

RESOLUTION 11-11-2003

DIGEST

Administrative Court: Stay of Proceedings When Other Case Pending

Adds Government Code section 11506.5 to allow an administrative law judge to stay a disciplinary proceeding while a parallel criminal or civil case is proceeding.

RESOLUTION COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

None known.

Reasons:

This resolution adds Government Code section 11506.5 to allow an administrative law judge to stay a disciplinary proceeding while a parallel criminal or civil case is proceeding. This resolution should be approved in principle because stays for disciplinary administrative proceedings are appropriate when parallel criminal or civil cases are ongoing.

Staying an administrative proceeding may in some circumstances best serve the administration of justice. The decision in an administrative proceeding may have collateral estoppel or res judicata effect in other proceedings. (*People v. Sims* (1982) 32 Cal.3d 468; *Castillo v. City of Los Angeles* (2001) 82 Cal.App.4th 477.) Furthermore, resolution of the civil or criminal case may dispose of the disciplinary proceeding, thereby saving administrative time and money. This resolution would give an administrative law judge the ability to exercise his or her discretion to stay the administrative proceeding when the administration of justice would be furthered by so doing.

SECTION/COMMITTEE REPORT

OFFICE OF THE CHIEF TRIAL COUNSEL, STATE BAR

Recommend: **DISAPPROVE**

Reasons:

The Conference is considering a proposal which would, depending on the circumstances, authorize administrative agencies to abate licensing cases during the pendency of civil or criminal proceedings against the licensee. This proposal is similar to one presented to the Conference last year by the respondent's bar, and opposed by our office. Unlike last year's proposal, this proposal would not directly apply to attorney licensing cases—but it would apply to all other types of professional licensing matters. Although this proposed statute would not directly apply to State Bar prosecutions, we are concerned this legislation would establish a precedent that would later be applied to attorney disciplinary matters.

We believe that such proposals would have unduly delay disciplinary matters. Specifically, we believe that disciplinary prosecutors and the courts should have discretion in deciding whether to abate cases based on pending litigation. It is often a mistake to abate a disciplinary prosecution based on pending civil litigation. It generally takes years for the parties to resolve a lawsuit, and the resolutions can take the form of a settlement with no admission of culpability. In such circumstances, the disciplinary proceedings can be delayed for years, and yet the issue of culpability may still be in dispute when the civil proceedings are completed. Similarly, it is often poor policy to delay disciplinary matters pending the outcome of criminal proceedings. It is unwise to delay disciplinary proceedings in such cases because criminal behavior often represents the greatest danger to the public.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add Government Code section 11506.5 to read as follows:

1 §11506.5
2 Upon written motion of the agency or respondent, the administrative law judge may stay or
3 abate hearing on the accusation if a concurrent or parallel civil or criminal proceeding is being
4 maintained. This motion may be granted unless circumstances exist involving ongoing harm to the
5 client or concern for the public safety at large. In granting the stay or abatement of proceedings
6 pending resolution of a concurrent or parallel civil or criminal proceeding, the administrative law
7 judge may condition the stay order on such terms as may be reasonable under the circumstances.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS:

Existing Law: No such provision now exists.

This Resolution: Provides the licensee, or for that matter the agency, a reasonable and qualified remedy to protect the present abuses, appearance of impropriety and duplicative waste which on occasion attend administrative proceedings shadowing contemporaneously pending civil or criminal suits on the same issues. It vests the administrative law judge with broad powers to effect the ends of justice, which do not now exist.

The Problem: Some administrative proceedings, such as disciplinary proceedings against a physician by the Medical Board of California, arise out of a complaint reported to the licensing agency by a plaintiff or the plaintiff's attorney pursuing a civil malpractice case against the licensee. Concern exists when it appears the state agency is essentially prosecuting the facts and issues of a civil claim for the plaintiff, is being used by the plaintiff as a tool to effect the outcome of a civil complaint for damages, is or is conspiring with the plaintiff, his or her lawyer or with persons with a motive against the licensee, rather than the agency objectively and in an unbiased manner exercising its own independent judgment in the area of its purview. Moreover, forcing a licensee to defend his or her license in an administrative forum while contemporaneously participating in a defense to a similar civil or criminal proceeding creates unwarranted conflict and hardship, if not duplication of efforts when the resolution of one may impact on the determination in the other proceeding.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Joel Bruce Douglas, Bonne, Bridges, Mueller, O'Keefe & Nichols, P.C., 3699 Wilshire Bl., Tenth Fl., Los Angeles CA 90010, voice (213) 738-5834, fax (213) 738-5888, e-mail jdouglas@bonnebridges.com

RESPONSIBLE FLOOR DELEGATE: Joel Bruce Douglas