RESOLUTION 01-01-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Business and Professions Code section 6060, to read as follows:

§ 6060

To be certified to the Supreme Court for admission and a license to practice law, a person who has not been admitted to practice law in a sister state, United States jurisdiction, possession, territory, or dependency or in a foreign country shall:

(a) Be at least 18 years of age.

(b) (1) Be of good moral character.

(2) (A) In reviewing whether an applicant is of good moral character under this subdivision, the staff of the State Bar or the members of the examining committee shall not review or consider the person's medical records relating to mental health, except

if the applicant seeks to use the record for either of the following purposes:

(i) To demonstrate that the applicant is of good moral character.

(ii) As a mitigating factor to explain a specific act of misconduct.

(B) The staff of the State Bar and members of the examining committee shall not request or seek to review any medical records relating to mental health, including by obtaining the consent of the applicant to disclose such records, except as requested by an applicant and for a purpose specified in subparagraph (A).

(c) Before beginning the study of law, have done either of the following:

(1) Completed at least two years of college work, which college work shall be at least one-half of the collegiate work acceptable for a bachelor's degree granted on the basis of a four-year period of study by a college or university approved by the examining committee.

(2) Have attained in apparent intellectual ability the equivalent of at least two years of college work by taking examinations in subject matters and achieving the scores as are prescribed by the examining committee.

(d) Have registered with the State Bar as a law student within 90 days after beginning the study of law. The State Bar, upon a showing of good cause, may permit a later registration.

(e) Have done either of the following:

(1) Had conferred upon them a juris doctor (J.D.) degree or a bachelor of laws (LL.B.) degree by a law school accredited by the examining committee or approved by the American Bar Association.

(2) Studied law diligently and in good faith for at least four years in any of the following manners:

(A) (i) In a law school that is authorized or approved to confer professional degrees and requires classroom attendance of its students for a minimum of 270 hours a year.

(ii) A person who has received their legal education in a foreign state or country where the common law of England does not constitute the basis of jurisprudence shall demonstrate to the satisfaction of the State Bar that the person's education, experience, and qualifications qualify them to take the examination.

(B) In a law office in this state and under the personal supervision of a licensee of the State Bar of California who is, and for at least the last five years continuously has been, engaged in the active practice of law. It is the duty of the supervising attorney to render any periodic reports to the State Bar as required.

(C) In the chambers and under the personal supervision of a judge of a court of record of this state. It is the duty of the supervising judge to render any periodic reports to the State Bar as required.

(D) By instruction in law from a correspondence law school authorized or approved to confer professional degrees by this state, which requires 864 hours of preparation and study per year for four years.

(E) By any combination of the methods referred to in this paragraph.

(f) Have passed any examination in professional responsibility or legal ethics as the examining committee may prescribe.

(g) Have passed the general bar examination given by the examining committee.

(h) (1) Have passed a law students' examination administered by the examining committee after completion of their first year of law study. Those who pass the examination within its first three administrations upon becoming eligible to take the examination, shall receive credit for all law studies completed to the time the examination is passed. Those who do not pass the examination within the number of administrations allowed by this subdivision, upon becoming eligible to take the examination, but who subsequently pass the examination, shall receive credit for all law studies completed before the first three administrations upon becoming eligible to take the examination. ~~one year of legal study only.~~

(2) (A) This requirement does not apply to a student who has satisfactorily completed their first year of law study at a law school accredited by the examining committee and who has completed at least two years of college work prior to matriculating in the accredited law school, nor shall this requirement apply to an applicant who has passed the bar examination of a sister state or of a country in which the common law of England constitutes the basis of jurisprudence.

(B) The law students' examination shall be administered twice a year at reasonable intervals.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Some students attend registered, unaccredited, law schools to get their law degree because it fits with their other commitments and is more cost-effective. As a condition, they have to take the Baby Bar upon completing courses in Contracts, Torts, and Criminal Law, which they take their first year. The Baby Bar is administered in June and October. Students have three chances to pass it, or they are unenrolled from school and lose credit for all courses completed except Contracts, Torts, and Criminal Law. If they pass the Baby Bar later, they can resume law school, but have to retake every course they already took except those three.

Although understandable that they need to pass to stay in school, taking away credits from courses where they have already earned passing scores makes no sense and requires greater expenditures of time and energy. This makes access to the Bar more inequitable.

The Solution: This resolution would keep the rule that if someone does not pass the Baby Bar in three attempts, they are unenrolled from school until they pass later, while letting them keep the credit for all courses they passed before they were required to unenroll.

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

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT:
Ben Rudin, 3830 Valley Centre Dr., Ste. 705 PMB 231, San Diego, CA 92130, (858) 256-4429, ben_rudin@hotmail.com.

RESPONSIBLE FLOOR DELEGATE: Ben Rudin

RESOLUTION 01-02-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend California Business and Professions Code Section 733 to read as follows:

§ 733

(a) A licentiate shall not obstruct a patient in obtaining legally prescribed and medically necessary care such as exams, diagnostic tests, prescription drugs, devices, and various treatments and services that have been a ~~a prescription drug or device that has been legally prescribed or~~ ordered for that patient. A violation of this section constitutes unprofessional conduct by the licentiate and shall subject the licentiate to disciplinary or administrative action by his or her licensing agency.

(b) Notwithstanding any other law, a licentiate shall dispense drugs and devices, as described in subdivision (a) of Section 4024, pursuant to a lawful order or prescription unless one of the following circumstances exists:

(1) Based solely on the licentiate's professional training and judgment, dispensing pursuant to the order or the prescription is contrary to law, or the licentiate determines that the prescribed drug or device would cause a harmful drug interaction or would otherwise adversely affect the patient's medical condition.

(2) The prescription drug or device is not in stock. If an order, other than an order described in Section 4019, or prescription cannot be dispensed because the drug or device is not in stock, the licentiate shall take one of the following actions:

(A) Immediately notify the patient and arrange for the drug or device to be delivered to the site or directly to the patient in a timely manner.

(B) Promptly transfer the prescription to another pharmacy known to stock the prescription drug or device that is near enough to the site from which the prescription or order is transferred, to ensure the patient has timely access to the drug or device.

(C) Return the prescription to the patient and refer the patient. The licentiate shall make a reasonable effort to refer the patient to a pharmacy that stocks the prescription drug or device that is near enough to the referring site to ensure that the patient has timely access to the drug or device.

(3) The licentiate refuses on ethical, moral, or religious grounds to dispense a drug or device pursuant to an order or prescription. A licentiate may decline to dispense a prescription drug or device on this basis only if the licentiate has previously notified his or her employer, in writing, of the drug or class of drugs to which he or she objects, and the licentiate's employer can, without creating undue hardship, provide a reasonable accommodation of the licentiate's objection. The licentiate's employer shall establish protocols that ensure that the patient has timely access to the prescribed drug or device despite the licentiate's refusal to dispense the prescription or order. For purposes of this section, “reasonable accommodation” and “undue hardship” shall have the same meaning as applied to those terms pursuant to subdivision (l) of Section 12940 of the Government Code.

(c) For the purposes of this section, “prescription drug or device” has the same meaning as the definition in Section 4022.

(d) This section applies to emergency contraception drug therapy and self-administered hormonal contraceptives described in Section 4052.3.

(e) This section imposes no duty on a licentiate to dispense a drug or device pursuant to a prescription or order without payment for the drug or device, including payment directly by the patient or through a third-party payer accepted by the licentiate or payment of any required copayment by the patient.

(f) The notice to consumers required by Section 4122 shall include a statement that describes patients' rights relative to the requirements of this section

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): As it stands, the Code is not written specifically enough, nor is it inclusive enough to describe the type of behavior from licentiates that it is trying to punish or what is considered an obstruction. Prescription drugs and devices are not the only types of care that licentiates can obstruct. The Code in the status quo does not incorporate other very medically necessary types of care such as exams, diagnostic tests, and treatments. Licentiates must be held accountable for providing medically necessary care according to the standard of care point blank - not just when it comes to drugs and devices. Licentiates especially need to be held accountable when they *deny* medically necessary care in the form of pre-authorization review.

The Solution: We recommend incorporating this new language because not only does it broaden the definition to include what is determined to be medically necessary care for the patient, but it ensures that patients *do* get the requisite care they need and it punishes practitioners (or licentiates) if they do not practice accordingly.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule as far as we can determine.

CURRENT OR PRIOR RELATED LEGISLATION
This resolution pertains to California Business and Professions Code Section 733.

AUTHOR AND/OR PERMANENT CONTACT:
Robert Bitonte, M.D., J.D., Los Angeles, rbitonte@aol.com
Grace Haddad, MPH, J.D. Candidate gah68@case.edu

RESPONSIBLE FLOOR DELEGATE:
Robert Bitonte, M.D., J.D., Los Angeles, rbitonte@aol.com

RESOLUTION 02-01-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 2924m, to read as follows:

§ 2924m

(a) For purposes of this section:

(1) "Prospective owner-occupant" means a natural person who presents to the trustee an affidavit that:

- (A) They will occupy the property as their primary residence within 60 days of the trustee's deed being recorded.
- (B) They will maintain their occupancy for at least one year.
- (C) They are not the mortgagor or trustor, or the child, spouse, or parent of the mortgagor or trustor.
- (D) They are not acting as the agent of any other person or entity in purchasing the real property.

(2) "Eligible tenant buyer" means a natural person who at the time of the trustee's sale:

- (A) Is occupying the real property as their primary residence.
- (B) Is occupying the real property under a rental or lease agreement entered into as the result of an arm's length transaction with the mortgagor or trustor on a date prior to the recording of the Notice of Default against the property.
- (C) Is not the mortgagor or trustor, or the child, spouse, or parent of the mortgagor or trustor.

(3) "Eligible bidder" means any of the following:

- (A) An eligible tenant buyer.
- (B) A prospective owner-occupant.
- (C) A nonprofit association, nonprofit corporation, or cooperative corporation in which an eligible tenant buyer or a prospective owner-occupant is a voting member or director.
- (D) An eligible nonprofit corporation based in California whose primary activity is the development and preservation of affordable rental housing.
- (E) A limited partnership in which the managing general partner is an eligible nonprofit corporation based in California whose primary activity is the development and preservation of affordable housing.
- (F) A limited liability company in which the managing member is an eligible nonprofit corporation based in California whose primary activity is the development and preservation of affordable rental housing.
- (G) A community land trust, as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.
- (H) A limited-equity housing cooperative as defined in Section 817.
- (I) The state, the Regents of the University of California, a county, city, district, public authority, or public agency, and any other political subdivision or public corporation in the state.

(b) Nothing in this section shall prevent an eligible tenant buyer who meets the conditions set forth in paragraph (1) of subdivision (a) from being deemed a prospective owner-occupant.

(c) A trustee's sale of property under a power of sale contained in a deed of trust or mortgage on real property containing one to four residential units pursuant to Section 2924g shall not be deemed final until the earliest of the following:

(1) If a prospective owner-occupant is the last and highest bidder at the trustee's sale, the date upon which the conditions set forth in Section 2924h of the Civil Code for the sale to become final are met. The trustee shall require the prospective owner-occupant to submit the affidavit described in paragraph (1) of subdivision (a). The trustee may reasonably rely upon this affidavit.

(2) Fifteen days after the trustee's sale unless at least one eligible tenant buyer or eligible bidder submits to the trustee either a bid pursuant to paragraph (3) or (4) or a nonbinding written notice of intent to place such a bid. The bid or written notice of intent to place a bid shall be sent to the trustee by certified mail, overnight delivery, or other method that allows for confirmation of the delivery date and shall be received by the trustee no later than 15 days after the trustee's sale.

(3) The date upon which a representative of all of the eligible tenant buyers submits to the trustee a bid in an amount equal to the full amount of the last and highest bid at the trustee's sale, in the form of cash, a cashier's check drawn on a state or national bank, a cashier's check drawn by a state or federal credit union, or a cashier's check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state. This bid shall be accompanied by an affidavit stating that the persons represented meet the criteria set forth in paragraph (2) of subdivision (a). The trustee may reasonably rely on this affidavit. The bid and affidavit shall be sent to the trustee by certified mail, overnight delivery, or other method that allows for confirmation of the delivery date and shall be received by the trustee no later than 45 days after the trustee's sale. If this occurs, the eligible tenant buyers shall be deemed the last and highest bidder pursuant to the power of sale.

(4) Forty-five days after the trustee's sale, except that during the 45-day period, an eligible bidder may submit to the trustee a bid in an amount that exceeds the last and highest bid at the trustee's sale, in the form of cash, a cashier's check drawn on a state or national bank, a cashier's check drawn by a state or federal credit union, or a cashier's check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state. The bid shall be accompanied by an affidavit identifying the category set forth in paragraph (3) of subdivision (a) to which the eligible bidder belongs and stating that the eligible bidder meets the criteria for that category. The trustee may reasonably rely on this affidavit. The bid and affidavit shall be sent to the trustee by certified mail, overnight delivery, or other method that allows for confirmation of the delivery date and shall be received by the trustee no later than 45 days after the trustee's sale. As of 5 p.m. on the 45th day after the trustee's sale, if one or more eligible bidders has submitted a bid, the eligible bidder that submitted the highest bid shall be deemed the last and highest bidder pursuant to the power of sale. The trustee shall return any losing bid to the eligible bidder that submitted it.

(d) If the conditions set forth in paragraph (1) of subdivision (c) for a sale to be deemed final are not met, then:

(1) Not later than 48 hours after the trustee's sale of property under Section 2924g, the trustee or an authorized agent shall post on the internet website set forth on the notice of sale, as required under paragraph (8) of subdivision (b) of section 2924f, the following information:

(A) The date on which the trustee's sale took place.

(B) The amount of the last and highest bid at the trustee's sale.

(C) An address at which the trustee can receive documents sent by United States mail and by a method of delivery providing for overnight delivery.

(2) The information required to be posted on the internet website under paragraph (1) shall also be made available not later than 48 hours after the trustee's sale of property under section 2924g by calling the telephone number set forth on the notice of sale as required under paragraph (8) of subdivision (b) of section 2924f.

(3) The information required to be provided under paragraphs (1) and (2) shall be made available using the file number assigned to the case that is set forth on the notice of sale as required under paragraph (8) of subdivision (b) of section 2924f.

(4) The information required to be provided under paragraphs (1) and (2) shall be made available for a period of not less than 45 days after the sale of property under section 2924g.

(5) A disruption of any of these methods of providing the information required under paragraphs (1) and (2) to allow for reasonable maintenance or due to a service outage shall not be deemed to be a violation of this subdivision.

(e) A prospective owner-occupant shall not be in violation of this section if a legal owner's compliance with the requirements of Section 2924n renders them unable to occupy the property as their primary residence within 60 days of the trustee's deed being recorded.

(f) Attorney fees and costs shall be awarded to any party under this section if the court makes a specific finding that the action, claim, or defense was frivolous. For the purpose of this section, frivolous shall mean that the action was brought or maintained in bad faith or with the intent to harass or delay the opposing party..

~~(f)~~(g) This section shall prevail over any conflicting provision of Section 2924h.

~~(g)~~(h) This section shall remain in effect only until January 1, 2026, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2026, deletes or extends that date.

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

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Current law, following SB 1079, creates an alternative process for prospective owner-occupant to bid on certain property. There is currently repeated litigation between bidders and prospective owner-occupants disputing the claims of the owner-occupants, with the intent to force parties to withdraw their bids under increased litigation costs.

As there is no privity of contract between separate bidders to an auction, attorneys' fees cannot be recovered.

The Solution: This amendment allows for reasonably attorneys' fees to be awarded if the Court makes a specific finding that the action or defense is frivolous. Adding this should discourage frivolous bids and should also discourage frivolous litigation.

IMPACT STATEMENT
The impact of this resolution is uncertain.

CURRENT OR PRIOR RELATED LEGISLATION
SB 1079 in the year 2020

AUTHOR AND/OR PERMANENT CONTACT:
Ricky S. Shah, Irvine, CA, R.Shah@GeraciLLP.com, and Kelsey Luu, Best Best & Krieger LLP, Kelsey.Luu@bbklaw.com

RESPONSIBLE FLOOR DELEGATE: Ricky S. Shah and Kelsey Luu.

RESOLUTION 02-02-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to create Civil Code section 4921, to read as follows:

§ 4921

(a) If an association becomes involved in litigation, the board shall announce the litigation at its subsequent meeting. The meeting minutes shall state the name of the court and the case number.

(b) If an association files a claim on one of its insurance policies, the board shall announce the claim at its subsequent meeting. The meeting minutes shall state the type of insurance, the insurance carrier, and the policy number.

(c) If a change to an insurance policy has occurred, as described in Section 5810, the board shall announce the change at its subsequent meeting. The meeting minutes shall state the type of insurance, the insurance carrier, the policy number, and describe the change.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law):

Presently, associations are not required to volunteer information about litigation when units/lots go into escrow.

When an association has become involved in litigation that fact should be make known to the association's membership.   Even the courts have noted that boards have a general duty to disclose facts that materially affect the rights and interests of members. (*Ostayan v. Nordhoff Townhomes*).

In fact, while sellers *must* provide relevant information to buyers, associations *have no duty* to volunteer such information. (*Kovich v. Paseo Del Mar*.)

Hence, a Board can obfuscate the true state of the association's litigation to the detriment of both the existing homeowners and buyers, and also put sellers at risk of being sued for failure to disclose.

The Solution: This resolution creates a new statute to be included as part of the Open Meeting Act which requires a Board to announce when it becomes involved in litigation.

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

CURRENT OR PRIOR RELATED LEGISLATION
(None known).

AUTHOR AND/OR PERMANENT CONTACT:
Edward M. Teyssier, 3200 Highland Avenue, Suite #300, National City, CA 91950, email: edwardtlp@sbcglobal.net, cell: 619-274-6432.

RESPONSIBLE FLOOR DELEGATE: Edward M Teyssier

RESOLUTION 02-03-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 4935, to read as follows:

§ 4935

(a) The board may adjourn to, or meet solely in, executive session to consider litigation, matters relating to the formation of contracts with third parties, member discipline, personnel matters, or to meet with a member, upon the member's request, regarding the member's payment of assessments, as specified in Section 5665.

(b) The board shall adjourn to, or meet solely in, executive session to discuss member discipline, if requested by the member who is the subject of the discussion. That member shall be entitled to attend the executive session.

(c) The board shall adjourn to, or meet solely in, executive session to discuss a payment plan pursuant to Section 5665.

(d) The board shall adjourn to, or meet solely in, executive session to decide whether to foreclose on a lien pursuant to subdivision (b) of Section 5705.

(e) Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership. Discussions regarding on-going litigation shall have the case name and case number included as part of the of the executive session meeting minute notes.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law):

The statute requiring associations to note what their boards are doing in executive sessions is too vague.

The membership of an association has a right to know what its board is doing. Typically, association Boards do not tell the membership what they are discussing when in executive session. Even though Civil Code section 4935 requires that, "[A]ny matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the members," there isn't any definition or even any guideline as to what constitutes, "generally noted." Hence, associations merely repeat "litigation/member discipline," for every set of meeting minutes.

The Solution: This resolution amends Civil Code section 4935 to require that a board discussing litigation in executive session at least specify the name and case number of that litigation.

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

CURRENT OR PRIOR RELATED LEGISLATION
(None known).

AUTHOR AND/OR PERMANENT CONTACT:
Edward M. Teyssier, 3200 Highland Avenue, Suite #300, National City, CA 91950, email: edwardtlp@sbcglobal.net, cell: 619-274-6432.

RESPONSIBLE FLOOR DELEGATE: Edward M Teyssier

RESOLUTION 02-04-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Civil Code section 4941, to read as follows:

§ 4941.

(a). Open session meetings of the Board shall be electronically recorded using audio, or audio and video,   and the recordings shall be considered a record of the association, which shall be made available to members on the same basis as written meeting minutes.

(b). Notice shall be at the beginning of every open session of the Board, that the meeting is being recorded.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law):

Members of associations should have a way of verifying and confirming that their board's meeting minutes are accurate.

Associations are required to keep minutes of their Board's meetings, and a draft version of thos meeting minutes must be made available to any member who requests after 30 days of the meeting. (Civil Code §4950.)   But there isn't any way for a member to know whether those minutes if those minutes have, due to either inadvertence or improper intent, are inaccurate.

The Solution: This resolution adds Civil Code section 4941 to require that open session board meetings be electronically recorded so that members will have at least an audio record to verify what transpired at the meeting.   This is not an onerous requirement. Since 2020, when COVID-19 made in-person meetings difficult, many homeowner associations all over the state have been conducting their monthly board meetings on-line. Hence, associations have the means for electronic recording readily available.

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

CURRENT OR PRIOR RELATED LEGISLATION
(None known).

AUTHOR AND/OR PERMANENT CONTACT:
Edward M. Teyssier, 3200 Highland Avenue, Suite #300, National City, CA 91950, email: edwardtlp@sbcglobal.net, cell: 619-274-6432.

RESPONSIBLE FLOOR DELEGATE: Edward M Teyssier

RESOLUTION 02-05-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 4950, to read as follows:

§ 4950

(a) The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any board meeting, other than an executive session, shall be available to members within 30 days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any member upon request and upon reimbursement of the association's costs for making that distribution. There shall be no charge for minutes distributed electronically.

(b) The minutes, or minutes proposed minutes, shall include, but not limited to the following:

1. Date of the meeting;
2. Time of the meeting;
3. Location of the meeting, and when;
4. The type of meeting, such as regular, special, emergency, executive, committee;
5. Whether notice and agenda of the meeting was given to the membership;
6. Names of directors present;
7. Names of absent directors;
8. Whether members also present, and names and titles of any guest speakers. Members names are not required, and no member may be compelled to give his/her name in order to attend an open meeting of an association, unless the member speaks at the meeting;
9. Whether a quorum of directors was established;
10. Whether board directors left early or re-entered the meeting;
11. The wording of any approvals, resolutions, acceptance of any reports, or motion adopted by the board, and including who moved, who seconded, and how each director voted;
12. Rationale for board actions and decisions;
13. Summary of major arguments;
14. Statements that support board directors following fiduciary duties.

~~(b)~~(c) The annual policy statement, prepared pursuant to Section 5310, shall inform the members of their right to obtain copies of board meeting minutes and of how and where to do so.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Presently, while there is a requirement that meeting minutes of the Board of Directors of an association must be kept, there isn't any requirement as to what those minutes must contain. Hence, meeting minutes for some associations do have basic information, such as what was decided, and how each director voted, or whether there was a quorum or even which directors were at the meeting!

Also, associations may charge members for requesting meeting minutes, even though Civil Code section 5205 (f) only allows an association to collect the actual costs of copying and mailing, and there isn't any variable costs for emailing.

The Solution: This resolution specifies the minimum content of meeting minutes, and makes clear that there isn't any copying or mailing costs for emailing minutes.

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

CURRENT OR PRIOR RELATED LEGISLATION
(None known).

AUTHOR AND/OR PERMANENT CONTACT:
Edward M. Teyssier, 3200 Highland Avenue, Suite #300, National City, CA 91950, email: edwardtlp@sbcglobal.net, cell: 619-274-6432.

RESPONSIBLE FLOOR DELEGATE: Edward M Teyssier

RESOLUTION 02-06-2026

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 4955, to read as follows:

§ 4955

(a) A member of an association may bring a civil action for relief, including but not limited to declaratory, or equitable relief for a violation of this article by the association, ~~including, but not limited to, injunctive relief, restitution,~~ or a combination thereof, within one year of the date the cause of action accrues. A court shall void any action taken by the board that was shown to be conducted in violation of the provisions of this article.

(b) A member who prevails in a civil action to enforce the member's rights pursuant to this article shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars ($500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation. If a member prevails in a civil action brought in small claims court, the member shall be awarded court costs and reasonable attorney's fees incurred for consulting an attorney in connection with this civil action.

(c) A cause of action under this section may be brought in either the superior court or, if the amount of the demand does not exceed the jurisdictional amount of the small claims court, in small claims court, which court shall have jurisdiction to order declaratory, injunctive, equitable relief, and civil penalties, as specified above.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law):

Article 2 ("Article 2") of chapter 6 of the Davis-Stirling Act (beginning with Civil Code section 4900) is known as The Open Meeting Act. But while Article 2 does have multiple provisions requiring openness and accountability of an association, the available means of enforcing those sunshine statutes is quite limited. Practically speaking, there are any consequences for violations of those statutes. Furthermore, any legal action requires the expense of filing a superior court action.

The Solution: This resolution amends Civil Code section 4955 to give it some enforcement "teeth". With these revisions a Board's act taking in violation of a provision of the Open Meeting Act could result in a court voiding that act. Plus, under these revisions, a member could bring the action in small claims court. These revisions also specially allow a homeowner who consulted with an attorney, reasonable attorney fees for that consultation.

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

CURRENT OR PRIOR RELATED LEGISLATION
(None known).

AUTHOR AND/OR PERMANENT CONTACT:
Edward M. Teyssier, 3200 Highland Avenue, Suite #300, National City, CA 91950, email: edwardtlp@sbcglobal.net, cell: 619-274-6432.

RESPONSIBLE FLOOR DELEGATE: Edward M Teyssier

RESOLUTION 02-07-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 5230, to read as follows:

§ 5230

(a) The association records, and any information from them, may not be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a member's interest as a member. An association may bring an action against any person who violates this article for injunctive relief and for actual damages to the association caused by the violation.

(b) This article may not be construed to limit the right of an association to damages for misuse of information obtained from the association records pursuant to this article or to limit the right of an association to injunctive relief to stop the misuse of this information.

(c) (1) An association or its managing agent shall not do either of the following:

(A) Sell a member's personal information for any purpose without the consent of the member.

(B) Transmit a member's personal information to a third party without the consent of the member unless required to do so by law, including, but not limited to, Article 5 (commencing with Section 5200).

(2) A member may bring an action against an association that violates this subdivision for injunctive relief and actual damages caused by the violation. A member shall be entitled to recover reasonable costs and expenses, including reasonable attorney's fees, in a successful action to enforce the member's rights under this subdivision.

(d) An association shall be entitled to recover reasonable costs and expenses, including reasonable attorney's fees, in a successful action to enforce its rights under this ~~article~~ section.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law):

There is a potential conflict between Civil Code sections 5230 and 5235 in regards to whether an association may be awarded attorney fees and costs in the event a homeowner is not the prevailing party in requesting association documents.

Article 5 ("Article 5") of chapter 6 of the Davis-Stirling Act (beginning with Civil Code section 5200) essentially requires an association make certain specified documents accessible to its members for inspection and copying.

Section 5235 of Article 5 has been interpreted to provide a member standing to enforce his/her rights under that article, including a civil penalty of $500 per denial of each written request, and an asymmetric attorney fee provision providing reasonable attorney's fee and reasonable costs and expenses to a prevailing member. But that a prevailing association is not entitled to any fees. (*Retzloff v. Moulton Parkway Residents' Association, No. One* (2017) 14 Cal App 5th 742.)

