

RESOLUTION 07-01-2015

DIGEST

Judicial Elections: Ballot Designations

Amends Elections Code section 13107 and adds section 13107.1 to clarify ballot designations for judicial elections.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend California Elections Code section 13107, and add section 13107.1, to read as follows:

§13107

1 (a) ~~With the exception of candidates for Justice of the State Supreme Court or Court of~~
2 ~~Appeal,~~ immediately under the name of each candidate, and not separated from the name by any
3 line, unless the designation made by the candidate pursuant to Section 8002.5 must be listed
4 immediately below the name of the candidate pursuant to Section 13105, and in that case
5 immediately under the designation, may appear at the option of the candidate only one of the
6 following designations:

7 (1) Words designating the elective city, county, district, state, or federal office which the
8 candidate holds at the time of filing the nomination documents to which he or she was elected by
9 vote of the people, or to which he or she was appointed, in the case of a superior court judge.

10 (2) The word “incumbent” if the candidate is a candidate for the same office which he or
11 she holds at the time of filing the nomination papers, and was elected to that office by a vote of
12 the people, or, in the case of a superior court judge, was appointed to that office.

13 (3) No more than three words designating either the current principal professions,
14 vocations, or occupations of the candidate, or the principal professions, vocations, or occupations
15 of the candidate during the calendar year immediately preceding the filing of nomination
16 documents. For purposes of this section, all California geographical names shall be considered to
17 be one word. Hyphenated words that appear in any generally available standard reference
18 dictionary, published in the United States at any time within the 10 calendar years immediately
19 preceding the election for which the words are counted, shall be considered as one word. Each
20 part of all other hyphenated words shall be counted as a separate word.

21 (4) The phrase “appointed incumbent” if the candidate holds an office other than a
22 judicial office by virtue of appointment, and the candidate is a candidate for election to the same
23 office, or, if the candidate is a candidate for election to the same office or to some other office,
24 the word “appointed” and the title of the office. In either instance, the candidate may not use the
25 unmodified word “incumbent” or any words designating the office unmodified by the word
26 “appointed.” However, the phrase “appointed incumbent” shall not be required of a candidate
27 who seeks reelection to an office which he or she holds and to which he or she was appointed, as
28 a nominated candidate, in lieu of an election, pursuant to Sections 5326 and 5328 of the
29 Education Code or Section 7228, 7423, 7673, 10229, or 10515 of this code.

30 (b) Neither the Secretary of State nor any other elections official shall accept a
31 designation of which any of the following would be true:

32 (1) It would mislead the voter.

33 (2) It would suggest an evaluation of a candidate, such as outstanding, leading, expert,
34 virtuous, or eminent.

35 (3) It abbreviates the word “retired” or places it following any word or words which it
36 modifies.

37 (4) It uses a word or prefix, such as “former” or “ex-,” which means a prior status. The
38 only exception is the use of the word “retired.”

39 (5) It uses the name of any political party, whether or not it has qualified for the ballot.

40 (6) It uses a word or words referring to a racial, religious, or ethnic group.

41 (7) It refers to any activity prohibited by law.

42 (c) If, upon checking the nomination documents and the ballot designation worksheet
43 described in Section 13107.3, the elections official finds the designation to be in violation of any
44 of the restrictions set forth in this section, the elections official shall notify the candidate by
45 registered or certified mail return receipt requested, addressed to the mailing address provided on
46 the candidate’s ballot designation worksheet.

47 (1) The candidate shall, within three days, excluding Saturday, Sunday, and state
48 holidays, from the date he or she receives notice by registered or certified mail, or from the date
49 the candidate receives actual notice of the violation, whichever occurs first, appear before the
50 elections official or, in the case of the Secretary of State, notify the Secretary of State by
51 telephone, and provide a designation that complies with subdivision (a).

52 (2) In the event the candidate fails to provide a designation that complies with
53 subdivision (a) within the three-day period specified in paragraph (1), no designation shall
54 appear after the candidate’s name.

55 (d) No designation given by a candidate shall be changed by the candidate after the final
56 date for filing nomination documents, except as specifically requested by the elections official as
57 specified in subdivision (c) or as provided in subdivision (e). The elections official shall maintain
58 a copy of the ballot designation worksheet for each candidate that appears on the ballot in the
59 county for the same period of time as applied to nomination documents pursuant to Section
60 17100.

61 (e) The designation shall remain the same for all purposes of both primary and general
62 elections, unless the candidate, at least 98 days prior to the general election, requests in writing a
63 different designation which the candidate is entitled to use at the time of the request.

64 (f) In all cases, the words so used shall be printed in 8-point roman uppercase and
65 lowercase type except that, if the designation selected is so long that it would conflict with the
66 space requirements of Sections 13207 and 13211, the elections official shall use a type size for
67 the designation for each candidate for that office sufficiently smaller to meet these requirements.

