

Katherine A. Fox (5278)  
General Counsel  
Utah State Bar  
645 South 200 East  
Salt Lake City, Utah 84111  
Telephone: (801) 297-7047  
Fax: (801) 531-0660

---

IN THE SUPREME COURT OF THE STATE OF UTAH

---

|                |   |                        |
|----------------|---|------------------------|
| IN RE:         | ) |                        |
|                | ) |                        |
| UTAH STATE BAR | ) | PETITION TO MODIFY BAR |
|                | ) | RULES RELATING TO THE  |
|                | ) | OFFICES OF PRESIDENT   |
| Petitioner.    | ) | AND PRESIDENT-ELECT    |
|                | ) |                        |

---

THE UTAH STATE BAR, by and through its General Counsel, files this Petition to Modify Bar Rules Relating to the Offices of President and President-Elect. The Board of Bar Commissioners ("Commission" or "Board") voted in a regularly scheduled meeting on July 16, 2008, to standardize the requirements for a Commissioner to vacate his or her unexpired Commission term when succeeding to the office of President. The Bar also petitions this Court for a rule amendment in the event where the Commission is unable to nominate two candidates for the office of President-elect to run in a contested election. This change was approved by the Commission at its January 2007 regularly scheduled meeting shortly after only one qualified candidate for the office emerged. Attached are copies of redlined rule amendments which are necessary to implement these proposed revisions.

## **PRESIDENT'S UNEXPIRED COMMISSION TERM**

Under current governing rules, voting lawyer Commissioners are elected for a three year period.<sup>1</sup> In some circumstances, a Commissioner may have been appointed or may have run for election in order to fill the remainder of another Commissioner's unexpired term. A circumstance that arises on a more or less regular basis is when a Commissioner, who still has two or even three years left in their Commission term, runs and successfully wins the office of President-elect. At the point where that Commissioner succeeds to the office of President, he or she may still have an unexpired term left as a Commissioner and may end up wearing two hats: one as President and one still representing a division as an elected Commissioner.

The practice of filling a President's unexpired Commission term has not been uniform because the current rules allow for different scenarios. In the past, some new Presidents have continued to serve as a Commissioner. Others have resigned their Commissioner seat and the Commission has appointed another lawyer to fill their unexpired term. Still others have allowed their unexpired term to lapse until the next election cycle where the vacancy is filled.

The Commission voted to standardize the practice of filling a President-elect's unexpired Commission term upon succeeding to the office of President this past July to increase uniformity and predictability of how this situation is handled. The thinking underlying this move was that whenever possible, Bar

---

<sup>1</sup> Other lawyers who sit on the Board, namely Ex-officio members such as the deans of the law school, a representative from the Minority Bar of Utah and the like, are not designated as voting members. Their terms run for one year. The two public members who also vote are not lawyers and thus, ineligible to run for the office of President-elect.

members in a given division should have full and complete representation through the election process. That is, a lawyer who ran for Commission in the corresponding division with the next highest vote total should assume the unexpired Commission term of the new President.

Two rule amendments are necessary to formalize this proposed change. Rule 14-103 (b)(3) in the Bar's Rules for Integration and Management is new and provides that , "A President's unexpired Commission term shall be filled in the regular election cycle immediately preceding the time he or she succeeds to the office of President." See attached Exhibit "1" for a redlined and clean version. Rule 14-205 (b)(4) in the Bar's Bylaws is also new and provides that, "A President-elect's unexpired Commission term shall be filled in the regular election cycle immediately preceding the time he or she succeeds to the office of President." See attached Exhibit "2" for a redlined and a clean version.

### **ELECTION FOR OFFICE OF PRESIDENT-ELECT WITH ONLY ONE CANDIDATE**

In the fall of 1999, the Court established a Task Force to study and make recommendations on several Bar governance issues. One issue was how the Bar's President-elect should be selected. In 2000, the Court indicated that it preferred that the Bar hold a contested election between two lawyers in good standing to run for that office to replace the one candidate retention election which had been in place. Since that time, the Commission has nominated two qualified and interested candidates to run for the office. In 2007, despite

publicity<sup>2</sup> and the Bar's encouragement to lawyers to run, the Commission faced a dilemma: only one candidate indicated interest in submitting his name.

Because the Bylaws were amended in 2000 to comply with the Court's direction to eliminate the retention election, the Bar President sent a letter to the Chief Justice indicating that Commission was unable to find another qualified lawyer to run in the upcoming election. (See copy of the letter to the Chief Justice dated January 18, 2007, attached as Exhibit "5.") The letter stated that unless the Commission heard otherwise from the Court, the Commission would waive the Bylaw requirement at its January meeting. The letter also indicated that the Bar would prepare a petition to the Court to amend the Bylaws to make permanent the option of a retention election in the event that only one qualified candidate was willing and able to run for President-elect.

The practical impact surrounding the offices of President and President-elect cannot be minimized. The demands of those offices are considerable. Both these positions, and particularly the office of President, require significant time commitments. More often than not, the President must not only have the support of his or her law firm partners in order to run, but also to fill in the firm's work gaps which necessarily follow an election. In addition to work complications, there are burdens to one's personal life, including civic, religious, financial and family, which must be taken into account and somehow balanced in the equation.

---

<sup>2</sup> The Bar consistently publicizes the annual opening for President-elect in order to solicit candidates. At least one notice of the upcoming annual election is inserted the *Utah Bar Journal* issue preceding the annual election. See Exhibit "3" for the November-December 2008 issue. Since instituting the Bar's e-Bulletin (a succinct Bar newsletter which is emailed to lawyers on a monthly basis), notice of the President-elect election has also been included. A copy of the current e-Bulletin for November 2008 as well as e-Bulletin notices in December 2005, December 2006 and November 2007 are attached as Exhibit "4".

Simply put, the Board cannot make qualified lawyers volunteer for the responsibilities of the office of President-elect, and subsequently, the office of President; there may be, from time to time, periods where only one qualified candidate is interested and able to devote the time those positions require.

Two changes to the Bar's Bylaws are necessary if this proposed revision is approved. Rules 14-206 (b) (2) and 14-206 (b) (4) can be modified to provide that in the event that only one candidate for the office of President-elect emerges, the election shall be designated as a retention election with a majority of those voting required to reject the candidate.<sup>3</sup> A redlined and clean version of Rules 14-206 (b) (2) 14-206 (b) (4) is attached as Exhibit "6."

### **CONCLUSION**

For the reasons set forth above, the Bar respectfully asks the Court to approve the rule amendments relating to the office of President and President-elect.

Dated this \_\_\_\_ day of November, 2008.

---

Katherine A. Fox  
Utah State Bar General Counsel

---

<sup>3</sup> The requirement of a majority of those voting to reject the sole candidate for President-elect in a retention election was also approved by the Commission at the January 2007 meeting.