RESOLUTION 05-01-2019

DIGEST
Probate: Fee Waiver for Nunc Pro Tunc Correction of Orders
Amends Government Code section 70657 to create a fee exception for ex parte applications presented to correct orders nunc pro tunc in probate matters.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Government Code section 70657 to create a fee exception for ex parte applications presented to correct orders nunc pro tunc in probate matters. This resolution should be approved in principle because filing fees should not be charged to correct incorrect court orders nunc pro tunc.

Current law requires a uniform fee of sixty-dollars ($60) for motions and applications requiring a hearing subsequent to the first filing in probate proceedings, unless expressly exempted. (Gov. Code, § 70657, subd. (a).) This resolution would add an exemption for ex parte applications to correct court orders nunc pro tunc.

Orders of a court should conform to law and justice. (Code Civ. Proc., §§ 128, subd. (a)(8), 473, subd. (d), 1008.) While a court has the power to amend or correct orders on its own motion, this rarely occurs. Errors are usually identified by a party. It is often the party affected who brings the need for correction to the attention of the judicial officer. A party should not be charged a filing fee for alerting the court of an incorrect order and seeking to correct it, nunc pro tunc, by ex parte application.

The resolution is sound. If anything, it should not be limited to probate matters or ex parte applications. Government Code section 70617, subdivision (b), contains a list of motions and applications exempted from the sixty-dollar motion filing fee that applies to all proceedings. Inserting a new subdivision (b)(14) to that provision, exempting fees for a motion or application to correct an order nunc pro tunc, would foster consistency and fairness by extending the principle to all motions and non-probate proceedings.

It is noted that this resolution may require the adoption of a Judicial Council form for this specific purpose so that court clerks know that it is the type of application that does not require a fee.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Government Code section 70657 to read as follows:

§70657

(a) Except as provided in subdivision (c), the uniform fee for filing a motion or other paper requiring a hearing subsequent to the first paper in a proceeding under the Probate Code, other than a petition or application or opposition described in Sections 70657.5 and 70658, is sixty dollars ($60). This fee shall be charged for the following papers:

(1) Papers listed in subdivision (a) of Section 70617.

(2) Applications for ex parte relief, whether or not notice of the application to any person is required, except (1) an ex parte petition for discharge of a personal representative, conservator, or guardian upon completion of a court-ordered distribution or transfer, for which no fee shall be charged and (2) an ex parte application to correct court orders nunc pro tunc.

(3) Petitions or applications, or objections, filed subsequent to issuance of temporary letters of conservatorship or guardianship or letters of conservatorship or guardianship that are not subject to the filing fee provided in subdivision (a) of Section 70658.

(4) The first or subsequent petition for temporary letters of conservatorship or guardianship.

(b) There shall be no fee under subdivision (a) for filing any of the papers listed under subdivision (b) of Section 70617.

(c) The summary judgment fee provided in subdivision (d) of Section 70617 shall apply to summary judgment motions in proceedings under the Probate Code.

(d) Regardless of whether each motion or matter is heard at a single hearing or at separate hearings, the filing fees required by subdivisions (a) and (c) apply separately to each motion or other paper filed. The Judicial Council may publish rules to give uniform guidance to courts in applying fees under this section.

(e) No fee is payable under this section for a petition or opposition filed subsequent to issuance of letters of temporary guardianship or letters of guardianship in a guardianship described in Section 70654.

(f) This section shall become inoperative on July 1, 2018, and, as of January 1, 2019, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2019, deletes or extends the dates on which it becomes inoperative and is repealed.

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

PROPONENT: Bar Association of Northern San Diego County.

STATEMENT OF REASONS

The Problem: Current law requires a $60 fee for all ex parte applications, including correction of Orders Nunc Pro Tunc. Minute Orders, particularly in probate matters, are more and more being adopted as the Order of the Court. However, now and then, mistakes are made by the clerk in entering the text of the Order. To make a correction to a court Order Nunc Pro Tunc, an ex parte application and hearing is required, which carries with it a $60 fee under Government

Code section 70657. This adds an additional financial burden for the party who needs to correct the error made through no fault of their own.

The Solution: This resolution creates an exception for ex parte applications to correct court Orders Nunc Pro Tunc so that no additional fee needs to be paid. Although it puts a financial burden on an already over-burdened court, such burden would be minimal and would encourage entry of correct and complete orders.

IMPACT STATEMENT
Related to Government Code sections 70617, 70654, 70657.5, and 70658, all referenced in section 70657 being amended.

CURRENT OR PRIOR RELATED LEGISLATION:
None known.

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RESOLUTION 05-02-2019

DIGEST
Courthouse Accessibility: Lactation Rooms for Jurors, Witnesses, Lawyers, and Parties
Amends Labor Code section 1030 to give breastfeeding jurors, lawyers, witnesses, and parties the right to use a court's lactation room.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Labor Code section 1030 to give breastfeeding jurors, lawyers, witnesses, and parties the right to use a court's lactation room. This resolution should be disapproved because the Labor Code governs the rights and obligations of employers and employees, not accessibility concerns, and this resolution could create security risks for court personnel, jurors and witnesses.

Under the current law, the Labor Code requires that employers accommodate their employees' lactation needs. (Lab. Code, § 1030.) Other statutory schemes also require similar accommodations, but they are tailored to address the existing relationships governed by those statutory schemes. For example, the Education Code requires schools to provide accommodations for students and staff at schools, and the Penal Code requires that jails provide accommodations for lactating inmates. (Ed. Code, §§ 222 and 66271.9; Pen. Code, § 4003.5.) This resolution would revise the Labor Code to require public accommodations.

While ensuring that breastfeeding women at courthouses have access to lactation spaces is an important goal and should be addressed, as written, this resolution would expand the duties of an employer to third-parties, potentially create security concerns, and increase the risk for ex parte communications and improper witness or juror communications.

Under this resolution, the employer at the courthouse, e.g. the County or State, would be obligated to provide third-parties with access to lactation rooms. Therefore, if the county or state fails to do so, they could potentially be liable to third-parties for civil penalties under Labor Code section 1033, even though there is no employment relationship. Further, for smaller courthouses, with limited space, the only place for accommodating lactating employees' needs may be in secured areas of the building. Allowing the public, jurors, and witnesses into such areas would create a security risk for court employees, as well as increasing the risk for improper communications between jurors, witnesses, and judicial officers.

While there is a problem that needs to be addressed, the proposed solution should be in a statutory scheme governing courts and/or access to public government buildings, not employment relationships.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Labor Code sections 1030 as follows:

§1030.

Every employer, including the state and any political subdivision, shall provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time shall, if possible, run concurrently with any break time already provided to the employee. Break time for an employee that does not run concurrently with the rest time authorized for the employee by the applicable wage order of the Industrial Welfare Commission shall be unpaid. Courthouses shall offer the use of lactation rooms as required by section 1031-1035 to jurors, witnesses, lawyers, and parties having lawful business before the court, subject to the administration of justice.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Currently, breastfeeding mothers who have business before the court as jurors, witnesses, parties, or lawyers are regularly required to breastfeed in their cars, or while sitting on a toilet in the courthouse bathroom. Not only is this system unhygienic and disrespectful, it places courthouse-working moms at a disadvantage in a the course of their employment, discourages breastfeeding jurors from service, and needlessly imposes suffering on witnesses and parties who have a legal obligation to spend days, weeks, or months in the courthouse.

The Solution: This resolution would clarify that, for the purposes of the labor code provisions requiring employers to provide employees with access to a clean, functional lactation rooms, courthouses are required to make a lactation room available to those having lawful business before the court.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESPONSIBLE FLOOR DELEGATE: Arwen Johnson

RESOLUTION 05-03-2019

DIGEST
Judicial Disqualification: Enlarged Time to File a Writ of Mandate
Amends Code of Civil Procedure section 170.3 to enlarge the time in which to file a writ of mandate challenging an order determining the disqualification of a judge.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Code of Civil Procedure section 170.3 to enlarge the time in which to file a writ of mandate challenging an order determining the disqualification of a judge. This resolution should be approved in principle because the current 10-day deadline provides insufficient time to prepare a properly presented writ petition, and increasing the deadline to 21 days reflects a reasonable and realistic time parameter, all matters considered.

Appellate review of orders ruling on disqualification of a judge is limited to discretionary review by writ of mandate. Current law requires the petition be filed within 10 days after service of written notice of entry of the order, with the time limit extended by mail service. (Code Civ. Proc., § 170.3, subd. (d).) This short time limit exists to provide certainty to the parties because appellate reversal of an order denying judicial disqualification would result in the invalidation of all orders entered by the challenged judge after the motion to disqualify was filed.

