



POINT/COUNTERPOINT

SELECTING CANDIDATES



MY VIEW

A BETTER WAY TO SELECT CANDIDATES

By Steve Fischer

When three quarters of Texas lawyers don't vote for the State Bar president, we have a problem. Candidates for State Bar president-elect are selected according to a three-year cycle based on geographic area. The rotation consists of attorneys whose principal office is in one of the five largest counties, attorneys from one of the other 249 counties, and an "open" year in which any Texas-licensed attorney can run. In the past three elections, roughly 20,000 of the 80,000 attorneys eligible to vote have cast ballots for one of the two candidates selected by the State Bar of Texas Board of Directors.

We can't blame inclement weather, long lines at the polls, voluminous lists of candidates, political parties, propositions, equipment failure, or inconvenient voting hours. Nor do any of us belong to the disadvantaged socioeconomic segments noted for low turnout. In fact, the State Bar makes these elections among the easiest to participate in on the planet. Members can vote online or via a furnished stamped-and-addressed envelope. The "polls" are open for weeks.

Last year, I concluded that the best way to represent the

average attorney would be to run for State Bar president with the support of average attorneys. I looked into the possibility of running by nominating petition as set out in the State Bar Act (Texas Govt. Code 81,019 C). I estimated that I needed 5,000 signatures, which included the 5 percent required by law, plus a few extra to take care of invalid or illegible signatures. I had no personal issue with the State Bar Board of Directors. In fact, having gotten to know and like former President Harper Estes of Midland and Corpus Christi Director Pat Wolter, I would guess they are all fine and dedicated people. What I did not like was that 16 directors on a nominations subcommittee, who amount to 0.002 percent of the State Bar's membership, would handpick our nominees. In 1986, Tom Sharpe, Jr. of Brownsville became the last attorney to successfully file by petition. Of course, significantly fewer signatures were required then. No one believes gathering 5,000 signatures is realistically attainable in a short time period. Estes suggested I would "break my heart" trying.

My son, Huey, and I started by randomly calling and emailing several hundred attorneys we didn't know around the state and speaking to about 50 attorney friends. After that, we planned to "camp out" at major courthouses, catching as many attorneys as possible.

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I quickly learned that many Texas lawyers feel alienated from the State Bar. They believe that an elite group of attorneys, mostly from large civil firms, dictate policy for the rest of us, a pattern that is perpetuated by those who are elected president. Small firms, sole practitioners, and family and criminal law attorneys feel left out. This perception is not totally accurate, as Estes pointed out. A sole practitioner, Rhonda Hunter of Dallas, was one of the candidates last year, and about eight years ago, Dan Boulware, an elected district attorney, was a Board nominee. Both candidates lost. While it is not fair to say these portions of the practice are totally shut out, they are substantially underrepresented on the Board of Directors and among the candidates for president-elect we get to choose between. Having practiced in all kinds of firms, I personally don't feel these divisions and would love to see a united bar where more attorneys participate and vote.

My "campaign" hit an abrupt halt when I received notice from the staff liaison to the Board's Nominations Subcommittee that I could request signatures, but "the request is limited to seeking their help to have your name placed on the ballot and there is no discussion of goals or vision for the bar, etc." Ostensibly, I could still run on my good looks. Unfortunately, I have little political capital in that area. I have always believed one should run on issues. In fairness, the Board never anticipated that an attorney would run by petition and had never utilized or examined the rules available. I was told my candidacy was turning the State Bar "upside down." Estes called me immediately and in a pleasant and lengthy conversation, we agreed on most, but not all, issues.

Estes correctly pointed out that if I was able to give attorneys a reason for supporting me, I would have a head start over the Board's as-yet-unpicked candidates. He also mentioned that the Board sometimes calls and recruits candidates. My response, aside from the free speech concerns, was that if someone was interested in serving as State Bar president, he or she should be speaking with, and listening to, other attorneys in advance of selection. How can one ascertain the concerns attorneys have without talking with them?

The Board of Directors believes that despite all of the State Bar committees that lawyers can serve on, prospective candidates for president-elect need (although it is not absolutely required) to serve on the State Bar Board of Directors. When I mentioned this to rank-and-file attorneys, some of the less colorful remarks centered around "cronyism" and the "good ol' boy network." I can't print the others, but I do know there are many other experiences and qualifications a candidate can have, some even more vital than serving on the State Bar Board.

I considered an injunction and challenging these rules, especially those inhibiting free speech. However, I felt the resultant publicity would be negative for our State Bar, which should always encourage democratic and constitutional principles. The next potential candidate may not feel the same way.

