LOS ANGELES & SAN FRANCISCO
Daily Journal
www.dailyjournal.com
THURSDAY, MARCH 12, 2020

PERSPECTIVE

Ballot designations favor prosecutors for the bench

By Timothy D. Reuben

The results of the March 3 judicial election demonstrate one powerful fact: Prosecutors *win* elections to the bench because of their ballot designations, while private practitioners, who cannot have descriptive ballot designations, will always lose against a prosecutor. [Full disclosure: I am a private practitioner who unsuccessfully ran for the Los Angeles County Superior Court bench in this month's election.]

This past election, there were 12 open judicial seats and prosecutors won *every* contest — no one could beat a prosecutor regardless of race, sex, credentials, qualifications, bar association ratings, experience, education, endorsements, money spent, advertising, or any other factor. Simply put, private practitioners do not stand a chance.

This reality was further assured by the recent 2018 amendments to Elections Code Section 13107, which governs ballot designations and now gives an overwhelming advantage to government attorneys. This reality is particularly true since the majority of the public is unfamiliar with any of the candidates and therefore vote based only on the name and the ballot designation of each candidate.

Under the 2018 amendments, ballot designations for private practitioners can only be "Attorney," "Attorney at Law," "Lawyer" or "Counselor at Law." Such insipid, non-descriptive, and virtually meaningless designations carry no gravitas — a private lawyer has no way to distinguish him or herself.

This past election, there were 12 open judicial seats and prosecutors won every contest — no one could beat a prosecutor regardless of race, sex, credentials, qualifications, bar association ratings, experience, education, endorsements, money spent, advertising, or any other factor.

Prosecutors, on the other hand, are allowed to put their full and impressive job title, such as "Deputy District Attorney, County of Los Angeles," or "Deputy Attorney General, State of California." One can almost hear the accolades, trumpets and cheers after those titles. And since most voters do not know anything else about judicial candidates other than the candidate's name and job title, it is not surprising that all prosecutors just win. Essentially, the new amendments to the election code have insured that elections to the bench in effect constitute a jobs program for prosecutors.

Ironically, according to the Feb. 27, 2018 Daily Journal article ("Judicial ballot reform is here") by Judge Randolph Hammock of the Los Angeles County Superior Court, who participated in the drafting of the 2018 amendments, the reform was to stop the "alarming trend of prosecutors, in the words of the bill's author, Sen. Ben Allen, to utilize 'emotion gripping ballot designations' such as 'Child Molestation Prosecutor' or 'Gang Murder Prosecutor.'"

While the reform did eliminate such over-the-top ballot designations, it also neutralized any possible opportunity for a civil attorney or private practitioner to distinguish him or herself with designations that might be appealing to voters, such as "Civil Rights Attorney," "Appellate Law Specialist," "Criminal Defense Lawyer" or "Family Law Specialist." Moreover, the prosecutors just get to have more words in their ballot designations — although it is not clear why they should be allowed "County of Los Angeles" or "State of California" as part of their designation. More words simply make the prosecutor's ballot designation more official, more impressive sounding, and apparently endorsed by the city, county or state, and in that sense the extra words mislead voters, since the government does not get to make such endorsements. By contrast, private practitioners are not allowed to add extra words to the title of "Attorney at Law," such as "Senior Partner of O'Melveny & Meyers" or "Certified Specialist," or simply "Member of California Bar."

The advantage enjoyed by prosecutors is likely why in three of the 12 open seats

in the recent judicial election, three prosecutors were simply unopposed and in no way vetted or rated; obviously, not enough private lawyer possible candidates believe it is worth the time and expense to challenge them, since the designation law assures defeat.

There is a tiny bit of flexibility in the Elections Code, in that a ballot designation may consist of no more than three words, the first of which must be "lawyer," the second of which can be "one other current principal profession, vocation, or occupation of the candidate, or the principal profession, vocation, or occupation of the candidate during the calendar year immediately preceding the filing of nominating documents." But what is an "other" profession, vocation or occupation? Clearly the private practitioner must actually have worked (and gotten paid) for something other than being a lawyer in the year prior to the election. Judge Hammock and other commentators view this option with strict scrutiny and have been publicly critical of any effort to interpret the law so as to allow more descriptive language, especially if it in any way relates to the legal profession, since if it relates in any way to practicing law, it is not an "other" profession, vocation or occupation. But of course, to show the voters one's legal qualifications, it is just that type of "other" experience that would be the most important information for a potential voter.

Prosecutors dominate the bench. While they do provide laudable service and develop significant legal experience, so do private practitioners, who often are experienced in a much greater number of legal areas. Moreover, private practitioners represent clients — people, organizations, companies, while prosecutors working for the county, city or the state have no such experience. Understanding the dynamics of representing a real client (and not the demands of your government-employed supervisor) provides critical experience to lawyers which provides useful insight to bench officers. Unfortunately, under current law, government lawyers have been given such an advantage that it eliminates the ability of a civil trial lawyer or even a criminal defense lawyer to challenge them in an election. That is bad democracy, bad for the public, and bad for the system. The recent amendments to the Elections Code desperately need amending to allow a level playing field for any qualified lawyer willing to run for election to have a fair chance. ■

Timothy D. Reuben *is the founding principal of Reuben Raucher & Blum, a litigation boutique located in Brentwood. He handles matters at both the trial and appellate level and in arbitration and specializes in complex matters including real estate, intellectual property, unfair competition, and related business disputes. He can be reached at treuben@rrbattorneys.com.*