

# AGENDA ITEM

**MAY 163**

Consideration of 2007  
Resolutions of the  
Conference of Delegates  
of California Bar  
Associations

**DATE:** April 19, 2007

**TO:** Members, Board of Governors  
Members, Board Committee on Stakeholder Relations

**FROM:** Office of Governmental Affairs

**SUBJECT:** Consideration of 2007 Resolutions of the Conference of Delegates of  
California Bar Associations

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## **EXECUTIVE SUMMARY**

The Conference of Delegates of California Bar Associations (CDCBA) has posted its 2007 resolutions. Four of those resolutions relate directly to the State Bar. The State Bar's Office of Governmental Affairs has reviewed those resolutions, in consultation with other State Bar staff, and proposes that the Board Committee on Stakeholder Relations recommend to the full Board of Governors that all four resolutions be opposed. Questions regarding this agenda item should be directed to Larry Doyle, Chief Legislative Counsel, at (916) 442-8018 or Saul Bercovitch, Staff Attorney, at (415) 538-2306.

## **BACKGROUND**

The Conference of Delegates of California Bar Associations (CDCBA) has posted its 2007 resolutions. The following resolutions relate directly to the State Bar:

- 09-02-07 - Conference Of Delegates: Location Of Conference Meetings
- 09-04-07 - State Bar: Access and Fairness Voluntary Dues Increases

- 09-06-07 - Mandatory Continuing Legal Education: Pro Bono Requirement
- 09-07-07 - Direct Election of State Bar President

The State Bar's Office of Governmental Affairs has reviewed the resolutions, in consultation with other State Bar staff, and proposes that the Board Committee on Stakeholder Relations recommend to the full Board of Governors that all four Resolutions be opposed, for the reasons discussed below.

### **09-02-07 - Conference Of Delegates: Location Of Conference Meetings**

(Resolution found at <http://cdcba.org/pdfs/R2007/09-02-2007.pdf>)

In essence, this resolution proposes that the CDCBA Conference and the State Bar Annual Meeting no longer be held in Monterey. More specifically, the resolution recommends that the Board of Governors not schedule future State Bar Annual Meetings, and explore the possibility of legally terminating existing contracts for holding the Annual Meeting, in any city which is not served by a major airline carrier or which lacks facilities for both the Conference and MCLE programs within easy walking distance of each other.

The State Bar has enjoyed a long-standing relationship with the CDCBA (and the predecessor Conference of Delegates), and will continue to keep the needs and preferences of its delegates and alternates in mind as it secures locations for future meeting sites. However, this resolution would restrict the already limited location options for holding the State Bar Annual Meeting, and would unnecessarily prohibit the State Bar from holding its Annual Meeting in Monterey. As a matter of practice, the State Bar considers many factors before it selects a site for the Annual Meeting, including attendees location preference (Monterey has the highest meeting attendance), participant costs, available meeting space and hotel rooms, accessibility, and local attractions. The general geographic location also is considered since the State Bar annually rotates between northern and southern locations for the benefit of its attendees. As a practical matter, the actual choices for meeting sites are very limited.

Terminating existing contracts is not feasible, and replacement sites would need to be found in any event.

### **09-04-2007 - State Bar: Access and Fairness Voluntary Dues Increases**

(Resolution found at <http://cdcba.org/pdfs/R2007/09-04-2007.pdf>)

According to the proponents: "The purpose of this resolution is to allow the State Bar to collect voluntary dues of ten (\$10) dollars for access and fairness issues, and to allow the State Bar to raise this amount every time the dues bill is increased, as necessary."

The State Bar fully supports the goal of addressing access and fairness issues within the legal profession, but the approach proposed by this resolution is faulty.

The Board of Governors currently has the authority to seek voluntary contributions from members of the State Bar for programs and activities consistent with the State Bar's Strategic Plan. The Board of Governors currently seeks voluntary contributions for the elimination of bias in the profession through the Elimination of Bias/Bar Relations Fund, which is included in the overall bar dues. The level of voluntary contributions to the Elimination of Bias fund impacts the net amounts available to the State Bar for other programs and operations. An additional voluntary contribution appearing on the dues statement would be duplicative and may be confusing to members seeking to support the State Bar's diversity efforts.