I believe the State Bar Act and the Board Rules for presidential selection should be amended. Here are my suggestions:

- The Board of Directors should set up reasonable minimum qualifications to serve as president. The first requirement should be some combination of a certain number of years of practice in good standing as well as committee service, *Texas Bar Journal* publication, or serving as president of a local or specialty bar association. This qualification should be inclusive so that anyone who has meaningfully participated or served in the State Bar would be eligible.
- The prospective candidate should be required to obtain signatures equal to, say, 300 attorneys (0.3 percent of the current membership).
- An alternate plan would keep the present system in place, but drop the required number of signatures substantially to perhaps 1 percent (approximately 830) of licensed attorneys. Petitions require some show of support from the State Bar membership in general and encourage a candidate to actually talk with — and hopefully listen to — other attorneys. For me, this meant learning how distant the average attorney feels from the State Bar's decision-making process. There should be no State Bar-imposed restrictions on what a candidate can say other than existing law and common decency. A candidate "too busy" to obtain signatures is probably too busy to devote the vast amount of time this position requires. This lower numerical requirement might result in more than two candidates and precipitate a run-off; however, with online voting we might save money over the existing system, which also includes printing and postage. Some might say that multiple candidates would be too confusing, but we are all attorneys with advanced degrees and can make these choices for ourselves.

Because I am involved in State Bar activities and know some Board members, I do not agree that they intentionally exclude the rest. Yet often perception is reality, and the 60,000 attorneys who don't vote certainly dwarf my own opinion, just as hundreds of attorney signatures should trump 16 Board votes.

Rules that are undemocratic and violative of free speech should be dumped. Attorneys championed "one person, one vote" and our other democratic principles. We should take extra care to instill them in our own house.



STEVE FISCHER

of Rockport is a past president of the Aransas Area Bar Association. He has served on multiple State Bar committees and authored several *Texas Bar Journal* articles. He has served as the Willacy County district and county attorney and has practiced in Odessa, Huntsville, El Paso, and Denton, among other places.



MY VIEW

IF IT AIN'T BROKE ...

By Harper Estes

It is likely true that no electoral system is perfect or even ideal. However, the electoral process for officers of the State Bar of Texas is a good system that affords qualified candidates from all over the state — from cities large and small and from any practice area — the opportunity to be considered for office. Experience has borne this out. I served on the State Bar Board of Directors under presidents that included a general practitioner from Dalhart (Charles Aycock), an appellate lawyer from Houston (Lynne Liberato), and a trial lawyer from Austin (Broadus Spivey). If one looks at the list of presidents since the Bar's inception in 1939, one will readily see that my experience was not unusual.

The State Bar's electoral process is derived from three sources. The Legislature, in Section 81.019 of the State Bar Act, provides that offices of the State Bar are president-elect, president, and immediate past president. The Act further requires that the officers be elected in accordance with rules for the election of officers and directors to be prescribed by the Supreme Court of Texas. The legislation mandates that the Supreme Court provide a means for any qualified member to get on the ballot by petition signed by 5 percent of the membership of the Bar.

The Supreme Court promulgated rules requiring that, among other things, the Board of Directors shall nominate two or more members to stand for election for the office of president-elect for the ensuing Bar year. The rules provide for a three-year rotation between large cities, small cities, and an open year where the candidates can be from anywhere. The Supreme Court rules further comply with the legislative requirement that a member be placed on the ballot if a petition is presented signed by no fewer than 5 percent of the active members of the State Bar.

Finally, the Board of Directors passed policies that limit expenditures and time for campaigning for president-elect.

State Bar member Steve Fischer has suggested a process he views as more democratic. Others believe we should move another direction. During my campaign for president-elect, my opponent and I received a lengthy and well-reasoned letter from a lawyer suggesting there should be no election at all, rather the president should advance over time from the Board of Directors. His premise was that in the typical year the Board presents two well-qualified candidates and that the unsuccessful candidate is lost to future Bar service. He stated that the reason he was not voting was that he did not want to make that choice. There are valid arguments for a more democratic approach (Steve Fischer) and for no election at all. Neither is wrong.

The approach selected by the Legislature, the Supreme Court of Texas, and the State Bar Board of Directors leans

toward a more democratic approach tempered with common sense. The scheme allows for broad participation, but ensures that the candidates are well prepared to serve. The policy of a limited campaign actually broadens the pool of potential candidates. Most working lawyers could ill afford to campaign longer than the allotted time and it is likely that members of the Bar believe the period is long enough. The idea is to provide for a fair election between two well-qualified candidates, neither of whom has to spend an inordinate amount of money or time seeking the opportunity to serve.

It would be better if more lawyers voted and fewer lawyers felt alienated from the State Bar. I do not, however, believe the election process is the cause of either problem. It has been my experience that most vote if they know a candidate or if a candidate is recommended by someone they do know. There is no reason to believe increasing the number of candidates through a less onerous petition process will increase voter turnout. The sense of alienation from the Bar is best addressed by encouraging lawyer participation in the work of the Bar and educating all lawyers about the Bar's purpose and how that purpose is carried out.

The current system is fair and rational. Changes that often sound good at first blush are almost always burdened with unintended consequences. The State Bar Board works hard and continually to be certain that the system remains fair and rational. Despite the fact that I slipped through, we are presented with outstanding candidates year in and year out. As we say in West Texas, "If it ain't broke, don't fix it," or perhaps stated another way, "Be careful what you ask for."



HARPER ESTES

is a shareholder in Lynch, Chappell & Alsup, P.C. in Midland. He served as 2008–2009 president of the State Bar of Texas.

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