

**AMERICAN BAR ASSOCIATION
HOUSE OF DELEGATES
2011 MIDYEAR MEETING
ATLANTA, GEORGIA**

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AMERICAN BAR ASSOCIATION

**SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR
COMMISSION ON IMMIGRATION**

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association reaffirms its support for the principles of law
2 school self-governance and academic freedom;
3
4 FURTHER RESOLVED, That the American Bar Association also reaffirms its support for the
5 ethical independence of law school clinical programs and courses consistent with the ABA
6 Model Rules of Professional Conduct;
7
8 FURTHER RESOLVED, That the American Bar Association opposes improper attempts by
9 persons or institutions outside law schools to interfere in the ongoing activities of law school
10 clinical programs and courses; and
11
12 FURTHER RESOLVED, That the American Bar Association will assist law schools, as
13 appropriate, in preserving the independence of clinical programs and courses.

EXECUTIVE SUMMARY

A. Summary of Recommendation

This recommendation urges the ABA to: 1) reaffirm its support for the principles of law school self-governance, academic freedom and ethical independence as outlined in the ABA Model Rules of Professional Conduct; 2) oppose improper attempts by persons or institutions outside law schools to interfere in the ongoing activities of law school clinical programs and courses; and 3) assist law schools, as appropriate, in preserving the independence of these clinical programs and courses.

B. Issue Recommendation Addresses

This recommendation addresses the ability of law schools to offer in-house clinics and externships that enable students to learn essential lessons about the law and legal practice by engaging in student practice on behalf of clients. To effectively provide this education, law school clinics must be free to operate like other lawyers, zealously pursuing their clients' interests and fulfilling their ethical obligations of loyalty, diligence, and confidentiality. Over the years, law school clinics have faced significant threats to their independence from outside institutions, groups, and individuals.

C. How Proposed Policy Will Address the Issue

The adoption of this recommendation sets forth the relevant principles in support of protecting law school clinics from improper interference. Given the frequency of improper attacks on law schools clinics' independence, it is essential that the ABA take a public position on this issue and that the House of Delegates adopt this policy statement in order to guide the response of ABA leadership.

D. Minority Views or Opposition

Not that the Section is aware of.

**AMERICAN BAR ASSOCIATION
SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR**

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association House of Delegates concurs in the action of
2 the Council of the Section of Legal Education and Admissions to the Bar in making
3 amendments dated February 2011, to the ABA *Standards and Rules of Procedure for Approval*
4 *of Law Schools*:

- 5 1. Standard 509 Basic Consumer Information;
- 6 2. Rule 10 Appeal of an Adverse Decision of the Council;
- 7 3. Rule 22 Teach Out Plan and Agreement and Closure of a Law School; and
- 8 4. Rule 24 Complaints Concerning Law School Non-Compliance with the
9 Standards.

10
11 **Standard 509. BASIC CONSUMER INFORMATION**

12
13 (a) A law school shall publish basic consumer information. The information shall be published
14 in a fair and accurate manner reflective of actual practice.

15
16 (b) A law school must publicly disclose on its website, in a readable and comprehensive manner,
17 its policies regarding the transfer of credit earned at another institution of higher education. The
18 law school's transfer of credit policies must include, at a minimum:

19 (i) A statement of the criteria established by the law school regarding the transfer of credit earned
20 at another institution; and

21 (ii) A list of institutions, if any, with which the law school has established an articulation
22 agreement.

23
24
25 **Rule 10. Appeal of an Adverse Decision of the Council ~~Review by the House of a Council~~**
26 **~~Decision to Grant or Deny Provisional or Full Approval or to Withdraw Approval~~**

27
28 (a) A law school may appeal the following adverse decisions of the Council:

- 29 1. Denial of provisional approval;
- 30 2. Denial of full approval; or
- 31 3. Removal from list of approved law schools