A short time limit on writ petitions challenging judicial disqualification orders makes sense. Yet the current 10-day limit is an unreasonably short period in which to realistically expect: 1) meaningful consideration whether to seek appellate writ review; and if so, 2) properly preparing a petition for prerogative writ relief. The short time limit coupled with the prospect of forfeiting the right to challenge the ruling if a writ petition is not timely filed with the appeals court, actually forces a party to make an immediate, often reactionary investment in preparing a petition for writ relief, when, on more reflective thought, the party may have decided to accept the decision.

The short increase in the deadline from 10 to 21 days is reasonable. It allows time for the party to seek the reasoned input of counsel and possibly the consultation of an appellate specialist. It allows for the time needed to order and obtain the reporter's transcript and prepare an adequate record for the appeals court, which must accompany the petition. It more realistically provides the time required to properly research, draft, edit and format an effective petition for meaningful appellate review.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 170.3 to read as follows:

§170.3

(a) (1) If a judge determines himself or herself to be disqualified, the judge shall notify the presiding judge of the court of his or her recusal and shall not further participate in the proceeding, except as provided in Section 170.4, unless his or her disqualification is waived by the parties as provided in subdivision (b).

(2) If the judge disqualifying himself or herself is the only judge or the presiding judge of the court, the notification shall be sent to the person having authority to assign another judge to replace the disqualified judge.

(b) (1) A judge who determines himself or herself to be disqualified after disclosing the basis for his or her disqualification on the record may ask the parties and their attorneys whether they wish to waive the disqualification, except where the basis for disqualification is as provided in paragraph (2). A waiver of disqualification shall recite the basis for the disqualification, and is effective only when signed by all parties and their attorneys and filed in the record.

(2) There shall be no waiver of disqualification if the basis therefor is either of the following:

(A) The judge has a personal bias or prejudice concerning a party.

(B) The judge served as an attorney in the matter in controversy, or the judge has been a material witness concerning that matter.

(3) The judge shall not seek to induce a waiver and shall avoid any effort to discover which lawyers or parties favored or opposed a waiver of disqualification.

(4) If grounds for disqualification are first learned of or arise after the judge has made one or more rulings in a proceeding, but before the judge has completed judicial action in a proceeding, the judge shall, unless the disqualification be waived, disqualify himself or herself, but in the absence of good cause the rulings he or she has made up to that time shall not be set aside by the judge who replaces the disqualified judge.

(c)(1) If a judge who should disqualify himself or herself refuses or fails to do so, any party may file with the clerk a written verified statement objecting to the hearing or trial before the judge and setting forth the facts constituting the grounds for disqualification of the judge. The statement shall be presented at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification. Copies of the statement shall be served on each party or his or her attorney who has appeared and shall be personally served on the judge alleged to be disqualified, or on his or her clerk, provided that the judge is present in the courthouse or in chambers.

(2) Without conceding his or her disqualification, a judge whose impartiality has been challenged by the filing of a written statement may request any other judge agreed upon by the parties to sit and act in his or her place.

(3) Within 10 days after the filing or service, whichever is later, the judge may file a consent to disqualification in which case the judge shall notify the presiding judge or the person authorized to appoint a replacement of his or her recusal as provided in subdivision (a), or the judge may file a written verified answer admitting or denying any or all of the allegations contained in the party's statement and setting forth any additional facts material or relevant to the

question of disqualification. The clerk shall forthwith transmit a copy of the judge's answer to each party or his or her attorney who has appeared in the action.

(4) A judge who fails to file a consent or answer within the time allowed shall be deemed to have consented to his or her disqualification and the clerk shall notify the presiding judge or person authorized to appoint a replacement of the recusal as provided in subdivision (a).

(5) A judge who refuses to recuse himself or herself shall not pass upon his or her own disqualification or upon the sufficiency in law, fact, or otherwise, of the statement of disqualification filed by a party. In that case, the question of disqualification shall be heard and determined by another judge agreed upon by all the parties who have appeared or, in the event they are unable to agree within five days of notification of the judge's answer, by a judge selected by the chairperson of the Judicial Council, or if the chairperson is unable to act, the vice chairperson. The clerk shall notify the executive officer of the Judicial Council of the need for a selection. The selection shall be made as expeditiously as possible. No challenge pursuant to this subdivision or Section 170.6 may be made against the judge selected to decide the question of disqualification.

(6) The judge deciding the question of disqualification may decide the question on the basis of the statement of disqualification and answer and any written arguments as the judge requests, or the judge may set the matter for hearing as promptly as practicable. If a hearing is ordered, the judge shall permit the parties and the judge alleged to be disqualified to argue the question of disqualification and shall for good cause shown hear evidence on any disputed issue of fact. If the judge deciding the question of disqualification determines that the judge is disqualified, the judge hearing the question shall notify the presiding judge or the person having authority to appoint a replacement of the disqualified judge as provided in subdivision (a).

(d) The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding. The petition for the writ shall be filed and served within ~~10~~ 21 days after service of written notice of entry of the court's order determining the question of disqualification. If the notice of entry is served by mail, that time shall be extended as provided in subdivision (a) of Section 1013.

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

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: A writ of mandate is the exclusive remedy of appeal for review of an order denying a motion to disqualify a judge for cause under CCP section 170.3. Ten days is not sufficient time to file a writ (which is analogous to a short appeal). The right to a fair and impartial judge is the cornerstone of our justice system. Removing roadblocks in a party's way to obtaining a fair and impartial judge will increase public confidence in our justice system.

The Solution: Give a party reasonable time to file a writ when a judge refuses to disqualify him or herself. Change it from 10 days to 21 days.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule

CURRENT OR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE: Carla DiMare

RESOLUTION 05-04-2019

DIGEST
Judges: Performance Evaluations
Amends Government Code section 2011.5 and Elections Code section 9083 to authorize the Judicial Nominees Evaluation Commission to periodically evaluate judicial performance.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
Similar to Resolution 11-04-2016, which was disapproved.

Reasons:
This resolution amends Government Code section 2011.5 and Elections Code section 9083 to authorize the Judicial Nominees Evaluation Commission to periodically evaluate judicial performance. This resolution should be disapproved because there are mechanisms already in place that help judicial officers improve professionally, and the resolution seeks to assign additional, ongoing and more complex duties to the Commission on the Judicial Nominees Evaluation (the JNE Commission) without addressing the additional corresponding costs and burdens.

This resolution appears to be based on the belief that since there are not systematized public fora for feedback and criticism about judicial officer performance, judicial officers do not receive feedback about their job. This is inaccurate. Judicial officers receive significant feedback on their performance from their presiding judges and more experienced colleagues on the bench. There is also a mechanism for public or private punishment for judicial misconduct through the investigations conducted by the Commission on Judicial Performance. There are other ways that judicial performance can be measured, as well. For example, litigants and counsel may file motions to disqualify a judicial officer pursuant to Code of Civil Procedure section 170.1. Additionally, feedback on a bench officer's reasoning and understanding of the law may come by way of appellate decisions affirming or reversing the order of the trial judge. Less dramatic and more regular and consistent helpful job analysis comes from peer review, job shadowing within a court, feedback and other information provided to/by presiding judges, requirements to attend judicial college, reassignments to other case types, and many others.

Additionally, this solution adds bureaucracy and work to the already overburdened JNE Commission without guaranteeing trustworthy information that would be helpful in educating voters about a judge. The resolution appears to be an invitation for dissatisfied litigants, losing or inexperienced counsel, frustrated witnesses, and others to publicly call out judges. Misleading, biased and dissatisfied reactions to a ruling do not provide guidance to the majority of voters who have not personally interacted with the judge, but who may be persuaded a judge is "bad" even if loss was warranted and the case reasonably decided, legally constructed, and consistent with other judicial norms. For these reasons, this resolution should be disapproved.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Government Code section 12011.5 and Elections Code section 9083 to read as follows:

§12011.5

(a) In the event of a vacancy in a judicial office to be filled by appointment of the Governor, or in the event that a declaration of candidacy is not filed by a judge and the Governor is required under subdivision (d) of Section 16 of Article VI of the California Constitution to nominate a candidate, the Governor shall first submit to a designated agency of the State Bar of California the names of all potential appointees or nominees for the judicial office for evaluation of their judicial qualifications.

(b) The membership of the designated agency of the State Bar responsible for evaluation of judicial candidates shall consist of attorney members and public members with the ratio of public members to attorney members determined, to the extent practical, by the ratio established in Section 6013.5 of the Business and Professions Code. It is the intent of this subdivision that the designated agency of the State Bar responsible for evaluation of judicial candidates shall be broadly representative of the ethnic, gender, and racial diversity of the population of California and composed in accordance with Sections 11140 and 11141. The further intent of this subdivision is to establish a selection process for membership on the designated agency of the State Bar responsible for evaluation of judicial candidates under which no member of that agency shall provide inappropriate, multiple representation for purposes of this subdivision. Each member of the designated agency of the State Bar responsible for evaluation of judicial candidates shall complete a minimum of 60 minutes of training in the areas of fairness and bias in the judicial appointments process at an orientation for new members. If the member serves more than one term, the member shall complete an additional 60 minutes of that training during the member's service on the designated agency of the State Bar responsible for evaluation of judicial candidates.

