

## RESOLUTION 01-04-2008

### DIGEST

#### CDCBA Rules: Response to Requests for Position on Legislation

Amends 09-08-2007, which granted the CDCBA Legislative Committee authority to respond to requests for support or opposition on legislation.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

Resolution 09-08-2007 was approved.

#### Reasons:

This resolution amends 09-08-2007, which granted the CDCBA Legislative Committee authority to respond to requests for support or opposition on legislation. This resolution should be approved in principle because it adds clarity to the parameters under which CDCBA may respond to requests for support of or opposition to legislation.

The resolution removes the option for the Committee to support a request for support or opposition “if determined that the proposed legislation is consistent with the CDCBA’s stated mission and goals.” With approval in principle of this resolution, the Legislative Committee of CDCBA will continue to be able to recommend three, rather than four, courses of action when CDCBA’s voice is requested to support or oppose legislation. The Committee can recommend that CDCBA (1) sponsor the request for support/opposition based on a resolution that the Conference has passed and that is in line with the proposed support/opposition; (2) oppose the request because it is in conflict with a position taken at the Conference; or (3) recommend that no position be adopted because the issue is not germane or is not in the interests of CDCBA to voice an opinion.

Because the basic foundation of CDCBA is that delegates with different backgrounds, perspectives and professional expertise debate possible changes to the law and then, by democratic process vote on the courses of action appropriate for those changes. It is a reasonable corollary that legislation supported or opposed by CDCBA likewise be rooted in the debate and democratic processes employed at the Conference. Otherwise, the Legislative Committee would have the authority to recommend a course of action on which the Delegates have not opined. This resolution would allow the CDCBA to support or oppose legislation *only* where the CDCBA determines that the issue has been debated and decided by the Conference and *only* where such position was consistent with that taken by the Conference. It may continue to take positions in opposition to such requests where the request is in conflict with Conference objectives.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations amend its policy implemented by Resolution 09-08-2007 (hereinafter, the “Policy”) as follows:

1 09-08-2007 (or subsequent numbered Policy resulting from Resolution 09-08-2007):  
2 All requests for support of, or opposition to, pending or proposed legislation shall be given  
3 to the Chair of the Legislative Committee, Chair of the Board, and Executive Director  
4 within 3 days of receipt.  
5 The Chair of the Legislative Committee shall first determine if the Conference has debated  
6 resolution(s) on the topic during the preceding 3 years. S/he shall communicate the request  
7 in writing to members of the committee, examine said request in detail, and after due  
8 consideration, obtain a recommendation of the majority of said committee on the position  
9 the Board should take with respect to said proposed legislation. The Legislative  
10 Committee shall recommend one of the following three (3) ~~four (4)~~ positions on the  
11 proposed legislation:  
12 A) Sponsor: upon determination that the Conference has passed a resolution on  
13 all fours with the proposed legislation;  
14 ~~B) Support: if determined that the proposed legislation is consistent with the~~  
15 ~~CDCBA's stated mission and goals;~~  
16 B) Oppose: if determined the Conference affirmatively passed a resolution  
17 contrary to the proposed legislation or the proposed legislation is inconsistent with the  
18 Conference's stated mission and goals; or  
19 ~~D) C) No position: if determined the proposed legislation is not germane or it is~~  
20 ~~not in the best interest of the CDCBA to take a position.~~  
21 This recommendation shall be made in writing to the Chair of the Board and the  
22 Executive Director within 10 days of receipt of the original request.  
23 The Chair of the Board and Executive Director shall promptly communicate in  
24 writing the Legislative Committee's recommendation to the Board and request the Board's  
25 responses as to whether it accepts or rejects the recommendation of the Legislative  
26 Committee. Any position on legislation requires a super-majority 2/3rds vote of the Board  
27 if adopted at a duly noticed meeting. If the vote of the Board is sought by electronic  
28 resolution rather than noticed meeting, then voting shall be via e-mail or other electronic  
29 written communication sent to the Executive Director or other designee and the vote of the  
30 Board must be unanimous.  
31 Upon receipt of the decision of the Board, the Executive Director shall  
32 communicate the Board's decision to the requesting party.  
33 The Legislative Committee shall report back to the Conference at the annual  
34 meeting regarding any action taken under this policy, as part of its legislative report.

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

**PROPONENT:** Orange County Bar Association

**STATEMENT OF REASONS:**

Existing Law/Policy: Last year, the CDCBA Board allowed a late-filed resolution (09-08-2007) in connection with the CDCBA procedure for incoming requests for positions on legislation (the

“Policy”), which would allow the CDCBA to sponsor or oppose legislation upon request, even where the Conference had never decided the issue.

This Resolution: Would allow the CDCBA to sponsor or oppose legislation without a vote of the Conference only where the CDCBA determines that the issue has been debated and decided by the Conference, and only where such position was consistent with that taken by the Conference.

The Problem: The authority of the CDCBA arises out of the deliberative process that it engages in at the Conference and throughout the year. Because the CDCBA is comprised of delegations of bar associations throughout the State, it is important that those associations have an opportunity to speak through their delegations on proposed legislation. As an example, the OCBA does not take positions through its delegation until after they have been debated within the delegation and approved by both the delegation and our bar association. This ensures that the OCBA delegation is taking positions that are consistent with the position of the OCBA on legislation.

The proposed resolution and counterargument process, along with debate during the Conference is the appropriate mechanism by which the CDCBA should take positions on legislation. While it is reasonable that the CDCBA Board be authorized to take positions on legislation throughout the year that are consistent with the determination of the Conference, the Board should not act on behalf of the Conference without the issue being vetted through the Conference. The OCBA urges that the CDCBA adopt this Resolution to avoid the CDCBA Board taking positions on behalf of the CDCBA which have not been debated by the Conference and may, in fact, be contrary to what the overall conference would recommend.

#### **IMPACT STATEMENT:**

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

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#### **COUNTERARGUMENTS**

##### **THE BAR ASSOCIATION OF SAN FRANCISCO**

The proponent correctly recognizes that the policy which it wishes to change was adopted at the 2007 Conference. The proponent offers no reason why the decision of the Conference was misguided and should be reversed. In essence this is simply re-argument. The Bar Association of San Francisco has full confidence that Board of Directors of the CDCBA will not abuse the authority given to it by Resolution 09-08-2007 to support legislation consistent with the CDCBA’s stated mission even though the Conference has not acted on the particular issue.

## **SAN DIEGO COUNTY BAR ASSOCIATION**

The Board, as head of the CDCBA, is most knowledgeable about the goals and positions of the Conference. If this resolution is passed, it may prohibit the Conference from supporting issues that would be beneficial to the members. The Board needs the discretion to take positions that benefit the organization as a whole during the time the Conference is not in session.