

Colorado Bar Association: LPC Procedural Guide for Sections and Committees

Introduction

One of the primary goals of the Colorado Bar Association (CBA) is to promote improvements in the administration of justice and advancements in jurisprudence through the legislative process. CBA section input into the legislative process is critical for our state, both for the practice of law as well as for Colorado's citizens, government, and businesses. These procedures outline the role of CBA Sections and Committees, and especially their point people in that process.

Authority

Acting on a grant of authority from the governing boards of the CBA, the Legislative Policy Committee (LPC) decides whether the CBA will take a position, and if so what the position will be, on proposed state legislation during session. The LPC follows the attached "Legislative Policy Committee Guidelines on Legislative Positions" approved by the CBA's Executive Council. That Executive Council retains oversight and authority for action or comment on all other matters.

No section or committee may take a position on behalf of the CBA or the section itself on state legislation unless authorized by the LPC. No section or committee may take a position on any other policy, including ballot measures, federal legislation, administrative rulemaking or court rules, unless authorized by the Executive Council.

The Legislative Process

The Colorado legislative session is fast paced and runs for 120 days; from early January through early May. The CBA's legislative process requires extreme attention to detail and adherence to strict deadlines. Timely communication of a Section's position on a bill is critical. Decisions on pending legislation must be made quickly, accurately and be routed correctly. There is typically a 24 to 48-hour turnaround time in reacting to something at the State Capitol.

Roles

The Legislative Policy Committee

The LPC is comprised of 13 voting members; 10 presidential appointees and three members elected by the Board of Governors. The LPC determines whether the CBA will take a position on a particular bill and what the position of the CBA will be. All legislatively related items must go through this committee before being taken to the capitol.

The LPC meets at the CBA offices every Friday morning during the legislative session at 7:30 a.m. or as set by the LPC chair. Agendas are made available to LPC Members, section chairs and point people before the meetings. Any CBA member is welcome to attend the LPC meetings in person.

The Director of Legislative Relations

The Director of Legislative Relations (director) leads all efforts and actions to promote, oppose or amend the passage of legislation reviewed or acted upon by the LPC. The director monitors the activity at the capitol, the political climate, and legislation that may be of interest to CBA sections or members.

Responsibility for coordination of legislative engagement rests with the director with respect to: outreach to legislators, stakeholders, lobbyists and administration and department officials; solicitation of legislators to sponsor the bill; scheduling of witnesses; and lobbying to ensure its passage. The director is a registered lobbyist, and usually works with a professional lobbyist on contract.

Sections and Committees

Sections and committees are the backbone of the CBA legislative process. Their expertise, guidance and involvement are critical to the success of the bar at the legislature. Sections and committees may take different approaches to the legislative process based on how important legislation is to their size and area of law. In order to be as effective as possible, a clear chain of command and the ability to make decisions at meetings or by email is critical. The Section Council must create an action plan for when decisions are needed immediately.

Section Councils are required to appoint a legislative point person. Appointing a point person gives the section council the ability to make better decisions much more quickly. The Section Council must determine whether the point person has the discretion to act on behalf of the Section, or whether an email vote is required.

If the section is large enough and involved in enough legislation, it may have a committee chaired by the point person. The committee will want to have frequent conference calls to be sure all deadlines are met and the correct information is getting back to the director and LPC.

Important Information

The CBA will not engage on any bill without debate and approval of the LPC.

No section or committee may take a position on legislation unless authorized by the LPC.

Information and discussions held by the LPC are confidential and not to be shared outside of the CBA. This is especially critical when the LPC recommends positions on legislation and allows for the CBA lobbying team to properly and appropriately disseminate the information with Legislators and other stakeholders.

Checklist of Requirements

- ✓ Each section must appoint a legislative point person.
- ✓ Point persons are responsible to assign bills to section council members/committees to review, follow and update the section on bill progress.

- ✓ Point persons are responsible for coordinating preparation of testimony or materials for the bill.
- ✓ Point persons must attend the CBA's mandatory legislative training before the session.
- ✓ Point persons must respond to every bill sent to their section.
- ✓ Point persons must update the section and council bill tracks.
- ✓ Point persons must follow timelines and deadlines for any bill of interest.
- ✓ Point persons must provide an answer to the lobbyist by the deadline given for every bill forwarded to it, even if the response is "no position".

The Process

Duties of the Point Person

The director will route pending bills to the point person for the appropriate section(s). The point person shall review and respond with an initial (simple) assessment within 24 to 48 hours. The point person may subsequently assign bills to the council/section or committee members (based on their areas of expertise) for further or more detailed analysis and coordinate a response back to the director. The point person should use a tracking system such as Bill Track50. This creates accountability for the section and council members who have been assigned to review a bill.

Point persons are to review all Colorado bills frequently to ensure nothing is missed. The section or committee chair acts as a back-up to the point person to ensure nothing falls through the cracks.

Bill Tracking

The CBA uses *BillTrack50* (www.billtrack50.com) to follow legislation electronically. The website allows for easy dissemination to the section council and to the section as a whole through the section webpage. Point persons are responsible for updating their section or committee information.

There will be mandatory training each year and additional training can be scheduled as necessary, and every point person is required to attend the training on legislative process annually or schedule additional training with the director.

Taking Positions

On any particular bill, the section council must determine how to proceed. When reviewing legislation – consideration should be given to ensuring (among other things):

- ✓ Accuracy and Precision in drafting
- ✓ A positive effect on the practice of law
- ✓ The section or committee has competency and expertise on the subject of the bill
- ✓ Whether the bill falls within the attached "Legislative Policy Committee Guidelines on Legislative Positions."