[subdivisions (c) through (p) remain unchanged]

(q) The designated agency shall adopt and administer for all justices and judges a process for evaluating judicial performance twice per term. The first evaluation shall be midway through a judge's or justices term of office for the purpose of improving a judge's performance, and shall not be released to the public. The second evaluation shall be at the end of the term for those who file a declaration to be retained in office and shall be completed in time to be placed in the ballot pamphlet in California Elections Code section 9083. The evaluation process shall include written performance standards and performance reviews, which survey opinions of persons who have knowledge of the justice's or judge's performance, including but not limited to attorneys, peace officers, social services professionals, jurors, and court employees. The elements assessed shall include, but are not restricted to, the judge's or justice's abilities, integrity, impartiality, communication skills, professionalism, and administrative capacity. For the second evaluation, the public shall be afforded a full and fair opportunity for participation in the evaluation process through public hearings, dissemination of evaluation reports in standardized formats, and any other methods as the designated agency deems advisable.

§9083

If the ballot contains a question as to the confirmation of a justice of the Supreme Court or a court of appeal, the Secretary of State shall include the following in the state ballot pamphlet:

(a) ~~a~~ A written explanation of the electoral procedure for justices of the Supreme Court and the courts of appeal. The explanation shall state the following:

"Under the California Constitution, justices of the Supreme Court and the courts of appeal are subject to confirmation by the voters. The public votes "yes" or "no" on whether to retain each justice.

"These judicial offices are nonpartisan.

"Before a person can become an appellate justice, the Governor must submit the candidate's name to the Judicial Nominees Evaluation Commission, which is comprised of public members and lawyers. The commission conducts a thorough review of the candidate's background and qualifications, with community input, and then forwards its evaluation of the candidate to the Governor.

"The Governor then reviews the commission's evaluation and officially nominates the candidate, whose qualifications are subject to public comment before examination and review by the Commission on Judicial Appointments. That commission consists of the Chief Justice of California, the Attorney General of California, and a senior Presiding Justice of the Courts of Appeal. The Commission on Judicial Appointments must then confirm or reject the nomination. Only if confirmed does the nominee become a justice.

"Following confirmation, the justice is sworn into office and is subject to voter approval at the next gubernatorial election, and thereafter at the conclusion of each term. The term prescribed by the California Constitution for justices of the Supreme Court and courts of appeal is 12 years. Justices are confirmed by the Commission on Judicial Appointments only until the next gubernatorial election, at which time they run for retention of the remainder of the term, if any, of their predecessor, which will be either four or eight years."

(b) Information and recommendations resulting from the judicial performance evaluations by the Commission on Judicial Nominees Evaluation or successor commission.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Existing law has two problems: (1) the judges do not have a sophisticated way to get anonymous feedback about their performance on the bench, and (2) the public gets little to no insight on a judge's integrity, fairness, professionalism, and so forth when voting whether to retain a judge. The public also lacks the opportunity to provide comments to the Commission on Judicial Nominees Evaluation about judges with whom they have interacted. That undermines judicial accountability significantly.

The Solution: This resolution provides (1) confidential feedback for judges in the middle of their term, and (2) an evaluation process for judges seeking retention. Lawyers, jurors, court employees, and others will be asked to evaluate judges they've interacted with, including their integrity, fairness, and professionalism. Judges will get to receive feedback and implement any

suggestions they find worthy. Voters will get to see the evaluation results of judges in the ballot pamphlet and be able to vote with more information.

This is similar to Resolution 11-04-2016, except it addresses two concerns raised previously: (1) it includes a confidential midterm evaluation to enable judges to improve their performance, and (2) and it specifies the Commission on Judicial Nominees Evaluation instead of the Commission on Judicial Performance.
For an example of the evaluation-for-retention aspect implemented elsewhere, see here:

Alaska Judicial Council Recommendation

Judge William B. Carey, Ketchikan Superior Court

The Judicial Council finds Judge Carey to be ***Qualified*** and recommends unanimously that the public vote **"YES"** to retain him.

What is the Alaska Judicial Council?
- A citizens commission created by the Alaska Constitution
- Council members are volunteers appointed with due consideration for area representation and without regard to political affiliation
- Alaska's law requires the Judicial Council to evaluate judges' performance and authorizes it to recommend to voters whether judges should be retained.

What qualities did the Alaska Judicial Council evaluate?
The Judicial Council evaluated Judge Carey's:
- Integrity, diligence, fairness, demeanor, and legal ability
- Ability to manage his caseload, and
- Overall performance of judicial duties in and out of the courtroom, including judgment.

How did the Alaska Judicial Council evaluate Judge Carey?
- **Surveyed Thousands of Alaskans** – the Judicial Council surveyed thousands of Alaskans about their experience with Judge Carey. The survey ratings from attorneys, peace and probation officers, court employees, jurors, and social services professionals (social workers, and guardians ad litem) are listed below.
- **Reviewed Information** – The Judicial Council reviewed other indicators of Judge Carey's performance, including peremptory challenges, recusal rates, appellate affirmance and reversal rates, any civil or criminal litigation involving the judge, whether Judge Carey's pay was withheld for untimely decisions, and Judge Carey's assessment of his own performance.
- **Asked Members of the Public** – The Judicial Council hosted a statewide public hearing on the performance of all judges, and asked for comments from the public.

Survey Ratings for Judge Carey

	N	Legal Ability	Impartiality	Integrity	Temperament	Diligence	Overall
Attorneys	99	4.2	4.4	4.6	4.4	4.3	4.4
Peace Officers	18	--	4.6	4.8	4.9	4.6	4.7
Court Employees	26	--	4.4	4.6	4.2	3.9	4.4
Jurors	13	--	4.8	--	4.8	--	4.8
Social Services Professionals	7	--	4.6	4.9	4.6	4.6	4.7

Rating Scale: 5 = Excellent, 4 = Good, 3 = Acceptable, 2 = Deficient, 1 = Poor

For more information go to www.ajc.state.ak.us/2018-retention-election

Alaska Judicial Council Recommendation:
Vote **"YES"** to retain **Judge Carey**

http://www.elections.alaska.gov/election/2018/General/OEPBooks/2018%20AK%20Region%20I%20pamphlet_WEB.pdf (page 85 of 84-107)
Also see here for more details on the process or inputs: http://www.ajc.state.ak.us/2018-retention-election

IMPACT STATEMENT
This resolution may require the Judicial Council to adopt conforming changes to Rules of Court. It might also require the State Bar of California to change its rules for the Commission on Judicial Nominees.

CURRENT OR PRIOR RELATED LEGISLATION
None known. Similar to Resolution 11-04-2016.

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RESPONSIBLE FLOOR DELEGATE: Ben Rudin

RESOLUTION 05-05-2019

DIGEST
Republic of California: Ask Lesser States for Permission to Secede from Union
Adds Government Code section 174 to ask other states if the State of California can commence its glorious transmutation into the Republic of California.

RESOLUTIONS COMMITTEE RECOMMENDATIONS
DISAPPROVE

History:
With high hopes, California signed on to the noble experiment of American Democracy by becoming a State in 1850. It seemed like a good idea at the time.

Reasons:
This resolution adds Government Code section 174 to ask other states if the State of California can commence its glorious transmutation into the Republic of California. This resolution should be disapproved because in leaving the decision on the matter up to the very states who have so ill-served California's interests, it stands little chance of making California great again.

The proposed language allows our state government to request and seek secession from the other states. Although the resolution has the laudable goal of promoting the valiant endeavor of California's glorious secession from these United States, nothing in the resolution says that secession WILL occur. Instead, the proposal places the future of the State of California in the hands of states with small economies and terrible ratings, rather than allowing for the will of the people of California to triumph. Sad!

Moreover, the resolution as drafted would leave the newly minted Republic of California a defenseless actor on the world stage. For example, nothing in the proposal allows for the creation of a militia or other armed force to fight the inevitable backlash from the Revenuers (aka "Federal Government"). It does not allow for the trade treaties or other agreements with Mexico or Canada to ensure the survival of the new republic. Looking back in history, it is abundantly clear that the federal government will fight tooth and nail to keep California part of the Republic. The Republic of California needs the ability to defend itself and not rely on the largess or grace of the low-energy states it will have rightfully rejected.

In addition, the proposed language does not allow for the creation and printing of a new currency, for trade deals with the newly-diminished United States, instead it allows the federal government to set these terms and conditions. This will likely cripple the fledgling powers of the new Republic of California.

