

Application for Consideration of Emergency Late Filed Resolution No. 03-2008

The proponent of ELF-03-2008 hereby requests the Board of Directors of the CDCBA to permit the attached Emergency Late Filed Resolution to be debated at the 2008 Conference. We believe that the proposed Emergency 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. The Final Report of the California Commission on the Fair Administration of Justice, containing the Commission's Report and Recommendations on the Administration of the Death Penalty in California, was released on June 30, 2008. The Final Report identifies flaws in California's death penalty system that render it dysfunctional, and remedies the Commission unanimously recommend to repair it. The Final Report also contains identifies alternatives to the death penalty but makes no recommendations about these alternatives, and makes additional recommendations relating to miscellaneous aspects of the administration of California's death penalty law about which the Commission failed to reach unanimous recommendations. This resolution deals with the alternatives to the death penalty and the recommendations of the Commission which did not receive unanimous recommendations. A separate Emergency Late Filed Resolution (ELF-02-2008) deals with the unanimous recommendations.

A prompt response of the CDCBA to the substantial work of the Commission and the release of its final report on the administration of the death penalty in California is needed. In the words of Commission Vice Chair Jon Streeter in an accompanying Statement, "something must be done."

(B) The events giving rise to the resolution occurred at a time which effectively precluded the proponent from filing it earlier. The Final Report of the California Commission on the Fair Administration of Justice, containing the Commission's Report and Recommendations on the Administration of the Death Penalty in California, was released on June 30, 2008, making it impossible to present this resolution in compliance with ordinary CDCBA deadlines.

(C) The resolution was presented for filing as soon as reasonably possible after the occurrence of those events. It has only been a matter of weeks since the release of the Final Report.

(D) In part, the subject matter of the resolution will not be before the Conference at its meeting unless the resolution is filed. This ELF Resolution differs from other Resolutions dealing with the death penalty as presented by Resolutions also before the Conference in that it contains the specific recommendations of the Commission dealing with the death penalty system in a comprehensive manner. Resolution 02-01-2008, dealing with capital appeals and advocating transfer of review from the Supreme Court to the courts of appeals, does not deal with the funding issues that the Final Report considers a precondition to consideration of the proposal to transfer jurisdiction. Resolution 02-05-2008, dealing with the elimination of certain special circumstances in the death penalty statute, is one of the "alternatives" to the death penalty identified by the Commission for which there was no recommendation, and is therefore within

the subject of this ELF. Similarly, Resolution 02-21-2008, dealing with elimination of the death penalty, is the other of the “alternatives” to the death penalty identified by the Commission for which there was no recommendation, and is therefore within the subject of this ELF. Finally, Resolution 02-08-2008, dealing with juror disqualification based on opposition to the death penalty, is not the subject of any recommendation of the Commission.

(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. The CDCBA began considering interim reports and recommendations of the Commission in 2006 and passed ELF’s submitted in that year due to the importance of the subject matter. In 2007, the CDCBA also considered interim reports and recommendations of the Commission which were presented in Resolutions regularly presented. The CDCBA has a track record of considering the reports and recommendations of the Commission and the collective wisdom and judgment of the CDCBA should again be brought to bear on the Final Report and Recommendations of the Commission. This ELF presents the recommendations of the Commission that did not receive unanimous support. Thus, this ELF presents the more controversial aspects of the Commission’s work and is appropriate for approval because it is these controversial recommendations that should be debated by the Conference.