

RESOLUTION 03-01-2017

DIGEST

CCBA: Responses to Requests for Support of Pending Bills or Rules

Adds Rule 14 to Article II and Rule 4 to Article VI of the CCBA Rules of Operation & Procedure to allow CCBA to take positions on pending legislation and rule changes outside the annual Conference.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

Similar to Resolution 11-03-2014, which was disapproved.

Reasons:

This resolution adds Rule 14 to Article II and Rule 4 to Article VI of the CCBA Rules of Operation & Procedure to allow CCBA to take positions on pending legislation and rule changes outside the annual Conference. This resolution should be disapproved because it would treat the decisions made as the action of the Conference without key Conference procedures, such as extended analysis and live debate.

It is not clear that the problem addressed by the proposed Rule 4 in this resolution—requests to support pending legislation that was introduced during the two-month period between the late-filing deadline for resolutions and the Conference—is a frequent occurrence. Assuming that it has occurred, existing procedures already allow for an emergency late-filed resolution, if certain criteria are met, such as the resolution addressing a matter of substantial importance to the bar and the public. But if the legislation is likely to be voted on before the Conference could consider even an emergency late-filed resolution, the proposed Rule 4 would allow the Legislative Committee to pass the proposed legislation on to the individual delegations for review. Such review would not be limited to pending legislation of substantial importance to the bar and the public. Rather, a primary consideration would be quid pro quo: whether the organization requesting CCBA's support had supported CCBA legislation in the past.

This resolution differs in two respects from Resolution 11-03-2014, but neither adequately addresses the problems with that resolution. First, the resolution expands the role of the Legislative Committee, which under the CCBA Rules currently only has the power to recommend to the Board placement of passed resolutions into one of four groups. (CCBA Rules of Operation and Proc., art. VI.) Second, rather than having the Legislative Committee or the Board act alone, the resolution provides delegations a two-week window in which to discuss and vote on the pending legislation. This is not enough time for most delegations to research and debate even relatively simple bills, particularly without the benefit of a Resolutions Committee report.

CCBA has built a reputation, over the years, for providing an impartial, reliable review of proposed legislation, and as a source of new legislation that adequately addresses identified problems without creating unintended consequences. This reputation stems directly from the

review, deliberation, amendment, and debate to which each resolution is subjected, in the delegation caucuses, during the Resolution Committee’s meeting and at the Conference. The abbreviated process proposed in this resolution would not provide the same benefits to legislators or the public, and would give the impression that a CCBA approval doesn’t necessarily mean what it used to—particularly once it becomes known that only organizations that have supported CCBA legislation get this special treatment. This latest attempt to circumvent CCBA process in the name of increasing the organization’s lobbying effectiveness should be disapproved.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that the Board of Directors add Rule 14 to Article II and Rule 4 to Article VI of the CCBA Rules of Operation & Procedure, to read as follows:

1 Article II

2 [Rules 1 through 13 remain unchanged]

3 **14. CCBA Support and Opposition to Pending Legislation and Requests for CCBA**
4 **to Support or Oppose Pending Legislation.** The CCBA, its Board of Directors and legislative
5 advocate, are authorized to support and advocate for any pending legislation substantially similar
6 to any Resolution having been passed by the Conference and to oppose any pending legislation
7 contrary to any Resolution having been passed by the Conference. Except as may be submitted
8 through the Resolution process outlined in these Rules and the Guide for Proponents, as may be
9 in effect, any request for CCBA support or opposition to pending legislation shall be referred to
10 the Legislation Committee for action consistent with the procedures outlined in rule 4 of Article
11 VI.

12
13 Article VI

14 [Rules 1 through 3 remain unchanged]

15 4. The Legislative Committee shall also consider and oversee the following process for
16 requests to the CCBA for its support or opposition to any pending legislation, inclusive of
17 proposed changes to the Rules of Court (collectively “pending legislation”) that are not
18 substantially similar to a Resolution previously passed by the Conference.