However, at the same time, the section immediately preceding, section 5230, allows an association protections against a member's abuse of his/her access to associations records. There appears to be in conflict because while section 5235 does not provide attorney fees to a prevailing association, section 5230 does allow an association its attorney fees and costs, "in a successful action to enforce its rights under this *article.*" (Section 5230, last sent..)

<u>The Solution</u>: This resolution amends Civil Code section 5230 to make clear that the attorney fee provisions of that section only apply to an association enforcement of its protections of its records under that section, and not the entire article.

IMPACT STATEMENT
This resolution may affect how section 5235 is interpreted as to whether a prevailing association or just a prevailing homeowner is entitled to attorney fees and costs, as mentioned above.

CURRENT OR PRIOR RELATED LEGISLATION
(None known).

AUTHOR AND/OR PERMANENT CONTACT:
Edward M. Teyssier, 3200 Highland Avenue, Suite #300, National City, CA 91950, email: edwardtlp@sbcglobal.net, cell: 619-274-6432.

RESPONSIBLE FLOOR DELEGATE: Edward M Teyssier

RESOLUTION 02-08-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 5235, to read as follows:

§ 5235

(a) A member may bring an action to enforce that member's right to inspect and copy the association records, <u>including but not limited to declaratory, injunctive, equitable relief, and civil penalties</u>. If a court finds that the association unreasonably withheld access to the association records, the court shall award the member reasonable costs and expenses, including reasonable attorney's fees, and may assess a civil penalty of up to five hundred dollars ($500) for the denial of each separate written request. <u>A prevailing association may not recover any costs unless the action is found to be frivolous, unreasonable, or without foundation.</u>

<u>If a member prevails in a civil action brought in small claims court, the member shall be awarded court costs and reasonable attorney's fees incurred for consulting an attorney in connection with this civil action.</u>

(b) A cause of action under this section, <u>except for declaratory relief,</u> may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court.<u> In which case the small claims court shall have jurisdiction to order injunctive, equitable relief, and civil penalties, as specified above.</u>

~~(c) A prevailing association may recover any costs if the court finds the action to be frivolous, unreasonable, or without foundation.~~

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

<u>The Problem (including Existing Law)</u>:

There is a potential conflict between Civil Code sections 5230 and 5235 in regards to whether an association may be awarded attorney fees and costs in the event a homeowner is not the prevailing party in requesting association documents.

Article 5 ("Article 5") of chapter 6 of the Davis-Stirling Act (beginning with Civil Code section 5200) essentially requires an association make certain specified documents accessible to its members for inspection and copying.

Section 5235 of Article 5 has been interpreted to provide a member standing to enforce his/her rights under that article, including a civil penalty of $500 per denial of each written request, and an asymmetric attorney fee provision providing reasonable attorney's fee and reasonable costs and expenses to a prevailing member. But that a prevailing association is not entitled to any fees. (*Retzloff v. Moulton Parkway Residents' Association, No. One* (2017) 14 Cal App 5th 742.)

However, at the same time, the section immediately preceding, section 5230, allows an association protections against a member's abuse of his/her access to associations records. There appears to be in conflict because while section 5235 does not provide attorney fees to a prevailing association, section 5230 does allow an association its attorney fees and costs, "in a successful action to enforce its rights under this *article.*" (Section 5230, last sent..)

Furthermore, enforcement under Article 5 presently requires a prohibitively high cost because the case must be brought in superior court.

<u>The Solution</u>: This resolution amends Civil Code section 5235 to make clear that the attorney fee provisions of that section apply for homeowner enforcement of that entire article, and that an enforcement action may be brought in small claims court.

IMPACT STATEMENT

This resolution may affect how section 5230 is interpreted as to whether a prevailing association or just a prevailing homeowner is entitled to attorney fees and costs, as mentioned above.

CURRENT OR PRIOR RELATED LEGISLATION

(None known).

AUTHOR AND/OR PERMANENT CONTACT:

Edward M. Teyssier, 3200 Highland Avenue, Suite #300, National City, CA 91950, email: edwardtlp@sbcglobal.net, cell: 619-274-6432.

RESPONSIBLE FLOOR DELEGATE: Edward M Teyssier

RESOLUTION 02-09-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Commercial Code section 11207, to read as follows:

§ 11207

(a) Subject to subdivision (b), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subdivision (c), if the beneficiary's bank ~~does not know~~ knows or should know that the name and number refer to different persons, it may not rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank ~~need not~~ needs to determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows or should know that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in subdivision (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by paragraph (1) of subdivision (b), the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a record stating the information to which the notice relates.

(d) In a case governed by paragraph (1) of subdivision (b), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subdivision (c), the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

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

PROPONENT: Los Angeles County Bar Association (LACBA)

STATEMENT OF REASONS

The Problem (including Existing Law):

Consumers are falling victim to BEC (Business Email Compromise) scams. According to FBI's 2023 Internet Crime Report, "[i]n 2023, the IC3 received 21,489 BEC complaints with adjusted losses over 2.9 billion. BEC is a sophisticated scam targeting both businesses and individuals performing transfers of funds. The scam is frequently carried out when a subject compromises legitimate business email accounts through social engineering or computer intrusion techniques to conduct unauthorized transfers of funds."

The victim receives an email from a vendor's compromised email account asking that payments be directed to a given bank account. The given account number is linked to a person unrelated to the vendor.

"BECs typically involve a variety of social engineering techniques (for example, domain spoofing) to obtain credentials for a corporate email account. Once inside the email account, attackers typically search for discussions of upcoming vendor payments or other financial transactions and trick victims into transferring funds to an attacker-controlled bank account instead of the account of the legitimate recipient. A very common type of BEC involves an attacker posing as a company's vendor and emailing "updated" bank account details for electronic payment of the vendor's invoices. While these misdirected funds sometimes can be recovered through quick reporting to the involved financial institutions and law enforcement, recovery efforts often are difficult. Attackers promptly disperse the funds by transferring them to multiple foreign bank accounts or converting them to cryptocurrency and transferring them to multiple wallets. … [1]

[1] https://www.dwt.com/blogs/privacy--security-law-blog/2023/02/business-email-compromise-bec-studco-1st-advantage

Criminals behind the scam know that banks rely primarily on bank account numbers and are not required to determine whether the name and number on the account refer to the same person. The unintended beneficiary's bank is absolved of liability under Commercial Code Section 11207(b)(1) and a series of decisions such as *TME Enterprises Inc. v. Norwest Corp.* (2004) 124 Cal. App. 4th 1021. "If the beneficiary's bank has both the account number and the name of the beneficiary supplied by the originator of the funds transfer, it is possible for the beneficiary's bank to determine whether the name and number refer to the same person, but if a duty to make that determination is imposed on the beneficiary's bank the benefits of automated payment are lost. …" Id at 1032.

"A recent Virginia federal court decision in *Studco v. 1st Advantage [decided in 2023 and currently on appeal to the Fourth Circuit Court of Appeals]*[2] provides a different answer: … The court held that the financial institution was liable under the Uniform Commercial Code (UCC) Article 4A, which governs fund transfers, because it failed to act on certain alerts it received about the recipient bank account from its own anti-money laundering (AML) software. … The court's effective creation of a "should have known" standard into the relevant provision of UCC Article 4A is in sharp contrast to many other court decisions that have required proof of *actual* knowledge by the recipient institution of the discrepancy between named payee and actual accountholder at the time the payment was credited to the designated account." …The *Studco* court made [it] clear that financial institutions "cannot ignore their own systems to prevent fraud in order to claim that they did not have actual knowledge of said fraud." [3]

"The Consumer Financial Protection Bureau has been considering ways to have financial institutions assume more liability for when their customers are tricked into transferring funds to a fraudster's account. Legislators may consider a similar approach to try to address BEC losses." [4]

However, "The Consumer Financial Protection Bureau is … on the chopping block in Trump's downsizing effort."[5]

According to an article dated February 10, 2025,[6] "[s]taff and contractors at the Consumer Financial Protection Bureau have been told they cannot "perform any work tasks," according to an internal email obtained by NPR on Monday. The new directive from CFPB's acting director Russell Vought on Monday comes after the agency closed the bureau's Washington headquarters for the week and told staff to work remotely. No reason was given for the building's closure. "Employees should not come into the office. Please do not perform any work tasks," Vought said in an email to CFPB staff on Monday. Representatives of Elon Musk's Department of Government Efficiency team were seen at the headquarters on Friday, according to the union representing CFPB staff, and have been granted access to key systems, stirring concerns about the fate of the vast amount of sensitive information maintained by the bureau."

With CFPB (Consumer Financial Protection Bureau), a consumer watchdog, losing its potential funding or existence by DOGE (Department of Government Efficiency), our legislature must take a more active role in protecting consumers from BEC crimes by requiring banks to determine whether the name and account numbers for incoming wires match. Banks have sophisticated security and anti-money laundering (AML) software and should have no difficulty in identifying mismatched information.

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[2] The appeal in Studco Building Systems US, LLC v. 1st Advantage Federal Credit Union is still pending, with oral arguments having been heard in the Fourth Circuit Court of Appeals on 12/12/2024. Case No. 2:20-cv-417, Court of Appeals Docket #: 23-1766.

[3] https://www.dwt.com/blogs/privacy--security-law-blog/2023/02/business-email-compromise-bec-studco-1st- advantage

[4] https://www.dwt.com/blogs/privacy--security-law-blog/2023/02/business-email-compromise-bec-studco-1st- advantage

[5] https://cbsaustin.com/news/nation-world/federal-agencies-that-are-on-the-chopping-block-or-being-overhauled-in- 2025-doge-usaid-education-department-irs-doj-fbi-government-spending-cuts

[6] https://www.npr.org/2025/02/08/nx-s1-5290914/russell-vought-cfpb-doge-access-musk

The Solution: Section 11207 was added in 1990. It is time to amend the statute to grapple with the new realities of cybercrime. To protect consumers, banks receiving wire transfers should be required to determine whether the name and account numbers for incoming wires match and reject transfers with mismatched information. The proposed amendment to Section 11207 will shift the burden to the banks to detect BECs and stop the flow of funds into cyber-criminals' accounts.

IMPACT STATEMENT

The impact of this resolution is uncertain. However, it will have a positive impact on protecting consumers from pernicious BEC scams.

CURRENT OR PRIOR RELATED LEGISLATION

In 2023, the Legislature amended Section 11207(c)(2) to replace the word "writing" with the word "record."

AUTHOR AND/OR PERMANENT CONTACT:

Naris Khalatian, 3250 Wilshire Blvd., Suite 2000, Los Angeles, CA 90010, 213-447-7773
nkhalatian@gmail.com

RESPONSIBLE FLOOR DELEGATE: Naris Khalatian

RESOLUTION 02-10-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Civil Code section 3428.1, to read as follows:

§ 3428.1
Healthcare access means the ability to receive prescribed, medically necessary care, on time, every time, by the appropriate provider, with the provider being adequately and reasonably reimbursed to ensure further availability to the next person in need.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: While the term "healthcare access" is frequently used in both law and policy, there is no precise definition and thus little insight into possible effectiveness of any policy. It would be incredibly useful to have a comprehensive definition of healthcare access

The Solution: We are recommending that a definition of healthcare access be stipulated. Our recommended definition of healthcare access encompasses patients' rights to receive adequate and medically necessary care, and providers' rights to distribute such care in a timely manner under managed care entities, with proper reimbursement.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule as far as we can determine.

CURRENT OR PRIOR RELATED LEGISLATION
This resolution pertains to California Civil Code Section 3428.

AUTHOR AND/OR PERMANENT CONTACT:
Robert Bitonte, M.D., J.D., Los Angeles, rbitonte@aol.com
Grace Haddad, MPH, J.D. Candidate, gah68@case.edu

RESPONSIBLE FLOOR DELEGATE:
Robert Bitonte, M.D., J.D., Los Angeles, rbitonte@aol.com

RESOLUTION 02-11-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Corporations Code Section 7511, to read as follows:

§ 7511

(a) Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given not less than 10 nor more than 90 days before the date of the meeting to each member who, on the record date for notice of the meeting, is entitled to vote thereat; provided, however, that if notice is given by mail, and the notice is not mailed by first-class, registered, or certified mail, that notice shall be given not less than 20 days before the meeting. Subject to subdivision (f), and subdivision (b) of Section 7512, the notice shall state the place, date and time of the meeting, the means of electronic transmission by and to the corporation (Sections 20 and 21), electronic video screen communication, conference telephone, or other means of remote communication, if any, by which members may participate in that meeting, and (1) in the case of a special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (2) in the case of the regular meeting, those matters which the board, at the time the notice is given, intends to present for action by the members, but, except as provided in subdivision (b) of Section 7512, any proper matter may be presented at the meeting for the action. <u>If the corporation is an association that manages a common interest development, as controlled by Sections 4000 - 6150 of the Civil Code, the corporation shall cause notice to be given to the members entitled to vote that a meeting will be held at a time fixed by the board not less than 35 nor more than 150 days after receipt of the request.</u> The notice of any meeting at which directors are to be elected shall include the names of all those who are nominees at the time the notice is given to members.

(b) (1) Notice of a members' meeting or any report shall be given personally, by electronic transmission by a corporation, or by mail or other means of written communication, addressed to a member at the address of the member appearing on the books of the corporation or given by the member to the corporation for purpose of notice, or if no such address appears or is given, at the place where the principal office of the corporation is located or by publication at least once in a newspaper of general circulation in the county in which the principal office is located. Notwithstanding the foregoing, the notice of a members' meeting or any report may be sent by electronic communication or other means of remote communication if the board determines it is necessary or appropriate because of an emergency, as defined in paragraph (5) of subdivision (m) of Section 7140. An affidavit of giving of any notice or report as permitted because of an emergency or otherwise in accordance with the provisions of this part, executed by the secretary, assistant secretary, or any transfer agent, shall be prima facie evidence of the giving of the notice or report.

(2) If any notice or report addressed to the member at the address of the member appearing on the books of the corporation is returned to the corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice or report to the member at the address, all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available for the member upon written

demand of the member at the principal office of the corporation for a period of one year from the date of the giving of the notice or report to all other members.

(3) (A) Notice given by electronic transmission by the corporation under this subdivision shall be valid only if it complies with Section 20. Notwithstanding the foregoing, notice shall not be given by electronic transmission by the corporation under this subdivision after either of the following:

(i) The corporation is unable to deliver two consecutive notices to the member by that means.

(ii) The inability to so deliver the notices to the member becomes known to the secretary, any assistant secretary, the transfer agent, or other person responsible for the giving of the notice.

(B) This paragraph shall not apply if notices are provided by electronic communication or other means of remote communication as permitted because of an emergency.

(c) Upon request in writing to the corporation addressed to the attention of the chairperson of the board, president, vice president, or secretary by any person (other than the board) entitled to call a special meeting of members, the officer forthwith shall cause notice to be given to the members entitled to vote that a meeting will be held at a time fixed by the board not less than 35 nor more than 90 days after the receipt of the request. If the corporation is an association that manages a common interest development, as ~~defined in~~controlled by Sections ~~4100~~4000-6150 of the Civil Code, the corporation shall cause notice to be given to the members entitled to vote that a meeting will be held at a time fixed by the board not less than 35 nor more than 150 days after receipt of the request. If the notice is not given within 20 days after receipt of the request, the persons entitled to call the meeting may give the notice or the superior court of the proper county shall summarily order the giving of the notice, after notice to the corporation giving it an opportunity to be heard. The court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice.

(d) When a members' meeting is adjourned to another time or place, unless the bylaws otherwise require and except as provided in this subdivision, notice need not be given of the adjourned meeting if the time and place thereof (or the means of electronic transmission by and to the corporation or electronic video screen communication, conference telephone, or other means of remote communication, if any, by which members may participate) are announced at the meeting at which the adjournment is taken. No meeting may be adjourned for more than 45 days. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If after the adjournment a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each member who, on the record date for notice of the meeting, is entitled to vote at the meeting.

(e) The transactions of any meeting of members however called and noticed, and wherever held, are as valid as though had at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote, not present in person (or, if proxies are allowed, by proxy), provides a waiver of notice or consent to the holding of the meeting or an approval of the minutes thereof in writing. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of and presence at the meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by this part to be included in the notice but not so included, if the objection is expressly made at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of members need be specified in any written waiver of notice, consent to the holding of the meeting or approval of the minutes thereof, unless otherwise provided in the articles or bylaws, except as provided in subdivision (f).

(f) Any approval of the members required under Section 7222, 7224, 7233, 7812, 8610, or 8719, other than unanimous approval by those entitled to vote, shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice.

(g) A court may find that notice not given in conformity with this section is still valid, if it was given in a fair and reasonable manner.

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Within Corporations Code Section 7511(c), there are provisions that apply to nonprofit mutual benefit corporations – that include some errors when it comes to the subset of homeowners associations (HOAs). For example, subpart (c) implies that common interest "developments," which are pieces of real property, can be "corporations." However, only common interest development "associations" can be "corporations" (if they are "incorporated"). In addition, it is not appropriate for Corporations Code Section 7511(c) to merely refer to the Davis-Stirling Act definition for the term "common interest development" that is in Civil Code Section 4100 when the entire Davis-Stirling Act should be referred to. Further, the unique election timeline that applies to nonprofit mutual benefit corporations that are common interest development associations that is currently set out in subpart (c), for "requested" meetings should also be set out in subpart (a), for "regular" meetings.

The Solution: This Resolution would clarify that Corporations Code Section 7511(c) refers to the "association" instead of the real property "development." In addition, the Resolution would apply the unique election timeline for nonprofit mutual benefit corporations that are HOAs to regular meetings (in subpart (a)), as well as to requested meetings (in subpart (c)). Further, the Resolution would properly refer to the "Davis-Stirling Act" within Civil Code Sections 4000 – 6150 (instead of referring to the definition for "common interest development").

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

CURRENT OR PRIOR RELATED LEGISLATION
Corporations Code Section 7511 was amended by Stats. 2022, Ch. 617, Sec. 62 (SB 1202, Limón, "Business entities: Secretary of State: document filings") Effective January 1, 2023.

AUTHOR AND/OR PERMANENT CONTACT:
Catherine Rucker, SBN 309559

RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 02-12-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 5110, to read as follows:

§ 5110

(a) The association shall select an independent third party or parties as an inspector of elections. The number of inspectors of elections shall be one or three.

(b) For the purposes of this section, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member, but may not be a director or a candidate for director or be related to a director or to a candidate for director. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the association for any compensable services other than serving as an inspector of elections.

(c) If the inspectors of elections are hired by the association, the association shall not indemnify the inspectors of elections from liability risks.

(d) The inspector or inspectors of elections shall do all of the following:

- (1) Determine the number of memberships entitled to vote and the voting power of each.
- (2) Determine the authenticity, validity, and effect of proxies, if any.
- (3) Receive ballots.
- (4) Ensure compliance with all of the following, if the inspector or inspectors of elections conducts an election by electronic secret ballot pursuant to Section 5105:
  - (A) Each member voting by electronic secret ballot shall be provided with all of the following:
    - (i) A method to authenticate the member's identity to the internet-based voting system.
    - (ii) A method to transmit an electronic secret ballot to the internet-based voting system that ensures the secrecy and integrity of each ballot.
    - (iii) A method to confirm, at least 30 days before the voting deadline, that the member's electronic device can successfully communicate with the internet-based voting system.
  - (B) Any internet-based voting system that is utilized shall have the ability to accomplish all of the following:
    - (i) Authenticate the member's identity.
    - (ii) Authenticate the validity of each electronic secret ballot to ensure that the electronic secret ballot is not altered in transit.
    - (iii) Transmit a receipt from the internet-based voting system to each member who casts an electronic secret ballot.
    - (iv) Permanently separate any authenticating or identifying information from the electronic secret ballot, rendering it impossible to connect an election ballot to a specific member.
    - (v) Store and keep electronic secret ballots accessible to elections officials or their authorized representatives for recount, inspection, and review purposes.

(5) ~~Hear~~Be available to communicate directly with the members and determine all challenges and questions in any way arising out of or in connection with the right to vote and the voting process.

(6) Count and tabulate all votes.

(7) Determine when the polls shall close, consistent with the governing documents.

(8) Determine the tabulated results of the election.

(9) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this article, the Corporations Code, and all applicable rules of the association regarding the conduct of the election that are not in conflict with this article.

(d) An inspector or inspectors of elections shall perform all duties impartially, in good faith, to the best of the inspector or inspectors of elections' ability, as expeditiously as is practical, and in a manner that protects the interest of all members of the association. If there are three inspectors of elections, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the inspector or inspectors of elections is prima facie evidence of the facts stated in the report.

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Civil Code Section 5110 requires homeowner association (HOA) Inspectors of Elections to be "independent third parties" so that the elections will be carried out in a fair and equitable manner. As a result, HOA property managers are prohibited from serving as "Inspectors of Election" (IOEs) for the HOAs that they manage. However, some HOAs designate the property manager as the "point of contact" for the election, and the property manager automatically becomes a "gatekeeper." When the property manager is the gatekeeper, he or she can consult with the board to then provide false or misleading information to any members who have complained about the board of directors or the property manager. In addition, the property manager can interfere by simply not forwarding member questions or concerns to the IOEs. Further, if a property manager fails to forward a member's request to receive a replacement ballot to the IOEs, there are basically no consequences for this behavior. See the member election enforcement provisions within Civil Code Section 5145. Furthermore, if an association agrees to "indemnify" the paid IOEs against liability issues – with the HOA's bank account or an insurance policy - that creates a conflict of interest because it reduces the IOEs' independence.

The Solution: This Resolution will require the independent IOEs to communicate directly with the members – and will ensure that the property managers and the board of directors cannot intervene in HOA elections. The Resolution will also prohibit associations from providing indemnification for IOEs who are paid for their services. IOEs who are hired can and should obtain their own liability insurance coverage and then pass on a portion of that cost in their service fees. In addition, when an HOA's members volunteer to serve as IOEs, they are typically covered by the HOA's Directors & Officers (D&O) insurance policy – just like the board committee members are.

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

CURRENT OR PRIOR RELATED LEGISLATION
Civil Code Section 5110 was amended by Stats. 2024, Ch. 383, Sec. 2. (AB 2159) Effective January 1, 2025.).

AUTHOR AND/OR PERMANENT CONTACT:
Catherine Rucker

RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 02-13-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 5975, to read as follows:

§ 5975

(a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any ~~owner of a separate interest~~<u>member of an association </u>or by the association, or by both.

(b) A governing document other than the declaration may be enforced by the association against an owner of a separate interest or by an owner of a separate interest against the association.

(c) In an action <u>brought by the association</u> to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs.

<u>(d) In an action brought by a member of an association against the association to enforce the governing documents, a member of an association who prevails in a civil action to enforce the owner's rights pursuant to this article shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars ($500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.</u>

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

<u>The Problem (including Existing Law)</u>: For homeowners associations (HOAs), two Articles within the Davis-Stirling Act Articles have "whistleblower provisions" to encourage members to bring civil suits to protect their rights by providing asymmetric attorney fee and cost provisions, as well as civil penalties. For example, the two Articles are for "Board Meeting" and "Member Election." However, when a member (who is an "owner of a separate interest") wants to file a civil suit to enforce the association's governing documents against the HOA when the board of directors has failed to do its job, there are no such member-favorable asymmetrical provisions. For example, if an association fails to hold elections to fill director positions – because the term period limits are typically set out in the bylaws, which are a type of "governing document" - and a member files a civil suit and loses, the member must pay the association's attorney fees and costs. In addition, because most HOAs carry "Director and Officer" insurance policies, they have access to vast amounts of funds to spend on litigation attorneys – to go after the members who dare to file civil suits. For example, the Resolution author's HOA has a $1-million-dollar "Directors and Officers" insurance policy. In addition, although Civil Code Section 5100(a)(2) requires HOAs to carry out an election whenever a director's term expires, an HOA board's excuse can be that the director or directors are "holding over" until the next election. In

summary, when an HOA member wants to compel his or her HOA board to carry out a required election, the member faces an extreme litigation risk – that the board has insurance for.

The Solution: This Resolution would level the playing field for HOA members – because HOA boards are typically covered by D&O insurance – even when they fail to enforce the governing documents. Please note that Civil Code Sections 5930 & 5935 also require association members to invite the association to ADR for 30 days – before the member may file a lawsuit. This Resolution copies the member "whistleblower" attorney fee and cost provisions from the Davis-Stirling Act Articles for "Board Meeting" and "Member Election," and would apply them to the Section 5975 situations when association members feel compelled to file civil suits against their associations to enforce the governing documents. See Civil Code sections 4955(b) and 5145(b). In addition, this Resolution copies the one-year statute of limitations from the two Articles about "Board Meeting" and "Member Election." See Civil Code Sections 4955(a) and 5145(a). Further, this Resolution replaces the term "owner of a separate interest" with the terms "member of an association" and "member" because "member of an association" and "member" are the terms that are used in Civil Code Sections 4955 and 5145.

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

CURRENT OR PRIOR RELATED LEGISLATION
Civil Code Section 5975 was added by Stats. 2012, Ch. 180, Sec. 2. (AB 805) Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.

AUTHOR AND/OR PERMANENT CONTACT:
Catherine Rucker, SBN 309559; catherinerucker@me.com

RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 02-14-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Civil Code sections 6200, 6201, 6202, 6203, 6204, 6205, and 6206, to read as follows:

The Association Honesty Act

6200. California's economy depends on integrity in the operation of Common Interest Homeowners' associations. California is home to 50,700 Homeowners' Associations encompassing a total of 5.009 million homes. 14.4 million people in California live in communities with Associations. The Associations collect fees from owners with no agency of the State of California having the assigned responsibility to assure compliance with legal and financial rules.

6201. The Common Interest Development Commission is hereby established within the California Department of Real Estate.

6202. For purposes of this chapter, the definitions contained in sections 4075 through 4190, inclusive, are incorporated.

6203. (a) The Common Interest Development Commission will be composed of eight members appointed by the Commissioner of Real Estate.
(b) Members appointed to the commission will serve at the pleasure of the Governor.
(c) The members will elect a chairperson.

6204. The Common Interest Development Commission will review, investigate, audit, and analyze the operation of Common Interest Developments within the State of California, and where appropriate initiate prosecution for instances of financial dishonesty or abuse of members within Associations. The issues reviewed, investigated, and analyzed by the Common Interest Development Commission will include, but not limited to, all of the following:
(a) Investigation of complaints from Members and initiation of prosecution if the investigation discloses improprieties;
(b) The conduct of annual or special Association elections to elect board members;
(c) The manner of selection of a Manager for the Association and the fairness of the compensation of the Manager;
(d) The awarding of contracts to vendors and the level of compensation to the vendors to assure fairness to the Association;
(e) Whether board members, vendors, or third parties are obtaining secret profits from contracts with the Association;
(f) The procedures to assure the Association properly and clearly documents Board action;
(g) The submission of annual reports and documentation that the Commission believes are necessary to carry out its mandate to assure the integrity of Association operation;

(h) The Association's timely issuance of audit reports, financial statements, and reports to Members within the Association;
(i) The operation of the Association so as to prevent groundless ligations against owners; and
(j) The appropriateness of fees charged to members for filing applications or requesting reviews by the Association's Architectural Review Committee.

