



Federal Bar Association

Constitution, Bylaws, Rules and Resolutions Committee

Date: August 1, 2017

To: Federal Bar Association's National Council

From: Constitution, Bylaws, Rules and Resolutions Committee

Tyler Brooks
Geoffrey Cheshire
Kristin Kimmelman
Stacy King (Staff Liaison)
Kevin Maxim (Chair)
Matt Moschella

Peg O'Connor
Thomas Schuck
Tom Segars
Beth Smith
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**Re: Committee Report & Recommendation:
Proposed Constitutional Amendment regarding
Circuit Vice Presidents and the Federal Circuit**

I. Background

Pursuant to the Federal Bar Association's Bylaws at Sections 8(a)(1)(c) and 14, the Constitution, Bylaws, Rules and Resolutions Committee (the "Committee") reports that it received a proposal from FBA member Jim Satola to amend the FBA's Constitution.

Mr. Satola proposed to amend the Constitution so as to clarify that the FBA does not maintain a Circuit Vice President position for the Federal Circuit. Mr. Satola's proposal is included in Section II below.

On March 4, 2017, the Committee submitted its report and recommendation to the Board of Directors to request the Board's recommendation regarding the constitutional amendment proposed below. The Board of Directors recommended the approval of the proposed amendment, and did not have revisions to the proposal.

As a reminder, pursuant to Article XIV of the FBA's Constitution, entitled "Amendment to the Constitution," the National Council is empowered to put this proposed amendment to the Constitution to an FBA member vote:



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Section 1. Initiation of Amendment. A proposal to amend this Constitution may be initiated in any one of the following ways:

a. Subject to satisfying the notice and quorum requirements of Article VII, by two-third's vote of those present and voting at a meeting of the National Council, if written notice of the proposal has been included in the notice.

...

Section 2. Adoption of Amendment. An amendment so proposed shall be submitted to the members in good standing under procedures established by the Bylaws of the Association, either mailed or transmitted electronically. An amendment so submitted shall become effective upon the affirmative vote of two-thirds of the members who vote upon it.

The Committee here submits its report and recommendation on this proposal to the September 2017 National Council convening at the FBA's Annual Meeting & Convention in Atlanta.

II. Proposed Constitutional Amendment

On Jan 13, 2017, at 9:06 PM, James W. Satola <jsatola@roadrunner.com> wrote:

Here is something for consideration at the upcoming FBA Board of Directors meeting: a proposal to amend the language of the FBA Constitution to clarify the definition of Circuit Vice President to conform to the actual purpose of having CVPs -- to advise and assist those Chapters within each geographic region drawn by the boundaries of the numbered/geographic federal circuits, and to put an end to a claim of there being two "open" seats for "CVP for the Federal Circuit."

The role of Circuit Vice President is defined somewhat ambiguously in the FBA Constitution:

Article V – Officers, Directors and Delegates: Nomination, Removal, and Duties

Section 1. *Elective Officers, Directors and Delegates.* The elective officers and directors of the Association shall assume their respective offices at the beginning of the fiscal year to which they are elected and shall serve through the end of the fiscal year in which their terms expire or until their successors shall have been installed in office. * * * The elective officers and directors of the Association shall be as follows and in the order named and shall be elected to terms of office as indicated:



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e. Two Vice Presidents for the Circuit for each Federal judicial circuit, who shall be elected for staggered terms of two years by the members within that Circuit. No Vice President for the Circuit shall serve more than three full terms.

The duties of the CVPs are then later listed as follows:

Section 6. Duties of Officers and Directors.

* * *

e. Each Vice President for the Circuit shall serve as liaison with all Chapters within that officer's Circuit; shall serve as counselor and advisor for such Chapters in the promotion of their welfare; shall undertake and supervise creation of new Chapters and reactivation of inactive Chapters in that officer's Circuit as appropriate; shall represent that officer's Circuit on the National Council; and shall perform such other duties as properly pertain to the office or as may be required by the President, this Constitution, or the Bylaws of the Association.

Having "Federal Circuit" CVPs, with no Chapters to assist or supervise (or being completely redundant to the role of the "geographic Circuit" CVPs) because there are no Chapters residing outside a geographic Circuit (and such is an impossibility) would be both pointless, while at the same time be self-aggrandizing as a "Federal Circuit" CVP could claim to be the "equal partner" of each and EVERY geographic Circuit CVP pair, thus giving such position claim to being a "super-CVP."

A simple way to put an end to any claim of a "right" to hold such a pointless position would be to clarify the definition of the role of CVP in the FBA Constitution as being representatives of each of the GEOGRAPHIC federal circuits.

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III. Summary of Arguments for and Against the Proposed Amendment

In the Committee's understanding, the primary argument for the establishment of Federal Circuit CVPs would be to align the Federal Circuit with the other twelve Circuits in having Circuit Vice Presidents. The Federal Circuit CVP positions would provide an additional opportunity for FBA members to take-on leadership roles and responsibilities in the organization, and perhaps the Federal Circuit CVPs might find a role for themselves to advance the interests of the Federal Circuit that are not presently being served by other contingents of the FBA.

According to FBA Executive Director Stacy King, the issue whether the FBA should support a Circuit Vice President position for the Federal Circuit has arisen from time-to-time over the years. In each prior instance, the consensus was that a Federal Circuit CVP was not necessary. That conclusion was reached because there are no Chapters associated with the Federal Circuit, and since the role of a CVP consists largely of supporting the Chapters within the Circuit, there does not appear to be any functional need for Federal Circuit CVPs. In addition, there would of course be a cost to the FBA of supporting CVPs for a thirteenth Circuit, which may be unnecessary if the needs of members who practice in the Federal Circuit already are met by the FBA's Intellectual Property and Government Contracts substantive law sections. It is also Ms. King's understanding that there have never been CVPs for the Federal Circuit.

IV. Committee Recommendation

As noted in Mr. Satola's proposal, the relevant language of the FBA's Constitution, Article V, Section 1(e), currently provides:

- e. Two Vice Presidents for the Circuit for each Federal judicial circuit, who shall be elected for staggered terms of two years by the members within that Circuit. No Vice President for the Circuit shall serve more than three full terms.

After analysis, discussion, and a unanimous vote, the Committee recommended the following changes to the Constitution's Article V, Section 1(e), shown below in comparison format:

- e. Two Vice Presidents for the Circuit for each Federal ~~judicial~~ circuit court of appeals (other than the Court of Appeals for the Federal Circuit), who shall be elected for staggered terms of two years by the members within that Circuit. Because the Court of Appeals for the Federal Circuit is unique among the courts of appeals in that it has nationwide jurisdiction in a variety of subject areas, and because there are no Chapters specifically associated with the court, the Court of



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Appeals for the Federal Circuit shall not have a Circuit Vice President. No Vice President for the Circuit shall serve more than three full terms.

The Committee took into account Mr. Satola's proposal and supporting arguments, and Ms. King's historical perspective. The Committee found that it would not appear to be beneficial to the FBA to support Federal Circuit CVPs, when the positions would not function as do the CVPs for the other Circuits by serving Chapters within the Circuit. The Committee also believed that it would benefit the organization to make this constitutional change, so as to avoid the issue of Federal Circuit CVPs arising periodically, and expending time and energy revisiting the issue.

The Committee does not believe that the proposed amendment conflicts with any other provision of the Constitution or Bylaws, and believes that the proposed amendment is consistent with the FBA's historical practices with respect to the Circuits traditionally represented by Circuit Vice Presidents.

The Committee respectfully recommends that the National Council approve of submitting this proposed constitutional amendment to an FBA member vote.