19 4.1 The Legislative Committee shall first make a determination that the request to
20 support or oppose pending legislation is not amenable to the ordinary procedures for submission
21 of Resolutions to the Conference. In making such a determination, the Legislative Committee
22 shall consider the following factors: 1) the pending legislation was introduced after the deadline
23 for submission of Resolutions and the Late File deadline for submission of Resolutions; and 2)
24 the Legislature or governmental body is likely to act on the pending legislation prior to
25 convening of the Conference. If these factors are not satisfied, the Legislation Committee shall
26 inform the organization or person making the request of the CCBA process for submission of
27 Resolutions and may provide a reference to any member delegation that might be willing to
28 proffer a Resolution on the pending legislation. If these factors are satisfied, then the Legislation
29 Committee shall prepare a recommendation and report and refer the matter in accordance with
30 the procedures in 4.2.

31 4.2 The Legislation Committee shall prepare a brief report and recommendation on
32 requests to support or oppose pending legislation allowed under 4.1. In addition to factors

33 normally considered by the Resolutions Committee in making recommendations to the
34 Conference on Resolutions, the Legislation Committee may also consider and report on whether
35 the organization requesting CCBA support has previously offered support to CCBA sponsored
36 legislation. The report and recommendation of the Legislation Committee shall then be referred
37 to the Chair or designated point of contact for each Delegation that attended the immediate past
38 Conference for a vote by the Delegation along with a deadline for submission of voting.
39 Delegations shall be provided a minimum of two weeks from the referral to submit the results of
40 a vote of the Delegation to Approve in Principle or Disapprove the action recommended by the
41 Legislation Committee. Each Delegation's vote shall be weighted in direct proportion to the
42 number of its delegates attending the immediate past Conference. Upon expiration of the voting
43 deadline, the Legislation Committee shall tabulate the votes timely submitted and certify the
44 results which shall become the action of the Conference, and in turn the action of the CCBA on
45 the request to support or oppose pending legislation.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Current CCBA rules do not allow the CCBA to support or oppose or otherwise act on requests to support or oppose pending legislation or proposed changes to rules of court unless they are substantially similar to a Resolution previously passed by the Conference. This has placed the CCBA in the awkward position of obtaining support by outside organizations for CCBA sponsored legislation while not being able to provide similar return support for legislation. This problem is particularly acute where pending legislation is introduced after the normal CCBA Resolution submission process and/or when action by the governmental body is likely to occur before the Conference convenes.

The Solution: This resolution adds new provisions to the CCBA rules to confirm the implied rule that the CCBA is authorized to support legislation substantially similar to a Resolution passed by the conference and confirms the reverse corollary that the CCBA is authorized to oppose pending legislation contrary to a Resolution that has previously passed the Conference. It also expands the power of the Legislation Committee to review and oversee the process for request for CCBA support or opposition to pending legislation. It sets forth a gatekeeper function which provides that requests amenable to normal Resolution submission process proceed through that process. It then establishes a representative voting process for those requests satisfying the criteria of requests that cannot be properly considered through the normal Conference process.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known. The CCBA Board of Directors has formed a Committee to examine this “between Conference” dilemma and propose potential changes to current CCBA rules and processes.

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RESPONSIBLE FLOOR DELEGATE: Darin L. Wessel

COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

BAR ASSOCIATION OF NORTHERN SAN DIEGO COUNTY

This Resolution would allow the CCBA to become a lobbying organization on a wide range of legislation. Of particular concern is the amendment to Article VI which would give the CCBA Legislation Committee power to recommend the CCBA support or oppose a bill in the California State Legislature on matters the Conference has not voted as a whole on, and that may contain matters outside the CCBA's mission to "seek, debate, and promote creative, non-partisan solutions to law-related issues." (Article I, Rule 1, and Article II, Rule 9 of CCBA Rules of Operation & Procedure.) This Resolution does away with the extensive review and debate process. There would be no Resolutions Committee review (which is an intensive months-long research and debate process), no written counter-argument by the delegations, no caucusing or lobbying among delegations prior to a vote, and no oral argument prior to a vote. This combination may well lead to the CCBA taking ill-considered positions that will harm it in the long term. The ability to trade lobbying favors with other organizations in order to promote CCBA resolutions more effectively is not worth the price.

RESOLUTION 03-02-2017

DIGEST

CCBA: Post-Conference Publication of Final ResCom Reports and Amended Resolutions
Amends Rule 1 of Article III and adds Rule 25 to Article IV of the CCBA Rules of Operation & Procedure to require publication of Resolutions Committee Conference action reports and proposed amendments to Resolutions.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE WITH RECOMMENDED AMENDMENTS

History:

Similar to Resolution 11-04-2014 and Resolution 01-01-2008, both of which were approved in principle.

