BE IT RESOLVED, That the American Bar Association recommends to the states that have not adopted legislation similar to the federal Equal Access to Justice Act, that they be urged to adopt similar legislation which will provide for litigation expenses, including attorneys' fees to parties successfully challenging the government in the courts and in administrative proceedings where the actions of the government are not substantially justified, and thus broaden access to justice for their citizens and residents, particularly in administrative proceedings.
The American Bar Association and Local and State Bar Associations throughout the country have endorsed the concept of equal access to justice which provides that everyone, no matter what their economic status, is entitled to equal participation in the administration of justice in court proceedings and the like.

In 1980, the federal Equal Access to Justice Act was enacted which provided for litigation expenses, including attorneys' fees to parties successfully challenging the federal government in the courts and in administrative proceedings where the actions of the federal government were not substantially justified.

In 1986, the federal Equal Access to Justice Act was extended and broadened.

The American Bar Association has endorsed the concept in body of the federal Equal Access to Justice Act and has recommended its enactment and extension.

The administrative process involving administrative adjudication in hearings, both federal and state, is an integral part of the administration of justice.

Some states have adopted measures similar to the federal Equal Access to Justice Act but even if they have done so, they have not adopted the entire broad scope of said legislation.

For example, in California, the approach is piecemeal.

With respect to judicial review of administrative action, California Government Code section 800 permits a party prevailing in a court reviewing administrative action or proceeding to recover attorneys' fees from the administrative agency (up to a limit of $1500) provided that the action of the administrative agency was arbitrary or capricious.

In the administrative process itself, some administrative proceedings allow for this scheme and others do not. Section 1021.5 of the California Code of Civil Procedure permits payment of attorneys fees to successful parties, under the "private attorney general concept", from opposing parties, including public entities.
Section 1028.5 of the California Code of Civil Procedure, dubbed the Katz-Carpenter Equal Access to Justice Act, allows this procedure in California licensing proceedings. A licensee or business entity who has prevailed in a licensing proceeding against the government or administrative agency thereof, is entitled to reasonable litigation expenses, including attorneys' fees against and from that agency provided that the action of the agency was not substantially justified. However, it appears that section 1028.5 is not extensively utilized, perhaps because of lack of publicity of the provisions.

In workers' compensation proceedings in California, as in many other states, the injured applicant who receives an award of workers' compensation benefits from the employer's insurance carrier, is entitled to receive attorneys' fees payable by the insurance carrier to the applicant's attorney although said fees are deducted from the award.

In other types of proceedings there is no such arrangement and welfare hearings and unemployment compensation hearings are among those that do not provide for the payment of attorneys' fees to successful parties prevailing against the government out of public funds, but require the representative to seek his fee from the welfare claimant or unemployment insurance claimant or employer.

This resolution does not dictate in what manner the states shall adopt an Equal Access to Justice Act but merely states that they should consider adopting one similar in spirit to the federal Equal Access to Justice Act. Perhaps it might be useful if some body of the American Bar Association conduct a survey of how the states have followed the federal model and in what areas of law such arrangements are permitted.

CONCLUSION

In view of the above support in the legal profession and in the federal government of the concepts embodied in the federal Equal Access to Justice Act, the American Bar Association should and does support legislation in the states similar thereto.

Respectfully submitted,

David I. Harfeld
Chair

August, 1990
GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

No.______
(Leave Blank)

Submitting Entity: National Conference of Administrative Law Judges
Submitted By: David I. Harfeld, Chair

1. **Summary of Recommendation(s).**
   URGES states to adopt legislation similar to the federal Equal Access to Justice Act.

2. **Approval by Submitting Entity.**
   Approved by the Conference Executive Committee on August 4, 1989.

3. **Previous submission to the House or relevant Association position.**
   Not applicable.

4. **Need for Action at This Meeting.**
   The concept of equal access to justice as exemplified by the federal Equal Access to Justice Act should be urged upon the states for prompt action thereon.

5. **Status of Legislation.** (If applicable.)
   In some states, comparable legislation has been adopted but not in all.

6. **Cost to the Association.** (Both direct and indirect costs.)
   Minimal, consisting of costs of correspondence.

7. **Disclosure of Interest.** (If applicable.)
   None

8. **Referrals.**
   Referred to Administrative Law and Regulatory Practice Section; Labor and Employment Law Section; Section on Individual Rights and Responsibilities; Tort and Insurance Practice Section; Urban, State and Local Government Law Section; Special Commission on Lawyers in Government; Senior Lawyers Division and Young Lawyers Division

9. **Contact Person.** (Prior to meeting.)
   Honorable Nahum Litt, P.O. Box 19241, Washington, D.C. 20036 202/633-5052.

10. **Contact Person.** (Who will present the report to the House.)
    Honorable Nahum Litt.