

**RESOLUTION 08-03-04**

**DIGEST**

Lis Pendens: Notice of Withdrawal by Attorney

Amends Code of Civil Procedure section 405.50 to allow a party's attorney to execute and record the notice of withdrawal of lis pendens.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 405.50 to allow a party's attorney to execute and record the notice of withdrawal of lis pendens. This resolution should be approved in principle because it renders the procedure for recording a withdrawal of lis pendens more consistent with the procedure for recording a notice of lis pendens and eliminates unnecessary delay in the facilitation of settlements.

Code of Civil Procedure section 405.21 permits a party's attorney to sign and record a notice of lis pendens. Code of Civil Procedure section 405.50 authorizes only a party or a party's successor in interest to sign and record the notice of withdrawal of lis pendens. It appears that this discrepancy is an oversight since there is no discussion in the legislative history of section 405.50 or case law of why a party's attorney should not execute and record the notice of withdrawal. Furthermore, permitting a party's attorney to sign and record the notice of withdrawal would expedite the completion of settlements since an attorney is often in a position to execute and record documents more quickly than the client in the normal course of business.

**TEXT OF RESOLUTION**

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 405.50 to read as follows:

- 1    § 405.50
- 2            At any time after notice of pendency of an action has been recorded pursuant to this
- 3    title or other law, the notice may be withdrawn by recording in the office of the recorder in
- 4    which the notice of pendency was recorded a notice of withdrawal executed by the party
- 5    who recorded the notice of pendency of action, by the party's attorney of record in the
- 6    action, or by the party's successor in interest. The notice of withdrawal shall be
- 7    acknowledged.

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

PROPONENT: San Diego County Bar Association

## STATEMENT OF REASONS

Existing Law: Permits a party's attorney of record to sign and record the notice of pending action (lis pendens), but only authorizes the party to sign and record the notice of withdrawal of the lis pendens.

This Resolution: Would enable the party's attorney of record to sign and record a notice of withdrawal of a lis pendens on behalf of the party.

The Problem: Although the statute authorizing the recording of a lis pendens specifically authorizes either the party or the party's attorney of record to sign and record the lis pendens, the statute authorizing the withdrawal of the lis pendens authorizes only the party to sign the notice of withdrawal of the lis pendens. The requirement that the notice be signed by the client makes the withdrawal process potentially more cumbersome, and can delay the efforts of parties and their attorneys to complete the documentation necessary to complete settlements. There is no logical reason why the party's attorney, who already has the authority to sign the lis pendens itself, should not be authorized to sign a notice of withdrawal.

## IMPACT STATEMENT

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

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