Reasons:

This resolution amends Rule 1 of Article III and adds Rule 25 to Article IV of the CCBA Rules of Operation & Procedure to require publication of Resolutions Committee Conference action reports and proposed amendments to Resolutions. This resolution should be approved in principle with recommended amendments, because such publication will provide a more accurate and complete public record of Conference actions than is currently available.

Resolutions Committee reports making recommendations to the Conference are the only reports currently publicly posted on the CCBA website. Thus, if a resolution which Resolutions Committee recommended be disapproved is approved in principle or approved as amended at the Conference, the only public report is Resolutions Committee's report recommending disapproval. This makes it difficult for CCBA's lobbyist to place such a resolution with a Legislator because when the legislator or their staff pull the Resolutions Committee report, they will only see the disapproval. If the final action report is publicly available, the Legislature can see why the resolution was approved in principle or approved as amended and provide reasons for the Legislator to support and sponsor CCBA's resolutions.

The resolution should be amended to clarify that the report should indicate which, if any, of the proposed amendments were passed by the Conference. The Conference has approved similar resolutions twice in the past ten years, but the Board did not adopt the proposed amendments. Given that improvement of CCBA's archives and records enjoys broad support among Board members, this was presumably an oversight, and this resolution should be approved in principle.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that the Board of Directors amend Rule 1 of Article III and add Rule 25 to Article IV of the CCBA Rules of Operation & Procedure, to read as follows:

- 1 Article III
- 2 1. Resolutions Committee

3 The Board shall appoint a Resolutions Committee. One member of the committee shall
4 be recommended for appointment by each district Board member and one member of the
5 committee shall be recommended for appointment by each Ethnic Minority Board member. In
6 addition to the members of the committee, the Board shall appoint a chair and up to three vice-
7 chairs of the Resolutions Committee.

8 Members and officers of the committee shall serve for a period of one year or until their
9 successors have been appointed.

10 The Resolutions Committee shall meet at the call of its Chair.

11 All ordinary and late-filed resolutions to be submitted to the Conference shall be referred
12 to the Resolutions Committee. The committee shall consider all resolutions and report its
13 recommendations before the resolutions are made available to Conference pursuant to article III,
14 section 14. The Resolutions Committee may recommend:

- 15 • Approval in principle as submitted;
- 16 • Approval in principle as amended;
- 17 • Referral to the Conference without recommendation;
- 18 • Referral to Board for appropriate action;
- 19 • Disapproval
- 20 • Action Unnecessary

21 Upon the conclusion of a regular meeting of the Conference, the chair of the Resolutions
22 Committee shall report to the Board concerning the proceedings of the meeting and make
23 recommendations for committee membership for the following year.

24 The chair of the Resolutions Committee shall submit to the CCBA Board for publication
25 on the CCBA website a Final Conference Report as outlined in Rule 25 of Article IV.

26
27 Article IV

28 [Rules 1 through 24 remain unchanged]

29 25. Upon the conclusion of a regular meeting of the Conference and not more than 30
30 days following the Conference, the chair of the Resolutions Committee, or his or her designee,
31 shall prepare and the chair shall submit to the CCBA Board for publication on the CCBA website
32 a Final Conference Report which shall consist of: 1) The Resolution Committee member reports
33 on the action of the Conference on Resolutions, 2) any amendments to Resolutions submitted
34 and voted on during the Conference; 3) the pre-Conference Resolutions Committee report and
35 recommendation; and 4) the original Resolution.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Currently the pre-Conference ResCom reports and recommendations along with Resolutions submitted to the Conference are published on the CCBA website, and after the Conference the CCBA publishes a list of Conference actions. The ResCom members also prepare Conference reports summarizing the debate and final Conference action, along with any amendments, on all Resolutions, but those reports are not published. As a result, those outside the CCBA including members of the Legislature and their staff, have found and misinterpreted

the function of the pre-Conference ResCom report versus the final Conference action. This has led to the CCBA legislative advocate experiencing difficulties in finding legislative sponsors for Resolutions passing the Conference.

