amendment providing for trial court unification on a county-by-county basis.³ Since then, the trial courts in all fifty-eight counties have unified. Each county now has a unified superior court; all municipal courts have been eliminated.

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

Use of Historical Reference Point

The number of judge trustees in a unified superior court now depends on the number of judge trustees authorized as of January 1, 1998. Three superior court judges (or, under specified circumstances, 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.”

As January 1, 1998, becomes more distant, use of this historical reference point may cause confusion and become inappropriate. Section 6301 should be amended to eliminate this benchmark and permit the judges of a unified superior court to select either four or five judge trustees at their discretion, without regard to the number of judge trustees authorized as of January 1, 1998. This would not significantly alter the existing balance of power on law library boards.⁴

3. 1996 Cal. Stat. res. ch. 36 (“SCA 4”), which appeared on the ballot as Proposition 220.

4. 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 designated or appointed by judges) already constitute a majority of

Attorney Members

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

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

Size of the Board of Trustees

Existing law requires a six-member board in some counties and a seven-member board in other counties.⁶ As opposed to a six-member board, a seven-member board helps to prevent deadlock and makes it easier to obtain a quorum.⁷ To make these benefits widely available, the proposed legislation would allow each county governed by Section 6301 to have

the board: They hold four of six positions on the board, rather than five of seven positions. See Section 6301(d).

5. 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.

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

7. 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.

either a six- or a seven-member board, as best meets the needs of the county.

The proposed legislation would further enhance flexibility by expanding the scope of a special provision (Section 6301.5) permitting reduction of the size of the board in some counties. At present, this statute only applies in a county where there is no county bar association and too few eligible attorneys to constitute a board of six or seven members.⁸ The statute 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.⁹ As under current law, reduction of the size of the board pursuant to this provision would be optional, not mandatory.

Diversity of the Board

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. Although laypersons are a significant proportion of law

8. 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).

9. 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.

library users, they have no direct voice in library operations.¹⁰ The public also indirectly benefits from county law libraries because prosecutors, public defenders, private attorneys, and courts are able to share books and other legal resources, instead of maintaining their own collections and passing along the cost to clients or the public. The lay public may be oblivious to these benefits, however, and thus uninterested in supporting law libraries.

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

Despite these potential benefits, the proposed law would not require each law library board to include a member of the general public. Instead, it would broaden the range of persons who could serve on the board. Any resident of the county, not

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. See, e.g., Letter from Samuel Torres, Jr., Santa Cruz County counsel, to California Law Revision Commission (Sept. 20, 2000) (Memorandum 2000-70, Exhibit pp. 11-12, on file with Commission).

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

12. See Bus. & Prof. Code §§ 6321, 6322, 6322.1.

13. See Judicial Council & Administrative Office of the Courts, 2000 Court Statistics Report, p. 51.

just a member of the bar, could be designated by a judge to act for the judge as trustee, or, under the circumstances already specified by statute, appointed by the judges of a superior court to serve as trustee instead of a judge. Similarly, any resident of the county could be appointed to serve in place of the chair of the board of supervisors, not just another supervisor or an attorney. To ensure that judges, attorneys, and the board of supervisors continue to be represented on the law library board, a maximum of two laypersons could serve on the board at the same time. The proposed law thus authorizes diversification of the board to include laypersons, but permits flexibility in the composition of the board, allowing each county to structure its board according to its needs.

PROPOSED LEGISLATION

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

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

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 either four or 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.

(c)

(4) 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 State Bar~~, any other member of the board of supervisors of the ~~county county~~, or a resident of the county to serve as trustee in place of ~~said the~~ chair. The appointment of the person selected in lieu ~~place~~ of the chair of the board of supervisors shall expire when a new chair of the board of supervisors is selected, and that appointment shall not be subject to the provisions of Section 6302.

(d)

(5) The board of supervisors shall appoint as many additional trustees, who are members of the ~~bar of the county State Bar~~, 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)~~ at least six and not more than seven members.

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

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

Section 6301 is also amended to clarify that an attorney need not belong to a county bar association to serve on a law library board. It is also unnecessary for the attorney to reside in the county or regularly practice law in the county. It is sufficient if the attorney is a member of the State Bar. The local trial judges and the board of supervisors thus

have broad discretion to select capable attorneys to serve as trustees, yet eliminate unsuitable candidates in the selection process.

Section 6301 is further amended to permit a resident of the county to serve on a law library board in specified circumstances. To ensure that judges, attorneys, and boards of supervisors continue to be represented on law library boards, the number of lay trustees serving at the same time is limited to two.

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

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

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 with three or fewer superior court judges, 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 (discretion of board of supervisors in applying chapter).

Section 6301 is also amended to make technical changes.

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

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

~~6301.5. 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 where there are no more than three judges of the superior court, the board of supervisors, with the concurrence of the judges of the superior court, may reduce the number of law library trustees to not less than three members.~~

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

For the composition of a law library board generally, see Section 6301. For a special provision governing the composition of the law library board in San Diego County, see Section 6301.1. 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 (discretion of board of supervisors in applying chapter).
