



## Legislative Policy

Why It Matters and How We Work

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**A**s we enter the 2020 legislative session, my thoughts return to a theme from my summertime President's Message: the profession of practicing law is where one can do so much good while also addressing serious issues. This sentiment rings especially true for me as a participant on the CBA Legislative Policy

Committee (LPC), which I'm chairing this year in my capacity as CBA president. Each week of the legislative session brings an intellectual feast of legal concepts, policy, purpose, and action as the LPC diligently works to honor its charge of determining CBA positions on state legislation.

During the 2019 legislative session, as vice chair, I witnessed the exceptional leadership,

political acumen, and team approach the committee brought to the decision-making process on over 47 pieces of legislation. At weekly meetings, I watched as section recommendations, examination, debate, and intellectual wrestling yielded positions by which we measured success through legislative influence and outcome. Seeing firsthand the LPC's dedication to the law, the courts, and the constitution gave me a deep appreciation for our membership and great pride in the work we do. The CBA is what it is because of its members and professional staff.

Every few years, the LPC refreshes and refines its guidelines and its guidance to the sections and committees. This year, the LPC undertook summertime work to again revise its procedures. To that end, the start of the new legislative session seems like the perfect time to update members on the inner workings of the LPC. Many thanks to Amy Larson, CBA interim

executive director and COO, for her assistance with this month's message.

### **Roles and Responsibilities**

Acting on a grant of authority from the CBA Board of Governors, the LPC is charged with determining CBA positions on state legislation during the legislative session. The LPC reviews legislation to ensure it is narrowly crafted to solve an actual problem best resolved statutorily, seeks to ensure clarity and consistency in legislation that fits within existing frameworks and avoids unintended consequences, and determines whether the CBA will take a position on a bill and what that position will be. The groups and individuals below play a crucial role in furthering these objectives.

#### ***The Legislative Policy Committee***

The LPC comprises 13 voting members: the three members of the triumvirate (CBA president, incoming president, and immediate past president); seven presidential appointees; and three members elected by the Board of Governors. The LPC meets weekly at the CBA offices during the legislative session and throughout the rest of the year as determined by the LPC chair.

#### ***Sections and Committees***

Sections and committees are the backbone of the CBA legislative process. Their expertise, guidance, and involvement are critical to the CBA's success at the legislature. To be effective, sections and committees must have a clear chain of command with decision-making ability at meetings and by email. Thus, sections and committees are required to appoint a legislative liaison so they can make informed decisions quickly. The leadership within each section and committee determines whether the liaison has the discretion to act on behalf of its members, or whether an email vote is required.

#### ***The Director of Legislative Relations***

The CBA director of legislative relations leads all efforts and actions to support, oppose, amend, monitor, or take no position regarding the passage of legislation reviewed or acted upon by the LPC. The director assesses any legislation that may be of interest to sections

or committees and monitors the activity at the Capitol and the political climate for CBA impact.

The director coordinates legislative engagement through outreach to legislators, stakeholders, lobbyists, and administration and department officials; solicitation of legislators to sponsor bills; scheduling witnesses; and direct lobbying. The director is a registered lobbyist and works with a professional lobbyist on contract with the CBA.

The CBA recently welcomed Andrew White as its new legislative relations director. Andy is an attorney with over a decade of legislative

affairs experience at the state level. Members are encouraged to work with their sections and committees to alert Andy to any legislative matters that may relate to or affect the legal profession, the practice of law, the judiciary, or the justice system.<sup>1</sup>

### **Process and Procedures**

The CBA's legislative procedures are flexible by design. However, the LPC's processes, outlined below, provide a framework for how legislative objectives are achieved.

## **LPC GUIDELINES**

The LPC Guidelines outline priorities and considerations for the CBA's legislative work. These are summarized below.

**Substantive law.** The LPC should generally take a position on legislation where its sections or committees have specific legal expertise and a compelling legal argument. When sections or committees present conflicting recommendations, the LPC will weigh the respective analyses before considering a position. Conflicting recommendations do not preclude the LPC from taking a position.

**The practice of law.** The LPC should generally take positions on legislation that affects the practice of law, including the diversity of the profession, the business of lawyering, attorney fees, and attorney-client relations.

**The judiciary.** The LPC should support legislation promoting a fair, impartial, diverse, and independent judiciary. It may take positions on legislation involving the structure, organization, operation, or funding of Colorado courts, and on legislation involving the allocation of and access to judicial resources, judicial compensation and benefits, selection and retention, and budget appropriations for the court system.

**The justice system.** The LPC should generally support legislation that improves access to justice. It may take a position on legislation that relates to the public's interactions with the justice system, including due process and equal protection; the right to jury trials; and expanding or restricting claims, defenses, and allowable evidence.

**Stakeholder requests.** The LPC may consider requests of the diversity bars, affinity organizations, and other stakeholders or associations.

**Political climate.** The LPC may consider the political climate (e.g., partisan issues, legislative leadership, committee assignments, public opinion, press coverage, stakeholder involvement) and may choose not to take a position in circumstances that will portray the CBA as partisan or harm its reputation as a group of fair, impartial experts in the law.