68 (g) Whenever a foreign language translation of a candidate’s designation is required
69 under the Voting Rights Act of 1965 (42 U.S.C. Sec. 1971), as amended, to appear on the ballot
70 in addition to the English language version, it shall be as short as possible, as consistent as is
71 practicable with this section, and shall employ abbreviations and initials wherever possible in
72 order to avoid undue length.

73
74 §13107.1

75 (a) With the exception of candidates for Justice of the State Supreme Court or Court of
76 Appeal, immediately under the name of each candidate, and not separated from the name by any
77 line, may appear, should the candidate desire a designation, one of the following designations:

78 (1) Words designating the city, county, district, state, or federal judicial or quasi-judicial

79 office held by the candidate at the time of filing the nomination documents, or (B) words
80 designating the actual job title, as defined by statute, charter, or, if not defined by statute or
81 charter, other governing instrument, of an attorney employed by a city, county, district, state, or
82 by the United States. If the candidate is an official or employee of a city, the name of the city
83 must appear preceded by the words “City of.” If the candidate is an official or employee of a
84 county, the name of the county must appear preceded by the words “County of.” If the candidate
85 is a member of a quasi-judicial body, the full name of the agency must be included. If a
86 candidate is a fulltime official or employee of a city, county, district, state, or the United States
87 (working a minimum of 40 hours a week), the designation must be pursuant to this paragraph. If
88 the candidate is a part-time official or employee of such entity, the designation must include the
89 word “Part-Time” or, if the position does not reflect the candidate’s principal profession,
90 vocation, or occupation, the designation shall be pursuant to Paragraph (2).

91 (2) No more than three words designating either the current primary profession, vocation,
92 or occupation of the candidate, or, if the candidate is presently unemployed, the primary
93 profession, vocation, or occupation of the candidate during the calendar year immediately
94 preceding the filing of nomination documents. For purposes of this section, all California
95 geographical names shall be considered to be one word. Hyphenated words that appear in any
96 generally available standard reference dictionary, published in the United States at any time
97 within the 10 calendar years immediately preceding the election for which the words are
98 counted, shall be considered as one word. Each part of all other hyphenated words shall be
99 counted as a separate word.

100 (b) Neither the Secretary of State nor any other elections official shall accept a
101 designation of a sort which would be disallowed under §13107 of this code. A member of the
102 State Bar, whether on active or inactive status, shall not use the words “Attorney,” “Lawyer,” or
103 “Counselor at Law,” or variations on those words if, during the one-year period preceding filing
104 the filing of nominating papers, the candidate has not derived at least half of his or income from
105 the practice of law or has not devoted to law practice at least half of the time he or she has spent
106 working in a profession, vocation, or occupation.

107 (c) Procedures set forth in paragraphs (c) through (g) of Section 13107 apply to judicial
108 elections.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Elections Code §13107 provides that elective office-holders and appointed judges may use ballot designations with no set limit on the number of words; all others, however, are limited to three words, with a geographical designation counting as one word. This has proven unwieldy with respect to judicial elections. For example, a person who is a “State Bar Court judge” could not use that designation; it’s four words. Yet, variations are imprecise. If one candidate is labelled a “Criminal Prosecutor” and another is designated a “Supervising Criminal Prosecutor,” the public is bound to conclude that the latter individual supervises the former. This is misleading where the former is a deputy district attorney and the latter is a deputy city attorney. In at least one California county (Los Angeles), results of judicial elections have been

skewed by use of inventive ballot designations, such as “child molestation prosecutor,” while the actual title is “deputy district attorney.” There is the potential of such devices being adopted by candidates elsewhere. The resolution also settles problem arising from former occupations and part time professions.

The Solution: The proposed resolution would remove from §13107 references to judicial elections and create §13107.1, to address all aspects of ballot designations in such elections. The new section would set no word limit on the designations of city, county, district, state, or federal judicial or quasi-judicial office-holders, or attorneys for governmental entities; would require that actual job titles be used; and would require a geographical reference.

IMPACT STATEMENT

This proposed resolution does not impact any other law, statute or rule except to the extent of rendering §13107 inapplicable to judicial elections and requiring revision of secretary of state guidelines contained in §§20712-20714.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Elections Code section 13107 and adds section 13107.1 to clarify ballot designations for judicial elections. This resolution should be approved in principle because the current controls on ballot designations in judicial elections allow candidates to use misleading ballot designations.

Under the current statute, elective office-holders and appointed judges may use ballot designations with no set limit on the number of words while other candidates are limited to three word designations, with the geographical designation counting as one word. This allows for inconsistencies and misrepresentations in ballot designations that result in confusion by voters about candidates seeking to be elected judge.

The proposed resolution would require that actual job titles be used by eliminating word limits on the designations of city, county, district, state, or federal judicial or quasi-judicial office names, would limit to three words either the primary current profession, vocation, or occupation of the candidate, or, if presently unemployed, the primary profession, vocation, or occupation of

the candidate during the calendar year immediately preceding the filing of nomination documents. By making this change, the current job titles and ballot designations of candidates for judicial office will be more consistent.