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- 34 (b) A law school may appeal the adverse decisions specified in Section (a) of this Rule, by
35 filing with the Consultant a written appeal within 30 days after the date of the letter
36 reporting the adverse decision of the Council to the law school.
37
- 38 (c) A written appeal must include:
39
- 40 1. Grounds for appeal; and
 - 41 2. Documentation to support the appeal. The written appeal may not contain, nor
42 may it refer to, any evidence that is not in the record before the Council.
43
- 44 (d) The grounds for an appeal must be based upon at least one of the following:
45
- 46 1. The decision was arbitrary and capricious; or
 - 47 2. The Council failed to follow the applicable Rules of Procedure and the procedural
48 error prejudiced its decision.
49
- 50 (e) On appeal, the law school has the burden of demonstrating that the Council's decision
51 was arbitrary and capricious and not supported by the evidence on record, or inconsistent
52 with the Rules of Procedure and that inconsistency prejudiced its decision.
53
- 54 (f) Within 30 days of receipt of a written appeal, the Consultant will refer the appeal to the
55 Appeals Panel.
56
- 57 (g) The Appeals Panel shall consist of three people appointed by the Chair of the Council to
58 serve a one year term beginning at the end of the Annual Meeting of the Section and
59 continuing to the end of the next Annual Meeting of the Section. The Chair of the
60 Council shall also appoint, at the same time and for the same term, three alternates to the
61 Appeals Panel. All members of the Appeals Panel and alternates shall be (1) former
62 members of the Council or Accreditation Committee or (2) experienced site team
63 evaluators. The Appeals Panel and the panel of alternates will each include one legal
64 educator, one judge or practitioner, and one public member. The Chair of the Council
65 shall designate one member of the Appeals Panel to serve as its chair. Members of the
66 Appeals Panel and alternates shall be:
67
- 68 1. Experienced and knowledgeable in the Standards, Interpretations and Rules of
69 Procedure;
 - 70 2. Trained in the current Standards, Interpretations and Rules of Procedure at a
71 retreat or workshop or by other appropriate methods within the last 3 years;
 - 72 3. Subject to the Section's Conflicts of Interest Policy, as provided in IOP 19; and
 - 73 4. Appointed for a one-year term and eligible to serve consecutive terms.
74
- 75 In the event that any member of the Appeals Panel is disqualified under IOP 19 or is
76 otherwise unable to serve on a particular Appeal, that member of the Appeals Panel shall
77 be replaced for that Appeal by the alternate from the same occupational category. In the
78 event that neither the member nor designated alternate in the same occupational category

79 is able to serve on a particular Appeal, the Chair of the Council shall appoint a second
 80 alternate, from the same occupational category, for that Appeal.
 81

82 (h) The Consultant shall inform the law school of the time, date, and place of the hearing at
 83 least thirty days in advance. The law school shall have a right to have representatives of
 84 the school, including legal counsel, appear and present written and/or oral statements to
 85 the Appeals Panel, subject to Sections (c) and (i) of this Rule. The hearing shall be
 86 transcribed by a court reporter and a transcript of the hearing shall be provided to the
 87 Council and the law school. The hearing will be held in closed session and not open to
 88 the public. The Council may establish additional rules of procedure for the hearing of
 89 appeals.
 90

91 (i) The Appeals Panel shall consider the appeal at a hearing within forty-five days of having
 92 received its charge from the Consultant. The appeal shall be decided based on the record
 93 before the Accreditation Committee and the Council, the decision letters of those bodies
 94 and the documents cited therein, and transcripts from appearances by the law school. No
 95 new evidence shall be considered by the Appeals Panel. The Appeals Panel can take one
 96 of the following actions:
 97

- 98 1. Affirm the adverse decision of the Council;
- 99 2. Reverse the adverse decision of the Council;
- 100 3. Amend the adverse decision of the Council; or
- 101 4. Remand the adverse decision of the Council for further consideration.
 102

103 Within 30 days after the conclusion of the hearing, the Appeals Panel shall provide the
 104 Council and the law school with a written statement of the Appeals Panel's decision and
 105 the basis for that decision.
 106

107 The decision of the Appeals Panel shall be effective upon issuance. If the Appeals Panel
 108 remands the adverse decision of the Council for further consideration by the Council, the
 109 Appeals Panel shall identify specific issues that the Council must address. The Council
 110 shall act in a manner consistent with the Appeal's panel decisions or instructions.
 111

112 In implementing the decision of the Appeals Panel, the Council may impose any
 113 monitoring, reporting or other requirements on the law school consistent with the
 114 Appeals Panel decision and the Rules of Procedure.
 115