When a section or committee has an interest in a bill and it meets those guidelines, the director needs to know the recommended position as soon as it is determined. Below are the options for the section or committee to recommend to the LPC:

Support – the CBA supports the bill as drafted or as amended, and will work to support its passage.

Oppose – the CBA objects to the bill in whole or significant part, and will work to defeat the legislation. This position may be the result of unsuccessful efforts to amend the bill.

Amend – the CBA recommends changes to the bill to make it acceptable legislation and will work with partners or stakeholders to change the bill to an acceptable format.

Monitor – the CBA will track the bill and work with section leadership to ensure that amendments will not negatively impact the bill.

No Position – the CBA reviewed the legislation but will not engage.

Reporting Section Positions

The LPC Memo

When recommending the LPC take a support, oppose or amend position, point persons must draft or coordinate the drafting of a brief memo detailing the rationale behind the recommendation, including how the bill falls within the attached “Legislative Policy Committee Guidelines on Legislative Positions.” This can include recommended language or changes, case law citations, etc. This memo will serve as the foundation for the section’s presentation before the LPC and as a potential outline for a factsheet or testimony. At the discretion of the director the memo requirement may be waived.

When the section has a matter that comes before the LPC, the section leaders will participate in the LPC discussion and present their position with their accompanying memo. The memo must be submitted to the director the Wednesday prior to the LPC presentation.

Fact sheets and Expert Witness

Frequently, expertise and information must be shared with legislators and stakeholders at the Capitol. The point person is responsible for assisting the director to ensure timely, accurate information is available based on the LPC memo and other relevant information from the section. These fact sheets are vital to the success of the CBA’s success with the bill. In addition, the point person, or other section or committee member, may be expected to accompany the director to the Capitol to speak directly with stakeholders or legislators.

Testifying

- ✓ No one can testify or lobby a bill on behalf of the CBA or any section without the knowledge and approval of the LPC and the director.

- ✓ If you are testifying on a bill as a general citizen, or on behalf of a client, you may not use the CBA, LPC, section, or committee name at any time.
- ✓ The point person is responsible to coordinate testimony at the Capitol or assist in identifying members willing and able to testify, if needed.

LEGISLATIVE POLICY COMMITTEE GUIDELINES ON LEGISLATIVE POSITIONS **(As approved by LPC – 05.25.2017 and CBA EC – 06.13.2017)**

Introduction:

One of the primary goals of the CBA is to promote improvements in the administration of justice and advancements in jurisprudence. The CBA's Legislative Policy Committee (LPC) is a major part of this effort.

The CBA regularly takes positions on bills at the state legislature, and the LPC is charged with making the final determination on positions related to legislation on behalf of the association. These guidelines are directed toward state legislative activities and provide a guiding set of factors and principles for taking positions on legislation. When appropriate, this document may also be applied to help guide federal or local legislation as well.

Considerations for taking a position are intended as guidelines to be balanced. Generally, the CBA and the LPC should retain discretion when it comes to legislative involvement, purview and parameters.

Areas of Involvement:

On behalf of the CBA, the LPC should generally take a position on legislation related to the following:

Accuracy and Precision in Drafting

- The CBA should help ensure clarity in legislation. The CBA may do so even when it disagrees with the substance of proposed legislation, although there may be times when the LPC will not help clarify a bill to which the CBA would be opposed.

The Practice of Law

- The CBA should generally take positions on legislation that affects the practice of law, the business of lawyering, the court system, right to jury trials, lawyers' fees and lawyer-client relations.

CBA Competency and Expertise

- The CBA should generally take a position if the bill is within the core competency of the CBA and its sections.
- The CBA should generally take a position on legislation where we have unique or special expertise in the area of law, a specific legal argument, or legal angle that reflects CBA areas of expertise within the sections or committees.

Considerations of Members, Sections and Committees

- The CBA should generally take positions that, as much as possible, reflect the strong positions of sections and committees.
- The CBA should generally support legislation authored by sections or committees.
- The CBA will take into consideration if sections have conflicting positions.

Courts

- The CBA may take positions on legislation involving the structure and organization of federal, state and local courts in or affecting Colorado.
- The CBA may take positions on legislation involving the rules of practice, procedure and evidence in federal, state and local courts in or affecting Colorado.
- The CBA may take positions 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 Constitution of the United States and the State of Colorado

- The CBA should support legislation promoting a fair, impartial and independent judiciary.

- The CBA may take a position on legislation that relates to the public's interactions with the justice system, including but not limited to due process and equal protection.

Access to Justice

- The CBA should generally support legislation that improves access to the justice system by all persons.

CBA Strategic Plan and Values

- The CBA may take a position on legislation that reflects the current CBA mission, vision, values and goals within its strategic plan.

Other considerations to be taken into account:

Political

- The CBA will generally consider the political climate, and partisan motivation.
- The CBA may take a position where legislator/stakeholder relationships or engagement with other legislation may have an impact.
- The CBA may choose not to take a position when a bill, or a position will cast the CBA as partisan, or harm our reputation as fair, impartial and experts in the areas of law.

Impact

- The CBA may choose not to take a position if the bill is likely to be postponed indefinitely or otherwise not advance.
- The CBA may choose not take a position when our support or opposition will have no impact.

Requests

- The CBA will consider requests of the diversity bars, affinity organizations, other stakeholders or associations.

Positions available to the CBA include, but are not limited to:

- **Support** – the CBA supports the bill as drafted or as amended, and will work to support its passage.
- **Amend** – the CBA recommends changes to the bill to make it acceptable legislation and will work with partners or stakeholders to change the bill to an acceptable format.
- **Oppose** – the CBA 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.
- **Monitor** – the CBA will track the bill and work with section leadership to ensure that amendments will not negatively impact the bill.
- **No Position** – the CBA reviewed the legislation but will not engage.