In addition to these concerns, several other problems have been raised by individual delegations. For example, the counterargument of BANSDC (which would like to remind everyone that it is *not* the same thing as SDCBA) focuses on the potential negative impact of the resolution on property values. Moreover, OCBA's counterargument that secession will be unsuccessful because "Obama took all our guns"—a counterargument joined by new delegations from the Siskiyou, Inyo, and Imperial Country bar associations—would also need to be addressed in order for the resolution to be successful. Finally, in response to the BASF delegation's concern that,

due to climate change and the impact of California's tectonic plate boundaries, the State will affect a physical secession off into the Pacific Ocean long before the political secession called for by the resolution could be implemented, and the San Bernardino County Bar Association expressed eager anticipation for its members' anticipated future beachfront property.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to add Government Code section 174 to read as follows:

§174

In compliance with United States Supreme Court authority that contemplates a peaceful pathway for succession "through consent of the [other] States," *Texas v. White*, 74 U.S. 700, 725 (1868), the people of the State of California, through their legislative representatives, hereby declare their intent to secede from the Union. Upon enactment of this section, California shall seek resolutions from the legislatures of the other forty-nine states of the union, for permission by a majority of them to constitutionally secede from the United States and become an independent country.

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem**:** Statehood is no longer in California's interest.
Policy. A wide plurality of Americans outside California—up to 40% of the country—consistently vote for representatives that advance policies adverse to our state and adverse to our values. Recently these representatives have supported the separation and caging of babies and children from their asylum-seeking parents, have passed laws that subsidize the fossil fuel industries, and have passed a tax cut for the wealthy projected to add $2.3 trillion to the national debt over ten years.

Environment. Climate change is perhaps the single most urgent threat facing our state. Fires, hurricanes, and sea level rise will decimate significant parts of California in the coming decades. We are beginning to see, and breathe, the damage now. The Paradise Fire for example, was the world's most costly disaster in 2018. Meanwhile, a wide plurality of Americans, largely in non-coastal states, celebrate America's recent withdrawal from the Paris climate accords, the lowering of fuel economy standards, and federal plans to expand oil drilling off the California coast line.

Donor State. To add insult to injury, our state has been paying the federal government for decades for the pleasure of subjecting itself to these backwards policies—losing tens and sometimes hundreds of billions of dollars. In 2017, for example, Californians paid out $33 billion more to the federal government than the state received back. By subsidizing failing states, largely in the south, California props up and rewards those foreign jurisdictions for voting for

national policies that damage California's interests: voting for a degradation in health care, voting for tariffs that hurt the tech sector, voting for sea level rise, forest fires, and drought.

Minority Rule. America's electoral structure is often anti-democratic.
In the executive branch, for example, a *minority* of Americans elected the president twice out of the last five cycles.

In the United States Senate, a single citizen-voter in a small state like Wyoming, South Dakota, or Alaska may have as much influence as 66 voters in California.

And because the Senate consents to the appointment of judicial officers, the will of the national minority often infects the federal judiciary. Merrick Garland, for example was appointed to the bench by President Obama in 2016. But Mitch McConnell from Kentucky (10% the size of California), President Trump (elected by a minority of voting Americans) and senators from other small states representing a minority of the American citizenry, scuttled the appointment and installed Judge Neil Gorsuch instead.

The Solution: California's is the number one economy in the country, and the fifth largest in the world. This success has happened not despite our values but because of them. California believes that facts exist, that science is real, that all citizens are equal under law, our neighbors are not some monstrous "other," and that greatness is measured by the size of our hearts not the size of our wall. California should separate from a nation which, on its current trajectory may very well fail—as immoral empires often do.

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: B. Douglas Robbins

COUNTERARGUMENTS BY BAR ASSOCIATIONS AND CLA SECTIONS

SDCBA

The SDCBA Delegation recommends Disapproval of Resolution 05-05-2019 for the following reasons:

(1) Whether you like the path of the country or not, the solution is not for California to abandon the country and leave it to fend for itself.
(2) The “donor state” argument is too simplistic. Various generalized expenditures, such as military expenditures, disproportionately benefit California and other coastal states and are not included in the calculations of how much money is given to and taken from each state.
(3) Similarly, imagine how much more we would have to pay to have our own military. Military is just one area where strength and efficiency come in numbers.
(4) By seceding, we would lose our ability to travel freely within the country.

Say “No” to “Califexit.”

RESOLUTION 05-06-2019

DIGEST
Paid State Holidays: Election Day
Amends Code of Civil Procedure section 7.1, Education Code sections 37220, 45203, 79020, 79030, and 88203, Elections Code section 1100, Government Code sections 6700, 19853, and 19853.1, and Welfare and Institutions Code section 4692 to designate as a recognized and paid state holiday the first Tuesday after the first Monday in November in any even numbered year as Election Day.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Code of Civil Procedure section 7.1, Education Code sections 37220, 45203, 79020, 79030, and 88203, Elections Code section 1100, Government Code sections 6700, 19853, and 19853.1, and Welfare and Institutions Code section 4692 to designate as a recognized paid state holiday the first Tuesday after the first Monday in November in any even numbered year as Election Day. This resolution should be disapproved because there are many available and effective mechanisms for California counties to encourage voting and make voting available and accessible to as many registered Californians as possible, and it is substantially similar to pending legislation, Assembly Bill 177 (2018-2019, Reg. Sess.) by Assemblymember Low.

Current law, the California Voter's Choice Act ("the Act") (Sen. Bill No. 450 (2015-2016 Reg. Sess.), permits counties to opt-in to an approach to conduct elections significantly different from a one-day election in which every voter receives a vote-by-mail (VBM) ballot and vote centers and ballot drop-off locations are available prior to and on election day, in lieu of operating polling places for the elections. Counties that conduct elections pursuant to the California Voter's Choice Act are required to follow a defined public process for developing an election administration plan that includes specific proposals for voter education and outreach. (Elec. Code, § 4005, subd. (b)(1)(B).) Under these provisions, some vote centers must be open for ten days prior to an election, with remaining vote centers opening three days prior to the election. (Elec. Code, § 4007, subd. (b)(6).)

One of the goals of the Act is to increase voter turnout by allowing voters the opportunity to vote in the days prior to an election. Because vote centers will be open for at least eight hours a day in the ten days immediately preceding an election and from 7 a.m. to 8 p.m. on election day, many voters who cannot take unpaid time off to vote will have an increased number of days and hours to either vote in person or use one of the drop-off locations to deliver their VBM ballot. Counties that participated in 2018 were Madera, Napa, Nevada, Sacramento and San Mateo.

Also, this bill is identical to Assembly Bill No. 177 (2018-2019 Reg. Sess.) (Low), which is currently a two-year bill that may be taken up in 2020 but has stalled based on concerns related

to costs, which are estimated to be $92 million associated with state employees' wages and overtime. This bill is identical to Assembly Bill No. 2165 (2017-2018 Reg. Sess.) (Low), which was held on the Assembly Appropriations Committee's suspense file. Assembly Bill No. 674 (2017-2018) (Low), which is similar to this bill, was also held on the Assembly Appropriations Committee's suspense file. Assembly Bill No. 2634 (2007-2008 Reg. Sess.) (Torrico), would have made the first Tuesday after the first Monday in November of each year in which a statewide or national election is held a state holiday; it failed to pass in the Assembly Committee on Governmental Organization. This bill is similar to Assembly Bill No. 438 (2019-2020 Reg. Sess.) (Frazier) which seeks to delete four days from the list of holidays observed by regional centers and wherein they are prohibited from providing client services.

For these reasons, this resolution should be disapproved.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 7.1; Education Code sections 37220, 45203, 79020, 79030, 88203; Elections Code section 1100; Government Code sections 6700, 19853 and 19853.1; and Welfare and Institutions Code section 4692 to read as follows:

§7.1
Optional bank holidays within the meaning of Section 9 are:
(a) Any closing of a bank because of an extraordinary situation, as that term is defined in the Bank Extraordinary Situation Closing Act (Chapter ~~20~~ 4.5 (commencing with Section ~~3600)~~ 1090) of Division ~~1~~ 1.1 of the Financial Code).
(b) Every Saturday.
(c) Every Sunday.
(d) January 1st.
(e) The third Monday in January, known as "Dr. Martin Luther King, Jr. Day."
(f) February 12, known as "Lincoln Day."
(g) The third Monday in February.
(h) The last Monday in May.
(i) July 4th.
(j) The first Monday in September.
(k) September 9th, known as "Admission Day."
(l) The second Monday in October, known as "Columbus Day."
(m) The first Tuesday after the first Monday in November in any even-numbered year.
~~(m)~~(n) November 11th, known as "Veteran's Day."
~~(n)~~(o) December 25th.
~~(o)~~(p) Good Friday from 12 noon until closing.
~~(p)~~(q) The Thursday in November appointed as "Thanksgiving Day."
~~(q)~~(r) Any Monday following any Sunday on which January 1st, February 12th, July 4th, September 9th, November 11th, or December 25th falls.
~~(r)~~(s) Any Friday preceding any Saturday on which July 4th, September 9th, or December 25th falls.