116 (j) The Consultant shall give written notice to the president and dean of the law school of the
 117 Council's adoption and implementation of the Appeal Panel's decision.
 118

119 (k) When the only remaining deficiency cited by the Council in support of an adverse
 120 decision is a law school's failure to meet the standards dealing with financial resources
 121 for a law school, the law school may request a review of new financial information that
 122 was not part of the record before the Council at the time of the adverse decision if all of
 123 the following conditions are met:
 124

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- 125 1. A written request for review is filed with the Consultant within 30 days after the
126 date of the letter reporting the adverse decision of the Council to the law school;
127 2. The financial information was unavailable to the law school until after the adverse
128 decision subject to the appeal was made; and
129 3. The financial information is significant and bears materially on the financial
130 deficiencies that were the basis of the adverse decision by the Council.

131
132
133 (l) The request to review new financial information will be considered by the Council at its
134 next meeting occurring at least 30 days after receipt of the request.

135
136 (m) The Consultant shall inform the president and dean of the law school of the Council's
137 decision in writing.

138
139 (n) A law school may request review of new financial information only once and a decision
140 made by the Council with respect to that review does not provide a basis for appeal.

141 142 143 **Review by the House of a Council Decision to Grant or Deny Provisional or Full Approval** 144 **or to Withdraw Approval**

145
146 (a) ~~A decision by the Council to grant or deny provisional or full approval, or to withdraw~~
147 ~~approval from a law school, becomes effective upon the decision of the Council unless the law~~
148 ~~school files with the House, in accordance with the provisions of House of Delegates Rule 45.9,~~
149 ~~a timely appeal from a Council decision to deny approval. After the meeting of the Council at~~
150 ~~which it decides to grant or deny provisional or full approval or withdraw approval, the~~
151 ~~Chairperson of the Council shall furnish a written statement of the Council action to the House.~~
152 ~~No action of the House is required unless the law school appeals the decision of the Council~~
153 ~~pursuant to House Rule 45.9. A decision of the Council to grant provisional or full approval is~~
154 ~~effective upon the action of the Council. A decision of the Council to deny or withdraw approval~~
155 ~~is effective upon the expiration of the period provided for filing a notice of appeal under Section~~
156 ~~45.9(b)(1) if the law school fails to file a timely notice of appeal, or, if a timely notice of appeal~~
157 ~~is filed, upon concurrence by the House in the decision of the Council.~~

158
159 (b) ~~An appeal to the House of a Council decision to deny provisional or full approval, or to~~
160 ~~withdraw approval from a law school, shall be conducted in accordance with the provisions of~~
161 ~~this Rule and the Rules of Procedure of the House. Filing an appeal with the House constitutes a~~
162 ~~waiver by the law school of any confidentiality of the record.~~

163
164 (c) ~~A decision of the Council denying provisional or full approval may be referred back to the~~
165 ~~Council a maximum of two times. The decision of the Council following the second referral shall~~
166 ~~be final. A decision by the Council to withdraw approval from a law school is subject to a~~
167 ~~maximum of one referral back to the Council. The decision of the Council following that referral~~
168 ~~shall be final.~~

169
170

Rule 22. Teach-out Plan and Agreement and Law School Closure of a Law School

(a) A provisional or fully approved school must submit a teach-out plan for approval by the Accreditation Committee and Council upon occurrence of any of the following events:

1) The school notifies the consultant's office that it intends to cease operations entirely or close a separate location in which a student can earn all of the necessary credits to earn the J.D. degree;

2) The Accreditation Committee recommends or the Council acts to withdraw, terminate, or suspend the accreditation of the school;

3) The U.S. Secretary of Education notifies the Consultant's Office that the Secretary has initiated an emergency action against an institution, in accordance with section 487(c)(1)(G) of the HEA, or an action to limit, suspend, or terminate an institution participating in any title IV, HEA program, in accordance with section 487(c)(1)(F) of the HEA, and that a teach-out plan is required;

4) A State licensing or authorizing agency notifies the Consultant's Office that an institution's license or legal authorization to provide an educational program has been or will be revoked.

(b) To be approved by the Accreditation Committee and Council, the teach-out plan must be in writing and must provide for the equitable treatment of its own students, specify additional charges that may apply, and provide for notification to the students of any additional charges.