6205. On or before January 1, 2028, the Common Interest Development Commission will, based on the review, investigation, and analysis completed pursuant to this chapter, issue regulations. The program will include recommendations for policy changes, collaboration with other state agencies, and resources to support Association integrity in the state.

6206. The Commission will have prosecutorial powers to investigate and prosecute any act by an Association or Manager that violates California law, or that violates the Davis Sterling Act.

PROPONENT: Aaron Hicks, Clare Lucich, Michael Jeandron, Garrett R. Chambers, Jason Nicholas Argos, Tom G. Antunovich, Benjamin Ikuta, Michael Joseph Berry, Alain Kinaly, Atticus Wegman

STATEMENT OF REASONS

The Problem (including Existing Law): California HOAs have the highest membership rates in the nation; 65.0% of owned homes belong to an HOA. California is home to 50,700 HOAs encompassing a total of 5.009 million homes. 14.4 million people in California live in HOA communities (about 37.0% of the population), and no state oversight exists to monitor HOA management, honesty, or propriety.

This expansive growth of HOAs is due to California municipalities encouraging developers to create HOAs because developers build roads and parks and pass the costs along to homeowners. Many municipalities mandate the creation of HOAs in new residential developments. It is actually a significant privatization of local government responsibilities.

HOAs function like a local government. Some associations in the state handle street paving, snow plowing, lighting, and even run private water and sewer systems. Others dabble in traffic enforcement. Despite this, the California Attorney General's office (Ron Bonta), responding to questions says, "The Office of the Attorney General does not handle most HOA complaints.".

The Solution: This resolution calls for the creation of a commission within the Department of Real Estate, dedicated to HOA oversight to assure financial integrity, propriety of CC&R enforcement, and honesty of operation.

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

AUTHOR AND/OR PERMANENT CONTACT:
Steven R. Young, Aliso Viejo California, (949) 338-4459, syoung@juryattorney.com

RESPONSIBLE FLOOR DELEGATE: Steven R. Young

RESOLUTION 02-15-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 5115, to read as follows:

§ 5115

(a) An association shall provide ~~general~~individual notice of the procedure and deadline for submitting a nomination at least 30 days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to Section 4040~~ if individual notice is requested by a member~~. This subdivision shall only apply to elections of directors and to recall elections.

(b) For elections of directors and for recall elections, an association shall provide ~~general~~individual notice of all of the following at least 30 days before the ballots are distributed:

(1) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector or inspectors of elections.

(2) If the association allows for voting in an election by electronic secret ballot as provided for in Section 5105, the date and time by which electronic secret ballots are to be transmitted to the internet-based voting system and preliminary instructions on how to vote by electronic secret ballot upon commencement of the voting period.

(3) The date, time, and location of the meeting at which a quorum will be determined, if the association's governing documents require a quorum, and at which ballots will be counted.

(4) The list of all candidates' names that will appear on the ballot.

(5) Individual notice of the above paragraphs shall be delivered pursuant to Section 4040~~ if individual notice is requested by a member~~.

(6) (A) If the association's governing documents require a quorum for an election of directors, a statement that the association may call a reconvened meeting to be held at least 20 days after a scheduled election if the required quorum is not reached, at which time the quorum of the membership to elect directors will be 20 percent of the association's members, voting in person, by proxy, or by secret ballot.

(B) This paragraph shall not apply if the governing documents of the association provide for a quorum lower than 20 percent.

(c) Ballots and two preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the association to every member not less than 30 days prior to the deadline for voting, unless an association conducts an election by electronic secret ballot as provided for in Section 5105, in which case only members who will vote by written secret ballot pursuant to Section 5105 shall be mailed or delivered the ballots and envelopes. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The association shall use as a model those procedures used by California counties for ensuring confidentiality of vote by mail ballots, including both of the following:

(1) The ballot itself is not signed by the voter, but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left-hand corner of the second envelope, the voter shall sign the voter's name, indicate the voter's name, and indicate the address or separate interest identifier that entitles the voter to vote.

(2) The second envelope is addressed to the inspector or inspectors of elections, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of elections. The member may request a receipt for delivery.

(d) (1) A quorum shall be required only if so stated in the governing documents or other provisions of law. If a quorum is required by the governing documents, each ballot received by the inspector or inspectors of elections shall be treated as a member present at a meeting for purposes of establishing a quorum.

(2) For an election of directors of an association, and in the absence of meeting quorum as required by the association's governing documents or Section 7512 of the Corporations Code, unless a lower quorum for a reconvened meeting is authorized by the association's governing documents, the association may adjourn the meeting to a date at least 20 days after the adjourned meeting, at which time the quorum required for purposes of a reconvened meeting to elect directors shall be 20 percent of the association's members, voting in person, by proxy, or by secret ballot.

(3) No less than 15 days prior to the date of the reconvened meeting described in paragraph (2), the association shall provide ~~general~~<u>individual</u> notice of the reconvened meeting, which shall include:

(A) The date, time, and location of the meeting.

(B) The list of all candidates.

(C) Unless the association's governing documents provide for a lower quorum, a statement that 20 percent of the association's members, voting in person, by proxy, or secret ballot will satisfy the quorum requirements for the election of directors at that reconvened meeting and that the ballots will be counted if a quorum is reached, if the association's governing documents require a quorum.

(e) An association shall allow for cumulative voting using the secret ballot procedures provided in this section, if cumulative voting is provided for in the governing documents.

(f) Notwithstanding any contrary provision in the governing documents, except for the meeting to count the votes required in subdivision (a) of Section 5120, an election may be conducted entirely by mail, electronic secret ballot, or a combination of mail and electronic secret ballot, pursuant to Section 5105.

(g) (1) Except as provided in paragraph (2), in an election to approve an amendment of the governing documents, the text of the proposed amendment shall be delivered to the members with the ballot.

(2) Notwithstanding paragraph (1), if an association conducts an election to approve an amendment of governing documents by electronic secret ballot, the association may deliver, by electronic means, the text of the proposed amendment to those members who vote by electronic secret ballot, pursuant to Section 5105. The association shall also deliver a written copy of the text of the proposed amendment to those members upon request and without charge. If a member votes by written secret ballot, pursuant to Section 5105, the association shall deliver a written copy of the text of the proposed amendment to the member with the ballot.

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

PROPONENT: The San Mateo County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): For homeowner associations (HOAs), Civil Code Section 4045 defines the term "general notice." "General notice" is provided when an HOA provides the notice by using just one of the five listed methods. For example, if an HOA posts a notice on a bulletin board or its website – that most members pay little attention to – the general notice requirement is nonetheless satisfied. In addition, all HOA elections include several required stages. First, there is a 30-day "call for candidates" period, which begins with a "general notice." Second, a 60-day notice for the election is provided by "general notice." Third, the ballots are sent out to all of the members at least 30 days before the election. A problem occurs when a member would like to be a candidate for a director position, but because the HOA board provided a minimal "general notice," the member did not become aware of the election until the ballot showed up in the mail. As a result, the member completely missed the nomination opportunity. At this point, even if the HOA allows for "write-in" candidates, the member's chances of being elected to a director position are slim. Further, if an election meeting is adjourned to a future date due to a lack of quorum, "general delivery" is currently required for the subsequent meeting. Furthermore, the "general notice" requirements in Civil Code Section 5115, for the initial "call for candidates" and the 60-day notice for the election (as described above) conflict with the "individual notice" requirements in Section 5103(b), for "election by acclamation."

The Solution: This Resolution will take the "individual notice" requirements in Civil Code Section 5103, for "election by acclamation," and apply them to all of the "regular" election requirements in Section 5015. In addition, the Resolution will require "individual notice" for election meetings that are reconvened due to a lack of quorum. (See Section 5115(d).) The proposed amendments in the Resolution will ensure fairness for all types of HOA elections and during all phases of the elections. In addition, HOA elections already tend to be expensive, due to the necessary printing and mailing costs for secret ballots – or to meet the extensive electronic voting requirements (see, e.g., Civil Code Section 5105(h)). As a result, the additional expense to provide individual notices is reasonable.

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

CURRENT OR PRIOR RELATED LEGISLATION
Civil Code Section 5115 was Amended by Stats. 2024, Ch. 401, Sec. 1.5. (AB 2460) Effective January 1, 2025.) See also AB 1764, Section 3 (2023-2024 Reg. Sess.) (which amended Civil Code Section 5103, for election by acclamation).

AUTHOR AND/OR PERMANENT CONTACT:
Catherine Rucker, SBN 309559, catherinerucker@me.com

RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 02-16-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 8200, to read as follows:

§ 8200

(a) Except as otherwise provided by statute, before recording a lien claim, giving a stop payment notice, or asserting a claim against a payment bond, a claimant shall give preliminary notice to the following persons:

(1) The owner or reputed owner.

(2) The direct contractor or reputed direct contractor to which the claimant provides work, either directly or through one or more subcontractors.

(3) The construction lender or reputed construction lender, if any.

(b) The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

(c) Compliance with this section is a necessary prerequisite to the validity of a lien claim or stop payment notice under this title.

(d) Compliance with this section or with Section 8612 is a necessary prerequisite to the validity of a claim against a payment bond under this title.

(e) Notwithstanding the foregoing subdivisions:

(1) A laborer is not required to give preliminary notice.

(2) A claimant with a direct contractual relationship with an owner or reputed owner is required to give preliminary notice only to the construction lender or reputed construction lender, if any~~.~~, unless such lender is in a contractual relationship with the claimant.

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

PROPONENT: Sacramento County Bar Association Delegation

STATEMENT OF REASONS

The Problem (including Existing Law): This statute and the proposed change relate to construction work and mechanic's liens. A mechanic's lien is a lien against property justified by unpaid construction work on that property.

Existing law provides that a person (or "claimant") has the right to a mechanic's lien on a private work of improvement only if they have given a "preliminary notice" to persons who have an interest in property ("property owners") before asserting the lien.

The rationale of the preliminary notice is to ensure that property owners are made aware of potential lien claimants. Property owners are aware that those they are in direct contract with (e.g., general contractors) may assert a lien because they are in contract with them.

However, property owners may not be aware of other potential lien claimants. Therefore, a person who is not in contract with the property owner must give a preliminary notice to the property owner in order to maintain the right to assert a mechanic's lien later.

Contrary to this rationale, the statute requires that a lien claimant in direct contract with a construction lender deliver a preliminary notice to that lender or risk waiving their right to assert a mechanic's lien. That this is an oversight can be seen in the situation where a claimant is in direct contract with a lender but does not deliver a preliminary notice to that lender as required by the current statute. In that situation, a lender who is aware of the claimant's lien potential can nevertheless invalidate the claimant's lien based upon a technical argument that said lender was not delivered the preliminary notice..

The Solution: This resolution would align the notice provision with the logic of the statute and provide that a claimant with a direct contractual relationship with a construction lender is not required to give that same lender a preliminary notice.

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

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT:
Gregory Reaume, GWR Law, 500 Capitol Mall, Suite 2350, Sacramento, CA 95814, gwr@gwr-law.com, 213-926-1516

RESPONSIBLE FLOOR DELEGATE: Gregory Reaume

RESOLUTION 03-01-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 662, to read as follows:

§ 662

In ruling on such motion, in a cause tried without a jury, the court may, on such terms as may be just, change or add to the statement of decision, modify the judgment, in whole or in part, vacate the judgment, in whole or in part, and grant a new trial on all or part of the issues, or, in lieu of granting a new trial, may vacate and set aside the statement of decision and judgment and reopen the case for further proceedings and the introduction of additional evidence with the same effect as if the case had been reopened after the submission thereof and before a decision had been filed or judgment rendered. Any judgment thereafter entered shall be subject to the provisions of sections 657 and 659. The court may enter the modified judgment after the 75-day period for ruling on a motion for new trial has expired.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Code of Civil Procedure section 662 “was enacted to give a trial court, in an action tried without a jury, ‘the broad power to change its findings and to modify its judgment and thus avoid the necessity of a new trial.’ ” (Mayer v. C.W. Driver (2002) 98 Cal.App.4th 48, 63.) And it does not impose a “limitation on the time to file a new statement of decision or judgment after the statement of decision or the judgment is timely vacated.” (Uzyel v. Kadisha (2010) 188 Cal.App.4th 866, 900 (Uzyel).) But the lack of a time limit in the statute has created confusion as to whether the court must enter its new judgment within the 75-day period for ruling on a motion for new trial. (See Taormino v. Denny (1970) 1 Cal.3d 679, 683 [plaintiff arguing that new judgment must be entered within the statutory time period].)

The Solution: This resolution clarifies the law by eliminating uncertainty regarding when a modified judgment under Code of Civil Procedure section 662 may be entered. Explicitly stating that a trial court may enter the modified judgment after the statutory period for ruling on a new trial motion has expired will align the language of the statute with how some California courts have interpreted it. (See Uzyel, supra, 188 Cal.App.4th at p. 900 [“A court that timely rules on a new trial motion by vacating the statement of decision or the judgment . . . may file a new statement of decision or judgment after the expiration of the [statutory period]”].) This will remove any confusion about whether a modified judgment entered after the statutory period is proper.

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

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT:
H. Thomas Watson, Horvitz & Levy LLP, 3601 W. Olive Ave., 8th Fl., Burbank, CA 91505-4681; 818-995-5813 (direct); 818-995-0800 (main); 844-497-6592 (fax); htwatson@horvitzlevy.com

RESPONSIBLE FLOOR DELEGATE: H. Thomas Watson

RESOLUTION 03-02-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 631, to read as follows:

§ 631

(a) The right to a trial by jury as declared by Section 16 of Article I of the California Constitution shall be preserved to the parties inviolate. In civil cases, a jury may only be waived pursuant to subdivision (f).

(b) At least one party demanding a jury on each side of a civil case shall pay a nonrefundable fee of one hundred fifty dollars ($150), unless the fee has been paid by another party on the same side of the case. The fee shall offset the costs to the state of providing juries in civil cases. If there are more than two parties to the case, for purposes of this section only, all plaintiffs shall be considered one side of the case, and all other parties shall be considered the other side of the case. Payment of the fee by a party on one side of the case shall not relieve parties on the other side of the case from waiver pursuant to subdivision (f).

(c) The fee described in subdivision (b) shall be due on or before the date scheduled for the initial case management conference in the action, except as follows:

(1) In unlawful detainer actions, the fees shall be due at least five days before the date set for trial.

(2) If no case management conference is scheduled in a civil action, or the initial case management conference occurred before June 28, 2012, and the initial complaint was filed on or after July 1, 2011, the fee shall be due no later than 365 calendar days after the filing of the initial complaint.

(3) If the initial case management conference occurred before June 28, 2012, and the initial complaint in the case was filed before July 1, 2011, the fee shall be due at least 25 calendar days before the date initially set for trial.

(4) If the party requesting a jury has not appeared before the initial case management conference, or first appeared more than 365 calendar days after the filing of the initial complaint, the fee shall be due at least 25 calendar days before the date initially set for trial.

(d) If a party failed to timely pay the fee described in subdivision (b) that was due between June 27, 2012, and November 30, 2012, the party will be relieved of a jury waiver on that basis only if the party pays the fee on or before December 31, 2012, or 25 calendar days before the date initially set for trial, whichever is earlier.

(e) The parties demanding a jury trial shall deposit with the clerk or judge, at the beginning of the second and each succeeding day's session, a sum equal to that day's fees and mileage of the jury, including the fees and mileage for the trial jury panel if the trial jury has not yet been selected and sworn. If more than one party has demanded a jury, the respective amount to be paid daily by each party demanding a jury shall be determined by stipulation of the parties or by order of the court.

(f) A party waives trial by jury in any of the following ways:

(1) By failing to appear at the trial.

(2) By written consent filed with the clerk or judge.

(3) By oral consent, in open court, entered in the minutes.

(4) By failing to announce that a jury is required, at the time the cause is first set for trial, if it is set upon notice or stipulation, or within five days after notice of setting if it is set without notice or stipulation.

(5) By failing to timely pay the fee described in subdivision (b), unless another party on the same side of the case has paid that fee.

(6) By failing to deposit with the clerk or judge, at the beginning of the second and each succeeding day's session, the sum provided in subdivision (e).

(7) By mutual, written agreement between parties before any dispute arises. This provision shall not apply to contracts of adhesion, which shall be defined as, “standardized contracts, which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it.” Such pre-dispute jury waivers shall be valid and enforceable except in situations where a pre-dispute arbitration agreement would be deemed invalid or upon grounds that exist for the revocation of any contract.

(g) The court may, in its discretion upon just terms, allow a trial by jury although there may have been a waiver of a trial by jury.

(h) The court shall transmit the fee described in subdivision (b) to the State Treasury for deposit in the Trial Court Trust Fund within 45 calendar days after the end of the month in which the fee is paid to the court.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Although California allows pre-dispute arbitration agreements and enforces them, the same cannot be said for pre-dispute jury waivers.

As quoted by Justice Chin dissenting in *Grafton Partners v. Superior Court*, 36 Cal.4th 944 (Cal. 2005), jury waivers provide an attractive middle ground between arbitration and nothing:

> “[I]f parties are willing to agree to a non-jury trial, we think it preferable to enforce that agreement rather than leave them with arbitration as their only enforceable option. By agreeing to arbitration, parties waive not only their right to trial by jury but their right to appeal, whereas by agreeing to waive only the former right, they take advantage of the reduced expense and delay of a bench trial, avoid the expense of arbitration, and retain their right to appeal. The parties obtain dispute resolution of their own choosing in a manner already afforded to litigants in their courts. Their rights, and the orderly development of the law, are further protected by appeal. And even if the option appeals only to a few, some of the tide away from the civil justice system to alternate dispute resolution is stemmed." [citation omitted]

Also as stated by Justice Chin, “it makes little sense to authorize [] forfeitures [such as failing to deposit necessary fees], and yet categorically prohibit knowing and voluntary jury trial waivers simply because they are made before any dispute arises.”

The Solution: This resolution allows jury trials to be waived in a pre-dispute agreement, similar to how such agreements can require arbitration. It still voids such agreements under any situation where mandatory arbitration would be void, or where contracts would generally be void.

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

CURRENT OR PRIOR RELATED LEGISLATION
AB 2258 (2006), AB 2767 (2006), AB 3049 (2006), and SB 1386 (2006).

AUTHOR AND/OR PERMANENT CONTACT:
Ben Rudin, 3830 Valley Centre Dr., Ste. 705 PMB 231, San Diego, CA 92130, (858) 256-4429, ben_rudin@hotmail.com.

RESPONSIBLE FLOOR DELEGATE: Ben Rudin

RESOLUTION 03-03-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure sections 632 and 664, to read as follows:

§ 632

(a) In superior courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. The request must be made in writing ~~within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made~~ prior to the submission of the matter for decision. The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision. ~~After a party has requested the statement, any party may make proposals as to the content of the statement of decision~~.

(b) The statement of decision shall be in writing, unless the parties appearing at trial agree otherwise. The written statement of decision shall be served on all parties that appeared at trial. However, when the trial is concluded within one calendar day or in less than 8 hours over more than one day, the statement of decision may be made orally on the record in the presence of the parties.

(c) If a statement of decision is not timely requested under subdivision (a), the court may announce its ruling on all relief sought without a statement of decision. Alternatively, the court may, in its sole discretion, issue a statement of decision even though one has not been requested.

(d) The court may order a party to prepare a draft statement of decision within a specified time period ordered by the court. The court shall thereafter issue its statement of decision.

(e)(1) Any party may, within 10 days after the statement of decision has been served, serve and file objections to the statement of decision.

(2) If no objections are filed, the statement of decision becomes final upon the expiration of the time for filing objections.

(3) If objections are timely filed, the court may, but is not required to, set a hearing.

(4) If the objections are ruled upon, with or without a hearing, the ruling shall be served on all parties who appeared at the trial and the statement of decision becomes final upon issuance of the ruling. If any objection is sustained in whole or in part, the court may issue an amended statement of decision.

(5) If any objections filed are not ruled upon, then, unless the court orders otherwise, the objections are deemed overruled and the statement of decision becomes final on the later of the following dates: (i) 30 days after the time for objections has expired, or (ii) if there was a hearing, 30 days after the hearing.

(f)(1) The court may prepare and serve a proposed judgment or may order a party to prepare, lodge, and serve a proposed judgment, before or after the statement of decision becomes final.

(2) Any party may, within 10 days after service of the proposed judgment, serve and file objections thereto.

(g) The court may, by written order, extend any of the times prescribed by this section. Further, at any time before the entry of judgment, the court may, for good cause shown and on such terms as may be just, excuse a noncompliance with the time limits prescribed for doing any act required by this rule.

(h) The Judicial Council shall adopt or amend all rules of court necessary to implement this section.

§ 664

(a) When trial by jury has been had, judgment must be entered by the clerk, in conformity to the verdict within 24 hours after the rendition of the verdict, whether or not a motion for judgment notwithstanding the verdict be pending, unless the court orders the case to be reserved for argument or further consideration, or grants a stay of proceedings.

(b) If the trial has been had by the court, judgment must be entered by the clerk, in conformity to the decision of the court, ~~immediately upon the filing of such decision~~ by the following dates:

(1) If no statement of decision is requested, within 30 days after the filing of the court's decision.

(2) If a statement of decision is requested, within 30 days after the statement of decision becomes final.

(c) In no case is a judgment effectual for any purpose until entered.

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

PROPONENT: Women Lawyers Association of Los Angeles

STATEMENT OF REASONS

The Problem (including Existing Law): The current law governing when and how trial courts must issue statements of decision, and when and how a party can object to the statement of decision in civil bench trials is confusing. Currently Code of Civil Procedure section 632 provide a party must make a request for a statement of decision in writing within 10 days after the court announces its tentative decision for trials lasting more than eight hours. If a trial lasts less than eight hours, a party must request a statement of decision before the matter is submitted for decision. (Code Civ. Proc., § 632, subd. (a).). The current law also does not specify when and how a party may object to a proposed or tentative statement of decision (Code Civ. Proc., § 632), or when the statement of decision becomes final for purposes of entering judgment (Code Civ. Proc. § 664.) Thus, both the trial courts and the litigants are often confused about the process and use inconsistent methods to finalize the statement of decision and enter judgment thereafter.

The Solution: The proposed amendment to Code of Civil Procedure section 632 clarify the procedures and deadlines the trial courts and litigants must follow. It would require that all requests for a statement of decision be in writing regardless of the length of the trial. The amendment would also permit the trial court to issue a statement of decision even if no party requests one, and would allow the trial court to request that a party prepare a draft statement of decision. Finally, the proposed amendment would specify a 10-day deadline to file objections to the statement of decision, and what happens at the expiration of the 10-day deadline if the trial court fails to act on the objections, and allow the court to extend the deadlines for good cause.

Finally, the amendment to Code of Civil Procedure 664 would clarify when the court should enter judgment after a bench trial and after the trial court enters its decision or the statement of decision becomes final.

IMPACT STATEMENT
This resolution may require the Judicial Council to adopt conforming changes to Rules of Court.

CURRENT OR PRIOR RELATED LEGISLATION
Similar to Assembly Bill 515 (2025-2026 Reg. Sess. Pacheco).

AUTHOR AND/OR PERMANENT CONTACT:
Shaun Dabby Jacobs; shaun.jacobs@lacity.org; (213) 978-2704

RESPONSIBLE FLOOR DELEGATE: Shaun Dabby Jacobs; shaun.jacobs@lacity.org; (213) 978-2704

RESOLUTION 03-04-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 215, to read as follows:

§ 215

(a) Except as provided in subdivision (b), on and after July 1, 2000, the fee for jurors in the superior court, in civil and criminal cases, is fifteen dollars ($15) a day for each day's attendance as a juror after the first day.

(b) A juror who is employed by a federal, state, or local government entity, or by any other public entity as defined in Section 481.200, and who receives regular compensation and benefits while performing jury service, shall not be paid the fee described in subdivision (a).

(c) All jurors in the superior court, in civil and criminal cases, shall be reimbursed for mileage at the rate of ~~thirty-four cents ($0.34) per mile~~ the current Internal Revenue Service (IRS) mileage rate for the use of a car for "business use," for each mile actually traveled in attending and returning from court as a juror ~~after the first~~ for each day.

(d) All jurors and prospective jurors who have been summoned shall be provided with access to existing public transit services at no cost utilizing one of the following options:

(1) Courts may partner with public transit operators in their county to create new programs or continue existing public transit programs that provide no-cost service for jurors and prospective jurors who have been summoned.

(2) A method of reimbursement determined by the court up to a daily maximum of twelve dollars ($12).

(e) Subdivision (d) does not apply to a court in an area where a public transit operator does not provide existing service that is reasonably available to the court facility.

(f) In determining whether transit service is reasonably available to the court facility, the court shall consider factors that include, but are not limited to, all of the following:

(1) Proximity of transit service to the court location.

(2) Hours of operation of transit service in the vicinity of the court location.

(3) Frequency of operation of transit service in the vicinity of the court location.

(4) Availability of transit access to all areas of the court's jurisdiction from which a potential juror may reside.

(g) Prior to determining that transit service is not reasonably available to the court facility, the court shall contact the public transit operator to inquire whether new transit options may be implemented near the court.

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

PROPONENT: Michele Anderson, Catherine Rucker, Lei Chala Wilson, Shaun Dabby Jacobs, Darin Wessel, Mark Flory, Christopher Cooke, Margaret Grover, Margo Bouchet, Beverly Williams

STATEMENT OF REASONS

The Problem (including Existing Law): The current travel reimbursement for jurors, at thirty-four cents ($0.34) per mile, for a one-way trip only and only after the first day of service, is not reasonable. As a result, many potential jurors, who are low-income, simply cannot afford to travel to and from the courthouse..

The Solution: Because jurors are performing a public service, the State of California should reimburse them for their actual, round-trip travel expenses. As of January 1, 2025 the IRS standard mileage rate for the use of a car driven "for business" is $0.70 per mile. See IR-2024-312, (Dec. 19, 2024) (Standard Mileage Rates for 2025).