§37220

(a) Except as otherwise provided, the public schools shall close on the following holidays:

(1) January 1.

(2) The third Monday in January or the Monday or Friday in the week in which January 15 occurs, known as "Dr. Martin Luther King, Jr. Day." On the Friday preceding the day on which schools are closed, schools shall include exercises commemorating and directing attention to the history of the civil rights movement in the United States and particularly the role therein of Dr. Martin Luther King, Jr.

(3) The Monday or Friday of the week in which February 12 occurs, known as "Lincoln Day." On the day that school is in session prior to the day on which schools are closed for that purpose, all public schools and educational institutions throughout the state shall hold exercises in memory of Abraham Lincoln.

(4) The third Monday in February, known as "Washington Day." On the Friday preceding, all public schools and educational institutions throughout the state shall hold exercises in memory of George Washington.

(5) The last Monday in May, known as "Memorial Day."

(6) July 4.

(7) The first Monday in September, known as "Labor Day."

(8) The first Tuesday after the first Monday in November in any even-numbered year.

~~(8)~~(9) November 11, known as "Veterans Day."

~~(9)~~(10) That Thursday in November proclaimed by the President as "Thanksgiving Day."

~~(10)~~(11) December 25.

~~(11)~~(12) All days appointed by the Governor for a public fast, thanksgiving, or holiday, and all special or limited holidays on which the Governor provides that the schools shall close.

~~(12)~~(13) All days appointed by the President as a public fast, thanksgiving, or holiday, unless it is a special or limited holiday.

~~(13)~~(14) Any other day designated as a holiday by the governing board of the school district.

(b) When any of the holidays on which the schools would be closed falls on Sunday, the public schools shall close on the Monday following.

(c) When any of the holidays on which the schools would be closed falls on Saturday, the public schools shall close on the preceding Friday, and that Friday shall be declared a state holiday.

(d) If any holiday on which the public schools are required to close pursuant to subdivision (a) occurs under federal law on a date different from the date specified in subdivision (a), the governing board of any school district may close the public schools of the district on the date recognized by federal law and maintain classes on the date specified in subdivision (a).

(e) Except for Veterans Day, as designated in paragraph ~~(8)~~ (9) of subdivision (a), the governing board of a school district, by adoption of a resolution, may revise the date upon which the schools of the district close in observance of any of the holidays identified in subdivision (a).

(f) The governing board of a school district may not request a waiver of paragraph ~~(8)~~ (9) of subdivision (a) from the state board.

(g) This section does not prohibit a school district from authorizing its facilities or grounds to be used in accordance with Section 38131 on those days on which the public schools are closed.

§45203

(a) All probationary or permanent employees that are a part of the classified service shall be entitled to all of the following paid holidays provided they are in a paid status during any portion of the working day immediately preceding or succeeding the holiday: January 1, February 12 known as "Lincoln Day," the third Monday in February known as "Washington Day," the last Monday in May known as "Memorial Day," July 4, the first Monday in September known as "Labor Day," The first Tuesday after the first Monday in November in any even-numbered year, November 11 known as "Veterans Day," that Thursday in November proclaimed by the President as "Thanksgiving Day," December 25, every day appointed by the President, or the Governor of this state, as provided for in subdivisions (b) and (c) of Section 37220 for a public fast, thanksgiving or holiday, or any day declared a holiday under Section 1318 or 37222 for classified or certificated employees.

School recesses during the Christmas, Easter, and mid-February periods shall not be considered holidays for classified employees who are normally required to work during that period. However, this shall not be construed as affecting vacation rights specified in this section.

Regular employees of the district who are not normally assigned to duty during the school holidays of December 25 and January 1 shall be paid for those two holidays provided that they were in a paid status during any portion of the working day of their normal assignment immediately preceding or succeeding the holiday period.

When a holiday listed in this section falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. When a holiday listed in this section falls on a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed. When a classified employee is required to work on any of these holidays, he or she shall be paid compensation, or given compensating time off, for such work, in addition to the regular pay received for the holiday, at the rate of time and one-half the employee's regular rate of pay.

The provisions of Article 3 (commencing with Section 37220) of Chapter 2 of Part 22 shall not be construed to in any way limit the provisions of this section, nor shall anything in this section be construed to prohibit the governing board from adopting separate work schedules for the certificated and the classified services, or from providing holiday pay for employees who have not been in paid status on the days specified herein. Notwithstanding the adoption of separate work schedules for the certificated and the classified services, on any schoolday during which pupils would otherwise have been in attendance but are not and for which certificated personnel receive regular pay, classified personnel shall also receive regular pay whether or not they are required to report for duty that day.

In addition to the other paid holidays specified in this section, the classified service may be entitled to a paid holiday on March 31 known as "Cesar Chavez Day," and a paid holiday on the fourth Friday in September known as "Native American Day," provided they are in a paid status during any portion of the working day immediately preceding or succeeding the holiday, if the governing board, pursuant to a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, agrees to the paid holiday.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240).

§79020

Except as otherwise provided, the community colleges shall continue in session or close on specified holidays as follows:

(a) The community colleges shall close on January 1st, the third Monday in January, commencing in the 1989-90 fiscal year, known as "Dr. Martin Luther King, Jr. Day," February 12th known as "Lincoln Day," the third Monday in February known as "Washington Day," the last Monday in May known as "Memorial Day," July 4th, the first Monday in September known as "Labor Day," <u>The first Tuesday after the first Monday in November in any even-numbered year,</u> November 11th known as "Veterans Day," that Thursday in November proclaimed by the President as "Thanksgiving Day," and December 25th.

(b) Any contractual provision between any community college district and its employees in effect on the effective date of the act that adds this subdivision shall prevail over any conflict regarding Dr. Martin Luther King, Jr. Day until the termination date of the contract or upon termination by mutual agreement of the parties, whichever occurs first.

(c) The Governor in appointing any other day for a public fast, thanksgiving, or holiday may provide whether the community colleges shall close on the day. If the Governor does not provide whether the community colleges shall close, they shall continue in session on all special or limited holidays appointed by the Governor, but shall close on all other days appointed by the Governor for a public fast, thanksgiving, or holiday.

(d) The community colleges shall close on every day appointed by the President as a public fast, thanksgiving, or holiday, unless it is a special or limited holiday.

(e) The community colleges shall continue in session on all legal holidays other than those designated by or pursuant to this section, and shall hold proper exercises commemorating the day.

(f) When any of the holidays on which the schools would be closed fall on Sunday, the community colleges shall close on the Monday following, except that (1) if Lincoln Day falls on a Sunday, the community colleges may observe this holiday on the preceding or following Friday, the following Monday, or the following Tuesday, and maintain classes on the date specified in subdivision (a) where applicable, or (2) if Lincoln Day falls on a Monday, the community colleges may observe this holiday on the preceding or following Friday, that Monday, or the following Tuesday, and maintain classes on the date specified in subdivision (a) where applicable.

(g) When any of the holidays on which the schools would be closed, except Lincoln Day, fall on Saturday, the community colleges shall close on the preceding Friday, and that Friday shall be declared a state holiday.

(h) If any holiday on which the community colleges are required to close pursuant to subdivision (a) occurs under federal law on a date different than the date specified in subdivision (a), the governing board of any community college district may close the community colleges of the district on the date recognized by federal law and maintain classes on the date specified in subdivision (a).

(i) When Veterans Day would fall on Tuesday, the governing board of a community college district may close the colleges on the preceding Monday, and maintain classes on the date specified in subdivision (a). When Veterans Day would fall on Wednesday, the governing

board of a community college district may close the colleges on either the preceding Monday or the following Friday, and maintain classes on the date specified in subdivision (a). When Veterans Day would fall on Thursday, the governing board of a community college district may close the colleges on the following Friday, and maintain classes on the date specified in subdivision (a).

(j) When Lincoln Day would fall on Tuesday, the governing board of a community college district may close the colleges on the preceding Monday, the preceding Friday, or the following Friday, and maintain classes on the date specified in subdivision (a) where appropriate. When Lincoln Day would fall on Wednesday, the governing board of a community college district may close the colleges on the preceding Monday, the preceding Friday, or the following Friday, and maintain classes on the date specified in subdivision (a). When Lincoln Day would fall on Thursday, the governing board of a community college district may close the colleges on the preceding Friday or the following Friday, and maintain classes on the date specified in subdivision (a). When Lincoln Day falls on Saturday, the governing board of a community college district may close the colleges on the preceding Friday or the following Friday, and maintain classes on the date specified in subdivision (a) where appropriate.

(k) In addition to the holidays specified in subdivision (a), a community college may close on March 31 known as "Cesar Chavez Day" if the governing board, pursuant to a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, agrees to close the community college for that purpose.

