

RESOLUTION 3YL**AMERICAN BAR ASSOCIATION
YOUNG LAWYERS DIVISION****RESOLUTION**

BE IT RESOLVED, that Articles VI and VII of the Bylaws of the American Bar Association Young Lawyers Division are amended as follows:

**Article VI
Officers**§ 6.2. **Eligibility**

- (a) **Qualifications.** No person shall be eligible as an officer unless he or she—
- (1) has been a member since the preceding annual meeting;
 - (2) can and does continue as a member throughout his or her term (including subsequent positions to which the officer automatically advances, such as Chair, Chair-Elect, or Speaker);
 - (3) registered for and attended the preceding annual or midyear meeting or at least one national affiliate-outreach conference since the preceding annual meeting; and
 - (4) attends the election, unless excused pursuant to a rule, policy, or procedure.

Deleted: , in the case of the Chair-Elect, the ensuing term as Chair)

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**Article VII
Elections**§ 7.1. **Election**

- (a) **Election.** The Assembly shall elect the Secretary-Treasurer and Clerk at the annual meeting. The vote shall be taken by secret ballot. Election occurs by simple majority. The Chair shall vote in an election only for the purpose of breaking a tie.

Deleted: each officer, other than the Chair,

...

§ 7.2. **Tenure**

Each officer takes office when the Assembly adjourns sine die. At that time, the Chair-Elect becomes the Chair, the Secretary-Treasurer becomes the Chair-Elect, and the Clerk becomes the Speaker. Each officer serves until his or her successor takes office.

Deleted: , and the Chair-Elect becomes the Chair,

REPORT

As currently written, the American Bar Association Young Lawyers Division's ("Division") bylaws provide for election of four of the Division's five officers each year—Speaker, Clerk, Chair-Elect, and Secretary-Treasurer. Only the Chair position is technically unelected, with the Chair-Elect automatically becoming Chair. The proposed resolution seeks to alter this provision by having only the Clerk and Secretary-Treasurer positions elected each year and by having the Clerk automatically become Speaker and the Secretary-Treasurer automatically become Chair-Elect.

This is not a radical change. Rather, it simply codifies the historical practice of the Division. Since 1967, the Clerk has always become the Speaker the following year. Similarly, since 1965, the Secretary-Treasurer has always become the Chair-Elect the following year. The past forty-five years have shown that this succession model is preferred. The proposed bylaws amendment codifies the practices of the Division during the past half century and ensures officer transition that is suitable to the Division's planning needs.

A. History

When the Division—then a Conference—was created in 1934, no clear transition path for officers existed. At that time, there were only three officers: Chairman, Vice-Chairman, and Secretary. In the early years of its existence, the Secretary often served two one-year terms. Only a few of the Division's Secretaries went on to be Chairman in the first ten years of the Division's existence. The two-year term was likely used because the Division did not have an office or staff support; therefore, the Secretary maintained the records of the Division.

During the early years of the Division, the position of Chairman was elected each year. Although the Vice-Chairman became Chairman in some years, the elected Chairman did not previously serve as Vice-Chairman in the majority of years from 1935 until 1949. From 1949 until 1956, the Vice-Chairman became the Chairman in all but two years. After 1956, the Vice-Chairman—now Chair-Elect—has always served as Chairman—now Chair. In the mid 1970's, the Bylaws were changed so that the Vice-Chairman was renamed the Chair-Elect and so that the Chair-Elect automatically became Chair. This change was made because of the Division's recognition that a Chair needs time to plan for his or her year and to learn about the Division. In practice, the Division has recognized, since 1967, that the Chair needs two years to plan his or her year. Therefore, since 1967, the Secretary, now Secretary-Treasurer, has always become Chair-Elect and then Chair.

The Speaker and Clerk positions were not created until 1958, which was when the Assembly began to meet. The Speaker chairs the meetings of the Assembly and prepares the Assembly Agenda. The Clerk is responsible for certifying delegates to the Assembly, as well as overseeing any elections held by the Division. For the first eight years the

Assembly met, the Clerk did not always become Speaker. In its earliest form, the Assembly was smaller because it consisted of Council members and one delegate from each local or state young lawyer affiliate, which were less numerous in the 1960's. It also only met one time per year—at the Annual Meeting of the Association.

Beginning in 1967, the Clerk has always been elected to serve as Speaker the next year. Interestingly, from 1966 until 1971, the Speaker continued in the Division by becoming the Secretary, Vice-Chairman and Chairman. Not wanting a five year officer progression plan, the Division amended the bylaws to preclude any individual who had served as Clerk or Speaker from becoming Secretary-Treasurer or Chair-Elect.

B. Justification for the Change

Adopting the proposed amendments will improve the operations of the Division by removing uncertainty—although only hypothetical for the past 45 years—from the officer progression and allow better planning by the Division.

1. Clerk and Speaker

There is no legitimate argument for requiring the Clerk to run for election as Speaker. An election of an individual to serve as Clerk is a determination that he or she is qualified and should be allowed to serve as Speaker. In past elections for the position of Clerk, the individuals have often campaigned on how they would improve or run the Assembly as Speaker. Similarly, candidates for Clerk are usually judged by the electorate based upon how they will perform the duties of Speaker rather than Clerk because the Speaker position is the more visible of the two positions.

