

RESOLUTION 03-08-2008

DIGEST

Dispute Resolution Programs: Exclusion of District Attorneys' Offices as Grantees

Amends Business and Professions Code section 467.1 to exclude District Attorneys' offices from receiving Dispute Resolution Program Act grants.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Business and Professions Code section 467.1 to exclude District Attorneys' offices from receiving Dispute Resolution Program Act grants. This resolution should be approved in principle because it excludes an entity that is neither neutral nor primarily formed for dispute resolution.

One of the goals of the Dispute Resolution Program Act ("DRPA") is to encourage courts, prosecuting authorities, law enforcement agencies, and other governmental agencies to use alternative dispute resolution programs. The statute allows counties to establish a program to grant DRPA funds to public entities and nonpartisan nonprofits. The program is administered by county boards of supervisors and is regulated at the state level by the Department of Consumer Affairs, which has promulgated regulations.

A grantee agency must be a definitive unit of a governmental entity with a separate and identifiable annual budget. (16 Cal. Code Regs., § 3605.) Along with its grant application, a grantee must describe its organizational structure and that of its parent or sponsoring organization. Dispute resolution must be its primary purpose as evidenced by the program, project or entity devoting a minimum of 51% of its budget to dispute resolution services. Section 3620 of the regulations requires that neutral persons provide the services. (16 Cal. Code Regs., § 3620.) Section 3632 makes allowances for a grantee agency to provide disputants with information on other entities which provide dispute resolution services. (16 Cal. Code Regs., § 3632.)

Dispute resolution programs associated with District Attorneys' ("DA's") offices present several major problems that may produce results contrary to the purpose of dispute resolution. First, the primary purpose of DAs' offices is prosecution, not dispute resolution. As such, some community members are not likely to use dispute resolution services offered by these offices. Though DA's offices may have a desire to provide dispute resolution services, the perception of partiality should exclude them. Contrary to the Judicial Counsel's assertion, Business & Professions Code section 467.7 suggests participation in, not establishment of dispute resolution programs by DA's offices. Finally, DA's offices may have an unfair advantage in getting approval for DRPA funds over other non-public entities due to their connection as county employees.

The DRPA statutes and regulations specifically refer to providing services in cases involving criminal charges. For the charged or potentially charged person, the District Attorney's dispute resolution program is not likely to be perceived as a neutral and unbiased forum.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommend that legislation be sponsored to amend Business & Professions Code Section 467.1 as follows:

- 1 §467.1
- 2 (a) A program funded pursuant to this chapter shall be operated pursuant to
- 3 contract with the county and shall comply with all of the requirements of this chapter and
- 4 the rules and regulations of the advisory council.
- 5 (b) Counties may establish a program of grants to public entities, specifically
- 6 excluding District Attorneys' offices, and to nonpartisan nonprofit corporations for the
- 7 establishment and continuance of programs to be operated under the requirements of this
- 8 chapter and the standards developed by the advisory council. The board of supervisors of a
- 9 county in which, because of the county's size, the distribution authorized by Section 470.5
- 10 is insufficient to establish a county program may enter into an agreement with the board of
- 11 supervisors of one or more other such counties to establish a program authorized by this
- 12 chapter on a regional basis.

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

PROPONENT: National Lawyers Guild—Los Angeles Chapter

STATEMENT OF REASONS:

Existing Law: The existing law allows counties to allocate the Dispute Resolution Program Act (DRPA) money collected from court filing fees, and distributed to the counties by the Administrative Office of the Courts, to "public entities" and nonprofits to provide mediation and arbitration services to the community on a sliding scale basis.

This Resolution: Would modify existing law by excluding District Attorneys' offices from the definition of "public entities" that may receive DRPA funding to establish and operate dispute resolution programs.

The Problem: Counties typically provide dispute resolution services through local non-profits that are devoted to alternative dispute or conflict resolution, or through public entities such as consumer affairs departments. However, in some counties (e.g., Ventura County), the dispute resolution service is located within the District Attorney's Office. This may occur, for example, when the District Attorney has significant political clout with the county board of supervisors, and seeks to have the DRPA funding allocated for dispute resolution services directed to the Office of the District Attorney.

Locating the dispute resolution service in a District Attorney's Office creates a particular problem when a person seeking dispute resolution services is a current or former criminal defendant and does not feel comfortable seeking assistance in the office that is or was prosecuting him or her.

IMPACT STATEMENT:

This proposed resolution affects Business & Professions Code Section 467.2.

AUTHORS AND/OR PERMANENT CONTACT: Lisa Jaskol and Tina L. Rasnow, Ventura County Superior Court, Self-Help Legal Access Center, 800 South Victoria Avenue, Room 400, Ventura, CA 93009/(805)654-3879, tina.rasnow@ventura.courts.ca.gov

RESPONSIBLE FLOOR DELEGATE: Tina L. Rasnow