**Impact.** The LPC may choose not to take a position if the bill is unlikely to advance or when CBA engagement will have no impact.



### ***Duties of the Legislative Liaison***

The legislative director routes pending bills to the appropriate legislative liaison. The liaison may subsequently assign bills to section or committee council members (based on their areas of expertise) for further analysis. The liaison is required to coordinate the section's or committee's response to the director. This creates a system of shared review, expertise, and accountability within the sections and committees that have been assigned to review a bill. If a section or committee discovers a relevant bill in addition to those routed, the liaison is required to share that information with the director. This ensures a 360-degree identification of relevant legislation. The section or committee chair serves as a back-up to the liaison to ensure critical work is not unintentionally overlooked.

### ***Training and Bill Tracking***

Training on legislative process and procedure is offered to section and committee leadership and legislative liaisons twice per year. One of these trainings focuses on the CBA's bill tracking system (currently BillTrack50<sup>2</sup>). Legislative liaisons are required to attend a training on the legislative process and bill tracking technology annually, or schedule specific training with the legislative director. Additional and customized training and technical support is available throughout the year.

### ***Taking Positions***

Section or committee leadership must determine how to proceed on every bill that is identified as having a policy or legal impact on the CBA. When reviewing legislation, consideration is given to ensuring:

- the bill falls within the "Legislative Policy Committee Guidelines on Legislative Positions" (LPC Guidelines) (see the accompanying sidebar);
- the section or committee has competency and expertise to analyze the bill; and
- bill drafting is accurate and precise.

When a section or committee has an interest in a bill that meets the LPC Guidelines, the legislative director and legislative liaison schedule the bill for consideration at an upcoming LPC meeting.

The CBA's positions on bills are limited to:

- **Supporting**—The LPC supports the bill as drafted or as amended and will work to support its passage.
- **Opposing**—The LPC objects to the bill in whole or part and will work to defeat the legislation. This position may be the result of unsuccessful efforts to amend the bill.
- **Amending**—The LPC recommends changes to the bill and works with partners or stakeholders make the bill acceptable.
- **Monitoring**—The LPC watches the bill's progress and developments and reviews the legislation at future meetings.
- **None**—The LPC takes no action on the bill but may review it later.

The LPC must avoid nuanced positions on legislation and adhere to the positions above, as established by the Secretary of State.<sup>3</sup> The LPC may table a bill at any time and may reconsider such bill at a subsequent date or time.

### ***The LPC Memo***

When presenting a bill to the LPC, legislative liaisons must draft or coordinate the drafting of a brief memo detailing the rationale behind the recommendation, including how the bill falls within the LPC Guidelines. This can include recommended language or changes, case law citations, and so on. This memo serves as the foundation for the section's or committee's presentation before the LPC and as a potential outline for a fact sheet or testimony. The memo must be submitted to the legislative director the Thursday before the LPC presentation. The LPC, legislative director, or LPC chair reserves the right to not consider or table legislation for which a memo is not timely submitted. The memo requirement may be waived at the discretion of the director.

### ***Communicating Positions***

LPC members, legislative liaisons, members, and attendees agree not to share LPC decisions or discussions until and unless cleared by the legislative director or LPC chair.

### ***Fact Sheets and Testimony***

The legislative liaison assists the legislative director with ensuring that timely, accurate

information is available through fact sheets and other relevant information. Fact sheets are vital to the CBA's success with the bill. In addition, the liaison, or other section or committee member, may be expected to accompany the director to the Capitol to speak directly with stakeholders or legislators. The liaison is also responsible for coordinating testimony at the Capitol or assisting in identifying members willing and able to testify, if needed.

No one can testify or lobby a bill on behalf of the CBA or any section or committee without the knowledge and approval of the LPC and the legislative director. If a CBA member testifies on a bill as a general citizen, or on behalf of a client, he or she may not use the CBA, LPC, section, or committee name at any time.

### ***Get Involved***

The CBA sections, committees, and LPC invest hours of time and thought into delivering high-quality work throughout our legislative process. Member involvement is key. Consider getting involved in the CBA's legislative work through a section or committee, or offering to serve as an appointee to the LPC. For more information about the LPC, including the LPC Guidelines, visit [www.cobar.org/lpc](http://www.cobar.org/lpc). For a list of CBA sections and committees, visit [www.cobar.org/For-Members](http://www.cobar.org/For-Members).

The LPC's work truly combines the good and serious practice of law. My involvement with the CBA's legislative process has never disappointed. I hope this overview inspires you to up your CBA involvement and enhance your practice by engaging with the LPC. 

### **NOTES**

1. Andy White can be reached at [awhite@cobar.org](mailto:awhite@cobar.org) or (303) 824-5309.
2. BillTrack50, [www.billtrack50.com](http://www.billtrack50.com), allows easy access to bills. The CBA provides login credentials for each legislative liaison.
3. See Secretary of State, Lobbyists, [https://www.sos.state.co.us/pubs/lobby/lobby\\_home.html?menuheaders=6](https://www.sos.state.co.us/pubs/lobby/lobby_home.html?menuheaders=6).