In addition, a person holding the position of Speaker would be at a disadvantage if he or she had not served in the role of Clerk because the Clerk position introduces the future Speaker to the operations of the Assembly, certification issues, and development of resolutions. Moreover, service as an officer for one year prior to assuming the role of Speaker provides an individual with a greater understanding of the desires of the members of the Assembly and helps in the development of an Assembly agenda and resolutions for the Assembly.

Furthermore, it is unlikely that a person would run against a sitting Clerk for the position of Speaker. It would most likely not be looked upon favorably by the leadership of the Division—although they would remain neutral publicly—and could cause strife within the Division depending upon the individuals that were running. Camps often form in Division elections. When camps exist against a sitting officer, especially if other officers or high level appointees are perceived to be in the other camp, conflict can arise that negatively affect the operations of the Division.

Finally, the positions of Clerk and Speaker have changed since they were created. Whereas they were originally designed to be populist positions elected by the members of

the Assembly solely to run the Assembly, they have evolved into important positions responsible for operation of the Division through the five-officer Executive Committee. This is vastly different from when the positions were originally created and were not officer positions.

Although it could be argued that requiring the Clerk to run for the position of Speaker allows the Assembly to correct an error by electing someone else in as Speaker if the Clerk proves unable to perform his or her job, the fact of the matter is that the Assembly does not have enough time to make that determination. A person would have to file to run against the Clerk by the adjournment of the Assembly at the Midyear Meeting, but the first real responsibilities of the Clerk are delegate certification at the Midyear Meeting. Therefore, a person would most likely not have sufficient time to determine that the Clerk was unfit or not the right person to serve as Speaker.

2. Secretary-Treasurer and Chair-Elect

An automatic path of succession from Secretary-Treasurer to Chair-Elect should be created for the same reasons it was created for the Chair-Elect and Chair positions: to allow for increased continuity and more efficient planning of the Division's operations. The Division begins planning its future years three years out. In other words, a future Chair begins planning the meeting sites and project plans for the Division when he or she is Secretary-Treasurer. In order to lock in good hotel rates, the Division often contracts for meeting locations three years out and needs to know that the Secretary-Treasurer will be Chair.

Moreover, the Division engages in long range planning. This planning occurs not only through the Leadership Advisory Board, but also through communications between the officers and staff. Being able to determine the Division's course for three years by obtaining agreement among the Chair, Chair-Elect, and Secretary-Treasurer regarding developing or continuing a project, or in shifting the focus of the Division is crucial to the Division's operations.

Similarly, it is important for an individual to serve as Secretary-Treasurer prior to becoming Chair-Elect and Chair. The Secretary-Treasurer plays an important role in the Division's budgeting and financial management operations, oversees the Leadership Advisory Board, and learns important information regarding the operations of the Division. A person seeking the Chair-Elect position without previously serving as Secretary-Treasurer would be seriously handicapped in his or her preparedness to lead the Division as Chair. That the Secretary-Treasurer is expected to become Chair is further supported by the fact that a person seeking election for Secretary-Treasurer focuses not on what he or she expects to accomplish in that role, but rather what he or she will accomplish and change as Chair.

Finally, the Division would be seriously harmed by allowing someone to run against the Secretary-Treasurer for the position of Chair-Elect. First, having to run an

election would seriously distract the Secretary-Treasurer from his or her duties. Second, such an election would cause serious problems and conflict in the Division. Contested elections in the Division are usually hard fought and often result in rifts and disagreements. Although these are manageable when the individuals running for the positions are not current officers of the Division, the potential negative consequences would be magnified if one of the candidates was an officer expected to succeed to another officer position, including within the officer corps, with staff, and with additional Division leadership. This is especially true if a person who was defeated for the position of Clerk or Secretary-Treasurer decides to run against the victor for the next position in the officer chain in hopes that the delegates the next year—with delegate turnover and a different meeting site—might see things differently.

The risk is not worth the potential reward of getting a better candidate for the position, which is reflected in the fact that no one has run against the Secretary-Treasurer for Chair-Elect or the Clerk for Speaker in over forty years.

C. Final Thoughts

Although it is unlikely that anyone would ever run against the Secretary-Treasurer for Chair-Elect or the Clerk for Speaker, the fact remains that they could. Therefore, the Division often has to operate in a way that does not reflect reality and that restricts the Division's operations. The bylaws should be amended to reflect the historical practices of the Division, which will remove the risk of potentially destructive conflict and unreasonable restrictions on the Division's operations.

This amendment does not seek to reduce competition for the Division's officer positions. In fact, the author would like to see increased competition for the Division's offices. As a former Chair, I do not believe there is any bar position in this world better than YLD Chair. For that fact alone, there is no reason why the election for Secretary-Treasurer should not be contested every year. Moreover, contested elections for Clerk and Secretary-Treasurer are necessary because they allow candidates to meet more members of the Division, help to determine the path of the Division and whether any changes need to be made. Once the election has occurred for the entry-level officer position though, the Division is better off avoiding contested elections. If an officer proves to be unable to perform the job, he or she can be removed pursuant to the bylaws.¹

Respectfully Submitted,
Jay E. Ray
Former YLD Chair and Current YLD
Delegate to the ABA House of Delegates

¹ No bylaws change approved by the Assembly is effective until it has also been approved by the ABA Board of Governors. It is intended that this resolution be submitted for Board approval at the Annual Meeting, contingent upon the Assembly approving the change, and that it become effective at the conclusion of the Annual Meeting so long as both the Assembly and Board of Governors have approved it.