(c) The Consultant's Office, in consultation with the Accreditation Committee leadership, may require a school to enter into a teach-out agreement as part of its teach-out plan.

(d) If the school enters into a teach-out agreement, either on its own accord or as required by the Consultant's Office, the agreement must be recommended by the Accreditation Committee and approved by the Council and must comply with all federal and state laws, including regulations of the United States Department of Education. At a minimum, the agreement must be with a law school approved by the Accreditation Committee and Council for this purpose, must provide students access to the program and services without requiring them to move or travel substantial distances, and must provide students with information about additional charges, if any.

(e) The teach-out institution must have the necessary experience, resources and support services to provide a program of legal education that is reasonably similar in content, structure and scheduling to that provided by the institution that is subject to any of the occurrences that are set out in (a)(1-4) above. Additionally, the teach-out institution must be financially stable and able to carry out its mission and meet all of its obligations to its students and must demonstrate that it can provide students access to its program and services without requiring them to move or travel substantial distances and that it will provide re-located students with information about additional charges, if any.

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216 (f) If the Accreditation Committee recommends and the Council approve a teach-out plan that
217 includes a program that is accredited by another recognized accrediting agency, the Consultant's
218 Office must notify that accrediting agency of its approval.

219
220 ~~(a)~~ (g) In the event of closure or cessation of operation, An approved law school and its parent
221 institution, if any, must agree to provide, in the event of closure or cessation of operation, an
222 opportunity for currently enrolled students to complete their degrees under the terms of a closure
223 plan which meets at least the conditions set out below and is found acceptable by the
224 Accreditation Committee and the Council. As soon as the decision to close an approved law
225 school is made, the institution shall make a public announcement of the decision and shall notify
226 the Consultant, the appropriate State licensing authority and the U.S. Department of Education of
227 its decision.

228
229 ~~(b)~~ (h) Upon deciding or being required to close or cease operations, The law school shall
230 promptly submit a closure plan, which shall be reviewed by the Accreditation Committee and
231 must be approved by the Council.

232
233 ~~(c)~~ (i) The conditions to be met by a closure plan shall include the following:

234
235 (1) The law school shall not thereafter admit or enroll any student (including
236 transfer or non-degree candidates) who was not a student at the time when the
237 decision to close is announced.

238
239 (2) The governing body of the institution shall take all necessary steps to retain degree-
240 granting authority for sufficient time to allow completion of degrees by those students
241 who are degree candidates at the time the decision to close is announced and who
242 complete degree requirements either at the law school or at another ABA-approved law
243 school in the normal period of time required for that student's course of study.

244
245 (3) The law school shall use its best efforts to assist students in transferring to, or
246 acquiring visiting status at, another ABA-approved law school for completion of their
247 degree requirements.

248
249 (4) Until the date of closing the law school shall maintain:

250
251 (i) an educational program that is designed to qualify its graduates for admission
252 to the bar;

253
254 (ii) a library collection and services adequate to support the curriculum,
255 either on-site or through arrangements with other law libraries in the
256 immediate vicinity;

257
258 (iii) a faculty adequate to maintain a sound educational program;

259
260 (iv) an adequate administrative staff to handle student needs and recordkeeping
261 along with support of the academic program; and

262
 263 (v) ~~the law school shall maintain~~ its existing physical facilities unless prior
 264 approval of the Accreditation Committee is obtained.
 265

266 ~~(5) In the event that the school enters into a teach-out agreement with another law school,~~
 267 ~~the school shall submit the teach-out agreement to the Accreditation Committee for its~~
 268 ~~approval. As a condition for approval of the closure plan, the teach-out agreement must~~
 269 ~~comply with applicable regulations of the Department of Education.~~
 270

271 ~~(d)~~ (j) If the school discontinues instruction or makes a decision to do so prior to the end of the
 272 normal period for completion of degrees by current students, then:
 273

274 (1) The school shall take all reasonable steps to avoid closing during an academic year. If
 275 the closing occurs during an academic year, then the school shall make adequate
 276 arrangements for students to enroll in other law schools for that current year at no
 277 additional cost to the student.
 278

279 (2) The school shall permit currently enrolled students to complete their degree
 280 requirements at other ABA-approved law schools by entering into “teach out”
 281 agreements with other law schools. Credit earned at other law schools shall be received
 282 as transfer credit toward the degree of the closing school.
 283