The mission and charge of the new Council on Access & Fairness takes into consideration the interests of all diverse member constituencies and practice settings and is of a broader nature and scope than the focus of the former individual committees. The newly configured Council will serve as a high level, think tank and will enable the State Bar to focus on diversity issues in a comprehensive and more effective manner. The current level of voluntary contributions is sufficient to cover the activities of the new Council on Access & Fairness and sufficient staff support for the work of the Council. If the future level of contributions is not sufficient to cover these activities, or additional elimination of bias programs and activities are recommended, the Board of Governors can consider and propose increasing the level of voluntary contributions at that time.

A more productive approach than this resolution would be to recommend to all members of the State Bar that they voluntarily contribute to the current Elimination of Bias/Bar Relations Fund through the mechanism currently appearing on the annual Attorney Dues Statement.

### **09-06-2007 - Mandatory Continuing Legal Education: Pro Bono Requirement**

(Resolution found at <http://cdcba.org/pdfs/R2007/09-06-2007.pdf>)

This resolution proposes amending the MCLE statutes and rules so that: "In lieu of 5 of the 25 required hours of legal education, members may complete at least 5 hours in pro bono activities for no or low income residents approved by the State Bar or approved by a local Bar Association."

The State Bar supports the desire to encourage members to provide pro bono services and is sensitive to the intention of providing some incentive for lawyers to provide pro bono services. However, the effort to encourage participation in pro bono services through the MCLE program is problematic, and raises numerous issues and questions.

MCLE is intended to protect the public by requiring ongoing legal education for active members of the State Bar. A determination has been made that a certain minimum number of hours of continuing legal education should be required. Although providing incentives for pro bono service is a laudable goal, reducing the required number of hours of legal education – as a trade-off – does not seem to be the appropriate mechanism.

This proposal is also problematic because the 5 hours in “pro bono activities” would only count if they were “approved” by the State Bar or a local Bar Association. The standards for approval are not set out in the proposal. Moreover, the proposal is flawed to the extent it intends to suggest that pro bono activities would necessarily be equivalent to “education activities” under the current rules.

The basic nature of the MCLE program, which is regulatory, is different from the basic nature of pro bono services. Whether someone is “learning” is not the question in determining whether an activity is education and should provide MCLE credit.

As a general observation, it is in the nature of most legal work that continued learning follows from course work, whether it be on one’s own, or in service or employment situations where there is supervision, training and mentoring, or in conducting further research.

As a participatory credit activity, the proposal would fall short. MCLE Rule 4.1 sets out the criteria that must be met to qualify for participatory credit: “Participatory credit refers to participation in an *education activity* that can be verified by the education provider ...” (emphasis added)

The standards that all “education activities” must meet are set out in MCLE Rule 7.1: 1) education activities must have significant current intellectual or practical content; 2) the education activity must be an organized program of learning; 3) the education activity must be conducted by an individual or group qualified by practical or academic experience; and 4) education activities more than one hour in length must have substantive written materials. Pro bono “activities” – as envisioned by this resolution – do not appear to meet these criteria.

#### **09-07-2007 - Direct Election of State Bar President**

(Resolution found at <http://cdcba.org/pdfs/R2007/09-07-2007.pdf>)

This resolution would amend the Business and Professions Code to require that the State Bar President be elected by a vote of the membership of the State Bar, instead of the Board of Governors. The proposal would also amend the statute to provide that the eligible candidates would be *all* members of the Board, instead of the existing requirement (members of the Board whose terms on the Board expire, or, if no such member is able and willing to serve, Board members who have completed at least one or more years of their terms).

The CDCBA proposed a similar resolution in 2006. The Board of Governors opposed that resolution, and the resolution was disapproved at the 2006 Conference. In response to issues raised in 2006, the 2007 resolution contains a revised proposal, but fundamental issues still remain.

In opposing the 2006 resolution, the Board of Governors commented that the resolution would have disenfranchised the public members of the Board by eliminating their input into the selection of President. This is directly contrary to the decisions of the Legislative and Executive branches of the State, who created the public member positions on the Board of Governors for the specific reason of giving the public some input into the direction and actions of the State Bar, including the choice of its President. Under the current system, public Board members have a vote for President that is equal to the vote of the other Board members. The 2007 resolution has not addressed this issue and, under the current proposal, the public members would have no vote at all.

