

RESOLUTION 08-08-04

DIGEST

Judicial Review of Administrative Proceedings: Limitation on Attorneys' Fees

Amends Government Code section 800 by increasing attorneys' fees recoverable from an administrative agency.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolution found.

Reasons:

This resolution amends Government Code section 800 by increasing attorneys' fees recoverable from an administrative agency. This resolution should be approved in principle because the existing statute's provision of \$100 per hour has been in place since Government Code section 800 was enacted in 1971. Furthermore, the \$7,500 maximum has been in place since Government Code section 800 was amended in 1988 from a maximum of \$1,500. The existing limits are low both in terms of hourly attorneys' fees and in terms of the maximum sum of fees to be awarded, and the proposed resolution addresses both shortcomings.

This resolution proposes that where a party has been found to have acted arbitrarily or capriciously the fees imposed increase from \$100 to \$175 per hour with the maximum fees from \$7,500 to \$15,000. This resolution is necessary because of the important interests furthered by Government Code section 800, namely curtailing arbitrary and capricious acts by administrative entities and officials. It is reasonable to surmise that the existing limits on fees inhibit appellants from challenging administrative actions which are arbitrary and capricious.

Given that case law has narrowly defined the phrase "arbitrary and capricious" to conduct not supported by a fair or substantial reason, a stubborn insistence on following unauthorized conduct or a bad faith legal dispute, and explicitly excludes administrative action that is erroneous, even clearly erroneous, the administrative agency has broad latitude to make mistakes without being assessed attorneys' fees. Hence, there is little chance that this resolution would lead to an increase in unsubstantiated instigations of civil actions to appeal or review administrative proceedings, while it would address the artificially low limits on attorneys' fees currently in place.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Government Code section 800 to read as follows:

- 1 §800
- 2 In any civil action to appeal or review the award, finding, or other determination of any
- 3 administrative proceeding under this code or under any other provision of state law, except
- 4 actions resulting from actions of the State Board of Control, where it is shown that the
- 5 award, finding, or other determination of the proceeding was the result of arbitrary or
- 6 capricious action or conduct by a public entity or an officer thereof in his or her official

7 capacity, the complainant if he or she prevails in the civil action may collect reasonable
8 attorneys' fees, computed at ~~one hundred dollars (\$100)~~ one hundred seventy-five dollars
9 (\$175) per hour, but not to exceed ~~seven thousand five hundred dollars (\$7,500)~~ fifteen
10 thousand dollars (\$15,000), where he or she is personally obligated to pay the fees, from
11 the public entity, in addition to any other relief granted or other costs awarded.

12 This section is ancillary only, and shall not be construed to create a new cause of
13 action.

14 Refusal by a public entity or officer thereof to admit liability pursuant to a contract
15 of insurance shall not be considered arbitrary or capricious action or conduct within the
16 meaning of this section.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

Existing Law: Permits a court which is reviewing an administrative proceeding to grant reasonable attorneys' fees if it is shown that the action of the administrative agency was arbitrary or capricious but limits the amount of attorneys' fees, as set forth therein.

This Resolution: Would increase the limitations of attorneys' fees to those set forth in the amendment.

The Problem: Since this section was last amended, the costs of litigation have increased. The limitations in the present law may serve to chill potential review of administrative action.

IMPACT STATEMENT

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

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