

AGENDA ITEM

MAY 164

Consideration of 2008
Resolutions of the
Conference of Delegates
of California Bar
Associations

DATE: April 24, 2008

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

FROM: Office of the Executive Director

SUBJECT: Consideration of 2008 Resolutions of the Conference of Delegates of California Bar Associations

EXECUTIVE SUMMARY

The Conference of Delegates of California Bar Associations (CDCBA) has posted its 2008 resolutions. Three of those resolutions relate directly to the State Bar. The Executive Director's Office 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 two of the three resolutions be opposed. Staff does not currently have a recommendation on the third resolution, but the matter will be open for discussion by the Board. Questions regarding this agenda item should be directed to Saul Bercovitch at (415) 538-2306.

BACKGROUND

The Conference of Delegates of California Bar Associations (CDCBA) has posted its 2008 resolutions. The following resolutions relate directly to the State Bar:

- 01-03-08 - State Bar Records: Retired Judges Address and Member E-Mail Addresses
- 01-06-08 - Attorney Disqualification
- 06-07-08 - Commission on Judicial Nominees Evaluation: Disclosure of Not Qualified Rating

The Office of the Executive Director 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 two of the three resolutions be opposed, for the reasons discussed below. Staff does not currently have a recommendation on the third resolution, but the matter will be open for discussion by the Board.

01-03-08 - State Bar Records: Retired Judges Address and Member E-Mail Addresses

(Resolution found at <http://cdcba.org/pdfs/R2008/01-03-2008.pdf>)

This is a proposal to make two changes to the State Bar's rules. Under the first proposed change, the address (including a Post Office box) and phone number of an inactive retired judge would be withheld from disclosure on the State Bar website upon request. This would not be permissible under Business and Professions Code section 6002.1. Under the second proposed change, the e-mail address of *any* member would not be disclosed on the State Bar website if the member objects. This change is not needed. As the resolution notes, requests to withhold that information are currently honored (although the resolution seeks to make the rule explicit).

Staff recommends that this resolution be opposed.

01-06-08 - Attorney Disqualification

(Resolution found at <http://cdcba.org/pdfs/R2008/01-06-2008.pdf>)

This resolution seeks an amendment to the Rules of Professional Conduct, specifically rule 3-310 [re avoiding the representation of adverse interests]. The desired amendment would add a new paragraph (G) addressing the issue of imputed conflicts and ethical screens.

At this time, the State Bar is considering amendments to the Rules of Professional Conduct through the work of its Special Commission for the Revision of the Rules of Professional Conduct (Commission). The Commission is charged with conducting a cover-to-cover review of the California rules and proposing comprehensive amendments for consideration by the Board of Governors. This comprehensive review includes consideration of amendments to rule 3-310. In addition, the Commission's charge also instructs the Commission to consider the American Bar Association's Model Rules of Professional Conduct, including Model Rule 1.10 [re imputation of conflicts of interest].

Accordingly, the general subject matter of the proponent's desired initiative is being considered by the State Bar through its Commission and any action to approve Resolution 01-06-2008 would prejudge controversial substantive and policy issues that are already in process. Rather than pursuing Conference action, the resolution proponents should participate in the Commission's work by sending representatives to the open session meetings of the Commission and by providing input on draft rules that are distributed for public comment. Other stakeholders have participated in this

manner, greatly enhancing the Commission's deliberative process and clarifying complex issues that will be ultimately decided by the Board of Governors and the Supreme Court.

Staff recommends that this resolution be opposed.

06-07-08 - Commission on Judicial Nominees Evaluation: Disclosure of Not Qualified Rating

(Resolution found at <http://cdcba.org/pdfs/R2008/06-07-2008.pdf>)

This resolution would require a legislative change. Under the existing statute, disclosure of a "not qualified" rating by the Commission on Judicial Nominees Evaluation (JNE) of a person appointed to a trial court is discretionary with the Board of Governors. This proposal would make that same disclosure mandatory. Staff does not currently have a recommendation on this resolution, but the matter will be open for discussion by the Board.

FISCAL/STAFF IMPACT

If the resolution recommended below is adopted, and the two CDCBA resolutions noted below do not pass, there would be no fiscal or personnel impact.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

If the resolution recommended below is adopted, and the two CDCBA resolutions noted below do not pass, there would be no impact on the Board Book or Administrative Manual.

RECOMMENDATION

The Office of the Executive Director proposes that the Board Committee on Stakeholder Relations recommend to the full Board of Governors that the following CDCBA resolutions be opposed:

- 1) 01-03-08 - State Bar Records: Retired Judges Address and Member E-Mail Addresses; and
- 2) 01-06-08 - Attorney Disqualification

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) 01-03-08 - State Bar Records: Retired Judges Address and Member E-Mail Addresses; and
- 2) 01-06-08 - Attorney Disqualification

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) 01-03-08 - State Bar Records: Retired Judges Address and Member E-Mail Addresses; and
- 2) 01-06-08 - Attorney Disqualification