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

CURRENT OR PRIOR RELATED LEGISLATION
AB 1277 (Essayli, 2025-2026 Reg. Sess.) AB 1452 (Ting, 2021-2022 Reg. Sess.), effective Jan. 1, 2022, sunset Jan. 1, 2025, established a "pilot program" for the San Francisco Superior Court to pay low-income jurors one hundred dollars ($100) per day for jury service, for criminal trials only. However, AB 1452 did not address the issue of reasonable travel reimbursements for jurors. . AB 881 (Ting, 2023-2024 Reg. Sess.) was vetoed, It would have expanded the pilot program to four additional counties. CCBA had prior resolutions 08-10-2022, and 08-11-2022.AB 1981 Jury Pilot Program (Assem. Bill 1981 [Lee]; Stats 2022, ch. 326, effective January 1, 2023) increased mileage from .32 to round trip mileage. In addition, see SB 1102 (Committee on Budget and Fiscal Review, 2003-2004 Reg. Sess.; amended by Stats, 2004, Ch. 227, Sec. 9. Effective August 16, 2004 (which amended Code of Civil Procedure section 215).' See also SB 14 (Calderon, 1995-1996 Reg. Sess.), which had proposed a mileage reimbursement of $0.28 per mile one-way for jurors traveling more than 50 miles.

AUTHOR AND/OR PERMANENT CONTACT:
Michele Anderson, P.O. Box 1160 Long Beach 90807, (562) 243-6407, micheleanderson535@msn.com

RESPONSIBLE FLOOR DELEGATE: Michele Anderson

RESOLUTION 03-05-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 215, to read as follows:

§ 215

(a) Except as provided in subdivision (b), on and after July 1, ~~2000~~ 2026, the fee for jurors in the superior court, in civil and criminal cases, is ~~fifteen~~ one hundred dollars (~~$15~~$100) a day for each day's attendance as a juror ~~after the first day~~.

(b) A juror who is employed by a federal, state, or local government entity, or by any other public entity as defined in Section 481.200, and who receives regular compensation and benefits while performing jury service, shall not be paid the fee described in subdivision (a).

(c) All jurors in the superior court, in civil and criminal cases, shall be reimbursed for mileage at the rate of thirty-four cents ($0.34) per mile for each mile actually traveled in attending and returning from court as a juror after the first day.

(d) All jurors and prospective jurors who have been summoned shall be provided with access to existing public transit services at no cost utilizing one of the following options:

(1) Courts may partner with public transit operators in their county to create new programs or continue existing public transit programs that provide no-cost service for jurors and prospective jurors who have been summoned.

(2) A method of reimbursement determined by the court up to a daily maximum of twelve dollars ($12).

(e) Subdivision (d) does not apply to a court in an area where a public transit operator does not provide existing service that is reasonably available to the court facility.

(f) In determining whether transit service is reasonably available to the court facility, the court shall consider factors that include, but are not limited to, all of the following:

(1) Proximity of transit service to the court location.

(2) Hours of operation of transit service in the vicinity of the court location.

(3) Frequency of operation of transit service in the vicinity of the court location.

(4) Availability of transit access to all areas of the court's jurisdiction from which a potential juror may reside.

(g) Prior to determining that transit service is not reasonably available to the court facility, the court shall contact the public transit operator to inquire whether new transit options may be implemented near the court.

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

PROPONENT: Michele Anderson, Catherine Rucker, Lei Chala Wilson, Margo Bouchet, Beverly Williams, Mark Flory, Christopher Cooke, Margaret Grover, Shaun Jacobs, Darin Wessel.

STATEMENT OF REASONS

The Problem (including Existing Law): The current payment of fifteen dollars ($15) per day, which only begins on the second day of jury service, is insufficient. As a result, many people who earn more than $15 per day and whose employers refuse to pay for their time off from work cannot afford to serve on a jury. In addition, although Labor Code section 230(a) prohibits employers from discharging or discriminating against employees, there are no requirements for private-sector employers to pay employees while they are serving on juries. (For information about the payment of wages for public sector employees who serve on juries, see Code of Civil Procedure section 215(b)).
A 2022 national public opinion survey by the National Center for State Courts found that 84% of Americans believe that trials by jury help make the justice system accountable to the rule of law and the Constitution. Inconsistencies in the amounts and methods used to compensate jurors' daily compensation is far below respective federal or state minimum wage. Compensation raises important issues regarding diverse populations participatory role in the effective and fair administration of justice..

The Solution: This resolution proposes a payment of one hundred dollars ($100) per day. This amount would match the amount in the San Francisco Superior Court pilot program that was authorized by AB 1452 (Ting, 2021-2022 Reg. Sess.), effective January 1, 2022 (sunset on January 1, 2025) – for criminal trials only. Also, this matches the current pilot programs for Alameda County.

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

CURRENT OR PRIOR RELATED LEGISLATION
AB 1277 (Essayli, 2025-2026 Reg. Sess.) AB 1452 (Ting, 2021-2022 Reg. Sess.) effective Jan. 1, 2022, sunset Jan. 1, 2025. AB 1452 adds Code of Civil Procedure section 240 to create a pilot program in the Superior Court of San Francisco to pay low-income people one hundred dollars ($100) per day for jury service, for criminal trials only. In addition, see SB 1102 (Committee on Budget and Fiscal Review, Reg. Sess. 2003-2004; amended by Stats, 2004, Ch. 227, Sec. 9. Effective August 16, 2004 (which amended Code of Civil Procedure section 215). See also SB 14 (Calderon, Reg. Sess. 1995- 1996), which proposed juror fees of $16 per day after the first day of service. AB 881 (Ting, 2023-2024 Reg. Sess.) was vetoed, It would have expanded the pilot program to four additional counties. CCBA had prior resolutions 08-10-2022, and 08-11-2022.

AUTHOR AND/OR PERMANENT CONTACT:
Michele Anderson, P.O. Box 1160, Long Beach Ca 90807, (562) 243-6407.
Micheleanderson535@msn.com

RESPONSIBLE FLOOR DELEGATE: Michele Anderson

RESOLUTION 03-06-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 415.30 and Code of Civil Procedure section 417.10, to read as follows:

§ 415.30

(a) A summons may be served by mail or email on a person within or outside California as provided in this section. A copy of the summons and of the complaint shall be either:

(1) mailed (by first-class mail or airmail, postage prepaid) to the person to be served, together with two copies of the notice and acknowledgment provided for in subdivision (b) and a return envelope, postage prepaid, addressed to the sender; or

(2) emailed to the person to be served together with an electronic copy of the Notice and Acknowledgement of Receipt provided for in subsection (b) below. Before serving a represented party or unrepresented party, the person effecting service shall confirm the appropriate electronic service address for the counsel or unrepresented party being served. The signature of an unrepresented party on the notice and acknowledgment of receipt described below in 415.30(b) shall constitute express consent to electronic service for the limited purpose of the pleadings served with that notice and acknowledgement of receipt and supersedes Code of Civil Procedure section 1010.6(c)(3)(1) for that limited purpose.

(b) The notice specified in subdivision (a) shall be in substantially the following form:

(Title of court and cause, with action number, to be inserted by the sender prior to mailing)

NOTICE

To: (Here state the name of the person to be served.)

This summons is served pursuant to Section 415.30 of the California Code of Civil Procedure. Failure to complete this form and return it to the sender within 20 days of the date it is mailed or emailed to you may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons upon you in any other manner permitted by law. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, this form must be signed in the name of such entity by you or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. Section 415.30 provides that this summons is deemed served on the date of execution of an acknowledgment of receipt of summons.

____

Signature of sender

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS

This acknowledges receipt on (insert date) of a copy of the summons and of the complaint at (insert address).

Date: ____

(Date this acknowledgement is executed)

____

Signature of person acknowledging receipt, with title if acknowledgement is made on behalf of another person.

(c) Service of a summons pursuant to this section is deemed complete on the date a written acknowledgment of receipt of summons is executed, if such acknowledgment thereafter is returned to the sender.

(d) If the person to whom a copy of the summons and of the complaint are mailed or emailed pursuant to this section fails to complete and return the acknowledgment form set forth in subdivision (b) within 20 days from the date the party attempted service by ~~of~~ such mailing or email transmittal, the party to whom the summons was mailed or emailed shall be liable for reasonable expenses thereafter incurred in serving or attempting to serve the party by another method permitted by this chapter, and, except for good cause shown, the court in which the action is pending, upon motion, with or without notice, shall award the party such expenses whether or not ~~he~~ that person is otherwise entitled to recover his or her costs in the action.

(e) A notice or acknowledgment of receipt in form approved by the Judicial Council is deemed to comply with this section.

§ 415.30

(a) If served under Section 415.10, 415.20, or 415.30, by the affidavit of the person making the service showing the time, place, and manner of service and facts showing that the service was made in accordance with this chapter. The affidavit shall recite or in other manner show the name of the person to whom a copy of the summons and of the complaint were delivered, and, if appropriate, his or her title or the capacity in which he or she is served, and that the notice required by Section 412.30 appeared on the copy of the summons served, if in fact it did appear.

If service is made by mail or email pursuant to Section 415.30, proof of service shall include the acknowledgment of receipt of summons in the form provided by that section or other written acknowledgment of receipt of summons satisfactory to the court.

(b) If served by publication pursuant to Section 415.50, by the affidavit of the publisher or printer, or his or her foreperson or principal clerk, showing the time and place of publication, and an affidavit showing the time and place a copy of the summons and of the complaint were mailed to the party to be served, if in fact mailed.

(c) If served pursuant to another law of this state, in the manner prescribed by that law or, if no manner is prescribed, in the manner prescribed by this section for proof of a similar manner of service.

(d) By the written admission of the party.

(e) If served by posting pursuant to Section 415.45, by the affidavit of the person who posted the premises, showing the time and place of posting, and an affidavit showing the time and place copies of the summons and of the complaint were mailed to the party to be served, if in fact mailed.

(f) All proof of personal service shall be made on a form adopted by the Judicial Council.

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

PROPONENT: Karine Cargo, Alicia Gamaz, James Wood, Ciaran O'Sullivan, Gerald Richards, Gretchen Rubel, Brenda Sanders, Deborah Wald, Patricia Purcell, Melissa Allain

STATEMENT OF REASONS

<u>The Problem (including Existing Law)</u>: Existing law in Code of Civil Procedure section 415.30 and 417.10 permit a party to have a third person serve a Summons and Complaint or Petition by Notice and Acknowledgement of Receipt ("NAR") via U.S. Mail. It is unclear, especially to self-represented parties, whether the pleadings can be served via electronic mail ("email") with a NAR and returned via email. Some Superior Court family law clerks have rejected an NAR served on a Respondent by email because the legal authority is unclear.

Cal. Rule of Court 2.251(a), provides that:
"when a document may be served by mail,… the document may be served electronically under Code of Civil Procedure Section 1010.6, Penal code section 690.5, and the rules in this chapter. For purposes of electronic service made pursuant to Penal Code section 690.5, express consent to electronic service is required."
However, Section 1010.6 has limitations as described below.

Only if your county has mandatory electronic filing and service rules, then Code of Civil Procedure 1010.6(b) permits after a party has appeared in the litigation, of service of a notice or document by mail, express mail, overnight delivery or facsimile transmission, which would include the NAR. However, some counties don't make it mandatory for represented parties to accept electronic service. Also, even under Code of Civil Procedure section 1010.6, there is a restriction under subsection (c), which only permits electronic service on self-represented parties if they expressly consent to it, serve a notice on all parties, and file the notice with the court. This code section does not include the service of a Summons and Complaint by NAR (by a third person) and the existing framework is too complex and confusing for most self-represented parties, especially indigent family law litigants.

Section 415.30(b) and (d) are too vague as to when the 20 day deadline starts and it could be construed by the recipient as the date it is received. Section 415.30.(d) should be updated to be gender neutral.

Section 417.10 would also need to be updated to include email service..

The Solution: A rule in section 415.30(a) that permits a party to serve the initial pleadings with a NAR via email and permits the responding party to return it via email is more efficient. That procedure serves the needs of indigent self-represented parties. The above amendments to section 415.30(b) and (d) also clarify that the 20 day deadline starts from the date the NAR is served by the serving party rather than the date it is received. This eliminates confusion. The gender-neutral revisions updates an out of date reference.

IMPACT STATEMENT

This resolution may require the Judicial Council adopt conforming changes to Rules of Court. This would require the Judicial Council to update the NAR forms such as Judicial Council form FL-117 (for family law pleadings) and POS-015 (for other civil pleadings)

CURRENT OR PRIOR RELATED LEGISLATION

Section 415.30 History:Enacted Legislation Added by Stats.1969, c. 1610, p. 3363, § 3, operative July 1, 1970.Section 417.10 History:(Added by Stats.1969, c. 1610, p. 3363, § 3, operative July 1, 1970. Amended by Stats.1972, c. 719, § 2; Stats.1980, c. 676, § 65; Stats.1986, c. 953, § 2, operative July 1, 1987; Stats.2006, c. 538 (S.B.1852), § 63.)

AUTHOR AND/OR PERMANENT CONTACT:

Karine Cargo, Hersh Family Law Practice, P.C., 456 Montgomery St., 17th Floor, San Francisco, California, 94104; email: kcargo@hflp.com, phone (415) 788-2200.

RESPONSIBLE FLOOR DELEGATE: Karine Cargo, San Francisco, California, email: kcargo@hflp.com, phone (415) 788-2200.

RESOLUTION 03-07-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure sections 430.41 and 472, to read as follows:

§430.41

(a) Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person, by telephone, or by video conference with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. If an amended complaint, cross-complaint, or answer is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a demurrer to the amended pleading.

(1) As part of the meet and confer process, the demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies. The party who filed the complaint, cross-complaint, or answer shall provide legal support for its position that the pleading is legally sufficient or, in the alternative, how the complaint, cross-complaint, or answer could be amended to cure any legal insufficiency.

(2) The parties shall meet and confer at least 5 days before the date the responsive pleading is due. If the parties are not able to meet and confer at least 5 days before the date the responsive pleading is due, the demurring party shall be granted an automatic 30-day extension of time within which to file a responsive pleading, by filing and serving, on or before the date on which a demurrer would be due, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer. The 30-day extension shall commence from the date the responsive pleading was previously due, and the demurring party shall not be subject to default during the period of the extension. Any further extensions shall be obtained by court order upon a showing of good cause.

(3) The demurring party shall file and serve with the demurrer a declaration stating either of the following:

(A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.

(B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

(4) A determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer.

(b) A party demurring to a pleading that has been amended after a demurrer to an earlier version of the pleading was sustained shall not demur to any portion of the amended complaint, cross-complaint, or answer on grounds that could have been raised by demurrer to the earlier version of the complaint, cross-complaint, or answer.

(c) If a court sustains a demurrer to one or more causes of action and grants leave to amend, the court may order a conference of the parties before an amended complaint or cross-complaint or a demurrer to an amended complaint or cross-complaint, may be filed. If a conference is held, the court shall not preclude a party from filing a demurrer and the time to file a demurrer shall not begin until after the conference has concluded. This section does not prohibit the court from ordering a conference on its own motion at any time or prevent a party from requesting that the court order a conference to be held.

(d) This section does not apply to the following civil actions:

(1) An action in which a party not represented by counsel is incarcerated in a local, state, or federal correctional institution.

(2) A proceeding in forcible entry, forcible detainer, or unlawful detainer.

(e) (1) In response to a demurrer, an amended complaint or amended cross-complaint may be amended to respond to the defects identified in the demurrer without leave of court. In response to a demurrer~~ and prior to the case being at issue~~, a complaint or cross-complaint shall not be amended more than three times, absent an offer to the trial court as to such additional facts to be pleaded that there is a reasonable possibility the defect can be cured to state a cause of action. The three-amendment limit shall not include an amendment made without leave of the court pursuant to Section 472, provided the amendment is made before a demurrer to the original complaint or cross-complaint is filed.

(2) Nothing in this section affects the rights of a party to amend its pleading or respond to an amended pleading after the case is at issue.

(f) Nothing in this section affects appellate review or the rights of a party pursuant to Section 430.80.

(g) If a demurrer is overruled as to a cause of action and that cause of action is not further amended, the demurring party preserves its right to appeal after final judgment without filing a further demurrer.

§472

(a) A party may amend its pleading once without leave of the court at any time before the answer, demurrer, or motion to strike is filed, or after a demurrer or motion to strike is filed but before the demurrer or motion to strike is heard if the amended pleading is filed and served no later than the date for filing an opposition to the demurrer or motion to strike. A party may amend the pleading after the date for filing an opposition to the demurrer or motion to strike, upon stipulation by the parties. The time for responding to an amended pleading shall be computed from the date of service of the amended pleading.

(b) This section shall not apply to a special motion brought pursuant to Section 425.16.

(c) A party may amend an amended pleading in response to a demurrer pursuant to Section 430.41.

PROPONENTS: Alicia M. Gámez, Ciaran O'Sullivan, Karine Cargo, Melissa Allain, Gerald Richards, Ujvala Singh, Jeanne Darrah, John Rueppel, Yulissa Zulaica, Deborah Fox

STATEMENT OF REASONS

The Problem:
Under existing law, Code of Civil Procedure §§ 430.41 and 472 create confusion. Section 472 provides that a party may amend a pleading once without leave to amend. Section 430.41 allows a party to amend no more than three times in response to a demurrer, in addition to the one amendment allowed under Section 472. Section 430.41 says nothing about whether leave of court is required. Read together, many lawyers construe leave of court as being required to amend already-amended pleadings pursuant to Section 430.41, even when confronted by a demurrer or motion to strike, because Section 472 allows only one amendment without leave of court. See *Hedwall v. PCMV, LLC* (2018) 22 Cal. App. 5th 564 [cited for the proposition that one cannot amend more than once, period, without leave of court even in response to demurrers].

Thus, current authority appears to require a party facing a demurrer to a subsequent pleading to oppose the demurrer or file a motion for leave of court to amend, rather than simply file an amended pleading that responds to the defects alleged by the demurrer. Requiring a motion for leave of court to amend when confronted by a demurrer to a subsequent pleading makes Section 430.41 somewhat redundant, because leave to amend is always available by motion, regardless of whether a demurrer is pending. The clear intent of section 430.41(e), when read with section 472, is to allow up to four amendments, without leave of court. Thus, the ambiguity may further imply that Section 430.41's purpose is to cap the number of motions for leave to amend to no more than three. Rather than facilitating amendment of an amended pleading, with resulting savings of legal and judicial resources, the tool provided by Section 430.41 is ambiguous, creates uncertainty, and undoubtedly results in unnecessary motion practice.

The Solution:
This Resolution clarifies a plain ambiguity or conflict between Sections 430.41 and 472. This Resolution clarifies that in response to a demurrer, an amended pleading may be further amended without the necessity of a motion for leave of court to amend for the limited purpose of addressing defects identified by a demurrer. This Resolution reduces the burden on courts of recursive motion practice, expedites litigation, and reduces costs by settling the pleadings more quickly and efficiently.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

2023 Cal AB 1756 amended Code of Civil Procedure § 430.41, subd. (a), principally to clarify that the meet and confer required may occur via video conference.

2020 Cal AB 3364 amended Code of Civil Procedure § 430.41, subd. (c), principally to delete subdivision (h) which was a sunset provision.

2015 Cal SB 383 added Code of Civil Procedure § 430.41 and amended Code of Civil Procedure §§ 472 and 472a.

AUTHOR AND/OR PERMANENT CONTACT

Alicia M. Gámez. Gámez Law, 100 Pine Street, Suite 1250, San Francisco, California 94111, Tel. 415-341-8143, alicia@gamezlaw.com

RESPONSIBLE FLOOR DELEGATE

Alicia M. Gámez

RESOLUTION 04-01-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 502.01 to read as follows:

§ 502.01

(a) As used in this section:

(1) “Property subject to forfeiture” means any property of the defendant that is illegal telecommunications equipment as defined in subdivision (g) of Section 502.8, ~~or~~ a computer, computer system, or computer network, and any software or data residing thereon, if the telecommunications device, computer, computer system, or computer network was used in committing a violation of, or conspiracy to commit a violation of, subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5, 537e, 593d, 593e, 646.9, or subdivision (j) of Section 647, or was used as a repository for the storage of software or data obtained in violation of those provisions<u>, or an electronic device for which a magistrate issued a search warrant to examine pursuant to Section 1546.1, which could not be completed due to encryption</u>. Forfeiture shall not be available for any property used solely in the commission of an infraction. If the defendant is a minor, it also includes property of the parent or guardian of the defendant.

(2) “Sentencing court” means the court sentencing a person found guilty of violating or conspiring to commit a violation of subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e, 646.9, or subdivision (j) of Section 647, or, in the case of a minor, found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of those provisions, the juvenile court.

(3) “Interest” means any property interest in the property subject to forfeiture.

(4) “Security interest” means an interest that is a lien, mortgage, security interest, or interest under a conditional sales contract.

(5) “Value” has the following meanings:

(A) When counterfeit items of computer software are manufactured or possessed for sale, the “value” of those items shall be equivalent to the retail price or fair market price of the true items that are counterfeited.

(B) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the “value” of those components of computer software packages shall be equivalent to the retail price or fair market price of the number of completed computer software packages that could have been made from those components.

(b) The sentencing court shall, upon petition by the prosecuting attorney, at any time following sentencing, or by agreement of all parties, at the time of sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture under this section.

At the forfeiture hearing, the prosecuting attorney shall have the burden of establishing, by a preponderance of the evidence, that the property or property interests are subject to forfeiture. The prosecuting attorney may retain seized property that may be subject to forfeiture until the sentencing hearing.

[Subdivisions (c) through (e) remain unchanged.]

(f) Notwithstanding any other provision of this chapter, the court may exercise its discretion to deny forfeiture where the court finds that the convicted defendant, or minor adjudicated to come within the jurisdiction of the juvenile court, is not likely to use the property otherwise subject to forfeiture for future illegal acts.

[Subdivisions (g) through (h) remain unchanged.]

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Under existing law, a sentencing court may order the forfeiture of a defendant's electronic devices, if they were used to commit a specified offense or were used as a repository for any data obtained as a result of the offense. However, whether an electronic device contains contraband material or stolen data cannot be determined by law enforcement in the case of electronic devices that are impervious to examination due to encryption.

The Solution: This resolution would extend the items subject to forfeiture under Penal Code section 502.01 to include electronic devices whose examination pursuant to a CalECPA warrant could not be completed due to encryption.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT:

Michael Fern, Los Angeles, sclawyer@gmail.com

RESPONSIBLE FLOOR DELEGATE: Michael Fern, Los Angeles, sclawyer@gmail.com

RESOLUTION 04-02-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1170 to read as follows:

§ 1170

[Subdivisions (a) through (c) remain unchanged.]

(d) (1) (A) When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole or its functional equivalent, has been incarcerated for at least 15 years, the defendant may submit to the sentencing court a petition for recall and resentencing.

(B) Notwithstanding subparagraph (A), this paragraph shall not apply to defendants sentenced ~~to life without parole~~ for an offense where it was pled and proved that the defendant tortured, as described in Section 206, their victim or the victim was a public safety official, including any law enforcement personnel mentioned in Chapter 4.5 (commencing with Section 830) of Title 3, or any firefighter as described in Section 245.1, as well as any other officer in any segment of law enforcement who is employed by the federal government, the state, or any of its political subdivisions.

(2) The defendant shall file the original petition with the sentencing court. A copy of the petition shall be served on the agency that prosecuted the case. The petition shall include the defendant's statement that the defendant was under 18 years of age at the time of the crime and was sentenced to life in prison without the possibility of parole or its functional equivalent, the defendant's statement describing their remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

(A) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(B) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall.

(C) The defendant committed the offense with at least one adult codefendant.

(D) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(3) If any of the information required in paragraph (2) is missing from the petition, or if proof of service on the prosecuting agency is not provided, the court shall return the petition to the defendant and advise the defendant that the matter cannot be considered without the missing information.

(4) A reply to the petition, if any, shall be filed with the court within 60 days of the date on which the prosecuting agency was served with the petition unless a continuance is granted for good cause.

(5) If the court finds by a preponderance of the evidence that one or more of the statements specified in subparagraphs (A) to (D), inclusive, of paragraph (2) is true, the court shall recall the sentence and commitment previously ordered and hold a hearing to resentence the

defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. Victims, or victim family members if the victim is deceased, shall retain the rights to participate in the hearing. Notwithstanding any other law, a defendant who is 30 years of age or older and whose sentence is recalled shall not be transferred to juvenile jurisdiction.

(6) The factors that the court may consider when determining whether to resentence the defendant to a term of imprisonment with the possibility of parole include, but are not limited to, the following:

(A) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(B) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the defendant was sentenced to life without the possibility of parole.

(C) The defendant committed the offense with at least one adult codefendant.

(D) Prior to the offense for which the defendant was sentenced to life without the possibility of parole, the defendant had insufficient adult support or supervision and had suffered from psychological or physical trauma or significant stress.

(E) The defendant suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors that did not constitute a defense but influenced the defendant's involvement in the offense.

(F) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(G) The defendant has maintained family ties or connections with others through letter writing, calls, or visits or has eliminated contact with individuals outside of prison who are currently involved with crime.

(H) The defendant has had no disciplinary actions for violent activities in the last five years in which the defendant was determined to be the aggressor.

(7) The court shall have the discretion to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. The discretion of the court shall be exercised in consideration of the criteria in paragraph (6). Victims, or victim family members if the victim is deceased, shall be notified of the resentencing hearing and shall retain their rights to participate in the hearing.

(8) Notwithstanding paragraph (7), the court may also resentence the defendant to a term that is less than the initial sentence if any of the following were a contributing factor in the commission of the alleged offense:

(A) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

(B) The person is a youth or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense.

(C) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(9) Paragraph (8) does not prohibit the court from resentencing the defendant to a term that is less than the initial sentence, even if none of the circumstances listed in paragraph (8) are present.

(10) If the sentence is not recalled or the defendant is resentenced to imprisonment for life without the possibility of parole, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been committed to the custody of the department for at least 20 years. If the sentence is not recalled or the defendant is resentenced to imprisonment for life without the possibility of parole under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence.

(11) In addition to the criteria in paragraph (6), the court may consider any other criteria that the court deems relevant to its decision, so long as the court identifies them on the record, provides a statement of reasons for adopting them, and states why the defendant does or does not satisfy the criteria.

(12) This subdivision shall have retroactive application.

(13) Nothing in this paragraph is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

[Subdivisions (e) through (h) remain unchanged.]

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Under existing law, a defendant who was sentenced to life without parole for a crime committed as a minor, can file a petition for recall and resentencing after 15 years of incarceration. (Pen. Code, § 1170, subd. (d)(1).) Based on Equal Protection, this includes a sentence that is the functional equivalent of life without parole. (*People v. Heard* (2022) 83 Cal.App.5th 608.) A sentencing court that grants the petition can resentence the defendant to a lower term that ensures that the defendant has a chance to be released. (Pen. Code, § 1170, subd. (d)(7)-(9).) But instead of a prompt resentencing, ameliorative changes in juvenile law now require sentencing courts to transfer jurisdiction to a juvenile court to determine whether the defendant is a fit and proper subject to be dealt with in juvenile court. (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299; *In re J.M.* (2024) 103 Cal.App.5th 745 (on review).) But as a practical matter, the juvenile system is not meant for a "minor" who is 30 years or older and has been incarcerated for a capital offense or its functional equivalent for 15 years or more.

