

**RESOLUTION 06-05-2015**

**DIGEST**

Civil Procedure: Requirement that Entities Be Represented by Legal Counsel

Adds Code of Civil Procedure section 283.5 to require that entities be represented by legal counsel in all civil proceedings, other than small claims and specified probate matters.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Association recommends that legislation be sponsored to add California Code of Civil Procedure section 283.5 to read as follows:

§283.5

- 1           (a) Except as provided in Code of Civil Procedure section 116.530 and subsection (b) of  
2 this section, the following entities and representatives, whether domestic or foreign, must be  
3 represented by an attorney at all stages of any civil proceeding:  
4           (1) Corporations;  
5           (2) Limited Liability Companies;  
6           (3) Partnerships, including general partnership, limited partnerships and limited liability  
7 partnerships;  
8           (4) Unincorporated Associations, including business trusts;  
9           (5) Guardian  
10          (6) Conservator  
11          (7) Trustee  
12          (8) Personal Representative  
13          (9) Probate Fiduciary  
14          (10) Guardian ad Litem  
15          (b) In probate proceedings, the following representative may appear in pro per unless  
16 otherwise ordered by the court:  
17          (1) Guardian  
18          (2) Conservator  
19          (3) Trustee  
20          (4) Personal Representative  
21          (5) Probate Fiduciary  
22          (6) Guardian ad Litem.

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

**PROPONENT:** Bar Association of Northern San Diego County

**STATEMENT OF REASONS**

The Problem: There is confusion and uncertainty as to when certain entities and representative may represent themselves in civil proceedings. For example, the Substitution of Attorney-Civil Form provides that Guardians, Conservators, Trustees, Personal Representatives, Probate

Fiduciaries, Corporations, Guardians ad litem and Unincorporated Associations may not act as their own attorney. However, the form is silent as to other entities. For the most part, this decree is based on case law and there is no statutory authority concerning representation of entities outside of the small claims context. This leads to confusion and inconsistent rulings by courts when non-specified business entities seek to represent themselves, such as limited liability companies and various forms of partnerships. Since a corporation has the capacity to sue and defend and is not a natural person, it can only appear through an attorney in civil cases. (*Merco Const. Engineers, Inc. v. Mun. Ct. (Sully-Miller Contracting Co.)* (1978) 21 Cal.2d 724, 731.) Case law has also held that unincorporated association is more like a corporation than an individual since it has the capacity to sue and be sued in its name, and therefore can appear in court only through a licensed attorney. (*Clean Air Transport Systems v. San Mateo County Transit Dist.* (1988) 198 Cal.App.3d 576, 578-579.) There is a division in the courts on whether LLCs and partnerships can represent themselves in civil proceedings. Since LLCs and partnerships likewise have the capacity to sue and be sued in the entity's name (see Corp. Code §17003(b) and Code of Civil Procedure §369.5(a)), it is only logical that the requirement that these entities also be represented by counsel be extended.

The Solution: This clarifies that all representatives already listed in the Substitution of Attorney-Civil form, plus all entities must be represented by counsel at all stages of civil proceedings except for small claims hearings and probate proceedings. Certain representative capacities in probate proceedings were intentionally carved out because those representatives traditionally represent themselves in the probate court. However, those representatives should not be allowed to appear in a representative capacity in other civil proceedings.

#### **IMPACT STATEMENT**

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

#### **CURRENT OR PRIOR RELATED LEGISLATION**

Not known.

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#### **RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution adds Code of Civil Procedure section 283.5 to require that entities be represented by legal counsel in all civil proceedings, other than small claims and specified probate matters. This resolution should be approved in principle because 1) small claims proceedings do not allow lawyers; 2) in probate proceedings a fiduciary is not considered to be representing the

interest of others, but performing the duties of his/her office; and 3) in all other cases, entities and estates must be represented by legal counsel.

The resolution does not change but clarifies existing law and practices. In probate proceedings the fiduciary is acting within the capacity of his/her office. Unlike in civil litigation, the designated fiduciary is the designated fiduciary is required to protect the interest of the protected party, not necessarily the protected party's stated interest, an attorney would be necessary in the latter situation. The probate court judge retains the discretion, in any case, to require representation by legal counsel.