The Solution: This resolution fixes the problem by requiring publication of a post-Conference Final Conference Report within 30 days of conclusion of the Conference. This Final Conference Report would consist of the ResCom member Conference action reports, amendments to Resolutions voted on at the Conference, the original ResCom report and recommendation, and the original Resolution. The CCBA's legislative advocate would then have a final report to refer members of the Legislature and their staff to and the status of the pre-conference ResCom report as a preliminary report and recommendation should in turn be clarified to avoid the current misinterpretation.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESPONSIBLE FLOOR DELEGATE: Darin L. Wessel

RESOLUTION 03-03-2017

DIGEST

CCBA: Allow Resolutions Committee to Recommend Referral Back to Proponent

Amends Rule 1 of Article III of the CCBA Rules of Operation & Procedure to allow Resolutions Committee recommendations to include “Refer Back to Proponent for Substantial Revisions.”

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Rule 1 of Article III of the CCBA Rules of Operation & Procedure to allow Resolutions Committee recommendations to include “Refer Back to Proponent for Substantial Revisions.” This resolution should be disapproved because it would encourage poorly drafted resolutions, and would not allow a proponent sufficient time to revise and re-submit before the annual Conference.

Resolutions Committee typically recommends disapproval of resolutions that fail to address the stated problems, or that create additional problems. This practice encourages proponents not only to identify problems, but also to consider the efficacy of their proposed solutions and the potential for unintended consequences. This resolution would remove that incentive. Moreover, receiving a recommendation of “Refer Back to Proponent for Substantial Revisions” after Resolutions Committee reports are published in late summer would not afford proponents enough time to revise their resolutions and re-submit them prior to the annual Conference. If the resolution were adopted, the new recommendation would likely become a catch-all category for every resolution that identifies a problem, regardless of the quality of the response to that problem, diminishing the usefulness of the Resolutions Committee reports. In addition, if this were to pass, delegations would lobby Resolutions Committee to give the “Refer Back to Proponent for Substantial Revisions” rather than getting a recommendation of “Disapprove” because of the perceived stigma of a disapproval recommendation.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that the Board of Directors amend Rule 1 of Article III of the CCBA Rules of Operation & Procedure, to read as follows:

- 1 Article III
- 2 1. Resolutions Committee
- 3 The Board shall appoint a Resolutions Committee. One member of the committee shall be
- 4 recommended for appointment by each district Board member and one member of the committee
- 5 shall be recommended for appointment by each Ethnic Minority Board member. In addition to

6 the members of the committee, the Board shall appoint a chair and up to three vice-chairs of the
7 Resolutions Committee.
8 Members and officers of the committee shall serve for a period of one year or until their
9 successors have been appointed.
10 The Resolutions Committee shall meet at the call of its Chair.
11 All ordinary and late-filed resolutions to be submitted to the Conference shall be referred to the
12 Resolutions Committee. The committee shall consider all resolutions and report its
13 recommendations before the resolutions are made available to Conference pursuant to article III,
14 section 14. The Resolutions Committee may recommend:
15 • Approval in principle as submitted;
16 • Approval in principle as amended;
17 • Refer back to proponent for substantial revisions;
18 • Referral to the Conference without recommendation;
19 • Referral to Board for appropriate action;
20 • Disapproval
21 • Action Unnecessary
22 Upon the conclusion of a regular meeting of the Conference, the chair of the Resolutions
23 Committee shall report to the Board concerning the proceedings of the meeting and make
24 recommendations for committee membership for the following year.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Under current CCBA rules and practices, a Resolution that may have a good idea but suffers substantial problems receives a “Disapprove” from ResCom with an explanation of reasons. That disapprove may be based on problems ranging from the Resolution seeks to amend the incorrect statute, misses a better statute to accomplish the goal, utilizes language potentially causing unintended consequences, or proposes incomplete language. That Disapprove recommendation carries a lot of weight to outsiders unfamiliar with CCBA processes, even when the proponent corrects the problem, re-submits at a future Conference and the corrected Resolution receives a ResCom recommendation of Approve in Principle.

The Solution: This resolution fixes the problem by adding a new category to the allowed ResCom recommendations – Refer back to proponent for substantial revisions. This signals the Resolution appears to be a good idea but suffers from substantive problems that can be fixed. It allows the proponent the time to fix the Resolution without receiving the “Disapprove” label that might later haunt either an amended Resolution that passes the Conference, or a re-introduced and corrected Resolution submitted in a future Conference.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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