284 (3) Students transferring credit back to the law school shall not be charged fees beyond a
 285 reasonable administrative fee for processing of records.
 286

287 (4) The Consultant shall notify the Council of the school’s decision and the date at which
 288 the school intends to cease operations.
 289

290 ~~(e)~~ (k) The law school or the governing body of the institution shall make satisfactory
 291 arrangements for the continuation of legal representation undertaken during the operation of a
 292 law school skills training program.
 293

294 ~~(f)~~ (l) The governing body of the institution shall make arrangements for permanent retention and
 295 availability of student records.
 296

297 (m) In the event a School closes without an approved teach-out plan or agreement, the
 298 Consultant’s office will work with the U.S. Department of Education and the appropriate State
 299 agency, to the extent feasible, to assist students in finding reasonable opportunities to complete
 300 their education without additional charges.
 301
 302

303 **Rule 24. Complaints Reports Concerning Law School Non-Compliance with the Standards**

304

305 (a) The United States Department of Education procedures and rules for the recognition of
 306 accrediting agencies require a recognized accrediting agency to have a process for the reporting
 307 of complaints against accredited institutions that might be out of compliance with the agency’s

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308 accreditation standards. This is the process for the Council of the Section of Legal Education
309 and Admissions to the Bar and law schools with Juris Doctor programs approved by the Council.

310
311 (i) This process aims to bring to the attention of the Council, the Accreditation
312 Committee, and the Consultant on Legal Education facts and allegations that may
313 indicate that an approved law school is operating its program of legal education out of
314 compliance with the Standards for the Approval of Law Schools.

315
316 (ii) This process is not available to serve as a mediating or dispute-resolving process for
317 persons with complaints about the policies or actions of an approved law school. The
318 Council, Accreditation Committee and the Consultant on Legal Education will not
319 intervene with an approved law school on behalf of an individual with a complaint
320 against or concern about action taken by a law school that adversely affects that
321 individual. The outcome of this process will not be the ordering of any individual relief
322 for any person or specific action by a law school with respect to any individual.

323
324 (iii) If a law school that is the subject of a complaint is due to receive a regularly
325 scheduled sabbatical site visit within a reasonable amount of time after the complaint is
326 received, usually within one year, the complaint may be handled as part of the sabbatical
327 site visit.

328
329 (b) Any person may file with the Consultant on Legal Education a written complaint ~~report~~
330 alleging non-compliance with the Standards for the Approval of Law Schools by an approved
331 law school.

332
333 (i) Except in extraordinary circumstances, the complaint ~~This report~~ must be filed within
334 one calendar year ~~of the person's learning~~ of the facts on which the allegation is based.
335 Pursuit of other remedies does not toll this one calendar year limit.

336
337 (ii) ~~Reports-Complaints~~ must be in writing using the form "Complaint Against an ABA-
338 Approved Law School" and must be signed. The form is available online and from the
339 Office of the Consultant on Legal Education.

340
341 (iii) Anonymous ~~reports~~ complaints will not be considered.

342
343 (iv) A ~~report~~ complaint that has been resolved will not be subject to further review or
344 reconsideration unless subsequent ~~reports~~ complaints about the school raise new issues or
345 suggest a pattern of significant noncompliance with the Standards not evident from the
346 consideration of the previously resolved ~~report~~ complaint.

347
348 (v) The Consultant or designee may, with the concurrence of the chairperson of the
349 Accreditation Committee, defer the complaint proceedings if a party to the proceedings
350 files or has filed a claim in another forum.

351

352 (c) ~~The report should contain as much information and detail as possible about the circumstances~~
 353 ~~that led to the report. The report should cite the relevant Standards and Interpretations that are~~
 354 ~~implicated by the report. The Complaint form requests the following information:~~
 355

356 (i) A clear and concise description of the nature of the complaint and any evidence upon
 357 which the allegation is based, with relevant supporting documentation. The description
 358 and supporting evidence should include relevant facts that support the allegation that the
 359 law school is out of compliance with the Standards referenced in the complaint.
 360

361 (ii) The section(s) of the Standards alleged to have been violated and the time frame in
 362 which the lack of compliance is alleged to have occurred.
 363