(l) In addition to the holidays specified in subdivision (a), a community college may close on the fourth Friday in September known as "Native American Day" if the governing board, pursuant to a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, agrees to close the community college for that purpose.

(m) Nothing in this section is to be interpreted as authorizing a community college district governing board to maintain community colleges in its district for a lesser number of days during the college year than the minimum established by law.

SEC. 5.

Section 79030 of the Education Code is amended to read:

§79030

Whenever climatic conditions of a community college district are such as to render it necessary that the colleges be closed as early in the year as possible or opened as late in the year as possible, the governing board of the community college district may maintain classes on any days other than the 25th day of December, the first day of January, the fourth day of July, <u>the first Tuesday after the first Monday in November in any even-numbered year,</u> and any day appointed by the President or the Governor for a public thanksgiving.

When classes are maintained on holidays pursuant to this section, proper exercises shall be held commemorating the day.

§88203

All probationary or permanent employees who are part of the classified service shall be entitled to the following paid holidays if they are in a paid status during any portion of the working day immediately preceding or succeeding the holiday: January 1, February 12 known as

"Lincoln Day," the third Monday in February known as "Washington Day," the last Monday in May known as "Memorial Day," July 4, the first Monday in September known as "Labor Day," The first Tuesday after the first Monday in November in any even-numbered year, November 11 known as "Veterans Day," that Thursday in November proclaimed by the President as "Thanksgiving Day," December 25, every day appointed by the President, or the Governor of this state, as provided for in subdivisions (c) and (d) of Section 79020 for a public fast, thanksgiving or holiday, or any day declared a holiday under Section 1318 for classified or academic employees. College recesses during the Christmas and Easter periods shall not be considered holidays for classified employees who are normally required to work during that period; provided, however, that this shall not be construed as affecting vacation rights specified in this section.

Regular employees of the district who are not normally assigned to duty during the college holidays of December 25 and January 1 shall be paid for those two holidays if they were in a paid status during any portion of the working day of their normal assignment immediately preceding or succeeding the holiday period.

When a holiday herein listed falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. When a holiday herein listed falls on a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed. When a classified employee is required to work on any of said holidays, he or she shall be paid compensation, or given compensating time off, for such work, in addition to the regular pay received for the holiday, at the rate of time and one-half his or her regular rate of pay.

Article 3 (commencing with Section 79020) of Chapter 8 of Part 48 of this division shall not be construed to in any way limit this section, nor shall anything in this section be construed to prohibit the governing board from adopting separate work schedules for the academic and the classified services, or from providing holiday pay for employees who have not been in paid status on the days specified herein. Notwithstanding the adoption of separate work schedules for the academic and the classified services, on any schoolday during which students would otherwise have been in attendance, but are not and for which faculty receive regular pay, classified personnel shall also receive regular pay whether or not they are required to report for duty that day.

In addition to the other paid holidays specified in this section, the classified service may be entitled to a paid holiday on March 31 known as "Cesar Chavez Day" and a paid holiday on the fourth Friday in September known as "Native American Day," if they are in a paid status during any portion of the working day immediately preceding or succeeding the holiday, if the governing board, pursuant to a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, agrees to the paid holiday.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060).

§1100

~~No~~ An election shall not be held on any day other than a ~~Tuesday, nor~~ Tuesday and shall ~~any election~~ not be held on the day before, the day of, or the day after, a state ~~holiday~~ holiday, except for a statewide general election holiday as described in paragraph (13) of subdivision (a) of Section 6700 of the Government Code.

Government Code § 6700

(a) The holidays in this state are:

(1) Every Sunday.

(2) January 1st.

(3) The third Monday in January, known as "Dr. Martin Luther King, Jr. Day."

(4) February 12th, known as "Lincoln Day."

(5) The third Monday in February.

(6) March-31st, known as "Cesar Chavez Day."

(7) The last Monday in May.

(8) July 4th.

(9) The first Monday in September.

(10) September 9th, known as "Admission Day."

(11) The fourth Friday in September, known as "Native American Day."

(12) The second Monday in October, known as "Columbus Day."

(13) The first Tuesday after the first Monday in November ~~11th, known as "Veterans Day."~~ in any even-numbered year.

(14) November 11, known as "Veterans Day."

~~(14)~~(15) December ~~25th.~~ 25.

~~(15)~~(16) Good Friday from 12 noon until 3 p.m.

~~(16)~~(17) (A) Every day appointed by the President or Governor for a public fast, thanksgiving, or holiday.

(B) Except for the Thursday in November appointed as Thanksgiving Day, this paragraph and paragraphs (3) and (6) shall not apply to a city, county, or district unless made applicable by charter, or by ordinance or resolution of the governing body thereof.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

§19853

(a) All state employees shall be entitled to the following holidays: January 1, the third Monday in January, the third Monday in February, March 31, the last Monday in May, July 4, the first Monday in September, the first Tuesday after the first Monday in November in any even-numbered year, November 11, Thanksgiving Day, the day after Thanksgiving, December 25, the day chosen by an employee pursuant to Section 19854, and every day appointed by the Governor of this state for a public fast, thanksgiving, or holiday.

(b) If a day listed in this subdivision falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. If November 11 falls upon a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed.

(c) Any state employee who may be required to work on any of the holidays included in this section, and who does work on any of these holidays, shall be entitled to receive straight-time pay and eight hours of holiday credit.

(d) For the purpose of computing the number of hours worked, time when an employee is excused from work because of holidays, sick leave, vacation, annual leave, compensating time

off, or any other leave shall not be considered as time worked by the employee for the purpose of computing cash compensation for overtime or compensating time off for overtime.

(e) Any state employee, as defined in subdivision (c) of Section 3513, may elect to receive eight hours of holiday credit for the fourth Friday in September, known as "Native American Day," in lieu of receiving eight hours of personal holiday credit in accordance with Section 19854.

(f) Persons employed on less than a full-time basis shall receive holidays in accordance with the Department of Human Resources rules.

(g) If subdivision (a), (c), or (d) is in conflict with the provisions of a memorandum of understanding executed or amended pursuant to Section 3517.5 on or after February 1, 2009, or the date that the act adding this section takes effect, whichever is later, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of the memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

~~(h)This section shall become operative on February 1, 2009, or the date that the act adding this section takes effect, whichever is later.~~

§19853.1

(a) Notwithstanding Section 19853, this section shall apply to state employees in State Bargaining Unit 5.

(b) Except as provided in subdivision (c), all employees shall be entitled to the following holidays: January 1, the third Monday in January, the third Monday in February, March 31, the last Monday in May, July 4, the first Monday in September, the first Tuesday after the first Monday in November in any even-numbered year, November 11, the day after Thanksgiving, December 25, and every day appointed by the Governor of this state for a public fast, thanksgiving, or holiday.

If a day listed in this subdivision falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. If November 11 falls upon a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed. Any employee who may be required to work on any of the holidays included in this section and who does work on any of these holidays shall be entitled to be paid compensation or given compensating time off for that work in accordance with his or her classification's assigned workweek group.

(c) If the provisions of subdivision (b) are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(d) Any employee who either is excluded from the definition of state employee in subdivision (c) of Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, is entitled to the following holidays, with pay, in addition to any official state holiday appointed by the Governor:

(1) January 1, the third Monday in January, the third Monday in February, March 31, the last Monday in May, July 4, the first Monday in September, the first Tuesday after the first Monday in November in any even-numbered year, November 11, Thanksgiving Day, the day after Thanksgiving, and December 25.

(2) When November 11 falls on a Saturday, employees shall be entitled to the preceding Friday as a holiday with pay.

(3) When a holiday, other than a personal holiday, falls on a Saturday, an employee shall, regardless of whether he or she works on the holiday, accrue only an additional eight hours of personal holiday credit per fiscal year for the holiday. The holiday credit shall be accrued on the actual date of the holiday and shall be used within the same fiscal year.

(4) When a holiday other than a personal holiday falls on Sunday, employees shall be entitled to the following Monday as a holiday with pay.

(5) Employees who are required to work on a holiday shall be entitled to pay or compensating time off for this work in accordance with their classification's assigned workweek group.

(6) Persons employed on less than a full-time basis shall receive holidays in accordance with the Department of Human Resources rules.

(e) Any employee, as defined in subdivision (c) of Section 3513, may elect to use eight hours of vacation, annual leave, or compensating time off consistent with departmental operational needs and collective bargaining agreements for the fourth Friday in September, known as "Native American Day."

(f) This section shall become effective with regard to the March 31 holiday only when the Department of Human Resources notifies the Legislature that the language contained in this section has been agreed to by all exclusive representatives, and the Department of Human Resources authorizes this holiday to be applied to employees designated as excluded from the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1), and the necessary statutes are amended to reflect this change.

