

CLIENT NEWS BRIEF

The California Court of Appeal Has Spoken, Not Just Anyone Can Be Elected County Sheriff—So Says County Clerk

In 2017, basketball Hall-of-Famer Shaquille O'Neil was sworn in as a deputy sheriff of Henry County, Georgia. The momentous occasion concluded with a moment levity at the end of the swearing-in ceremony when Mr. O'Neil announced his candidacy for County Sheriff in 2020. His wit was fueled by the tacit understanding that county sheriff is a position requiring the qualification of sufficient prior law enforcement experience. World-class basketball skills, although highly important, are woefully insufficient to inform the leadership of a county's most powerful elected official. Needless to say, Shaq's announcement was not taken seriously. The ceremony was, for the most part, a publicity stunt. However, the case of *Bruce Boyer v. Ventura County* (2019) was not.

On February 22, 2018, Mr. Bruce Boyer, a citizen of Ventura County, who had no prior law enforcement experience, submitted his application to be placed on the ballot for county sheriff. Unlike Shaq, Mr. Boyer was serious. As is required by law, upon review of Mr. Boyer's application, the County Clerk requested documentation of his qualifications for the office of county sheriff.

Importantly, this case illustrates the role of a county and city clerk as a critical gatekeeper charged with the fundamental and important duty to review documents for statutory compliance. In many cases, a vigilant clerk can avert serious and costly problems. In other cases, a seemingly benign mistake can metastasize into a constitutional crisis. The case of Mr. Boyer is an ode to vigilant clerks.

Mr. Boyer, having neither sufficient documents nor sufficient qualifications, took the matter to court where he argued the qualifications requirement was unconstitutional and the Clerk's refusal to place his name on the ballot denied citizens of their First Amendment right to vote for elected officials of their own choosing. The trial court disagreed with Mr. Boyer and he appealed the case to the California Court of Appeal, where he made the same arguments a second time.

According to the California Elections Code, no person shall be considered a legally qualified candidate for sheriff unless their declaration for candidacy is accompanied with documentation showing they meet the statutory qualifications. The minimum qualifications are either of the following:

- An advanced certificate issued by the Commission on Peace Officer Standards and Training;
- One year of prior full-time law enforcement experience and possession of a master's degree;
- Two years of prior full-time law enforcement experience and possession of a bachelor's degree;
- Three years of prior full-time law enforcement experience and possession of an associate's degree; or
- Four years of prior full-time law enforcement experience and possession of a high school diploma or equivalent.

April 2019
Number 20



William P. Curley III
Partner

Los Angeles & Mission Viejo Office
wcurley@lozanosmith.com



Ryan M. Harrison, Sr.
Associate

Sacramento Office
rharrison@lozanosmith.com



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

CLIENT NEWS BRIEF

April 2019
Number 20

To support his case, Mr. Boyer argued a prior appellate case ruling unconstitutional Legislative predeterminations for Superior Court judge candidate qualifications similarly applied to, and rendered unconstitutional, the Legislative statute establishing the minimum qualifications for county sheriff. In rejecting Mr. Boyer's argument, the Court of Appeal held the California Constitution expressly directs the state Legislature to provide for the election of a sheriff for each county, which means the Legislature can determine the qualifications for that office. No such delegation of constitutional authority existed for Superior Court judge. Therefore, the precedent Mr. Boyer relied upon did not apply for his situation.

Mr. Boyer then argued the minimum qualifications requirement violated the First Amendment in that it restricted the pool of sheriff candidates to law enforcement personnel only, thereby excluding civilian viewpoints from being heard. Mr. Boyer went even further to argue "candidacy for public office is a fundamental constitutional right." The Court of Appeal relied on well-settled United States Supreme Court precedent to reject that argument. Candidacy for public office is not a fundamental constitutional right.

California Court of Appeal precedent also informed the court's opinion. In 2003, a staunch gun rights advocate with no prior law enforcement experience attempted to run for Sheriff of Santa Clara County on the promise that he would approve the majority of concealed weapons permit applications. There, the plaintiff argued his First Amendment rights were violated because the qualifications requirement impaired access to the ballot. The Court of Appeal rejected this argument. The court maintained this position again in Mr. Boyer's case.

According to the California Court of Appeal:

"There can be no doubt that the state has a strong interest in assuring that a person with aspirations to hold office is qualified to administer the complexities of that office. And the authority of the state to determine the qualifications of their most important government official is an authority that lies at the heart of representative government."

Perhaps Shaquille O'Neal will have better luck in 2020.

For more information on *Bruce Boyer v. Ventura County*, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).