

Application for Consideration of Emergency Late Filed Resolution

The Bar Association of San Francisco requests the Board of Directors of the CDCBA to permit the attached Emergency Late Filed Resolution to be debated at the Conference meeting in October 2006. We believe that the proposed Late Filed Resolution meets the requirements of the CDCBA Rules as follows:

A) The resolution deals with a matter of substantial importance to the bar and the public.

Over 80% of the legal needs of Americans with limited means are unmet, despite the efforts of organizations including the American Bar Association, State Bar of California and Bar Association of San Francisco, among many others. The delivery of pro bono legal help is a critically important bar function but cannot meet the need for legal services without the crucial assistance of the Legal Services Corporation.

(B) The events giving rise to the resolution occurred at a time which effectively precluded the proponent from filing it earlier.

The report which is the subject of this resolution was first issued on September 14, 2006, making it impossible to present this resolution any earlier.

(C) The resolution was presented for filing as soon as reasonably possible after the occurrence of those events.

The drafting of this resolution and report was commenced within hours of the issuance of the OIG report and was submitted as soon as it could be approved by the processes in place within the Bar Association of San Francisco. It could not have been done more quickly.

(D) The subject matter of the resolution will not be before the Conference at its meeting unless the resolution is filed.

There is no other resolution covering the issues raised in this report.

(E) The business of the Conference previously scheduled for the meeting will allow time for consideration of the resolution without unduly restricting the time for consideration of other matters deemed by the Board to be of equal or greater importance to the Conference, the bar and the public.

It is hard to imagine a topic more important than this one. There is time to consider it.

(F) The resolution is accompanied either by counter-arguments of a responsible spokesperson for the opposite viewpoint or by documentation that reasonable efforts have been made without success to obtain counter-arguments.

This resolution (and the underlying report) will be disseminated to the chairs of all other delegations, with an invitation to submit counter arguments to the CDCBA leadership and staff.

RESOLUTION ELF-01-2006

Legal Services: Protection of Client Privileges and Effective Representation of the Poor.

TEXT OF RESOLUTION

RESOLVED that the Conference of the Delegates of California Bar Associations calls upon California's Senators and Congressional Delegation to (1) ask the House Subcommittee on Commercial and Administrative Law (of the House Committee on the Judiciary) and the Board of Directors of the Legal Services Corporation ("LSC") to reject the September 14, 2006 LSC Office of Inspector General ("OIG") Report as inappropriately critical of the work and central mission of California Rural Legal Assistance ("CRLA") and as demanding conduct inconsistent with CRLA's ethical and legal duties to protect its clients' rights and confidences .

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Authorizes the Legal Services Corporation to grant about \$308 million annually to worthy programs which serve the critical legal needs of persons of limited means, subject to regulatory rules and restrictions.

This Resolution: Defends the key purposes of that much needed appropriation by supporting California Rural Legal Assistance's continued protection of its clients' legal rights, remedies and privileges.

The Problem: Over 80% of the legal needs of Americans with limited means remains unmet, despite the efforts of the individual lawyers and the organized bar. Those legal needs are varied, and must be met by a wide variety of programs. Some of those programs are funded in part by the Legal Services. Grants of LSC funds carry certain restrictions upon the grantee's activities, and subject it to audit by the LSC Inspector General (OIG)

California Rural Legal Assistance ("CRLA") is an LSC-funded program which, for decades, has represented the neediest residents of rural California, including but not limited to central valley farmworkers. One of the State Bar of California's major *pro bono publico* awards is named after former CRLA Executive Director Ralph Abascal. While CRLA represents individual poor people, its efforts impact broader issues such as housing, poverty, civil rights, employment rights and illegal discrimination. Effective legal advocacy on behalf of an individual often has a broad impact on the law.

On Thursday, September 14, 2006, the OIG issued a report that threatens the \$6 million annual LSC funding of CRLA because of CRLA's proper representation of its clients. The report criticizes CRLA for giving priority to work which impacts the rights of California's minorities and poor, and for advocacy that impacts critical issues such as employment, education and housing rights. The OIG's report suggests that CRLA is not materially in compliance with LSC rules because it places such "impact litigation" among its various policy and budgetary priorities

in conjunction with efforts that redress individual needs one client at a time. The report can be found at <http://www.oig.lsc.gov/reports/0603/crla0603.pdf>.

The OIG has demanded, in addition to a large volume of other documents and data, CRLA's production of a detailed mass of identifying information (including the name, address, telephone number, spouse's name, adverse party name and legal problem) of every one of the nearly 40,000 clients CRLA had served in any of its 22 offices over the past 3 years. Many legal aid clients consult organizations like CRLA in confidence because they fear retaliation. Many of the clients' identities the OIG has demanded are protected by the attorney-client privilege as defined by federal law, and by the privileges and rights of privacy and confidentiality codified in Cal. Bus. & Prof. Code 6068(e) and California Rule of Professional Conduct Rule 3-100. Additionally, providing that data would require thousands of CRLA attorney and staff hours, consuming large amounts of its scarce resources needed to provide legal services to the poor.

The OIG report is antithetical to both CRLA's effective client representation, and the rights and privileges of CRLA's clients.

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

AUTHOR AND/OR PERMANENT CONTACT: Patrick H. Fabian, Law Office of Patrick H. Fabian, 101 Howard St., Ste 310, San Francisco, CA 94105, Telephone: (415) 543.5443, Facsimile: (510) 525.5517, phf@phfabian.com

RESPONSIBLE FLOOR DELEGATE: Patrick H. Fabian