§4692

(a) Effective August 1, 2009, subject to subdivisions (c) and (e), regional centers shall not compensate a work activity program, activity center, adult development center, behavior management program, social recreation program, adaptive skills trainer, infant development program, program support group (day service), socialization training program, client/parent support behavior intervention training program, community integration training program, community activities support service, or creative arts program, as defined in Title 17 of the California Code of Regulations, for providing any service to a consumer on any of the following holidays:

(1) January 1.

(2) The third Monday in January.

(3) The third Monday in February.

(4) March 31.

(5) The last Monday in May.

(6) July 4.

(7) The first Monday in September.

(8) The first Tuesday after the first Monday in November ~~11.~~ in any even-numbered year.

(9) November 11.

~~(9)~~(10) Thanksgiving Day.

~~(10)~~(11) December 25.

~~(11)~~(12) The four business days between December 25 and January 1.

(b) Effective August 1, 2009, subject to subdivisions (c) and (e), regional centers shall not compensate a transportation vendor/family member, transportation company, transportation/additional component vendor, transportation broker, transportation assistant/vendor, transportation vendor/auto driver, or transportation vendor/public or rental car agency or taxi, in accordance with Title 17 of the California Code of Regulations, for transporting any consumer to receive services from any of the vendors specified in subdivision (a) for any of the holidays set forth in paragraphs (1) to ~~(11),~~ (12), inclusive, of subdivision (a).

(c) If a holiday listed in this section falls on a Saturday or a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed.

(d) Contracts between the vendors described in this section and regional centers shall reflect the holiday closures set forth in this section and shall be renegotiated accordingly, as necessary.

(e) The department may adjust the holidays set forth in subdivision (a) through a program directive. This directive shall be provided to the regional centers and posted on the department's Internet Web site at least 60 days prior to the effective date of the change in holiday.

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

PROPONENT: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS

The Problem: Existing law requires that an election for congressional and state elective offices be held on the first Tuesday after the first Monday in November of each even-numbered year. Existing law requires a presidential general election to be held on the first Tuesday after the first Monday in November in any year that is evenly divisible by the number 4.

From the earliest New England settlements, colonial elections were public feast days, when people put on their best clothes and paraded into town with neighbors and friends. Tuesday was established as election day because it did not interfere with the Biblical Sabbath or with market day, which was on Wednesday in many towns. In modern times, the United States is no longer primarily an agrarian society, and Tuesday is now normally a work day throughout the country with most voters working on that day. Having Election Day on a Tuesday decreases voter turnout.

American voter participation is abysmal compared with other established democracies, trailing behind countries such as France and Mexico that observe federal holidays for general elections — and also compared with Americans of the 19th century.

The Solution: The most vigorous turnout in a recent U.S. election was 63 percent, in 2008; it was down to about 56 percent in 2016. This low turnout is attributable in part to the fact that Americans can't get time off from work to vote. Delaware, Hawaii, Kentucky, Montana, New Jersey, New York, Ohio, West Virginia, and the territory of Puerto Rico have already declared Election Day a civic holiday. California Elections Code Section 14000 and New York State Election Law provide that employees without sufficient time to vote must be allowed two hours off with pay, at the beginning or end of a shift.

This resolution would add the day on which a statewide general election is held to the list of California paid holidays. It would also require community colleges and public schools to close on any day on which a statewide general election is held and require that state employees, with specified exceptions, be given time off with pay for days on which a statewide general election is held.

The far more robust voter turnouts of an earlier period, in which elections occasioned boisterous public festivities, reveal a civic culture that we've lost. Declaring Election Day a federal holiday and rekindling the celebratory spirit that marked the day in previous centuries would be an important step toward promoting democratic participation. Furthermore, we must also depart from our history to create an inclusive Election Day in which all Americans can take part.

There has been a recent and ongoing push make Election Day a Federal holiday for nearly 2 decades. It is time for California to change its laws to be in accord with the more progressive laws of other states that already make Election Day a civic holiday.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
AB 177 (2019) introduced by Assembly Member Low.

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RESPONSIBLE FLOOR DELEGATE: Jennifer Orthwein

COUNTERARGUMENTS BY BAR ASSOCIATIONS AND CLA SECTIONS

BANSDC

This resolution should be disapproved because it does not take into account the fiscal effects of the creation of an additional state holiday, particularly on a Tuesday as opposed to Monday or Friday, or moving elections to Saturday. It also appears to assume that every voter must physically appear at a polling place to vote, whereas the trend is to ballots dropped off with the Registrar or mailed in before Election Day. Elections Code section 14000 currently provides for two hours paid leave if a voter does not have sufficient time outside of working hours to vote at a statewide election.

RESOLUTION 05-07-2019

DIGEST
Public Holidays: Change of "Columbus Day" to "Indigenous Peoples' Day"
Amends Government Code section 6700 to change "Columbus Day" to "Indigenous Peoples' Day."

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
Similar to resolution 12-03-2018, which was disapproved.

Reasons:
This resolution amends Government Code section 6700 to change "Columbus Day" to "Indigenous Peoples' Day." This resolution should be disapproved because California already celebrates "Native American Day" and the purpose of this resolution could be achieved by striking "Columbus Day."

Under existing law, California celebrates "Native American Day" on the fourth Friday of September. (Gov. Code, § 6700, subd. (a)(11).) It does not appear necessary to celebrate a virtually identical holiday ten days later. If the resolution's purpose is to end California's recognition of Columbus because he and his men committed atrocities against Native American people, the state holiday bearing his name should simply be stricken. Further, if there is a concern about people "losing" a day off of work if "Columbus Day" is stricken, or about encouraging the celebration of Native Americans and Indigenous Peoples, then that concern could be alleviated by amending Civil Code section 7.1, subdivision (*l*), to refer to "the fourth Friday of September, known as 'Native American Day,'" instead of its current reference to "Columbus Day."

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 6700 to read as follows:

§6700
(a) The holidays in this state are:
(1) Every Sunday.
(2) January 1st.
(3) The third Monday in January, known as "Dr. Martin Luther King, Jr. Day."
(4) February 12th, known as "Lincoln Day."
(5) The third Monday in February.
(6) March 31st, known as "Cesar Chavez Day."
(7) The last Monday in May.
(8) July 4th.
(9) The first Monday in September.

(10) September 9th, known as "Admission Day."
(11) The fourth Friday in September, known as "Native American Day."
(12) The second Monday in October, known as "Indigenous Peoples' Day." "~~Columbus Day." "~~
(13) November 11th, known as "Veterans Day."
(14) December 25th.
(15) Good Friday from 12 noon until 3 p.m.
(16) (A) Every day appointed by the President or Governor for a public fast, thanksgiving, or holiday.
(B) Except for the Thursday in November appointed as Thanksgiving Day, this paragraph and paragraphs (3) and (6) shall not apply to a city, county, or district unless made applicable by charter, or by ordinance or resolution of the governing body thereof.
(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

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

PROPONENT: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS

The Problem: The celebration of Christopher Columbus through a public holiday is an anachronistic vestige of colonialism. Columbus was not a hero but rather an individual who, with his men, raped, murdered and enslaved countless Indigenous people. Upon his return to Spain, he brought more than two dozen Native Americans with him, and the handful who survived were sold into slavery. He traded young Native American girls as sex slaves. In 1500, he writes in his journal, that currency was "as easily obtained for a woman as for a farm" and that girls "from nine to ten [were then] in demand" among slave traders. Columbus Day celebrates an event that took place in 1492 and was established by Franklin Roosevelt, at the insistence of the Knights of Columbus in 1937. It was not until the 1970s, that the day began to be observed on the second Monday of October. Indigenous Peoples' Day, meanwhile, is about celebrating millennia of tradition and culture otherwise overlooked. While the past cannot be changed, we can realize and remember the pain that millions suffered throughout the nation's history.

The Solution: Indigenous Peoples' Day recognizes and celebrates the heritage of all indigenous peoples. While there is a Native American Day, it is not observed and fails to recognize that not all indigenous peoples are Native Americans. Indigenous Peoples' Day, recognizes the historic and ongoing painful impacts that Columbus's and other European colonists' arrival in the Americas had on Indigenous peoples. Instead of celebrating genocide, rape, and slavery, Indigenous People's Day educates Californians, the country and the world about the history of the United States before the arrival of colonizers, and recognizes the contributions, history, and sacrifices made by the original inhabitants of this continent. Columbus's achievements are not

outweighed by his moral deficits, genocide, rape, and wholesale destruction of cultures. Through Indigenous Peoples' Day, we can refocus the conversation away from genocide that was started by Columbus and his men, and instead focus to the ongoing resilience and resistance of Indigenous people throughout the Americas. The positive contributions of Italian and Spanish Americans should be celebrated and recognized, but not under the banner of a person with such a deep history of violence and destruction. With the act of naming Indigenous People's Day, we start to repair the damage done by generations of violence and oppression.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
No prior legislation in California is known. A similar resolution was brought before the conference as 12-03-2018 and was narrowly defeated

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RESPONSIBLE FLOOR DELEGATE: Michael Wolchansky

RESOLUTION 05-08-2019

DIGEST
Public Records Act: Transparency in Use of Public Resources
Amends Government Code section 6253 to promote narrowly tailored public record requests and to require public agencies to maintain logs regarding such requests and responses.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Government Code section 6253 to promote narrowly tailored public record requests and to require public agencies to maintain logs regarding such requests and responses. This resolution should be disapproved because the suggested language regarding narrowly-tailored requests does not materially change existing law, and the additional burden on public agencies to comply with logging requirements is unjustified.

