

RESOLUTION 01-02-2008

DIGEST

CDCBA Rules: Legislative Policy Resolutions

Encourages CDCBA to adopt a procedure allowing for Legislative Policy Resolutions in addition to resolutions seeking specific changes, additions and modifications to the California Code.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution encourages CDCBA to adopt a procedure allowing for Legislative Policy Resolutions in addition to resolutions seeking specific changes, additions and modifications to the California statutes. This resolution should be disapproved because it does not offer a procedure for determining when a Legislative Policy Resolution would be preferable to the traditional CDCBA resolution in which a specific code section and language are targeted for change.

The resolution offers a proposed option to CDCBA's standard approach to resolution preparation for those situations that do not readily lend themselves to changing specific words within particular code sections.

Though there may be identifiable circumstances in which a Legislative Policy Resolution would be appropriate, the proponent fails to suggest any standard how CDCBA and its participants might differentiate the circumstances in which one type of resolution is preferable to the other. There is an important policy served by requiring members of the Bar to offer specific changes to the words and sections of the laws of California; that policy is simply that lawyers are ostensibly more skilled in writing the laws they seek to change than others.

CDCBA has been effective in proposing legislative changes throughout its history in large part because, through the resolution process, it prepares language ready for and influential in the legislative process. Furthermore, the proponent fails to take into account the additional costs that would be incurred in the proposed process that would require paying a lobbyist or others to draft the language of implementing legislation. Anyone can say, "There ought to be a law." Lawyers are generally trained and experienced in crafting legislation that hopefully fulfills the object sought by a proponent.

TEXT OF RESOLUTION

RESOLVED, that the Board of Directors of the Conference of Delegates of California Bar Associations implement an additional format and procedure for resolutions that will allow the Conference to vote on general matters of policy within the mission of the Conference, as

opposed to specific items of proposed legislation.

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS:

Existing Policy: Under the current rules, a Resolution must be formatted to propose a specific amendment to a specific code section. The effect of this policy is to leave the Board of the Conference, when faced with a more generalized question of legislative policy to either decline to comment, or possibly, given the passage of Resolution 9-08-07, to implement the game plan outlined in that resolution, which amounts to an educated guess.

This Resolution: Would require the Board to implement a second procedure for the introduction of resolutions that have broader policy implications.

For example, Resolution 6-09-07 proposed enactment of new Elections Code sections 4500, et seq., contemplating an elaborate structure implementing voting by mail state wide. Obviously the proponent of that resolution gave a lot of thought to the mechanics of the resolution, because the detail involved is a requirement of the Conference's current resolution submission process. One wonders whether it might not have been better, both for the proponent, and for the Conference, for the proponent to have been required to do nothing more than ask the question "Should there be a procedure to allow voting by mail that is consistent state wide?" and then leave it to the Legislature to work out the details, in the event of an approval in principle. In that way, any policy argument made either way by a bar association, or the Resolutions Committee, or by anyone else, would be less amenable to being taken out of context, and when asked, the Board could disclose that the Conference is either in favor of, or against, the concept, as opposed to a mere detail of it, or an elaborate structure attempting to implement it.

The Problem: Resolution 09-08-07 demonstrated the problem that in the context of the legislative process in Sacramento, the influence Conference is dramatically limited in that it is not in a position to be generally consulted about the consensus of the Conference on issues other than those that are specific to resolutions that have made their way into the Conference's legislative program. Instead, as the procedure outlined in Resolution 9-08-07 demonstrates, absent a more generalized resolution taking a broader policy position, all the Conference can do is say "Well, in 2005 we had a resolution that was approved in principle that appears to be supportive of your position" or try to contrive some sort of prognostication of how the Conference would vote if confronted with the particular question. Given the fact that the delegates on floor of the conference are selected by their respective bar associations, whereas under the organizational structure of the Conference the Board members need not be elected, it would seem that a policy resolution voted on by delegates would carry more weight as being representative, than an educated guess from the Board.

IMPACT STATEMENT:

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

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