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# Utah State Bar

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January 18, 2007

The Honorable Christine M. Durham  
Chief Justice of the Utah Supreme Court  
450 South State Street  
P. O. Box 14020  
Salt Lake City, Utah 84114-0210

Re: Current Issue with President-Elect Process

Dear Chief Justice Durham:

I am writing to advise you of a time-sensitive matter relating to recent developments in the Bar's President-Elect nomination process and to receive input from the Court. Rule 14-206 (b) (1) of the Bar's bylaws requires that lawyers interested in being considered for nomination to run for the office of President-Elect notify the Commission in writing no later than January 1. Subsection (b) (2) then states that the Commission *shall* nominate *two* candidates to run for President-Elect from among the names submitted, resulting in a contested election. (A copy of the applicable bylaw sections is attached as Exhibit "A".)

To date despite the Bar's usual and customary publicity and encouragement only one individual, a current Commissioner has notified the Commission of his interest in being nominated to run for President-Elect. Thus, while the Court directed the Bar several years ago to amend its bylaws to eliminate the President-Elect retention election and institute a contested election with two candidates, at this time we only have one candidate who has expressed a desire to run.

At this juncture, unless we receive an additional nominee at our Commission meeting on January 26, we will be faced with a dilemma which requires quick resolution because the current President-Elect election process makes time of the essence. (A copy of the President-Elect election timetable is attached as Exhibit "B".) We consider our options to include: (a) a waiver the bylaw provision requiring a contested election this year to be followed by a petition to amend the by-laws; (b) an emergency bylaw amendment to provide for a retention election in the event there are not two qualified candidates running for the office of President-Elect; (c) a petition to amend the bylaws to accommodate the situation, including a possible scenario where there could be two candidates, but one is not considered to be qualified to run by the Commission. Of course, these options are

#### Board of Commissioners

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Mary Kay Griffin, CPA  
Robert L. Jells  
Curtis M. Jensen  
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by no means intended to be exclusive. Below is some background information (both historical and recent) which may be helpful in the Court's response to our desire for a waiver given the current situation.

### HISTORICAL BACKGROUND

In the fall of 1999, the Court established a Task Force to study and make recommendations on several Bar governance issues such as how the members of the Commission should be apportioned. One of the primary issues was how the Bar President should be selected. Stephen B. Nebeker was appointed as the Task Force chair and the Task Force issued a report dated February 28, 2000 (see copy at Exhibit "C"). The Court then provided a copy of the report to the Bar with an accompanying letter dated April 14, 2000 (see copy at Exhibit "D").

The procedure at that time for selection of the President-Elect (see "Recommendation No. 12 - Selection of President-elect" on page 3 of the report) was that the President-Elect was selected from among members of the Board by the Commission. The name of that person was subsequently submitted to the membership at large on a retention ballot. The Court had previously adopted this procedure pursuant to another, but different, Task Force recommendation. The Court required that 30% of the votes in the election was required to reject the designated candidate. The 1999 Task Force (also beginning on page 3 of the attached report) recommended that the previous retention election be retained although six members of the group dissented, preferring instead to modify the process to allow a majority of those voting in the election to reject the proposed President-Elect candidate.

Thereafter, the Court responded to the Task Force's recommendation by letter dated December 12, 2000. (A copy of the letter is attached as Exhibit "E".) Justice Howe indicated that the Court had preferred process. The now-in-place procedure designated by the Court eliminated the retention election and charged the Commission to nominate two lawyers in good standing to run in a contested election. Moreover, candidates are no longer limited to those sitting on the Board. As requested, the Bar filed a petition to amend the Rules for Integration and Management and the Bar's bylaws to comport with the changes.

After conducting several contested President-Elect elections, the Bar realized that the previously imposed Commission notification deadline of March 1 posed a number of scheduling difficulties and adversely impacted the election process. In 2005, the Bar filed a petition to amend the bylaws to provide for an earlier date (January 1) for interested lawyers to notify the Commission of their desire to be nominated as one of the two candidates running for President-Elect. (A copy of the petition is attached as Exhibit "F".) It is the January 1 notification deadline and resulting schedule that imposes the urgency of this matter.

## CURRENT SITUATION

Previously, the Commission chose the candidates to run for the office of President-Elect at the March meeting held in St. George, Utah. The current policy, however, requires the Commission to appoint two candidates at the January meeting. For the last 16 years the January meeting has been held at the end of the month and this year is no exception with the meeting scheduled for Friday, January 26th. The earlier timetable was implemented when it became evident that March was too late for notice purposes in light of the reduced number of *Bar Journal* issues published. Moreover, the March meeting meant that interested candidates who were not also Commissioners needed to travel to southern Utah in order to make their presentations or candidacy statements to the board.

The Bar has always publicized the officer election process in a timely fashion according to schedule by direct mailings, notices in the *Bar Journal* and more recently, via email in the Bar's e-Bulletin. In order to encourage applicants for the upcoming election, we published a notice in the November/December *Bar Journal* (a copy of which is attached as Exhibit "G"). The election was also discussed at the September and November board meetings so that Commissioners could encourage interest outside the Commission. Finally a reminder email of the impending January 1 deadline was sent at the end of December.

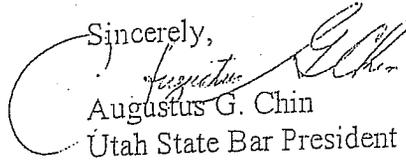
After the new contested election procedures were implemented in 2001 and up until this year, we have always had more than two individuals interested in running for the office of President-Elect. (Attached is a copy of those running for President-Elect since 1989 as Exhibit "H".) Currently all but one of the Commissioners who have had interest in running for the office have had extenuating circumstances arise which make it very difficult for them to adjust their schedules to devote the necessary time. We are unable to explain the lack of interest in running for President-Elect this year as the various notices provided to members of the Bar were similar to those of past years and were timely.

Recent efforts by Commissioners to encourage lawyers outside of the Commission to run have been unsuccessful. With the January 1, deadline having passed, the Commissioners do not believe we should pursue or solicit otherwise seemingly uninterested lawyers. We further believe that the effectiveness of an uninterested President could be problematic given the reality that the power of the office is largely one of positive relationships with others, persuasion and setting agendas. Having just one qualified candidate willing to take on the two-year commitment is not by any means a negative. Our present situation is no different that a general election process where it is not uncommon for there to be only one candidate running for office.

The Honorable Christine M. Durham  
January 18, 2007  
Page 4

In conclusion, unless we hear otherwise from the Court, we will implement an immediate waiver at our January 26 meeting of subsection (b) (2) requiring two candidates to run for the election. We will also prepare a petition to the Court to amend the bylaws to make permanent the option of a retention election for similar situations in the future.

Sincerely,



Augustus G. Chin  
Utah State Bar President

Enclosures