

Application for Consideration of Emergency Late Filed Resolution No. 04 - 2008

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 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 ability of employees of University of California to report improper activity without threat of reprisal, retaliation, threats, coercion or similar improper acts is crucial to the successful implementation of the Whistleblower Protection Act (Government Code §§ 8547.1 *et seq.*). Currently, University of California employees who wish to report whistleblower retaliation must file a complaint with the University, and that complaint is adjudicated by the University with no practical opportunity for judicial review. As such, University employees are greatly dissuaded from complaining of improper activity, thus thwarting the policy behind the Whistleblower Protection. This resolution is based on the concurring decision in California Supreme Court's July 31, 2008 decision in *Miklosy v. U.C. Regents* (2008) 2008 Cal. LEXIS 9370. Justice Werdegar wrote: "I urge the Legislature to revisit this statute and if, as I suspect, it intended to create only a requirement that complainants exhaust their internal remedies, to amend the statute in a manner that makes that intent clear."

(B) The events giving rise to the resolution occurred at a time which effectively precluded the proponent from filing it in the normal course. The California Supreme Court's decision in *Miklosy v. U.C. Regents, supra*, 2008 Cal. LEXIS 9370, giving rise to the resolution, was not decided until July 31, 2008. The proposed resolution was drafted and submitted to the BASF Caucus on August 15, 2008. It was approved for submission as an Emergency Late File.

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

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

(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.

(F) The Bar Association of San Francisco is not aware of any opposition at the present time.