The Solution: This resolution would ensure that a sentencing court that grants a petition for recall and resentencing under Penal Code section 1170(d)(1) can resentence the defendant without transferring the case back to a juvenile court. In addition, the resolution would codify the decision in *Heard* to include defendants who committed offenses as minors and were sentenced to the functional equivalent of life without parole.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT:
Michael Fern, Los Angeles, sclawyer@gmail.com

RESPONSIBLE FLOOR DELEGATE: Michael Fern, Los Angeles, sclawyer@gmail.com

RESOLUTION 04-03-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1524.2 to read as follows:

§ 1524.2

(a) As used in this section, the following terms have the following meanings:

(1) The terms "electronic communication services" and "remote computing services" shall be construed in accordance with the Electronic Communications Privacy Act of 1986 in Chapter 121 (commencing with Section 2701) of Part I of Title 18 of the United States Code. This section does not apply to corporations that do not provide those services to the general public.

(2) An "adverse result" occurs when notification of the existence of a search warrant results in:

(A) Danger to the life or physical safety of an individual.

(B) A flight from prosecution.

(C) The destruction of or tampering with evidence.

(D) The intimidation of potential witnesses.

(E) Serious jeopardy to an investigation or undue delay of a trial.

(3) "Applicant" refers to the peace officer to whom a search warrant is issued pursuant to subdivision (a) of Section 1528.

(4) "California corporation" refers to any corporation or other entity that is subject to Section 102 of the Corporations Code, excluding foreign corporations.

(5) "Foreign corporation" refers to any corporation, excluding a California corporation, that ~~is qualified to do business in this state pursuant to Section 2105 of the Corporations Code~~ has purposefully availed itself of California benefits, including providing electronic communication services or remote computing services within California or to its residents.

(6) "Properly served" means that a search warrant has been delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity listed in Section 2110 of the Corporations Code, or any other means ~~specified by the recipient of the search warrant~~ reasonably calculated to give actual notice, including email or submission via an internet web portal that the recipient has designated for the purpose of service of process.

(b) The following provisions apply to any search warrant issued pursuant to this chapter allowing a search for records that are in the actual or constructive possession of a foreign corporation that provides electronic communication services or remote computing services to the general public, where those records would reveal the identity of the customers using those services, data stored by, or on behalf of, the customer, the customer's usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications.

(1) When properly served with a search warrant issued by the California court, a foreign corporation subject to this section shall provide to the applicant, all records sought pursuant to that warrant within five business days of receipt, including those records maintained or located outside this state.

(2) If the applicant makes a showing and the magistrate finds that failure to produce records within less than five business days would cause an adverse result, the warrant may require production of records within less than five business days. A court may reasonably extend the time required for production of the records upon finding that the foreign corporation has shown good cause for that extension and that an extension of time would not cause an adverse result.

(3) A foreign corporation seeking to quash the warrant must seek relief from the court that issued the warrant within the time required for production of records pursuant to this section. The issuing court shall hear and decide that motion no later than five court days after the motion is filed.

(4) The foreign corporation shall verify the authenticity of records that it produces by providing an affidavit that complies with the requirements set forth in Section 1561 of the Evidence Code. Those records shall be admissible in evidence as set forth in Section 1562 of the Evidence Code.

(c) (1) A California corporation that provides electronic communication services or remote computing services to the general public, when served with a warrant issued by another state to produce records that would reveal the identity of the customers using those services, data stored by, or on behalf of, the customer, the customer's usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications, shall produce those records as if that warrant had been issued by a California court, but shall not produce records when the corporation knows or should know that the warrant relates to an investigation into, or enforcement of, a prohibited violation, as defined in Section 629.51.

(2) A California corporation shall not comply with subdivision (c) unless the warrant includes, or is accompanied by, an attestation that the evidence sought is not related to an investigation into, or enforcement of, a prohibited violation, as defined in Section 629.51.

(3) A California corporation served with a warrant described in paragraph (1) is entitled to rely on the representations made in an attestation described in paragraph (2) in determining whether the warrant relates to an investigation into, or enforcement of, a prohibited violation, as defined in Section 629.51.

(d) A cause of action shall not lie against any foreign or California corporation subject to this section, its officers, employees, agents, or other specified persons for providing records, information, facilities, or assistance in accordance with the terms of a warrant issued pursuant to this chapter.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Under Penal Code section 1546.2, California corporations that provide electronic communication services or remote computing services are required to comply with search warrants for customer records. However, this does not include foreign corporations that do business in California unless they are "qualified to do business in this state pursuant to Section 2105 of the Corporations Code." (Pen. Code, § 1546.2, subd. (a)(5).) Section 2105 states: "A foreign corporation shall not transact intrastate business without having first obtained from the Secretary of State a certificate of qualification. To obtain that certificate it shall file, on a form prescribed by the Secretary of State, a statement and designation signed by a corporate officer or, in the case of a foreign association that has no officers, signed by a trustee ….” (Corp. Code, § 2105, subd. (a).) Thus, a foreign corporation that disregards a duty to obtain a certificate of qualification pursuant to Corporations Code section 2105, falls outside the definition of a “foreign corporation,” as defined in Section 1546.2, and is not required to honor a search warrant.

The Solution: This resolution would amend Penal Code section 1546.2 to close a loophole that prevents search warrants from being served on foreign corporations, even when they operate in California, by defining a foreign corporation to include a non-California corporation that has “purposefully availed itself of California benefits” and thereby meets the ‘minimum contacts’ test for personal jurisdiction. (*See Bombardier Recreational Products, Inc. v. Dow Chemical Canada ULC* (2013) 216 Cal.App.4th 591.) The resolution would also allow service of a search warrant on a corporation to include any method that is reasonably calculated to provide actual notice.

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

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT:
Michael Fern, Los Angeles, sclawyer@gmail.com

RESPONSIBLE FLOOR DELEGATE: Michael Fern, Los Angeles, sclawyer@gmail.com

RESOLUTION 04-04-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 13778.1, to read as follows:

§ 13778.1

Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to anti-reproductive-rights calls by January 1, 2023. Every law enforcement agency in this state shall develop, adopt, and implement training protocols for their officers regarding California's Reproductive Health Act and Freedom of Access to Clinic Entrances act (California Penal Code sections 423-423.6).

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

PROPONENT: Women Lawyers Association of Los Angeles

STATEMENT OF REASONS

The Problem (including Existing Law): California has robust protections for reproductive rights, embodied in its Reproductive Health Act and Freedom of Access to Clinic Entrances Act, (FACE Act, Pen. Code, §§ 423-423.6), which provides in relevant part, that it is a crime to threaten, intimidate, physically obstruct, destroy property, injure, or interfere with a person seeking or providing reproductive health services. However, without enforcement from law enforcement, these protections are significantly less meaningful. Existing law already requires law enforcement agencies to train their officers broadly regarding anti-reproductive-rights calls and threats to reproductive rights, but does not include training regarding the FACE Act, that provide much of the basis and mechanism for these responses, and for protection of those seeking reproductive healthcare and those providing it..

The Solution: This proposal would specifically require the State's law enforcement agencies to train their officers regarding the enforcement of the FACE Act.

IMPACT STATEMENT
The impact of this resolution is uncertain.

CURRENT OR PRIOR RELATED LEGISLATION
Unknown

AUTHOR AND/OR PERMANENT CONTACT:
Vanessa Adriance; vanessa.adriance@gmail.com; (504) 473-4734

RESPONSIBLE FLOOR DELEGATE: Vanessa Adriance

RESOLUTION 04-05-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 190.5, to read as follows:

§ 190.5

(a) Notwithstanding any other provision of law, neither the death penalty or the penalty of confinement in the state prison for life without the possibility of parole shall ~~not~~ be imposed on any person who is under the age of ~~18~~ 26 at the time of the commission of the crime. The burden of proof as to the age of such person shall be on the defendant.

(b) The penalty for a defendant found guilty of murder in the first degree~~, in any case in which one or more special circumstances enumerated in Section 190.2 or 190.25 has been found true under Section 190.4,~~ who was 16 years of age or older and under the age of ~~18~~ 26 years at the time of the commission of the crime, shall be confinement in the state prison for ~~life without the possibility of parole or, at the discretion of the court,~~ 25 years to life.

~~(c) The trier of fact shall determine the existence of any special circumstance pursuant to the procedure set forth in Section 190.4.~~

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

PROPONENT: Women Lawyers Association of Los Angeles

STATEMENT OF REASONS

The Problem (including Existing Law): Existing law prohibits imposing a sentence of death for any person who was under the age of 18 at the time of the crime (Pen. Code § 190.5, subd. (a)) or a sentence of life imprisonment without the possibility of parole for any person who was under the age of 16 at the time of the crime (Pen. Code § 190.5, subd. (b)). The Legislature has recognized differences in culpability due to immature brain development of persons age 18 to 26. Penal Code section 3051 allows such youthful offenders to petition for a hearing to present mitigating factors not introduced at sentencing in the original trial in order to make a record for future consideration of parole, but such hearings are not authorized for persons serving a sentence of life without the possibility of parole as a result of conviction for a crime committed after they attained age 18. (Pen. Code § 3051, subd. (h).) The California Supreme Court has upheld the Legislature's decision to exclude youthful offenders serving life without parole from the benefits of section 3051. (*People v. Hardin* (2024) 15 Cal.5th 834.) Immature brain development of persons under age 26 should be a factor in sentencing, even for crimes subject to a penalty of death or life imprisonment without the possibility of parole. In *Roper v. Simmons* (2005) 543 U.S. 551, 574, the United States Supreme Court recognized "[t]he qualities that distinguish juveniles do not disappear when an individual turns 18." Scientific research supports the *Simmons* Court's observation because there is little empirical evidence supporting age 18 as an accurate age of maturity. (Sara B. Johnson, Robert W. Blum & Jay N. Giedd, *Adolescent*

Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy 45(3) J. Adolesc Health 216-221, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2892678/; Elizabeth S. Scott, Richard J. Bonnie & Laurence Steinberg, *Young Adulthood as a Transitional Legal Category: Science, Social Change and Justice Policy,* 85 Fordham L. Rev. 641, 645, 648 (2016).) Individuals mature intellectually before they achieve emotional or social maturity, but what is relevant to legal culpability is the emotional and social development that continues after age 18. (Scott, et al., 85 Fordham L. Rev, at p. 648.) Some scientific literature suggests the behavior and decision-making of adults between the ages of 18 and 25 is closer to juvenile offenders than adult offenders over age 25. (Carly Loomis-Gustafson, *Adjusting the Bright-Line Age of Accountability within the Criminal Justice System: Raising the Age of Majority to Age 21 Based on the Conclusions of Scientific Studies Regarding Neurological Development and Culpability of Young-Adult Offenders,* 55 Duq. L. Rev. 221, 229 (2017); see also Scott, et al. 85 Fordham L. Rev, at p. 642.)

The Solution: This proposal would apply the age range identified by the Legislature in Penal Code section 3051 to eliminate sentences of death or life imprisonment without the possibility of parole for persons who committed their crime prior to attaining age 26, and would eliminate the necessity of trying special circumstance allegations attached to murder charges against persons in this age range. Instead, those persons could receive parole-eligible life sentences.

IMPACT STATEMENT
The impact of this resolution is uncertain.

CURRENT OR PRIOR RELATED LEGISLATION
Unknown

AUTHOR AND/OR PERMANENT CONTACT:
Mark Alan Hart, 9420 Reseda Blvd., #520, Northridge, CA 91324, (818) 363-0419, malanhart@aol.com

RESPONSIBLE FLOOR DELEGATE: Mark Alan Hart

RESOLUTION 04-06-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 3041 to read as follows:

§ 3041

(a) (1) In the case of any inmate sentenced pursuant to any law, other than Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, the Board of Parole Hearings shall meet with each inmate during the sixth year before the inmate's minimum eligible parole date for the purposes of reviewing and documenting the inmate's activities and conduct pertinent to parole eligibility. During this consultation, the board shall provide the inmate information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior. Within 30 days following the consultation, the board shall issue its positive and negative findings and recommendations to the inmate in writing.

(2) One year before the inmate's minimum eligible parole date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and shall normally grant parole as provided in Section 3041.5. No more than one member of the panel shall be a deputy commissioner.

(3) In the event of a tie vote, the matter shall be referred for an en banc review of the record that was before the panel that rendered the tie vote. Upon en banc review, the board shall vote to either grant or deny parole and render a statement of decision. The en banc review shall be conducted pursuant to subdivision (e).

(4) Upon a grant of parole, the inmate shall be released subject to all applicable review periods. However, an inmate shall not be released before reaching his or her minimum eligible parole date as set pursuant to Section 3046 unless the inmate is eligible for earlier release pursuant to his or her youth offender parole eligibility date or elderly parole eligible date.

(5) At least one commissioner of the panel shall have been present at the last preceding meeting, unless it is not feasible to do so or where the last preceding meeting was the initial meeting. Any person on the hearing panel may request review of any decision regarding parole for an en banc hearing by the board. In case of a review, a majority vote in favor of parole by the board members participating in an en banc review is required to grant parole to any inmate.

(b) (1) The panel or the board, sitting en banc, shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety, including whether the inmate poses a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity, requires a more lengthy period of incarceration for this individual.

(2) After July 30, 2001, any decision of the parole panel finding an inmate suitable for parole shall become final within 120 days of the date of the hearing. During that period, the board may review the panel's decision. The panel's decision shall become final pursuant to this subdivision unless the board finds that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the board,

any of which when corrected or considered by the board has a substantial likelihood of resulting in a substantially different decision upon a rehearing. In making this determination, the board shall consult with the commissioners who conducted the parole consideration hearing.

(3) A decision of a panel shall not be disapproved and referred for rehearing except by a majority vote of the board, sitting en banc, following a public meeting.

(c) For the purpose of reviewing the suitability for parole of those inmates eligible for parole under prior law at a date earlier than that calculated under Section 1170.2, the board shall appoint panels of at least two persons to meet annually with each inmate until the time the person is released pursuant to proceedings or reaches the expiration of his or her term as calculated under Section 1170.2.

(d) It is the intent of the Legislature that, during times when there is no backlog of inmates awaiting parole hearings, life parole consideration hearings, or life rescission hearings, hearings will be conducted by a panel of three or more members, the majority of whom shall be commissioners. The board shall report monthly on the number of cases where an inmate has not received a completed initial or subsequent parole consideration hearing within 30 days of the hearing date required by subdivision (a) of Section 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless the inmate has waived the right to those timeframes. That report shall be considered the backlog of cases for purposes of this section, and shall include information on the progress toward eliminating the backlog, and on the number of inmates who have waived their right to the above timeframes. The report shall be made public at a regularly scheduled meeting of the board and a written report shall be made available to the public and transmitted to the Legislature quarterly.

(e) For purposes of this section, an en banc review by the board means a review conducted by a majority of commissioners holding office on the date the matter is heard by the board. An en banc review shall be conducted in compliance with the following:

(1) The commissioners conducting the review shall consider the entire record of the hearing that resulted in the tie vote.

(2) The review shall be limited to the record of the hearing. The record shall consist of the transcript or audiotape of the hearing, written or electronically recorded statements actually considered by the panel that produced the tie vote, and any other material actually considered by the panel. New evidence or comments shall not be considered in the en banc proceeding.

(3) The board shall separately state reasons for its decision to grant or deny parole.

(4) A commissioner who was involved in the tie vote shall be recused from consideration of the matter in the en banc review.

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

PROPONENT: Michael Fern, Heba Matta, Eunice Kim, Ethan Milius, Benyomin Forer, Donn Hoffman, Bjorn Dodd, Marc Beaart, Stefan Mrakitch, Guy Shirley

STATEMENT OF REASONS

The Problem: Existing law presumes that an inmate is suitable for release at a parole hearing, unless "consideration of the public safety requires a more lengthy period of incarceration for this individual." (Pen. Code, § 3041, subd. (b)(1).) However, "consideration of the public safety" is not defined by statute. Instead, the Board of Parole Hearings employs two different standards in the California Code of Regulations, depending on the nature of the commitment offense. For inmates serving a determinate sentence who are classified as nonviolent offenders, "If the hearing officer finds the inmate poses a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity, the hearing officer shall deny release and issue a decision." (Cal. Code Regs., tit. 15, § 2449.4, subd. (e); *In re Kavanaugh* (2021) 61 Cal.App.5th 320, 337.) But for inmates serving a life sentence or convicted of certain sex crimes, the "prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison." (Cal. Code Regs., tit. 15, §§ 2281(a); 2402(a), 2432(a).)

<u>The Solution</u>: For greater clarity as to what "the consideration of public safety" means and to ensure that a uniform standard is applied at parole hearings, this resolution would amend Section 3041 to codify the language in Section 2449.4(e) of Title 15 of the California Code of Regulations of "a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity."

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

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT:
Michael Fern, Los Angeles, sclawyer@gmail.com

RESPONSIBLE FLOOR DELEGATE: Michael Fern, Los Angeles, sclawyer@gmail.com

RESOLUTION 04-07-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to delete Penal Code section 3058 to read as follows:

~~§ 3058~~

~~Any person who knowingly and wilfully communicates to another, either orally or in writing, any statement concerning any person then or theretofore convicted of a felony, and then on parole, and which communication is made with the purpose and intent to deprive said person so convicted of employment, or to prevent him from procuring the same, or with the purpose and intent to extort from him any money or article of value; and any person who threatens to make any said communication with the purpose and intent to extort money or any article of value from said person so convicted of a felony, is guilty of a misdemeanor.~~

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

PROPONENT: Michael Fern, Sean McCoy, Heba Matta, Eunice Kim, Ethan Milius, Benyomin Forer, Donn Hoffman, Bjorn Dodd, Marc Beaart, Stefan Mrakich

STATEMENT OF REASONS

The Problem: Enacted in 1941, Penal Code section 3058 infringes on freedom of speech and probably has never been filed. "The right to free speech is one of the cornerstones of our society, and is protected under the First Amendment of the United States Constitution and under an even broader provision of the California Constitution. An injunction that forbids a citizen from speaking in advance of the time the communication is to occur is known as a prior restraint. A prior restraint is the most serious and the least tolerable infringement on First Amendment rights. Prior restraints are highly disfavored and presumptively violate the First Amendment." (*Evans v. Evans* (2008) 162 Cal.App.4th 1157, 1166-1167 (cleaned up).) Giving a 1-star review on a rideshare app could be a violation, and does not require knowledge that someone is a convicted felon or parolee. Also, extortion is already a felony under Penal Code sections 523 and 524.

The Solution: This resolution would delete Section 3058.

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

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT:
Michael Fern, Los Angeles, sclawyer@gmail.com

RESPONSIBLE FLOOR DELEGATE: Michael Fern, Los Angeles, sclawyer@gmail.com

RESOLUTION 04-08-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1524 to read as follows:

§ 1524

(a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of a person with the intent to use them as a means of committing a public offense, or in the possession of another to whom that person may have delivered them for the purpose of concealing them or preventing them from being discovered.

(4) When the property or things to be seized consist of an item or constitute evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under 18 years of age, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of a person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom that person may have delivered them for the purpose of concealing them or preventing their discovery.

(8) When the property or things to be seized include an item or evidence that tends to show a violation of Section 3700.5 of the Labor Code or tends to show that a particular person has violated Section 3700.5 of the Labor Code.

(9) When the property or things to be seized include a firearm or other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault as provided in Section 18250. This section does not affect warrantless seizures otherwise authorized by Section 18250.

(10) When the property or things to be seized include a firearm or other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.

(11) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 6389 of the Family Code, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a protective order has been issued pursuant to Section 6218 of the Family Code, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

(12) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code has been committed or is being committed, tends to show that a particular person has committed a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or will assist in locating an individual who has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code. A tracking device search warrant issued pursuant to this paragraph shall be executed in a manner meeting the requirements specified in subdivision (b) of Section 1534.

(13) When a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code, and the sample will be drawn from the person in a reasonable, medically approved manner. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(14) Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order that has been issued pursuant to Division 3.2 (commencing with Section 18100) of Title 2 of Part 6, if a prohibited firearm or ammunition or both is possessed, owned, in the custody of, or controlled by a person against whom a gun violence restraining order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

(15) Beginning January 1, 2018, the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 29800 or 29805, and the court has made a finding pursuant to subdivision (c) of Section 29810 that the person has failed to relinquish the firearm as required by law.

(16) When the property or things to be seized are controlled substances or a device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance pursuant to the authority described in Section 11472 of the Health and Safety Code.

(17) (A) When all of the following apply:

(i) A sample of the blood of a person constitutes evidence that tends to show a violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code.

(ii) The person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 655.1 of the Harbors and Navigation Code.

(iii) The sample will be drawn from the person in a reasonable, medically approved manner.

(B) This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(18) When the property or things to be seized consists of evidence that tends to show that a violation of paragraph (1), (2), or (3) of subdivision (j) of Section 647 has occurred or is occurring.

(19) (A) When the property or things to be seized are data, from a recording device installed by the manufacturer of a motor vehicle, that constitutes evidence that tends to show the commission of a felony or misdemeanor offense involving a motor vehicle, resulting in death or serious bodily injury to a person. The data accessed by a warrant pursuant to this paragraph shall not exceed the scope of the data that is directly related to the offense for which the warrant is issued.

(B) For the purposes of this paragraph, “recording device” has the same meaning as defined in subdivision (b) of Section 9951 of the Vehicle Code. The scope of the data accessible by a warrant issued pursuant to this paragraph shall be limited to the information described in subdivision (b) of Section 9951 of the Vehicle Code.

(C) For the purposes of this paragraph, “serious bodily injury” has the same meaning as defined in paragraph (4) of subdivision (f) of Section 243.

(20) When the property or things to be seized consists of evidence that tends to show that a violation of Section 647.9 has occurred or is occurring. Evidence to be seized pursuant to this paragraph shall be limited to evidence of a violation of Section 647.9 and shall not include evidence of a violation of a departmental rule or guideline that is not a public offense under California law.

(21) If the property to be seized includes ammunition and all of the following criteria are satisfied:

(A) The property is owned by, in the possession of, or in the custody or control of a person who is subject to the prohibition set forth in Section 8103 of the Welfare and Institutions Code.

(B) The person has been lawfully served with the order required by Section 8103 of the Welfare and Institutions Code.

(C) The person has failed to relinquish the ammunition as required by law.

(22) (A) When all of the following apply:

(i) A sample of the blood of a person is reasonably necessary to test for a communicable disease to protect the health of a peace officer or firefighter.

(ii) While in the course of their duties, a peace officer or firefighter was exposed to the bodily fluids of the person in a manner capable of causing infection during or as a result of an offense committed by the person.

(iii) The person from whom the sample is being sought has refused an officer’s request to submit to a blood test.

(iv) The sample will be drawn from the person in a reasonable, medically approved manner.

(B) This paragraph is not intended to abrogate a court’s mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

[Subdivisions (b) through (m) remain unchanged.]

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

PROPONENT: Michael Fern, Guy Shirley, Michele Anderson, Shaun Dabby Jacobs, Heba Matta, Eunice Kim, Benyomin Forer, Ethan Milius, Bjorn Dodd, Marc Beaart

STATEMENT OF REASONS

The Problem: Under existing law, when a peace officer or firefighter is bitten by a suspect in the course of their duties or stops an assault that leaves them exposed to a suspect's blood, saliva, or excrement, there is no statutory authority for requiring the suspect to submit to a blood test to determine the presence of a communicable disease. Having this information can help ensure timely medical treatment for first responders whose health has been put at risk by a suspect and prevent their death or disability.

The Solution: This resolution would amend Penal Code section 1524 to permit a search warrant for a person's blood sample when reasonably necessary to test for a communicable diseases to protect the health of a peace officer or firefighter.

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

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT:
Michael Fern, Los Angeles, sclawyer@gmail.com

RESPONSIBLE FLOOR DELEGATE: Michael Fern, Los Angeles, sclawyer@gmail.com

RESOLUTION 04-09-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 3043 to read as follows:

§ 3043

(a) (1) Upon request to the Department of Corrections and Rehabilitation and verification of the identity of the requester, notice of any hearing to review or consider the parole suitability for any inmate in a state prison shall be given by telephone, certified mail, regular mail, or electronic mail, using the method of communication selected by the requesting party, if that method is available, by the Board of Parole Hearings at least 90 days before the hearing to any victim of any crime committed by the inmate, or to the next of kin of the victim if the victim has died, and any requesting party who is an attorney representing the victim or the next of kin of the victim if the victim has died, an employee of a prosecuting agency of any crime committed by the inmate, or an employee of a law enforcement agency that investigated any crime committed by the inmate, to include the commitment crimes, determinate term commitment crimes for which the inmate has been paroled, and any other felony crimes or crimes against the person for which the inmate has been convicted. The requesting party shall keep the board apprised of their current contact information in order to receive the notice. The board shall keep the requesting party apprised of any changes to the date, time, or place of the hearing.

(2) No later than 30 days before the date selected for the hearing, any person entitled to attend the hearing, other than the victim, victim's next of kin, member of the victim's family, victim's representative, counsel representing any of these persons, or victim support persons, shall inform the board of their intention to attend the hearing and the name and identifying information of any other person entitled to attend the hearing who will accompany them.

(3) No later than 14 days before the date selected for the hearing, the board shall notify every person entitled to attend the hearing confirming the date, time, and place of the hearing.

(4) The department and the board may require no more than 15 days' notice by a victim, victim's next of kin, member of the victim's family, victim's representative, counsel representing any of these persons, or victim support persons, of their intention to attend the hearing.

(b) (1) The victim, next of kin, members of the victim's family, and two representatives designated as provided in paragraph (2) of this subdivision have the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express their views concerning the inmate and the case, including, but not limited to the commitment crimes, determinate term commitment crimes for which the inmate has been paroled, any other felony crimes or crimes against the person for which the inmate has been convicted, the effect of the enumerated crimes on the victim and the family of the victim, the person responsible for these enumerated crimes, and the suitability of the inmate for parole.

(2) Any statement provided by a representative designated by the victim or next of kin may cover any subject about which the victim or next of kin has the right to be heard including any recommendation regarding the granting of parole. The representatives shall be designated by the victim or, in the event that the victim is deceased or incapacitated, by the next of kin. They shall be designated in writing for the particular hearing before the hearing.

(c) A representative designated by the victim or the victim's next of kin for purposes of this section may be any adult person selected by the victim or the family of the victim. The board shall permit a representative designated by the victim or the victim's next of kin to attend a particular hearing, to provide testimony at a hearing, and to submit a statement to be included in the hearing as provided in Section 3043.2, even though the victim, next of kin, or a member of the victim's immediate family is present at the hearing, and even though the victim, next of kin, or a member of the victim's immediate family has submitted a statement as described in Section 3043.2.