In opposing the 2006 resolution, the Board of Governors also commented that the field of presidential candidates would almost certainly be narrowed to Board members who can afford a statewide campaign (i.e., the wealthiest attorneys) and/or those from major metropolitan areas who may be able to wage a successful campaign simply by focusing on their local constituency. The 2006 resolution, it was argued, would have therefore undercut the State Bar's efforts to promote diversity in all aspects of the legal profession, by restricting diversity in the office of President of the State Bar, and ultimately in the Board of Governors itself. The 2007 resolution has made some changes to address the geographic and economic concerns, but the proposal is still problematic.

With respect to the geographic issue, the 2007 resolution proposes amending the Business and Professions Code to add the following language: "If for two consecutive years, the president is a resident of a county south of the Tehachapi Mountains, no member who likewise resides south of the Tehachapi Mountains shall be eligible to serve as president in the next succeeding year. The same rule shall apply in reverse if the president for two consecutive years is a resident of a county north of the Tehachapi Mountains." This language would address a north/south issue, but would not deal with the fact that Board members from major metropolitan areas would have an advantage over Board members from less populated areas, given the simple distribution of the population of attorneys and their relative voting power.

With respect to the economic issue, the 2007 resolution proposes that the Board "enact rules providing means for candidates for president to communicate with the members at reasonable cost and providing for limits on campaign expenditures for candidates for president." Campaign finance restrictions are a potential quagmire, and could plunge the Board into unresolved areas that continue to be the subject of ongoing controversy in other arenas.

Finally – as with the 2006 resolution – the proposed statewide election would result in additional economic costs to the State Bar, requiring the use of funds that could be better spent on providing direct member services.

## **FISCAL/STAFF IMPACT**

If the resolutions recommended below are adopted, and the CDCBA resolutions do not pass, there would be no fiscal or personnel impact. If the changes proposed by those resolutions are ultimately made, there would be a fiscal and personnel impact, unknown at this time.

## **BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT**

If the resolutions recommended below are adopted, and the CDCBA resolutions do not pass, there would be no impact on the Board Book or Administrative Manual. If the changes proposed by those resolutions are ultimately made, relevant adjustments may need to be made to the Board Book and Administrative Manual.

## **RECOMMENDATION**

The Office of Governmental Affairs proposes that the Board Committee on Stakeholder Relations recommend to the full Board of Governors that the following CDCBA resolutions be opposed: 1) 09-02-07 - Conference Of Delegates: Location Of Conference Meetings; 2) 09-04-07 - State Bar: Access and Fairness Voluntary Dues Increases; 3) 09-06-07 - Mandatory Continuing Legal Education: Pro Bono Requirement; and 4) 09-07-07 - Direct Election of State Bar President.

## **RESOLUTION**

If the Board Committee on Stakeholder Relations agrees with the above recommendation, the following resolution is suggested:

RESOLVED, that the Board Committee on Stakeholder Relations recommends that the Board of Governors oppose the following resolutions of the Conference of Delegates of California Bar Associations:

- 1) 09-02-07 - Conference Of Delegates: Location Of Conference Meetings;
- 2) 09-04-07 - State Bar: Access and Fairness Voluntary Dues Increases;
- 3) 09-06-07 - Mandatory Continuing Legal Education: Pro Bono Requirement;
- and
- 4) 09-07-07 - Direct Election of State Bar President.

If the Board of Governors concurs with the recommendation of the Board Committee on Stakeholder Relations, the following resolution is suggested:

RESOLVED, that, upon recommendation of the Board Committee on Stakeholder Relations, the Board of Governors hereby opposes the following resolutions of the Conference of Delegates of California Bar Associations:

- 1) 09-02-07 - Conference Of Delegates: Location Of Conference Meetings;
- 2) 09-04-07 - State Bar: Access and Fairness Voluntary Dues Increases;
- 3) 09-06-07 - Mandatory Continuing Legal Education: Pro Bono Requirement;
- and
- 4) 09-07-07 - Direct Election of State Bar President.