Under the existing law, "'a person who seeks public records must present a reasonably focused and specific request, so that the public agency will have an opportunity to promptly identify and locate such records.'" (*Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 227, citing *Galbiso v. Orosi Public Utility Dist.* (2008) 167 CalApp.4th 1063, 1088.) A public agency faced with such a request is required "to the extent reasonable under the circumstances," to "[a]ssist the member of the public to identify records and information that are responsive to the purposes of the request, if stated." (Gov. Code, § 6253.1, subd. (d)(3).) Requiring requests to be "narrowly tailored in scope so as to prevent unnecessary burden on the agency," and permitting the agency to "suggest" possible ways of narrowing the scope of the request, as provided for in the resolution, adds nothing to the current statutory scheme.

Under Government Code section 6255, subdivision (a), a request which requires an agency to search an enormous volume of date for a "needle in a haystack" or which compels the production of a huge volume of material may legitimately be objected to as "unduly burdensome." (*Bertoli v. City of Sebast* (2015) 233 Cal.App.4th 353, 371-372; *Fredericks*, *supra*, 233 Cal.App.4th at p. 225.) Whether a request is "unduly burdensome" is a fact-based inquiry determined by weighing the public interest served by disclosure against that of nondisclosure. Any expense or inconvenience to the public agency may properly be considered. (*ACLU v. Deukmejian* (1982) 32 Cal.3d 440, 453.) Ultimately, however, the weighing of interests is determined by the courts on a case-by-case basis. (See e.g., *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1345; *Bertolt*, *supra*, 233 Cal.App.4th at pp. 377-378; *Fredericks*, *supra*, 233 Cal.App.4th. at p. 228.) This resolution does not change that.

The resolution's requirement for public agencies to create a log of each request received, the size of the responsive documents, the hours spent in gathering those documents, and the total expense incurred per request would put an additional burden on public agencies. While it may be feasible

for small agencies to comply, large municipalities such as the City of Los Angeles, or even individual departments, such as the Los Angeles Department of Water and Power, receive and respond to dozens, if not hundreds, of public record requests each year.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be amend Government Code section 6253 to read as follows:

§ 6253

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. To the extent reasonably practicable, requests made pursuant to this chapter should be narrowly tailored in scope so as to prevent unnecessary burden on the agency. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request. If the agency determines that narrowing the scope of the request could expedite the agency's response to the request, including, by way of example and not by limitation, by narrowing the scope of the request to a certain date range or certain custodians, the agency shall suggest such potential modifications to the person making the request, but the person making the request shall not be obligated to revise their request to conform to any such suggestion by the agency.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

(f) In addition to maintaining public records for public inspection during the office hours of the public agency, a public agency may comply with subdivision (a) by posting any public record on its Internet Web site and, in response to a request for a public record posted on the Internet Web site, directing a member of the public to the location on the Internet Web site where the public record is posted. However, if after the public agency directs a member of the public to the Internet Web site, the member of the public requesting the public record requests a copy of the public record due to an inability to access or reproduce the public record from the Internet Web site, the public agency shall promptly provide a copy of the public record pursuant to subdivision (b).

(g) Each agency shall create a log of each request for a copy of records received. The log shall disclose (i) the date of the request; (ii) the text of the request; and (iii) if known, the identity or source of the request. Each agency that determines that a request for a copy of records seeks disclosable public records shall also supplement the log with (i) the total volume of the request, stated either as the total number of pages or total file size of the documents produced in response to the request; (ii) the date of the agency's final response to the request; and (iii) the total number of hours spent by the agency's employees, attorneys, and agents in responding to the request, including in searching for, collecting, compiling, and appropriately examining records demanded in the request, rounded to the nearest one-quarter hour. If the agency incurs expenses in responding to a request other than direct costs of duplication, the agency shall also supplement the log with the total expenses incurred per request, including, without limitation, the total amount expended on outside counsel retained by the agency to review and respond to the request.

(h) The log required by subdivision (g) shall be made publicly available upon request in the office of the person or officer designated by the agency's legislative body and shall be posted in a prominent location on the agency's Internet Web site, if the agency has an Internet Web site. The agency shall complete and post the log required by this section by January 1, 2021, and thereafter shall update the log monthly.

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Public access to government records is paramount. Unfortunately, numerous individuals and law firms are abusing the Public Records Act—at mounting expense to public agencies—by failing to formulate narrowly-tailored requests, submitting duplicative requests,

and using the Act as a workaround or alternative to the civil discovery process. (See, e.g., https://nyti.ms/2D6MgP1 [UC Davis spent 80-100 hours complying with a public records request submitted by tax preparation companies in retaliation for a professor's criticism of a deal those companies have to provide tax filing services through IRS]; https://www.paloaltoonline.com/news/2018/06/19/district-seeks-to-limit-unduly-burdensome-public-records-requests [noting 453% increase in number of Public Records Act requests filed in 2018 vs. 2017, with a single request resulting in more than 300,000 responsive emails].) Anyone may request all documents related to X topic for the past 10 years, clearly burdening public agencies to search for and appropriately review records.

Current law does not require public agencies to track or report the amount of time spent by public officials or employees responding to requests or the amount of money expended by each agency in responding to these requests, though this information may otherwise be available to the public.

The Solution: This bill proposes to increase government transparency and public awareness by requiring public agencies to track and publish the name of each requester, the text of each request, and the amount of hours and money expended by the public agency in responding to each request, with the goals of exposing potential abuse as well as shedding light on potential solutions to increase efficiency in responding to requests (e.g., by making additional records available on agency websites, transitioning to the use of electronic records, etc.). Tracking and publishing this information will likely lead to additional insights about potential needed exceptions to the Public Records Act and/or areas where the Act could be improved, and could assist public agencies in managing requesters' expectations related to anticipated turnaround times to produce responsive records.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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COUNTERARGUMENTS BY BAR ASSOCIATIONS AND CLA SECTIONS

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The purpose of the Public Records Act (PRA) is to require agencies to locate and produce responsive records to "provide the public broad access to documents regarding how government agencies carry out their responsibilities." (*Weaver v. Superior Court* (2014) 224 Cal.App.4th

746, 750.) However, the proposed amendments under sections 6253 (b), (c)(2), (g), and (h) are unnecessary, time-consuming, and overly burdensome on public agencies and will inevitably lead to the delay or denial of crucial records to which the public is lawfully entitled.

First, the proposed amendments to 6253(b) and 6253(c)(2) do nothing but provide irrelevant and superfluous language to an already unwieldy law. Rather than accomplishing any specific goal, the proposed language merely invites requestors to "narrowly tailor" their requests to agencies if they choose to do so. Section 6253(c)(2) then requires agencies to "suggest" modifications to PRA requests that the requestor is not required to adopt. In short, these proposed amendments do absolutely nothing to improve the law or expedite the process of PRA requests. Instead, the amendments do nothing more but complicate an already confusing and unwieldy law.

Next, the proposed amendments to sections 6253(g) and (h) would impose an inordinately high burden on public agencies which will result in further challenge to the public's right to access records. Specifically, these proposed amendments would burden public agencies with additional responsibilities related to creating a log and collecting additional information about the method and efforts expended by the agency to produce each requested record. If adopted, the new law would force agencies to compile extensive information in response to each PRA request and then spend significant time and effort converting this information into an individual log for each request. On a monthly basis, the agency would be tasked with updating and adding more information to each log, thereby expending even more resources to keep up with these log exercises. In addition to all of its other obligations, the agency would be mandated to provide monthly updates on every single one of its PRA request logs on its agency website.

Rather than streamline the process, these proposed amendments will instead impose significant burdens on agencies such that the public records process will become even more complicated and time-consuming than it already is. In particular, the log requirements would be an absolute disaster for public agencies and public requestors alike. In addition to the inevitable delays and roadblocks created by these proposed amendments, the new log requirements would generate more government work, resulting in increased fees to either the taxpayers or the public requestor. The increase in fees would be detrimental to the public and likely to cause a substantial deterrent for non-profit organizations and the indigent. Finally, the threat of widespread publication on the internet, with each requestor's information and the fees charged for each request, would likely have a chilling effect on the public requestor, further exacerbating the bureaucratic red tape already inherent in the PRA statutes.