(d) The board, in deciding whether to release the person on parole, shall consider the entire and uninterrupted statements of the victim or victims, next of kin, immediate family members of the victim, and the designated representatives of the victim or next of kin, if applicable, made pursuant to this section and shall include in its report a statement whether the person would pose a threat to public safety if released on parole.

(e) In those cases where there are more than two immediate family members of the victim who wish to attend any hearing covered in this section, the board shall allow attendance of additional immediate family members to include the following: spouse, children, parents, siblings, grandchildren, and grandparents.

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

PROPONENT: Michael Fern, Heba Matta, Eunice Kim, Ethan Milius, Benyomin Forer, Donn Hoffman, Bjorn Dodd, Marc Beaart, Stefan Mrakich, Guy Shirley

STATEMENT OF REASONS

The Problem: Existing law allows a requesting party to require notice of a parole hearing to be given to a victim of any crime committed by the inmate, or to the next of kin of the victim if the victim has died. (Pen. Code, § 3043, subd. (a)(1).) If the inmate is serving a life sentence, existing law also requires notice of a parole hearing to be given to the prosecuting agency, investigating agency, and the agency that employed a peace officer or firefighter murdered by the inmate. (Pen. Code, §§ 3041.7, 3042 (a)(1).) However, there is no requirement to notify a requesting party who is an attorney for the victim or victim's next of kin, even though they have a right to appear as the victim's representative or support person. (Pen. Code, §§ 3043(c), 3043.1.) And unless the inmate is serving a life sentence, CDCR is not required to notify the prosecuting agency or a law enforcement agency that investigated the case, even if such entities request to be notified and have relevant information concerning the inmate's parole suitability. There is also no requirement to notify a requesting party about changes made to the date, time, or location of the hearing, which has sometimes led to victims not being informed of such changes.

The Solution: To ensure that notice is given to requesting parties that have an interest in an inmate's parole hearing, this resolution would amend Penal Code section 3043 to require notice to be given to a requesting party who is an attorney representing the victim or victim's next of kin, an employee of a prosecuting agency of any crime committed by the inmate, or an employee of a law enforcement agency that investigated any crime committed by the inmate. This resolution would also require notice to be given to requesting parties when CDCR changes the date, time, or place of a parole hearing.

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

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT:
Michael Fern, Los Angeles, sclawyer@gmail.com

RESPONSIBLE FLOOR DELEGATE: Michael Fern, Los Angeles, sclawyer@gmail.com

RESOLUTION 04-10-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 4900, 4903, 4904, and to add Penal Code section 4904.1, to read as follows:

§ 4900

(a) Any person who, having been convicted of any crime against the state amounting to a felony ~~and imprisoned in the state prison or incarcerated in county jail pursuant to subdivision (h) of Section 1170 for that conviction~~, is granted a pardon by the Governor for the reason that the crime with which they were charged was either not committed at all or, if committed, was not committed by the person, or who, being innocent of the crime with which they were charged for either of those reasons, ~~shall have~~ and who have served the term or any part thereof ~~for which they were imprisoned in state prison, or incarcerated in county jail,~~ of their sentence may, under the conditions provided under this chapter, present a claim against the state to the California Victim Compensation Board ~~for the injury sustained by the person through the erroneous conviction and imprisonment or incarceration~~.

(b) If a state or federal court has granted a writ of habeas corpus or if a state court has granted a motion to vacate pursuant to Section 1473.6 or paragraph (2) of subdivision (a) of Section 1473.7, and the charges were subsequently dismissed, or the person was acquitted of the charges on a retrial, the California Victim Compensation Board shall, upon application by the person, and without a hearing, recommend to the Legislature that an appropriation be made and the claim paid pursuant to Section 4904, unless the Attorney General establishes pursuant to subdivision (d) of Section 4902, that the claimant is not entitled to compensation.

~~(c) (1) This section shall become inoperative on July 1, 2024, only if General Fund moneys over the multiyear forecasts beginning in the 2024–25 fiscal year are available to support ongoing augmentations and actions, and an appropriation is made to backfill the Restitution Fund to support the actions in this section. If those conditions are met, this section is repealed January 1, 2025.~~

~~(2) The amendments made by the act adding this subdivision shall become operative on January 1, 2023.~~

§ 4903

(a) Except as provided in Sections 851.865 and 1485.55, and in subdivision (b) of Section 4900, the board shall fix a time and place for the hearing of the claim. At the hearing the claimant shall introduce evidence in support of the claim, and the Attorney General may introduce evidence in opposition thereto. The claimant shall prove the facts set forth in the statement constituting the claim, including the fact that the crime with which they were charged was either not committed at all, or, if committed, was not committed by the claimant~~, and the injury sustained by them through their erroneous conviction and incarceration~~.

(b) For claims falling within subdivision (b) of Section 4900 in which the Attorney General objects to the claim pursuant to subdivision (d) of Section 4902, the board shall fix a time and place for the hearing of the claim. At the hearing, the Attorney General shall bear the burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense. The claimant may introduce evidence in support of the claim.

(c) In a hearing before the board, the factual findings and credibility determinations establishing the court's basis for writ of habeas corpus, a motion to vacate pursuant to Section 1473.6 or paragraph (2) of subdivision (a) of Section 1473.7, or an application for a certificate of factual innocence as described in Section 1485.5 shall be binding on the Attorney General, the factfinder, and the board.

(d) A conviction reversed and dismissed is no longer valid, thus the Attorney General may not rely on the fact that the state still maintains that the claimant is guilty of the crime for which they were wrongfully convicted, that the state defended the conviction against the claimant through court litigation, or that there was a conviction to establish that the claimant is not entitled to compensation. The Attorney General may also not rely solely on the trial record to establish that the claimant is not entitled to compensation.

(e) The board shall deny payment of any claim if the board finds by a preponderance of the evidence that a claimant pled guilty with the specific intent to protect another from prosecution for the underlying conviction for which the claimant is seeking compensation.

(f) A presumption does not exist in any other proceeding if the claim for compensation is denied pursuant to this section. No res judicata or collateral estoppel finding shall be made in any other proceeding if the claim for compensation is denied pursuant to this section.

§ 4904.

(a) If the evidence shows that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, or for claims pursuant to subdivision (b) of Section 4900, the Attorney General's office has not met their burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense, ~~and the California Victim Compensation Board has found that the claimant has sustained injury through their erroneous conviction and imprisonment~~ the California Victim Compensation Board shall approve payment for the purpose of compensating ~~indemnifying~~ the claimant ~~for the injury~~ if sufficient funds are available, upon appropriation by the Legislature.. The amount of the appropriation recommended shall ~~be~~ include the following:

(1) a sum equivalent to one hundred forty dollars ($140) per day of incarceration served solely as a result of the former conviction, and shall include any time spent in custody, including in a county jail, that is considered to be part of the term of incarceration.

(2) a sum equivalent to seventy dollars ($70) per day served on parole pursuant to Section 3000 or 3000.1, on supervised release pursuant to Section 3074, or on the Sex Offender Registry pursuant to Section 290 solely as a result of the former conviction.

(3) reasonable attorney fees, costs, and expenses incurred by or on behalf of the claimant in overturning the claimant's conviction and/or in securing a pardon.

(4) reasonable attorney fees and costs incurred by or on behalf of the claimant in obtaining compensation under this section, and/or in obtaining a finding of factual innocence under Sections 851.8, 851.86, 1473.7, or 1485.55.

(b) The amounts provided in paragraphs (1) and (2) of subdivision (a) of this section shall be updated annually to reflect changes in the Bureau of Labor Standards Consumer Price Index, West Region (All), commencing one year after this section becomes effective.

(c) Notwithstanding any other provision in this section, the California Victim Compensation Board, prior to approving payment, may request from both parties additional documents or arguments as needed to calculate compensation.

(d) Funds received by the claimant under this section ~~That payment~~ shall not be treated as gross income to the recipient under the Revenue and Taxation Code.

§ 4904.1

(a) Any person who spent time on parole pursuant to Section 3000 or 3000.1, on supervised release pursuant to Section 3074, or on the Sex Offender Registry pursuant to Section 290 prior to the effective date of this act may bring a petition for compensation under paragraph (2) of subdivision (a) of Section 4904 within three years of the effective date of this act.

(b) Any person who previously brought a petition under section 4900, and who spent time on parole pursuant to Section 3000 or 3000.1, on supervised release pursuant to Section 3074, or on the Sex Offender Registry pursuant to Section 290, may bring a supplementary petition within three years of the effective date of this act for compensation under paragraph (2) of subdivision (a) of Section 4904, subdivision (a)(2). If the prior petition was granted, the petitioner on a supplementary petition need only prove the applicability of paragraph (2) of subdivision (a) of section 4904.

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

PROPONENT: James Mink, Ujvala Singh, Margaret Grover, Ryan Dean, Mark Flory, Jack Osborn, John Short, Aiskell Roman, Lisa Berger, Victor Herrera

STATEMENT OF REASONS

The Problem (including Existing Law):
Wrongfully convicted people who have not only been released from prison, but have taken the extra step of establishing that they did not commit the crime at issue, are compensated under current law at a fixed rate of one hundred forty dollars per day of incarceration served. The amount is not adjusted for inflation, and no compensation is given for time an innocent person wrongfully spends on parole, probation, or the sex offender registry. Although the law no longer requires wrongfully convicted claimants to prove (in addition to proving their innocence) that they suffered "injury" by being wrongfully incarcerated, current law still requires the California Victim Compensation Board to find that the claimant has "suffered injury" as a result of their wrongful incarceration before they can be compensated.

<u>The Solution</u>:
This resolution would increase the compensation amounts annually, based on changes in the Consumer Price Index. The resolution would also authorize compensation, at seventy dollars per day, for time wrongfully spent on parole, on supervised release, or on the sex offender registry, and would make this relief available retroactively. Finally, the resolution would eliminate the holdover language regarding proof of injury, which is no longer a substantive component of compensation claims.

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

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT:
After Innocence: Jon Eldan, Founder and Director; James Mink, Board Member. Address: 739 Cerrito Street, Albany, California 94706. Telephone: (510) 932-4552. Email: jamesmink@gmail.com.

RESPONSIBLE FLOOR DELEGATE: James Mink

RESOLUTION 05-01-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Probate Code Section 11604.5, to read as follows:

§ 11604.5

(a) This section applies when distribution from a decedent's estate is made to a transferee for value who acquires any interest of a beneficiary in exchange for cash or other consideration.

(b) For purposes of this section, a transferee for value is a person who satisfies both of the following criteria:

(1) The person purchases the interest from a beneficiary for consideration pursuant to a written agreement.

(2) The person, directly or indirectly, regularly engages in the purchase of beneficial interests in estates for consideration.

(c) This section does not apply to any of the following:

(1) A transferee who is a beneficiary of the estate or a person who has a claim to distribution from the estate under another instrument or by intestate succession.

(2) A transferee who is either the registered domestic partner of the beneficiary, or is related by blood, marriage, or adoption to the beneficiary or the decedent.

(3) A transaction made in conformity with the California Financing Law (Division 9 (commencing with Section 22000) of the Financial Code) and subject to regulation by the Department of Financial Protection and Innovation.

~~(4) A transferee who is engaged in the business of locating missing or unknown heirs and who acquires an interest from a beneficiary solely in exchange for providing information or services associated with locating the heir or beneficiary.~~

(d) A written agreement is effective only if all of the following conditions are met:

(1) The executed written agreement is filed with the court not later than 30 days following the date of its execution or, if administration of the decedent's estate has not commenced, then within 30 days of issuance of the letters of administration or letters testamentary, but in no event later than 15 days prior to the hearing on the petition for final distribution. Prior to filing or serving that written agreement, the transferee for value shall redact any personally identifying information about the beneficiary, other than the name and address of the beneficiary, and any financial information provided by the beneficiary to the transferee for value on the application for cash or other consideration, from the agreement.

(2) If the negotiation or discussion between the beneficiary and the transferee for value leading to the execution of the written agreement by the beneficiary was conducted in a language other than English, the beneficiary shall receive the written agreement in English, together with a copy of the agreement translated into the language in which it was negotiated or discussed. The written agreement and the translated copy, if any, shall be provided to the beneficiary.

(3) The documents signed by, or provided to, the beneficiary are printed in at least 10-point type.

(4) The transferee for value executes a declaration or affidavit attesting that the requirements of this section have been satisfied, and the declaration or affidavit is filed with the court within 30 days of execution of the written agreement or, if administration of the decedent's estate has not commenced, then within 30 days of issuance of the letters of administration or

letters testamentary, but in no event later than 15 days prior to the hearing on the petition for final distribution.

(5) Notice of the assignment is served on the personal representative or the attorney of record for the personal representative within 30 days of execution of the written agreement or, if general or special letters of administration or letters testamentary have not been issued, then within 30 days of issuance of the letters of administration or letters testamentary, but in no event later than 15 days before the hearing on the petition for final distribution.

(e) The written agreement shall include the following terms, in addition to any other terms:

(1) The amount of consideration paid to the beneficiary.

(2) A description of the transferred interest.

(3) If the written agreement so provides, the amount by which the transferee for value would have its distribution reduced if the beneficial interest assigned is distributed prior to a specified date.

(4) A statement of the total of all costs or fees charged to the beneficiary resulting from the transfer for value, including, but not limited to, transaction or processing fees, credit report costs, title search costs, due diligence fees, filing fees, bank or electronic transfer costs, or any other fees or costs. If all the costs and fees are paid by the transferee for value and are included in the amount of the transferred interest, then the statement of costs need not itemize any costs or fees. This subdivision shall not apply to costs, fees, or damages arising out of a material breach of the agreement or fraud by or on the part of the beneficiary.

(f) A written agreement shall not contain any of the following provisions and, if any such provision is included, that provision shall be null and void:

(1) A provision holding harmless the transferee for value, other than for liability arising out of fraud by the beneficiary.

(2) A provision granting to the transferee for value agency powers to represent the beneficiary's interest in the decedent's estate beyond the interest transferred.

(3) A provision requiring payment by the beneficiary to the transferee for value for services not related to the written agreement or services other than the transfer of interest under the written agreement.

(4) A provision permitting the transferee for value to have recourse against the beneficiary if the distribution from the estate in satisfaction of the beneficial interest is less than the beneficial interest assigned to the transferee for value, other than recourse for any expense or damage arising out of the material breach of the agreement or fraud by the beneficiary.

(g) The court on its own motion, or on the motion of the personal representative or other interested person, may inquire into the circumstances surrounding the execution of, and the consideration for, the written agreement to determine that the requirements of this section have been satisfied.

(h) The court may refuse to order distribution under the written agreement, or may order distribution on any terms that the court considers equitable, if the court finds that the transferee for value did not substantially comply with the requirements of this section, or if the court finds that any of the following conditions existed at the time of transfer:

(1) The fees, charges, or consideration paid or agreed to be paid by the beneficiary were grossly unreasonable.

(2) The transfer of the beneficial interest was obtained by duress, fraud, or undue influence.

(i) In addition to any remedy specified in this section, for any willful violation of the requirements of this section found to be committed in bad faith, the court may require the transferee for value to pay to the beneficiary up to twice the value paid for the assignment.

(j) Notice of the hearing on any motion brought under this section shall be served on the beneficiary and on the transferee for value at least 15 days before the hearing in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure.

(k) If the decedent's estate is not subject to a pending court proceeding under the Probate Code in California, but is the subject of a probate proceeding in another state, the transferee for value shall not be required to submit to the court a copy of the written agreement as required under paragraph (1) of subdivision (d). If the written agreement is entered into in California or if the beneficiary is domiciled in California, that written agreement shall otherwise conform to the provisions of subdivisions (d), (e), and (f) in order to be effective.

PROPONENT: James M. Wood, Jack Osborn, Mark Flory, Aiskell Roman, Ryan Dean, Vicki Green, Sean McCoy, John Short, Andrew Beechko, Janet LaTourette

STATEMENT OF REASONS

The Problem (including Existing Law): California Probate Code Section 11604.5 provides for a scheme for court review of assignments by a beneficiary of their interest in the estate in exchange for cash or other consideration. Enacted in 2005 (SB 390) was designed to protect people who are grieving the loss of a family member and who may be facing a pressing need for cash to support a family, pay medical bills, or keep their business up and running. The bill is a first-of-its-kind attempt to regulate the probate purchase industry, a small but growing group of companies who offer quick cash to people who've recently lost family members in exchange for their rights to inherit money or property from the deceased family member." Since that time a comparable industry, heir hunters, has emerged presenting similar unconscionable conduct as the probate purchase industry. However, SB 390 had a unique carve out for the heir hunter industry which exempted their assignments from court review. Assignments of intestate shares in an estate provide this industry with grossly unreasonable fees that may result from duress, fraud, or undue influence. These assignments, like any other estate assignment, should fall within the scope of judicial review provided by Section 11604.5. heir hunters charge exorbitant fees and routinely contact heirs before the administrator has even tried to locate them." There is no reasonable basis for this carve out.

The Solution: To ensure that assignments of a beneficiary's interest in an estate to an heir hunter is reviewed by the Court pursuant to California Probate Code Section 11604.5, the exemption provided by 11604.5 (b)(4) is deleted.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

AUTHOR AND/OR PERMANENT CONTACT:
James M. Wood, Law Office of James M. Wood, 1826 Casterline Road, Oakland, CA 94602, 415.215.3280, WoodLawOakland@gmail.com

RESPONSIBLE FLOOR DELEGATE: James M. Wood

RESOLUTION 05-02-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Welfare and Institutions Code section 5977, to read as follows:

§ 5977

(a) (1) The court shall promptly review the petition to determine if the petitioner has made a prima facie showing that the respondent is, or may be, a person described in Section 5972.

(2) If the court finds that the petitioner has not made a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court may dismiss the case and, if the court does so, it shall order that the dismissal is without prejudice, unless Section 5975.1 applies. Nothing other than Section 5975.1 prevents a petitioner whose petition was dismissed without prejudice from refiling the petition with amended information.

(3) If the court finds that the petitioner has made a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court shall do one of the following:

(A) If the petitioner is the director of a county behavioral health agency, or their designee, the court shall do the following:

(i) Set the matter for an initial appearance on the petition within 14 court days.

(ii) Appoint a qualified legal services project, as defined in Sections 6213 to 6214.5, inclusive, of the Business and Professions Code, to represent the respondent. If no legal services project has agreed to accept these appointments, a public defender or other counsel working in that capacity shall be appointed to represent the respondent.

(iii) Determine whether the petition includes all of the following information and, if it does not, order the county behavioral health agency to submit a written report with the court within 14 court days that includes all of the following:

(I) A determination as to whether the respondent meets, or is likely to meet, the criteria for the CARE process.

(II) The outcome of efforts made to voluntarily engage the respondent prior to the filing of the petition.

(III) Conclusions and recommendations about the respondent's ability to voluntarily engage in services.

(iv) Order the county behavioral health agency to provide notice to the respondent, the appointed counsel, and the county behavioral health agency in the county where the respondent resides, if different from the county where the CARE process has commenced.

(B) If the petitioner is a person other than the director of a county behavioral health agency, or their designee, the court shall order a county agency, or their designee, as determined by the court, to investigate, as necessary, file a written report with the court as soon as practicable, but within 30 court days, and provide notice to the respondent and petitioner that a report has been ordered. Parties shall complete the investigation with appropriate urgency. The written report shall include all of the following:

(i) A determination as to whether the respondent meets, or is likely to meet, the criteria for the CARE process.

(ii) The outcome of efforts made to voluntarily engage the respondent during the report period.

(iii) Conclusions and recommendations about the respondent's ability to voluntarily engage in services.

(iv) The information, including protected health information, necessary to support the determinations, conclusions, and recommendations in the report.

(4) If, upon a request by the county agency ordered to investigate and file a report under subparagraph (B) of paragraph (3), the court finds that the county agency is making progress to engage the respondent, the court may, in its discretion, grant the county agency no more than 30 additional days to continue to work with, engage, and enroll the individual in voluntary treatment and services. The county agency shall provide notice to the respondent and petitioner that an extension for filing a report has been granted.

(5) Upon receipt of the report described in subparagraph (B) of paragraph (3), the court shall, within five days, take one of the following actions:

(A) If the court determines that voluntary engagement with the respondent is effective, and that the individual has enrolled or is likely to enroll in voluntary behavioral health treatment, the court shall dismiss the matter.

(B) If the court determines, based on the county agency's report, that the evidence does not support a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court shall dismiss the matter. This section shall not prevent a county behavioral health agency from continuing to voluntarily engage with a person not described in Section 5972 but who is in need of services and supports.

(C) If the court determines, based on the county agency's report, that the evidence does support a prima facie showing that the respondent is, or may be, a person described in Section 5972, and engagement with the county agency was not effective, the court shall do all of the following:

(i) Set an initial appearance on the petition within 14 court days.

(ii) Appoint a qualified legal services project, as defined in Sections 6213 to 6214.5, inclusive, of the Business and Professions Code or, if no legal services project has agreed to accept these appointments, a public defender or other counsel working in that capacity to represent the respondent.

(iii) Order the county agency to provide notice of the initial appearance to the petitioner, the respondent, the appointed counsel, the county behavioral health agency in the county where the respondent resides, and, if different, the county where the CARE court proceedings have commenced.

(b) At the initial appearance on the petition, all of the following shall apply:

(1) The Court shall permit the respondent to substitute their own counsel.

(2) Petitioner shall be present. If the petitioner is not present, the matter may be dismissed.

(3) Respondent may waive personal appearance and appear through counsel. If the respondent does not waive personal appearance and does not appear at the hearing, and the court makes a finding in open court that reasonable attempts to elicit the attendance of the respondent have failed, the court may conduct the hearing in the respondent's absence if the court makes a finding in open court that conducting the hearing without the participation or presence of respondent would be in the respondent's best interest.

(4) A representative from the county behavioral health agency shall be present.

(5) If the respondent asserts that they are enrolled in a federally recognized Indian tribe or are receiving services from an Indian health care provider, a tribal court, or a tribal organization, a representative from the program, the tribe, or the tribal court shall be allowed to be present,

subject to the consent of the respondent. The tribal representative shall be entitled to notice by the county of the initial appearance.

(6) (A) If the petitioner is a person other than the director of a county behavioral health agency, or their designee, the court shall issue an order relieving the original petitioner and appointing the director of the county behavioral health agency or their designee as the successor petitioner.

(B) If the original petitioner is described in subdivision (a) or (b) of Section 5974, all of the following apply:

(i) The original petitioner shall have the right to be present and make a statement at the initial hearing on the merits of the petition held pursuant to paragraph (7)

(ii) (I) Until July 1, 2025, the court may, in it is discretion, assign ongoing rights of notice to the original petitioner.

(II) Commencing July 1, 2025, unless the court determines, either upon its own motion or upon the motion of the respondent, at any point in the proceedings, that it likely would be detrimental to the treatment or well-being of the respondent, the court shall provide notice of proceedings to the original petitioner throughout the CARE proceedings, including notice to when a continuance is granted or when a case is dismissed. If a continuance is granted, the notice shall provide a general reason for the continuance, including the absence of one of the groups pursuant to Rule 3.1332 of the California Rules of Court. If a case is dismissed, the notice shall specify the statutory basis for the dismissal. A notice pursuant to this clause shall not disclose any patient information that is protected under the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), or this act, without the respondent's consent.

(iii) ~~To the extent that the respondent consents, the~~ Unless the court determines, either upon its own motion or upon the motion of the respondent, at any point in the proceedings, that it likely would be detrimental to the treatment or well-being of the respondent, the court shall ~~provide notice of proceedings may~~ allow the original petitioner to participate in the respondent's CARE proceedings.

(iv) The original petitioner may file a new petition with the court, pursuant to Section 5974, if the matter is dismissed and there is a change in circumstances.

(C) If the original petitioner is not described in subdivision (a) or (b) of Section 5974, the court shall not assign ongoing rights to the original petitioner, other than the right to be present and make a statement at the hearing on the merits of the petition held pursuant to paragraph (7).

(7) (A) The court shall set a hearing on the merits of the petition within 10 days, at which time the court shall determine whether, by clear and convincing evidence, the respondent meets the CARE criteria in Section 5972. In making this determination, the court shall consider all evidence properly before it, including any report from the county behavioral health agency ordered pursuant to paragraph (3) of subdivision (a) and any additional admissible evidence presented by the parties, including the petition submitted and any statement given by the original petitioner. A licensed behavioral health professional may testify as an expert concerning whether the respondent meets the CARE criteria in Section 5972 provided that the court finds that the professional has special knowledge, skill, experience, training, or education sufficient to qualify as an expert under Section 720 of the Evidence Code.

(B) The hearing on the merits of the petition may be conducted concurrently with the initial appearance upon stipulation of the successor petitioner and the respondent, subject to the approval by the court.

(c) (1) If, at the hearing on the merits of the petition, the court finds there is not clear and convincing evidence that the respondent meets the CARE criteria in Section 5972, the court shall dismiss the case without prejudice, unless the court makes a finding, in open court, that the original petitioner’s filing was not in good faith, in which case the dismissal shall be with prejudice.
(2) If, at the hearing on the merits of the petition, the court finds by clear and convincing evidence that the respondent meets the CARE criteria in Section 5972, the court shall order the county behavioral health agency to work with the respondent, the respondent’s counsel, and the supporter to engage the respondent in behavioral health treatment and attempt to enter into a CARE agreement. The court shall set a case management hearing within 14 days.
(3) If the respondent is enrolled in a federally recognized Indian tribe, the respondent shall provide notice of the case management hearing to the tribe, subject to the consent of the respondent.
(d) The following shall apply to any written report submitted by a county behavioral health agency to the court pursuant to this section:
(1) The report is confidential and not subject to disclosure or inspection under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).
(2) The report is inadmissible in any subsequent legal proceeding, except upon motion of the respondent in that subsequent legal proceeding.
(3) The report shall be confidential pursuant to subdivision (e) of Section 5976.5.
(4) This subdivision shall not affect the applicability of paragraph (2) of subdivision (c) of Section 5977.1, make admissible any evidence that is not otherwise admissible, or permit a witness to base an opinion on any matter that is not a proper basis for such an opinion. The admission or exclusion of evidence shall be pursuant to the rules of evidence established by the Evidence Code, including, but not limited to, Section 352 of the Evidence Code, and by judicial decision.

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

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Under the Community Assistance, Recovery, and Empowerment (CARE) Act, family members, behavioral health providers, and first responders may submit a petition the court to create a voluntary care plan for individuals with untreated or undertreated schizophrenia or other psychotic disorders. Existing law does not allow the original petitioner, who is often the family member, to have the right to participate in all CARE Act proceedings. Instead, the original petitioner requires respondent’s consent to participate in hearings beyond the initial hearing. Often, respondents are experiencing psychosis and refuse family support. Existing law allows the court to exclude original petitioners from further involvement in CARE proceedings, leaving family members without information or the ability to advocate for their loved ones. Family members are often the most informed about the respondent's needs and are uniquely positioned to offer support. However, courts are not required to permit the original petitioner rights to participate in ongoing proceedings, which undermines the intent of the CARE Act..

