

RESOLUTION 06-03-05

DIGEST

Germaneness: Allowing Conference Activity Involving Individual Officeholders

Recommends that the Board of Directors amend CDCBA Conference Rule Section 5(D)(3)(c) to allow the CDCBA to consider matters involving individual officeholders.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution recommends that the Board of Directors amend CDCBA Conference Rule Section 5(D)(3)(c) to allow the CDCBA to consider matters involving individual officeholders. This resolution should be disapproved because allowing the CDCBA to engage in evaluations of the actions of individual officeholders is inconsistent with the mission statement set forth in the Conference Rules and would encourage a flood of resolutions evaluating officeholders in federal, state or local offices, thereby impeding the Conference's ability to effectively meet its goals.

According to Section 5(D)(3) of the Conference Rules, the "Conference shall consider only those matters that are germane to its mission and its goals." The mission of the Conference of Delegates is to "serve California by bringing together attorney volunteers from across the State representing diverse backgrounds, experience, and expertise to seek, debate and promote creative, non-partisan solutions to law-related issues." (Conf. Rules, § 5, subd. (D)(3)(a).) Matters involving "the selection, nomination, appointment, or retention of" individuals in public office are partisan in nature. Evaluating such matters would be inconsistent with the mission of the Conference and would encourage a flood of resolutions evaluating the numerous officeholders in local, state and federal office in California. Should that occur, then the CDCBA would not be able to meet its many goals. Individuals or groups who seek to censure public officials or to bring attention to matters involving their selection, nomination, appointment or retention have other ways to voice their concerns, such as through the political process or the media. The dangers of allowing the CDCBA to be utilized for that purpose outweigh the argument that debating such matters is tangentially consistent with some of its goals, especially in light of the Conference's mission statement. Moreover, Section 5(D)(3)(c) only bars activity involving individual officeholders. Thus, the CDCBA may still consider matters involving proposed changes to the laws, rules or procedures by which officeholders are selected, nominated, appointed or retained.

TEXT OF RESOLUTION

RESOLVED: that the Conference of Delegates of California Bar Associations amend the section of Conference Rules, Section 5D(3)(c) to read as follows:

- 1 5D(3)(c)
- 2 The CDCBA shall not consider any matter or otherwise engage in any activity involving the
- 3 selection, nomination, appointment, or retention of any individual to any federal, state, or local office,
- 4 or involving the censure of any federal, state, or local office holder. Nor shall the CDCBA take any
- 5 action that may adversely affect the status of the organization as a tax exempt entity under applicable
- 6 federal and state tax law.

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

PROPONENT: National Lawyers Guild, San Francisco Bay Area Chapter

STATEMENT OF REASONS

Existing Rule: The CDCBA may not consider any matter or otherwise engage in any activity involving the selection, nomination, appointment, or retention of any individual to any federal, state, or local office, or involving the censure of any federal, state, or local office holder.

This Resolution: This resolution reinstates the Conference's right to review actions of public officials for possible violations of law or legal ethics; and where deemed necessary, to call for appropriate action.

The Problem: The problem is obvious. As Section (3)(c) now stands, it violates the goals of the CDCBA Guide for Proponents, Section (3)(b):

To promote improvements in the California and American systems of justice.

To promote meaningful access to legal representation and the justice system for all persons regardless of their economic or social condition.

To provide leadership in improving the law to serve the changing needs of society.

To promote public understanding of and respect for the law, legal profession and the role of the legal profession.

To promote the highest standards of professionalism, competence, and ethical conduct.

To promote professional growth and to enhance the quality of life of the legal and judicial community.

To advance the rule of law.

To promote full and equal participation in the legal profession by all individuals without regard to race, gender, religion, national origin, sexual orientation, or economic circumstances.

To preserve and enhance the ideal of the legal profession as a service profession and its dedication to public service.

To preserve the independence of the legal profession and of the judiciary as fundamental to a free society.

Public officers, elected or appointed, who engage in actions which constitute criminal or unethical behavior, or which otherwise violate, attack, or impede conference goals, should be subject to censure, at the least, or impeachment. California lawyers, through this conference, have the duty, the obligation, to bring such actions to the attention of the California Bar, the legislature, and the citizens of California.

IMPACT STATEMENT

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

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RESPONSIBLE FLOOR DELEGATE: Richard P. Koch

COUNTER ARGUMENTS

ORANGE COUNTY BAR ASSOCIATION

The CDCBA is not uniquely qualified to evaluate any individual candidate for public office. Existing Section (3)(c) is not in conflict with the goals or guidelines of the CDCBA. Our predecessor, the Conference of Delegates of the State Bar of California, criticized a public officer who became governor, and years later inflicted great pain upon the California judicial system by vetoing the State Bar Dues Bill. The CDCBA should learn from that experience, and should not make a similar mistake.

SAN DIEGO COUNTY BAR ASSOCIATION

Section 5D(3)(C) of the existing conference rules prohibits the CDCBA from considering any matters during its deliberations involving the selection, nomination, appointment, or retention of any individual to any federal, state or local office or involving the censure of any federal, state or local office holder. The

CDCBA is also prohibited from taking any action that may adversely affect the status of the organization as tax exempt entity under applicable federal and state law. Purview has been a vital component of the CDCBA's (and its predecessor the State Bar Conference of Delegates') mode of operation. The CDCBA should confine its annual deliberations to issues uniquely within the expertise of lawyers and avoid debating issues which are strictly or substantially political in nature. This resolution would inappropriately re-empower the CDCBA to return to the political arena where it had no business entering in the first place.