<u>The Solution</u>: This resolution ensures that original petitioners retain rights to attend hearings, unless the court specifically finds that their involvement would harm the respondent. This aligns with the original petitioners' rights to receive notice of all proceedings as of July 1, 2025. By maintaining family engagement, the CARE Act can provide more effective support for individuals with severe mental illness, promoting safety, stability, and accountability. This resolution promotes transparency and family involvement in CARE Court, leading to better outcomes for respondents. Petitioners gain a statutory right to participate in all hearings unless detrimental to the respondent, aligning with the CARE Act's goal of family/community involvement in recovery.

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

CURRENT OR PRIOR RELATED LEGISLATION
SB 42 (2023-2024)

AUTHOR AND/OR PERMANENT CONTACT:
Suzanne A. Fidler, 13217 Jamboree Road, #401, Tustin, CA 92782, suzannefidler@gmail.com, 949-233-6788

RESPONSIBLE FLOOR DELEGATE: Suzanne A. Fidler

RESOLUTION 06-01-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Labor Code sections 139.3 and 139.32 to read as follows:

§ 139.3

(a) Notwithstanding any other law, to the extent those services are paid pursuant to Division 4 (commencing with Section 3200), it is unlawful for a physician to refer a person for clinical laboratory, diagnostic nuclear medicine, radiation oncology, physical therapy, physical rehabilitation, psychometric testing, home infusion therapy, outpatient surgery, diagnostic imaging goods or services, or pharmacy goods, whether for treatment or medical-legal purposes, if the physician or his or her immediate family has a financial interest with the person or in the entity that receives the referral.

(b) For purposes of this section and Section 139.31, the following shall apply:

(1) "Diagnostic imaging" includes, but is not limited to, all X-ray, computed axial tomography magnetic resonance imaging, nuclear medicine, positron emission tomography, mammography, and ultrasound goods and services.

(2) "Immediate family" includes the spouse and children of the physician, the parents of the physician, and the spouses of the children of the physician.

(3) "Physician" means a physician as defined in Section 3209.3.

(4) A "financial interest" includes, but is not limited to, any type of ownership, interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment, whether in money or otherwise, between a licensee and a person or entity to whom the physician refers a person for a good or service specified in subdivision (a). A financial interest also exists if there is an indirect relationship between a physician and the referral recipient, including, but not limited to, an arrangement whereby a physician has an ownership interest in any entity that leases property to the referral recipient. Any financial interest transferred by a physician to, or otherwise established in, any person or entity for the purpose of avoiding the prohibition of this section shall be deemed a financial interest of the physician.

(5) A "physician's office" is either of the following:

(A) An office of a physician in solo practice.

(B) An office in which the services or goods are personally provided by the physician or by employees in that office, or personally by independent contractors in that office, in accordance with other provisions of law. Employees and independent contractors shall be licensed or certified when that licensure or certification is required by law.

(6) The "office of a group practice" is an office or offices in which two or more physicians are legally organized as a partnership, professional corporation, or not-for-profit corporation licensed according to subdivision (a) of Section 1204 of the Health and Safety Code for which all of the following are applicable:

(A) Each physician who is a member of the group provides substantially the full range of services that the physician routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment, and personnel.

(B) Substantially all of the services of the physicians who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group, and except that in the case of multispecialty clinics, as defined in subdivision (l) of Section 1206 of the Health and Safety Code, physician services are billed in the name of the multispecialty clinic and amounts so received are treated as receipts of the multispecialty clinic.

(C) The overhead expenses of, and the income from, the practice are distributed in accordance with methods previously determined by members of the group.

(7) Outpatient surgery includes both of the following:

(A) Any procedure performed on an outpatient basis in the operating rooms, ambulatory surgery rooms, endoscopy units, cardiac catheterization laboratories, or other sections of a freestanding ambulatory surgery clinic, whether or not licensed under paragraph (1) of subdivision (b) of Section 1204 of the Health and Safety Code.

(B) The ambulatory surgery itself.

(8) “Pharmacy goods” means any dangerous drug or dangerous device as defined by Section 4022 of the Business and Professions Code, any medical food as defined by Section 109971 of the Health and Safety Code, and any over-the-counter drug as classified by the federal Food and Drug Administration, except over-the-counter drugs sold at commercially reasonable rates in physical retail outlets commonly accessed by the public.

(c) (1) It is unlawful for a licensee to enter into an arrangement or scheme, such as a cross-referral arrangement, that the licensee knows, or should know, has a principal purpose of ensuring referrals by the licensee to a particular entity that, if the licensee directly made referrals to that entity, would be in violation of this section.

(2) It shall be unlawful for a physician to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for a referred evaluation or consultation.

(d) No claim for payment shall be presented by an entity to any individual, third-party payor, or other entity for any goods or services furnished pursuant to a referral prohibited under this section.

(e) A physician who refers to or seeks consultation from an organization in which the physician has a financial interest shall disclose this interest to the patient or if the patient is a minor, to the patient’s parents or legal guardian in writing at the time of the referral.

(f) No insurer, self-insurer, or other payor shall pay a charge or lien for any goods or services resulting from a referral in violation of this section.

(g) A violation of subdivision (a) shall be a misdemeanor. The appropriate licensing board shall review the facts and circumstances of any conviction pursuant to subdivision (a) and take appropriate disciplinary action if the licensee has committed unprofessional conduct. Violations of this section may also be subject to civil penalties of up to five thousand dollars ($5,000) for each offense, which may be enforced by the Insurance Commissioner, Attorney General, or a district attorney. A violation of subdivision (c), (d), (e), or (f) is a public offense and is punishable upon conviction by a fine not exceeding fifteen thousand dollars ($15,000) for each violation and appropriate disciplinary action, including revocation of professional licensure, by the Medical Board of California or other appropriate governmental agency.

<u>(h) Nothing in this section shall preclude prosecution under any other provision of law.</u>

§ 139.32

(a) For the purpose of this section, the following definitions apply:

(1) “Financial interest in another entity” means, subject to subdivision (h), either of the following:

(A) Any type of ownership, interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment, whether in money or otherwise, between the interested party and the other entity to which the employee is referred for services.

(B) An agreement, debt instrument, or lease or rental agreement between the interested party and the other entity that provides compensation based upon, in whole or in part, the volume or value of the services provided as a result of referrals.

(2) “Interested party” means any of the following:

(A) An injured employee.

(B) The employer of an injured employee, and, if the employer is insured, its insurer.

(C) A claims administrator, which includes, but is not limited to, a self-administered workers’ compensation insurer, a self-administered self-insured employer, a self-administered joint powers authority, a self-administered legally uninsured employer, a third-party claims administrator for an insurer, a self-insured employer, a joint powers authority, or a legally uninsured employer or a subsidiary of a claims administrator.

(D) An attorney-at-law or law firm that is representing or advising an employee regarding a claim for compensation under Division 4 (commencing with Section 3200).

(E) A representative or agent of an interested party, including either of the following:

(i) An employee of an interested party.

(ii) Any individual acting on behalf of an interested party, including the immediate family of the interested party or of an employee of the interested party. For purposes of this clause, immediate family includes spouses, children, parents, and spouses of children.

(F) A provider of any medical services or products.

(3) “Services” means, but is not limited to, any of the following:

(A) A determination regarding an employee’s eligibility for compensation under Division 4 (commencing with Section 3200), that includes both of the following:

(i) A determination of a permanent disability rating under Section 4660.

(ii) An evaluation of an employee’s future earnings capacity resulting from an occupational injury or illness.

(B) Services to review the itemization of medical services set forth on a medical bill submitted under Section 4603.2.

(C) Copy and document reproduction services.

(D) Interpreter services.

(E) Medical services, including the provision of any medical products such as surgical hardware or durable medical equipment.

(F) Transportation services.

(G) Services in connection with utilization review pursuant to Section 4610.

(b) All interested parties shall disclose any financial interest in any entity providing services.

(c) Except as otherwise permitted by law, it is unlawful for an interested party other than a claims administrator or a network service provider to refer a person for services provided by another entity, or to use services provided by another entity, if the other entity will be paid for those services pursuant to Division 4 (commencing with Section 3200) and the interested party has a financial interest in the other entity.

(d) (1) It is unlawful for an interested party to enter into an arrangement or scheme, such as a cross-referral arrangement, that the interested party knows, or should know, has a purpose of ensuring referrals by the interested party to a particular entity that, if the interested party directly made referrals to that other entity, would be in violation of this section.

(2) It is unlawful for an interested party to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement to refer a person for services.

(e) A claim for payment shall not be presented by an entity to any interested party, individual, third-party payer, or other entity for any services furnished pursuant to a referral prohibited under this section.

(f) An insurer, self-insurer, or other payer shall not knowingly pay a charge or lien for any services resulting from a referral for services or use of services in violation of this section.

(g) (1) A violation of this section shall be misdemeanor <u>and does not preclude prosecution under any other provision of law</u>. If an interested party is a corporation, any director or officer of the corporation who knowingly concurs in a violation of this section shall be guilty of a misdemeanor. The appropriate licensing authority for any person subject to this section shall review the facts and circumstances of any conviction pursuant to this section and take appropriate disciplinary action if the licensee has committed unprofessional conduct, provided that the appropriate licensing authority may act on its own discretion independent of the initiation or completion of a criminal prosecution. Violations of this section are also subject to civil penalties of up to fifteen thousand dollars ($15,000) for each offense, which may be enforced by the Insurance Commissioner, Attorney General, or a district attorney.

(2) For an interested party, a practice of violating this section shall constitute a general business practice that discharges or administers compensation obligations in a dishonest manner, which shall be subject to a civil penalty under subdivision (e) of Section 129.5.

(3) For an interested party who is an attorney, a violation of subdivision (b) or (c) shall be referred to the Board of Governors of the State Bar of California, which shall review the facts and circumstances of any violation pursuant to subdivision (b) or (c) and take appropriate disciplinary action if the licensee has committed unprofessional conduct.

(4) Any determination regarding an employee’s eligibility for compensation shall be void if that service was provided in violation of this section.

(h) The following arrangements between an interested party and another entity do not constitute a “financial interest in another entity” for purposes of this section:

(1) A loan between an interested party and another entity, if the loan has commercially reasonable terms, bears interest at the prime rate or a higher rate that does not constitute usury, and is adequately secured, and the loan terms are not affected by either the interested party’s referral of any employee or the volume of services provided by the entity that receives the referral.

(2) A lease of space or equipment between an interested party and another entity, if the lease is written, has commercially reasonable terms, has a fixed periodic rent payment, has a term of one year or more, and the lease payments are not affected by either the interested party’s referral of any person or the volume of services provided by the entity that receives the referral.

(3) An interested party's ownership of the corporate investment securities of another entity, including shares, bonds, or other debt instruments that were purchased on terms that are available to the general public through a licensed securities exchange or NASDAQ.

(i) The prohibitions described in this section do not apply to any of the following:

(1) Services performed by, or determinations of compensation issues made by, employees of an interested party in the course of that employment.

(2) A referral for legal services if that referral is not prohibited by the Rules of Professional Conduct of the State Bar.

(3) A physician's referral that is exempted by Section 139.31 from the prohibitions prescribed by Section 139.3.

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

PROPONENT: Michael Fern, Heba Matta, Eunice Kim, Ethan Milius, Benyomin Forer, Sabrina Corsa, Ani Bailey, Donn Hoffman, Guy Shirley, Sean Carney

STATEMENT OF REASONS

The Problem: In *People v. Woods* (Mar. 18, 2025, G061948) _ Cal.App.5th _ [2025 WL 841193], the Fourth District reversed 33 felony convictions of insurance fraud involving a workers' compensation attorney who failed to disclose kickbacks to third parties and payments for referrals in violation of Penal Code section 550(b)(3). The court noted that Labor Code section 139.32 made it a misdemeanor to participate in an unlawful referral scheme, and as a matter of statutory interpretation, the existence a specific offense with lesser punishment precludes the filing of a general offense that calls for greater punishment, absent some indication of legislative intent to the contrary. (See *In re Williamson* (1954) 43 Cal.2d 651.) Here, however, the "specific" statute prohibiting kickbacks is a general intent crime, whereas the "general" statute requires a specific intent to defraud. (See *People v. Blick* (2007)153 Cal.App.4th 759.) Moreover, while misdemeanors have a 1-year statute of limitations, Penal Code section 550 has a 4-year statute of limitations from the date of discovery. (See Pen. Code, §§ 801.5, 802(a), 803(c).) Requiring kickback/referral schemes to be prosecuted within a year of the offense makes their prosecution impractical, as they are always kept hidden from insurers.

The Solution: This resolution would amend Labor Code sections 139.3 (physicians/ licensees) and 139.32 ("interested parties" as defined) to not preclude prosecution under other laws.

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

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT:
Michael Fern, Los Angeles, sclawyer@gmail.com

RESPONSIBLE FLOOR DELEGATE: Michael Fern, Los Angeles, sclawyer@gmail.com

RESOLUTION 06-02-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend California Labor Code section 2922, to read as follows:

§ 2922
An employment, having no specified term, (a) may be terminated at the will of ~~either party~~the employee on notice to the ~~other~~employer, or (b) may be terminated by the employer on a minimum of 30 days' written notice to the employee and only for just cause. Employment for a specified term means an employment for a period greater than one month.

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

PROPONENTS: Ujvala Singh, Sean M. McCoy, Vicki J. Greene, James L. Mink, Margaret J. Grover, Robyn S. Ginney, Michele B. Anderson, James P. Lamping, Shaun Dabby Jacobs, Mark J. Andrew Flory, Jack B. Osborn, Victor J. Herrera

STATEMENT OF REASONS

The Problem: At-will employment was a backlash to the abolition of slavery and development of worker-protective rights. It is an early 20th-century judicially created doctrine. It came from railroads wanting to fire workers for joining unions, demanding better working conditions and wages, and striking. Railroads argued that since workers could no longer be forced to work (no slavery / indentured servitude allowed post 13th Amendment) and were free to quit anytime, employers should also have the freedom to fire workers. Railroads used to rely heavily on indentured and slave labor, but now faced with workers (mostly minorities) who could legally go on strikes, the railroads' profits declined. Therefore, the railroads launched legal challenges to the constitutionality of worker-protective laws. In response, the US Supreme Court created the legal doctrine of at-will employment, namely that employers must have the freedom to terminate workers for any reason. (See e.g., *Adair v. United States* (1908) 208 U.S. 161; see also *Coppage v. Kansas* (1915) 236 U.S. 1.)

All states except Montana have codified this judicially-created doctrine.

In California, the current version of this doctrine is codified by Labor Code section 2922 (first enacted in 1937), which allows employers to terminate employees for any/no reason, without any specified period of notice (employees can be fired and made to leave the same day). While there are some restrictions on employers' ability to fire workers (e.g., Labor Code, § 2929 (no termination because of wage garnishment); also, e.g., Gov't. Code, §12945.8, subd. (a)(1) (no termination because of jury duty)), the default remains at-will employment. And it is so deferential to employers that even the covenant of good faith and fair dealing that is inherent in all other contractual relationships does **not** apply to at-will employment contracts. (*Guz v. Bechtel* (2000) 24 Cal.4th 317, 350-351.)

At-will employment has a disparate impact on impoverished and minority populations because most jobs do not include contracts changing the statutory presumption of at-will employment, and most employees do not have the bargaining power to demand such contracts. Employees living paycheck-to-paycheck are particularly vulnerable to being fired on the spot, and so are more likely to put up with improper and illegal working conditions.

It is time for California to put an end to this discriminatory law. Now is a particularly apt time. California recently announced the intention to seek direct trade relationships with other nations in other to bypass federally imposed tariffs. This resolution will help California be better positioned to foster such trade relationships. All of the potential trading partners disapprove of at-will employment precisely because of its inherent harm to workers. And it appears that only 10 countries have at-will employment as the default labor law -- Brunei Darussalam, Israel, Marshall Islands, Micronesia, Myanmar, Palau, Papua New Guinea, Tonga, United States (except Montana), and Uruguay. All other countries require employers to have cause to fire employees.

<u>The Solution</u>: Employers must have just cause to fire employees.

IMPACT STATEMENT: This resolution does not impact any other statute, rule or regulation. However, this resolution will have a broad impact on employment practices in California, and will likely face significant opposition from companies. Going forward, California must remain vigilant against the future erosion of this statutory change through legal challenges such as those launched by the railroads in the early 20th century.

CURRENT OR PRIOR RELATED LEGISLATION: None

AUTHOR AND/OR PERMANENT CONTACT: Ujvala Singh; Law Office of Ujvala Singh, 100 Pine Street, Suite 1250, San Francisco, CA 94111; 415-791-8198; usingh@ujvalasingh.com

RESPONSIBLE FLOOR DELEGATE: Ujvala Singh

RESOLUTION 06-03-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Labor Code section 200.3, to read as follows:

§ 200.3

(a) A successor to a judgment debtor shall be liable for any wages, damages, and penalties owed to any of the judgment debtor's former workforce pursuant to a final judgment, after the time to appeal therefrom has expired and for which no appeal therefrom is pending. Successorship is established upon meeting any of the following criteria:

(1) Uses substantially the same facilities or substantially the same workforce to offer substantially the same services as the judgment debtor. This factor does not apply to employers who maintain the same workforce pursuant to Chapter 4.5 (commencing with Section 1060) of Part 3.

(2) Has substantially the same owners or managers that control the labor relations as the judgment debtor.

(3) Employs as a managing agent any person who directly controlled the wages, hours, or working conditions of the affected workforce of the judgment debtor. The term managing agent has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(4) Operates a business in the same industry and (a) the business has an owner, partner, officer, or director who is an immediate family member of any owner, partner, officer, or director of the judgment debtor and (b) has a financial interest in or participates in management or control of the judgment debtor.

(b) This section shall not be construed to limit other means of establishing successor liability for wages, damages, and penalties.

PROPONENT: Margaret J. Grover, Ujvala Singh, Mark Flory, Jack Osborn, John Short, Aiskell Roman, Kelly Borelli, Ryan Dean, Lisa Berger, James Mink

STATEMENT OF REASONS

The Problem (including Existing Law): Under existing law, an employee or former employee who obtains a judgment against their employer, is entitled to collect that judgment from any immediate family member who operates a business in the same industry, if the business has an owner, partner, officer, or director who is an immediate family member of any owner, partner, officer, or director of the judgment debtor. A family member can be liable for the judgment even if the family members are estranged and the person who is the target of collection efforts played no role in the operation of the employer business, had no financial relationship to the employer, was not aware of the lawsuit, and did not participate in defending against the action. For example, a family operates a plumbing business. Two adult children (Pat and Shawn) leave the family business and each establishes their own plumbing business. Pat slowly builds a business, hires cautiously, does outstanding work, and is very successful. Shawn becomes a spendthrift, abuses alcohol, keeps poor records, and ultimately cannot pay their employees. A lawsuit is filed against Shawn, and the employees prevail, recovering wages, interest, penalties, and attorney's fees. Shawn has no assets. The employees' attorney then enforces the judgment against Pat, although Pat played no role in Shawn's business, was not aware of Shawn's financial difficulties, and did not have any opportunity to defend or resolve the claims. Pat is forced into bankruptcy as a result of the deadbeat sibling's actions.

The Solution: This resolution recognizes the need to provide protection for employees who are not paid, while assuring that the person or entity from whom collection is sought had a financial or managerial role with the judgment debtor, such that they are not held liable for debts that were wholly outside of their control simply because of a familial relationship.

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

CURRENT OR PRIOR RELATED LEGISLATION
Not known.

AUTHOR AND/OR PERMANENT CONTACT:
Margaret J. Grover, Grover Workplace Solutions, P.C., 1300 Clay Street, Suite 600, Oakland, CA 94612, 510.654.1678, mgrover@GroverWorkplaceSolutions.com

RESPONSIBLE FLOOR DELEGATE: Margaret J. Grover

RESOLUTION 06-04-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Labor Code section 226, to read as follows:

§ 226

(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to their employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of their social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

(c) An employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made. <u>The employer shall have no obligation to make available any records created more than 5 years prior to the employer's receipt of the request to inspect.</u>

(d) This section does not apply to any employer of a person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of their social security number or an employee identification number other than a social security number.

(C) For purposes of this paragraph, "promptly and easily determine" means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

(3) For purposes of this subdivision, a "knowing and intentional failure" does not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake. In reviewing for compliance with this section, the factfinder may consider as a relevant factor whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with this section.

(f) A failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar ($750) penalty from the employer.

(g) The listing by an employer of the name and address of the legal entity that secured the services of the employer in the itemized statement required by subdivision (a) shall not create any liability on the part of that legal entity.

(h) An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.

(i) This section does not apply to the state, to any city, county, city and county, district, or to any other governmental entity, except that if the state or a city, county, city and county, district, or other governmental entity furnishes its employees with a check, draft, or voucher paying the employee's wages, the state or a city, county, city and county, district, or other governmental entity shall use no more than the last four digits of the employee's social security number or shall use an employee identification number other than the social security number on the itemized statement provided with the check, draft, or voucher.

(j) An itemized wage statement furnished by an employer pursuant to subdivision (a) shall not be required to show total hours worked by the employee if any of the following apply:

(1) The employee's compensation is solely based on salary and the employee is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission.

(2) The employee is exempt from the payment of minimum wage and overtime under any of the following:

(A) The exemption for persons employed in an executive, administrative, or professional capacity provided in any applicable order of the Industrial Welfare Commission.

(B) The exemption for outside salespersons provided in any applicable order of the Industrial Welfare Commission.

(C) The overtime exemption for computer software professionals paid on a salaried basis provided in Section 515.5.

(D) The exemption for individuals who are the parent, spouse, child, or legally adopted child of the employer provided in any applicable order of the Industrial Welfare Commission.

(E) The exemption for participants, director, and staff of a live-in alternative to an incarceration rehabilitation program with special focus on substance abusers provided in Section 8002 of the Penal Code.

(F) The exemption for any crew member employed on a commercial passenger fishing boat licensed pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code provided in any applicable order of the Industrial Welfare Commission.

(G) The exemption for any individual participating in a national service program provided in any applicable order of the Industrial Welfare Commission.

(H) The exemption for any person who has entered into a contract to play baseball at the minor league level who satisfies the requirements set forth in subdivision (a) of Section 514.5.

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

PROPONENT: Margaret J. Grover, Ujvala Singh, Mark Flory, Jack Osborn, John Short, Aiskell Roman, Kelly Borelli, Ryan Dean, Lisa Berger, James Mink

STATEMENT OF REASONS

<u>The Problem (including Existing Law)</u>: Under existing law, an employer is required to provide wage and hour records to current and former employees upon demand. The statute requires the employer to keep wage records for 3 years after an employee's final date of employment, but contains no limit on the duration of time for which records must be produced. Many employers maintain records for longer than 5 years. Sometimes older records are difficult to access, because the employer has changed its payroll software or its outsourced payroll provider. If the employer does not produce all records in its possession, without regard to their age, it is subject to a penalty of $750.00..

The Solution: This resolution would limit the scope of the employer's obligation to produce payroll records to those records created within 5 years before the request for records. Providing the last 5 years of records is sufficient for an employee or former employee to evaluate any potential claims or causes of action for unpaid wages, as all such claims are time-barred after 4 years.

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

CURRENT OR PRIOR RELATED LEGISLATION
There is no prior related legislation.

AUTHOR AND/OR PERMANENT CONTACT:
Margaret J. Grover, Grover Workplace Solutions, P.C., 1300 Clay Street, Suite 600, Oakland, CA 94618, Tel: 415.596.9433, Email: mgrover@groverworkplacesolutions.com.

RESPONSIBLE FLOOR DELEGATE: Margaret J. Grover, Grover Workplace Solutions, P.C., 1300 Clay Street, Suite 600, Oakland, CA 94618, Tel: 415.596.9433, Email: mgrover@groverworkplacesolutions.com.

RESOLUTION 06-05-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Labor Code section 1198.5, to read as follows:

§ 1198.5

(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

(b) (1) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records, at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days from the date the employer receives the request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to produce a copy of the records, as long as the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request. Except as provided in paragraph (2) of subdivision (c), the employer is not required to make those personnel records or a copy thereof available at a time when the employee is actually required to render service to the employer, if the requester is the employee.

(2) (A) For purposes of this section, a request to inspect or receive a copy of personnel records shall be made in either of the following ways:

(i) Written and submitted by the current or former employee or his or her representative.

(ii) Written and submitted by the current or former employee or his or her representative by completing an employer-provided form.

(B) An employer-provided form shall be made available to the employee or his or her representative upon verbal request to the employee's supervisor or, if known to the employee or his or her representative at the time of the request, to the individual the employer designates under this section to receive a verbal request for the form.

(c) The employer shall do all of the following:

(1) With regard to all employees, maintain a copy of each employee's personnel records for a period of not less than three years after termination of employment.

(2) With regard to current employees, make a current employee's personnel records available for inspection, and, if requested by the employee or his or her representative, provide a copy thereof, at the place where the employee reports to work, or at another location agreeable to the employer and the requester. If the employee is required to inspect or receive a copy at a location other than the place where he or she reports to work, no loss of compensation to the employee is permitted.

(3) (A) With regard to former employees, make a former employee's personnel records available for inspection, and, if requested by the employee or his or her representative, provide a copy thereof, at the location where the employer stores the records, unless the parties mutually agree in writing to a different location. A former employee may receive a copy by mail if he or she reimburses the employer for actual postal expenses.

(B) (i) Notwithstanding subparagraph (A), if a former employee seeking to inspect his or her personnel records was terminated for a violation of law, or an employment-related policy, involving harassment or workplace violence, the employer may comply with the request by doing one of the following:

(I) Making the personnel records available to the former employee for inspection at a location other than the workplace that is within a reasonable driving distance of the former employee's residence.

(II) Providing a copy of the personnel records by mail.

(ii) Nothing in this subparagraph shall limit a former employee's right to receive a copy of his or her personnel records.

(d) An employer is required to comply with only one request per year by a former employee to inspect or receive a copy of his or her personnel records.

(e) The employer may take reasonable steps to verify the identity of a current or former employee or his or her authorized representative. For purposes of this section, "representative" means a person authorized in writing by the employee to inspect, or receive a copy of, his or her personnel records.

(f) The employer may designate the person to whom a request is made.

(g) Prior to making records specified in subdivision (a) available for inspection or providing a copy of those records, the employer may redact the name of any nonsupervisory employee contained therein.

(h) The requirements of this section do not apply to:

(1) Records relating to the investigation of a possible criminal offense.

(2) Letters of reference.

(3) Ratings, reports, or records that were:

(A) Obtained prior to the employee's employment.

(B) Prepared by identifiable examination committee members.

(C) Obtained in connection with a promotional examination.

(4) Employees who are subject to the Public Safety Officers Procedural Bill of Rights (Chapter 9.7 (commencing with Section 3300) of Division 4 of Title 1 of the Government Code).

(5) Employees of agencies subject to the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).

<u>(6) Records created more than 5 years prior to the employer's receipt of the request to inspect or receive.</u>

(i) If a public agency has established an independent employee relations board or commission, an employee shall first seek relief regarding any matter or dispute relating to this section from that board or commission before pursuing any available judicial remedy.

(j) In enacting this section, it is the intent of the Legislature to establish minimum standards for the inspection and the receipt of a copy of personnel records by employees. Nothing in this section shall be construed to prevent the establishment of additional rules for the inspection and the receipt of a copy of personnel records that are established as the result of agreements between an employer and a recognized employee organization.

(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars ($750) from the employer.

(l) A current or former employee may also bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney's fees in such an action.

(m) Notwithstanding Section 1199, a violation of this section is an infraction. Impossibility of performance, not caused by or resulting from a violation of law, may be asserted as an affirmative defense by an employer in any action alleging a violation of this section.

(n) If an employee or former employee files a lawsuit that relates to a personnel matter against his or her employer or former employer, the right of the employee, former employee, or his or her representative to inspect or copy personnel records under this section ceases during the pendency of the lawsuit in the court with original jurisdiction.

(o) For purposes of this section, a lawsuit "relates to a personnel matter" if a current or former employee's personnel records are relevant to the lawsuit.

(p) An employer is not required to comply with more than 50 requests under this section to inspect and receive a copy of personnel records filed by a representative or representatives of employees in one calendar month.

(q) This section does not apply to an employee covered by a valid collective bargaining agreement if the agreement expressly provides for all of the following:

(1) The wages, hours of work, and working conditions of employees.

(2) A procedure for the inspection and copying of personnel records.

(3) Premium wage rates for all overtime hours worked.

(4) A regular rate of pay of not less than 30 percent more than the state minimum wage rate.

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

PROPONENT: Margaret J. Grover, Ujvala Singh, Mark Flory, Jack Osborn, John Short, Aiskell Roman, Kelly Borelli, Ryan Dean, Lisa Berger, James Mink

STATEMENT OF REASONS

The Problem (including Existing Law): Under existing law, an employer is required to provide personnel records to current and former employees upon demand. The statute requires the employer to keep personnel records for 3 years after an employee's final date of employment, but contains no limit on the duration of time for which records must be produced. Many employers maintain records for longer than 5 years. Sometimes older records are difficult to access, because the employer has changed its database or changed an outsourced human resources provider. If the employer does not produce all records in its possession, it is subject to a penalty of $750.00.

The Solution: This resolution would limit the scope of the employer's obligation to produce personnel records to those records created within 5 years before the request for records. Providing the last 5 years of records is sufficient for an employee or former employee to evaluate any potential claims or causes of action, as almost every employment-related claim has a statute of limitations of 4 years or less.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

There is no prior related legislation. Resolution 08-02-2002 proposed a change to Labor Code section 1198.5 that would have granted former employees the right to inspect personnel files for a period of up to 4 years post-termination. Resolution 02-07-2005 proposed a change to Labor Code section 1198.5 that would have granted former employees the right to inspect personnel files for a period of up to 2 years post-termination. The statute was amended to grant rights to former employees, but the proposed limitation was not included in the amendment.

AUTHOR AND/OR PERMANENT CONTACT:

Margaret J. Grover, Grover Workplace Solutions, P.C., 1300 Clay Street, Suite 600, Oakland, CA 94618, Tel: 415.596.9433, Email: mgrover@groverworkplacesolutions.com.

RESPONSIBLE FLOOR DELEGATE: Margaret J. Grover, Grover Workplace Solutions, P.C., 1300 Clay Street, Suite 600, Oakland, CA 94618, Tel: 415.596.9433, Email: mgrover@groverworkplacesolutions.com.

RESOLUTION 07-01-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Evidence Code section 1151, to read as follows:

§ 1151

When, after the occurrence of an event, remedial or precautionary measures are taken, which, if taken previously, would have tended to make the event less likely to occur, evidence of such subsequent measures is inadmissible to prove negligence, ~~or~~ culpable conduct in connection with the event, a defect in a product or its design, or a need for a warning or instruction.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): California currently prohibits using subsequent remedial measures in court to prove negligence or culpable conduct, as do the Federal Rules of Evidence. That is good. Unlike Federal Rules of Evidence, California does not prohibit using subsequent remedial measures to prove a defect in a product or its design, or a need for a warning or instruction. That is a problem.

The reason subsequent remedial measures cannot be used against a defendant is we want to encourage such measures to be taken, and they are less likely to be taken if they can be used against the defendant. The same logic applies to fixing product defects and providing warnings or instructions. Additionally, allowing subsequent remedial measures to be used takes the focus away from the acts and circumstances during and before the incident.

The Solution: This resolution applies the same rule to subsequent remedial measures taken for product defects and the need for a warning as we currently have for negligence and culpable conduct, and matches Federal rules.

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

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT:
Ben Rudin, 3830 Valley Centre Dr., Ste. 705 PMB 231, San Diego, CA 92130, (858) 256-4429, ben_rudin@hotmail.com.

RESPONSIBLE FLOOR DELEGATE: Ben Rudin

RESOLUTION 08-01-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 6340, to read as follows:

§ 6340
(a)(1) The court may issue any of the orders described in Article 1 (commencing with Section 6320) after notice and a hearing. When determining whether to make any orders under this subdivision, the court shall consider whether failure to make any of these orders may jeopardize the safety of the petitioner and the children for whom the custody or visitation orders are sought. If the court makes any order for custody, visitation, or support, that order shall survive the termination of any protective order. The Judicial Council shall provide notice of this provision on any Judicial Council forms related to this subdivision.
(2)(A) If at the time of a hearing with respect to an order issued pursuant to this part based on an ex parte temporary restraining order, the court determines that, after diligent effort, the petitioner has been unable to accomplish personal service, and that there is reason to believe that the restrained party is evading service or cannot be located, the court may permit an alternative method of service designed to give reasonable notice of the action to the respondent. Alternative methods of service include, but are not limited to, the following:
(i) Service by publication pursuant to the standards set forth in Section 415.50 of the Code of Civil Procedure.
(ii) Service by first-class mail sent to the respondent at the most current address for the respondent that is available to the court or delivering a copy of the pleadings and orders at the respondent's home or place of employment, pursuant to the standards set forth in Sections 415.20 to 415.40, inclusive, of the Code of Civil Procedure.
(B) If the court permits an alternative method of service under this paragraph, the court shall grant a continuance to allow for the alternative service pursuant to Section 245.
(b) The court shall, upon denying a petition under this part, provide a brief statement of the reasons for the decision in writing or on the record. A decision stating "denied" is insufficient.
(c) The court may issue an order described in Section 6321 excluding a person from a dwelling if the court finds that physical or emotional harm would otherwise result to the other party, to a person under the care, custody, and control of the other party, or to a minor child of the parties or of the other party.

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

PROPONENT: Women Lawyers Association of Los Angeles

STATEMENT OF REASONS

The Problem (including Existing Law): A subtle yet significant disparity exists between the statutes governing alternative service for domestic violence restraining orders (DVROs) and civil harassment restraining orders (CHROs). Under Code of Civil Procedure section 527.6, subdivision (m)(2), courts may authorize alternative service for CHRO petitions if the respondent cannot be located or is evading service. Judicial Council form CH-117 reflects this flexibility.

By contrast, DVRO petitioners lack this option when the respondent's whereabouts are unknown. Family Code section 6340, subdivision (a)(2)(A), allows courts to order alternative service for a DVRO petition only if: (1) personal service has been unsuccessful despite diligent efforts, and (2) there is reason to believe the respondent is evading service. The statute assumes the petitioner knows the respondent's location. Judicial Council form FL-117 mirrors this limitation, providing no option for alternative service when the respondent is unable to be located.

This statutory gap leaves DVRO petitioners at a disadvantage, denying them the same protections available to CHRO petitioners and potentially compromising their safety and access to justice..

<u>The Solution</u>: To align the protections for DVRO petitioners with those for CHRO petitioners, the DVRO statute should be amended read similarly to the CHRO statute and give courts the ability to order an alternative method of service when the respondent's whereabouts are unknown. This change, which aligns with the Legislature's intent to provide robust protections for survivors of abuse, ensures that victims of domestic violence are not unfairly disadvantaged due to an inability to locate the respondent.

IMPACT STATEMENT

This resolution ensures all victims—whether of domestic violence or civil harassment—have equal access to the legal tools necessary to safeguard their safety and well-being.

CURRENT OR PRIOR RELATED LEGISLATION

Assembly Bill 2694, enacted in 2018, first authorized alternative service in DVRO cases when personal service could not be completed despite diligent efforts and there was reason to believe the respondent was evading service. However, this amendment did not extend to cases where the respondent's whereabouts were unknown. Assembly Bill 1143, enacted in 2021, authorized alternative service in CHRO cases if the court determines at the hearing that, after a diligent effort, the petitioner has been unable to accomplish personal service, and that there is reason to believe that the respondent is evading service or cannot be located. This amendment did not impact alternative service for DVRO petitions.

AUTHOR AND/OR PERMANENT CONTACT:

Erin Irene Reed, La Canada Flintridge, Los Angeles County, reed.erin.irene@gmail.com, 310-779-6469

RESPONSIBLE FLOOR DELEGATE: Erin Irene Reed

RESOLUTION 08-02-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 3558, to read as follows:

§ 3558

In a proceeding involving child or family support, a court may require

(a) either parent to attend job training, job placement and vocational rehabilitation, and work programs, as designated by the court, at regular intervals and times and for durations specified by the court, and provide documentation of participation in the programs, in a format that is acceptable to the court, in order to enable the court to make a finding that good faith attempts at job training and placement have been undertaken by the parent;

(b) either may order a party to submit to an examination by a vocational training counselor. The examination shall include an assessment of the party's ability to obtain employment based upon the party's age, health, education, marketable skills, employment history, and the current availability of employment opportunities. The focus of the examination shall be on an assessment of the party's ability to obtain employment that would allow the party to pay for the support of the children according to the parent's ability so that the children can share in the standard of living of both parents.

(c) The order may be made only on motion, for good cause, and on notice to the party to be examined and to all parties. The order shall specify the time, place, manner, conditions, scope of the examination, and the person or persons by whom it is to be made.

(d) A party who does not comply with an order under this section is subject to the same consequences provided for failure to comply with an examination ordered pursuant to Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.

(e) "Vocational training counselor" for the purpose of this section means an individual with sufficient knowledge, skill, experience, training, or education in interviewing, administering, and interpreting tests for analysis of marketable skills, formulating career goals, planning courses of training and study, and assessing the job market, to qualify as an expert in **vocational** training under Section 720 of the Evidence Code.

(f) A vocational training counselor shall have at least the following qualifications:

(1) A master's degree in the behavioral sciences, or other postgraduate degree that the court finds provides sufficient training to perform a vocational evaluation.

(2) Qualification to administer and interpret inventories for assessing career potential.

(3) Demonstrated ability in interviewing clients and assessing marketable skills with an understanding of age constraints, physical and mental health, previous education and experience, and time and geographic mobility constraints.

(4) Knowledge of current employment conditions, job market, and wages in the indicated geographic area.

(5) Knowledge of education and training programs in the area with costs and time plans for these programs.

(g) The court may order the party making the motion for the vocational examination to advance the reasonable fees and costs, subject to reallocation at the time of hearing on the report from the vocational examination.

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

PROPONENT: Steven G. Hittelman, Ryan Dean, Elaine Alston, Ellie K. Vilendrer, Ricky Shaw, Lauren Grochow, Allyson Thompson, Kelsey Luu, Steve Young, Alan Crivaro

STATEMENT OF REASONS

The Problem (including Existing Law): Courts in California have long dealt with the issue of a party's "ability to earn" as it relates to either the payment or receipt of either child or spousal support. In matters where only spousal support is at issue the current state of the law is that a party can request the court to order the other party to undergo a vocational examination to determine their ability to earn income to pay either pay support or reduce the amount to be paid. This availability in spousal support matters is found under Family Code Section 4331. Recently, Family Code Section 3558 was the subject of the opinion *Merado v. Superior Court* (2024) G063594. The court held that while the current language in Family Code Section 3558 gives the court the authority to order a party to "attend job training, job placement and vocational rehabilitance, and work programs" it does not give the court authority to order a party to undergo a vocational examination. Other child support statutes, such as Section 4058, offer no such authority.

The Solution: By amending Family Code Section 3558 to include the same language used in Family Code Section 4331 the court will be given the broadest possible discretion in how to deal with issues of a party's ability to earn.

IMPACT STATEMENT

This amendment will allow litigation of ability to earn, and the use vocational examinations, in matters involving child support only.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT:

Steven G. Hittelman, CFLS, Hittleman Family Law Group APC, 20101 SW Birch Street, Suite 220, Newport Beach, CA 92660

RESPONSIBLE FLOOR DELEGATE: Steven G. Hittelman

RESOLUTION 08-03-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 2013, to read as follows:

§2013. (a) ~~If a written agreement is entered into by the parties, the parties may utilize a collaborative law process to resolve any matter governed by this code over which the court is granted jurisdiction pursuant to Section 2000.~~ It is the State's policy to encourage parties to resolve their family law matters through consensual dispute resolution processes to reach agreements that promote the best interest of the entire family and particularly their children. The State recognizes the unique nature of family law disputes and the importance of parties themselves reaching an agreement or agreements over critical matters including child custody, support, and property, without engaging in the traditional adversarial litigation process. To facilitate such resolution, the court will accept stipulations to proceed collaboratively.

(b) "Collaborative law process" means the process in which the parties and any professionals engaged by the parties to assist them agree in writing to use their best efforts and to make a good faith attempt to resolve disputes related to the family law matters as referenced in subdivision ~~(a)~~ (c) on an agreed basis without resorting to adversary judicial intervention.

(c) A written agreement to proceed by collaborative law must be signed by both parties to proceed as a collaborative law process in the resolution of any matter governed by this code over which the court is granted jurisdiction pursuant to section 2000. The written agreement in the form of a Stipulation and Order to Proceed by Collaborative Law must be filed with the court and, upon filing, shall constitute (i) a waiver and acceptance of service by respondent within the meaning of Family Code section 233 if the Petition has not already been served on the Respondent and (ii) a general appearance if a Response to the Petition has not previously been filed.

(d) The term "Collaborative Law Case" must be included in the caption of any document filed with the Court from and after the filing of the collaborative law stipulation and order.

(e) Attorneys and law firms representing the parties in the collaborative law process, and/or any attorneys acting in association with such attorneys and/or law firms, are considered collaborative law counsel and their roles are deemed advisory and not attorneys of record. The court will not impose discovery deadlines or enter scheduling orders during the collaborative law process.

(f) Attorneys and law firms representing the parties in the collaborative law process, and/or any attorneys acting in association with such attorneys and/or law firms, may not represent either party as counsel of record, for any purpose outside of the collaborative law process, or for any contested proceedings (including post-judgment) between the same parties.

(g) Mental health professionals, accountants, financial professionals, and other consultants and experts jointly retained during the collaborative law process shall not, in any phase of the collaborative law process or of future contested proceedings (including post-judgment) between the same parties, (1) assist either party individually or (2) testify on behalf of one party (except as required by law).

(h) The collaborative law process is a confidential "Mediation" under Evidence Code section 1115 and protected under Evidence Code sections 1115 through 1129.

(1) Mediation confidentiality applies to all notes, work papers, summaries, and reports that the parties' jointly retained consultants and experts prepared during the collaborative law process. Statements, communications, and work product (excluding original source documents) made for the purpose of, in the course of, or pursuant to, a collaborative law process is confidential and inadmissible in any arbitration, administrative adjudication, civil action or other non-criminal proceeding in which testimony can be compelled.

(2) Notwithstanding this subdivision, executed pleadings and disclosure required under Family Code sections 2014 and 2105, all original source documents, and any written agreements signed by the parties during the collaborative law process are not confidential and are deemed admissible in court.

(3) Information disclosed to a mental health professional whose function relates primarily to the emotional dynamics and communications between the parties (often referred to as a divorce coach) or whose function relates primarily to the children or other dependents of the parties (often referred to as family or child specialist) as part of the professional collaborative team, including information disclosed by the minor child(ren), is confidential as within the collaborative law process. Such professional(s) is/are not serving in the capacity of a doctor/patient or psychotherapist/patient relationship with the party but, instead, serves to educate, guide, and facilitate a settlement in the collaborative law process, much as a mediator. However, no such confidentiality exists as it relates to mandated reports and a reasonable suspicion of child abuse or abuse of a dependent or elder, or when a party presents a serious danger to self or others.

(4) Mediation confidentiality commences upon the execution of the Stipulation and Order to Proceed by Collaborative Law, unless an earlier date is agreed upon by the parties, in writing, and continues until the termination of the collaborative law process as defined herein. Anything said, any admissions made, or any writing that is inadmissible, protected from disclosure, and confidential under this section before the collaborative law process terminates, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the collaborative law process terminates.

(i) Parties may elect to proceed collaboratively upon the commencement of an action or at any time before or after the entry of judgment.

(j) Effect of Collaborative Case on Pending Matters. Upon the filing of the Stipulation and Order to Proceed by Collaborative Law, all of the following will occur without further court order:

(1) All scheduled hearings are taken off calendar without prejudice. However, the parties may stipulate to maintain the Court's jurisdiction to make retroactive orders back to the filing date of the support request.

(2) All other appearances and court deadlines are vacated;

(3) All outstanding discovery and discovery-related deadlines are stayed;

(4) The time periods in Code of Civil Procedure section 583.420 for discretionary dismissal are stayed during the collaborative process.

(k) Termination of Collaborative Law Process. The Collaborative Law Process is voluntary and terminates when one of the following conditions is satisfied:

(1) The parties execute a written settlement agreement with the intent to fully resolve the family law matter.

(2) Any party provides all other parties and their attorneys with a writing stating that the collaborative law process is terminated.

(3) Any party states in the presence of all other parties and their attorneys that the collaborative law process is terminated.

(4) Any party files a request for relief from the Court.

Should the process terminate by one of the methods (2) through (4) above, the party terminating the process shall serve a written notice of termination on the other party and their attorney and shall file such Notice of Termination with a proof of service reflecting such service with the court. Upon a party's filing of such Notice of Termination with the Court in the manner provided herein, the collaborative attorneys' status for the parties shall terminate without further notice.

(l) Effect of Terminating the Collaborative Process. If the parties Terminate the Collaborative Law Process, the court clerk shall promptly schedule a status conference pursuant to the local rules and all stayed discovery-related deadlines, as per section (J)(3) herein, and Code of Civil Procedure section 583.420 time periods shall recommence but in no event shall the new discovery deadline be prior to 30 days from lifting of the discovery stay.

PROPONENT: Diana L. Martinez, Faith Nouri, Vicki Green, Dena Kleeman, Kristina Hohne, Joseph Spirito, David Yamamoto, Rozanna Velen, Forrest Mosten, Roslyn Soudry, Jami Fosgate

STATEMENT OF REASONS

The Problem (including Existing Law): The existing statute does not address important elements of the Collaborative Law Process as currently practiced. This includes confidentiality, professional roles, and the process's impact on ongoing cases. Only 7 out of the 58 judicial districts mention Collaborative Law in their local rules or general online information, leaving parties and lawyers without a clear framework for making informed decisions before entering the collaborative law process. In the matter of Mueller v. Mueller (June 3, 2024, A166577, Mendocino County Superior Court No. SCUK-CVFL 2020-73826) the parties disputed the confidentiality applicable to the process as per their written agreement. The appellate Court ruled that the collaborative discussions were not confidential, noting "the importance of carefully drafting collaborative law agreements", and confirming that "Unlike mediations, our Legislature has not created an evidentiary privilege for collaborative law process."

As amended, the statute should also be moved to Part 3. Dissolution of Marriage and Legal Separation, Chapter 6. Case Management. The statute is currently found in Part 1 "General Provisions", Chapter 2 "Jurisdiction". As currently written, the code is appropriately assigned as it addresses only two aspects of the collaborative divorce process: (a) the court's jurisdiction to govern the process and (b) the definition of "collaborative law process". The proposed amendments address jurisdiction and definition, as well as case management, including service of process, document captioning, confidentiality, limitations of the roles of the collaborative professionals, discovery and motions, impact on pending matters, and the commencement and termination of the process.

The Solution: The proposed amendments create consistency in practice, provide clarity to courts and court personnel, and ensure parties and professionals working with the parties in the collaborative law process are properly informed before commencing the collaborative law process. The proposed amendments reflect current Collaborative Law practices and is, in fact, already adopted by those with local rules (see Superior Court of California, County of Los Angeles Local Rule 5.26).

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule. Jurisdictions with local rules related to Collaborative Law already include various aspects, if not all, of the proposed amendments.

CURRENT OR PRIOR RELATED LEGISLATION
Mueller v. Mueller, Mendocino County Case No. SCUK-CVFL 2020-73826; Appeal No. A166577, June 3, 2024.

AUTHOR AND/OR PERMANENT CONTACT:
Diana L. Martinez, Esq., CASBN 198871, 111 West Ocean Blvd., Ste. 400, Long Beach, CA 90802, (562) 367-8001, DianaM@DLMartinezLaw.com.

RESPONSIBLE FLOOR DELEGATE: Diana L. Martinez, Esq.

RESOLUTION 08-04-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 6308 to read as follows:

§ 6308

A party, support person as defined in Section 6303, or witness ~~may~~ shall be permitted to appear remotely at the hearing on a petition for a domestic violence restraining order, if requested to do so, unless the court states its refusal for good cause. The superior court of each county shall develop local rules and instructions for remote appearances permitted under this section, which shall be posted on its internet website.

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

PROPONENT: Los Angeles County Bar Association.

STATEMENT OF REASONS:

The Problem: Due to the discretionary language within the statute, it has not proven helpful and the objectives of the legislation have not been met. Since its enactment, the courts have rarely permitted remote hearings and interpret the language as discretionary. Courts frequently hold that since DV requires an evidentiary hearing, and—pursuant to FC §217—they are required to conduct an in-person hearing, remote hearings are ill-suited to their needs. This attitude obviously defeats the entire purpose behind this new addition to the Family Code. The result is that victims and witnesses of DV are no more likely to be heard today than they were prior to the enactment of FC §6308. Many victims have limited access to the finances necessary to support themselves or even retain an attorney. Many victims moved away from their batterers and they are not close to their initial filing courthouses.

The Solution: This resolution would enhance public access that prevents a court from considering the remote appearance request and whether to deny a request for good cause only.

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

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT: Faith Nouri of Nouri Law Corporation, Cosa Mesa/Orange County; (562) 594-5678; faith@nourilaw.com; www.nourilaw.com

RESPONSIBLE FLOOR DELEGATE: Faith Nouri, CFLS; faith@nourilaw.com

RESOLUTION 09-01-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 800, to read as follows:

§ 800

(a) In any civil action to appeal or review the award, finding, or other determination of any administrative proceeding under this code or under any other provision of state law, except actions resulting from actions of the Department of General Services, if it is shown that the award, finding, or other determination of the proceeding was the result of arbitrary or capricious action or conduct by a public entity or an officer thereof in his or her official capacity, the complainant if he or she prevails in the civil action may collect from the public entity reasonable attorney's fees, computed at three ~~one~~ hundred dollars ($300) ~~($100)~~ per hour, but not to exceed twenty two thousand five hundred dollars ($22,500) ~~seven thousand five hundred dollars ($7,500),~~ if he or she is personally obligated to pay the fees in addition to any other relief granted or other relief granted or costs awarded.

(b) This section is ancillary only, and shall not be construed to create a new cause of action.

(c) The refusal by a public entity or officer thereof to admit liability pursuant to a contract of insurance shall not be considered arbitrary or capricious action or conduct within the meaning of this section.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law: Government Code Section 800 sets a cap on Attorney Fees in a Writ of Mandate against a Governmental Agency which found "arbitrary and capricious conduct" at $100 per hour with a cap of $7,500 in attorney fees. This hourly fee and cap is not reflective of current compensation and will discourage Attorneys from taking cases for those without the means to hire counsel to contest Licensing or Governmental regulatory issues. The compensation set many years ago is in need of updated revision to reflect current economic reality.

The Solution: Modify the existing statutory compensation to ($300) per hour and the maximum award to reflect the original intention of 75 hours to ($22,500)

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT: Paul H. Neuharth, Jr. 7855 Ivanhoe Ave, Suite 455, La Jolla, CA 92037, pneuharth@sbcglobal.net, (619)231-0401

RESPONSIBLE FLOOR DELEGATE: Ben Rudin

SDCBA-01-2025

RESOLUTION 09-02-2025

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 10233, to read as follows:

§ 10233

Insofar as in ~~his~~ its power, upon request, the Legislative Counsel shall aid and assist any member of the Legislature as to bills, resolutions and measures, drafting them into proper form, and furnishing to the member the fullest information upon all matters in the scope of the bureau.

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

PROPONENT: Naris Khalatian, Marc L. Sallus, Faith Nouri, Donna Tryfman, Josephine Gallegos, Carolin Shining, Margaret Kame, Mark Aprahamian, Joanna Darvish, Myanna Dellinger.

STATEMENT OF REASONS

The Problem (including Existing Law):

The Office of Legislative Counsel (OLC) is a nonpartisan public agency that drafts legislative proposals, prepares legal opinions, and provides other confidential legal services to the Legislature and other clients. OLC is not an individual but an entity.

As an agency, its appropriate pronouns are “it” and “its”.

California’s Legislature does not have a legislative drafting manual.

However, the House Legislative Counsel’s Manual on Drafting Style, dated December 2022,[1] prepared by The Office of the Legislative Counsel for the U.S. House of Representatives, at page 47, requires the use of gender-neutral language rather than personal pronouns in drafting laws.

The Solution: Proper rules of grammar and drafting require that the pronoun in *Government Code* Section 10233, authored in 1945, be corrected to “its”.

IMPACT STATEMENT

The impact of this resolution is uncertain. However, it will have a positive impact, as it will align the statute’s pronoun with proper rules of grammar and drafting.

CURRENT OR PRIOR RELATED LEGISLATION

The author is unaware of any prior or related legislation.

[1] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://legcounsel.house.gov/sites/evo-subsites/legcounsel-evo.house.gov/files/documents/ManualDraftStyle_2022.pdf

AUTHOR AND/OR PERMANENT CONTACT:
Naris Khalatian, 3250 Wilshire Blvd., Suite 2000, Los Angeles, CA 90010, 213-447-7773, nkhalatian@gmail.com

RESPONSIBLE FLOOR DELEGATE: Naris Khalatian