364 (iii) A description of the steps taken to exhaust the law school's grievance process and the
 365 actions taken by the law school in response to the complaint as a result of prescribed
 366 procedures.
 367

368 (iv) Disclosure of any other channels the complainant is pursuing, including legal action.
 369

370 (v) A release authorizing the Consultant's Office to send a copy of the complaint to the
 371 dean of the law school.
 372

373 (d) ~~The report must include the following release language: "I authorize the Consultant on Legal~~
 374 ~~Education to disclose this report and my identity to the law school discussed in the report."~~ If the
 375 person filing the ~~report~~ complaint is not willing to sign ~~such~~ a release authorizing the
 376 Consultant's Office to send a copy of the complaint to the dean of the law school, the matter will
 377 be closed. If the Consultant or designee concludes that extraordinary circumstances so require,
 378 the name of the person filing the ~~report~~ complaint may be withheld from the school.
 379

380 (e) Process
 381

382 (i) The Consultant or the Consultant's designee shall acknowledge receipt of the ~~report~~
 383 complaint within 14 days of its receipt.
 384

385 (ii) The Consultant or designee shall determine whether the ~~report~~ complaint alleges facts
 386 that raise issues relating to an approved law school's compliance with the Standards. This
 387 determination shall be made within six weeks of receiving the ~~report~~ complaint. If the
 388 Consultant or designee concludes that the ~~report~~ complaint does not raise issues relating
 389 to an approved school's compliance with the Standards, the matter will be closed.
 390

391 (iii) If the Consultant or designee determines that the ~~report~~ complaint ~~does~~ may raise
 392 such issues, the ~~report~~ complaint shall be sent to the school and a response requested. The
 393 Consultant or designee ordinarily will request the dean of the school to respond within 30
 394 days.
 395

396 (iv) If the school is asked for a response to the ~~report~~ complaint, the Consultant or
 designee will review that response within 45 days of receiving it. If the response

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397 establishes that the school is not out of compliance with respect to the matters raised in
398 the ~~report~~ complaint, the Consultant or designee will close the matter.

399
400 (v) If the school's response does not establish that it is operating in compliance with the
401 Standards on the matters raised by the ~~report~~ complaint, the Consultant or designee, with
402 the concurrence of the chairperson of the Accreditation Committee, ~~will~~ may appoint a
403 fact finder to visit the school to investigate the issues raised by the ~~report~~ complaint and
404 the school's response. The ~~report~~ complaint, school response, and fact-finder's report, if
405 any, shall be referred to the Accreditation Committee and considered in the same manner
406 as ~~reports~~ complaints and reviews that fall under Rule 13(a) of the Rules of Procedure.

407
408 (vi) The person making the ~~report~~ complaint will be notified promptly whether the matter
409 was concluded under (ii), (iv) or (v) above. The person filing the ~~report~~ complaint will
410 not be provided with a copy of the school's response, if any, and will not receive any
411 further report on the matter.

412
413 (f) There is no appeal to the Council or the Accreditation Committee, or elsewhere in the
414 American Bar Association, in connection with a conclusion by the Consultant or designee that a
415 ~~report~~ complaint does not raise issues under the Standards.

416
417 (g) To ensure the proper administration of the Standards and this ~~report~~ complaint process, a
418 subcommittee of the Accreditation Committee shall periodically review the written ~~reports~~
419 complaints received in the Consultant's Office and their disposition. The subcommittee shall
420 periodically report to the Committee on this process. The Consultant's Office shall keep a record
421 of these ~~reports~~ complaints for a period of ten years.

EXECUTIVE SUMMARY

A. Summary of Recommendation

That the American Bar Association House of Delegates concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making the following amendments to the *ABA Standards and Rules of Procedure for Approval of Law Schools*:

1. Standard 509 Basic Consumer Information;
2. Rule 10 Appeal of an Adverse Decision of the Council;
3. Rule 22 Teach Out Plan and Agreement and Closure of a Law School; and
4. Rule 24 Complaints Concerning Law School Non-Compliance with the Standards.

B. Issue Recommendation Addresses

The recommendation addresses compliance with United States Department of Education requirements for accrediting agencies.

C. How Proposed Policy Will Address the Issue

The proposed changes will bring the Section of Legal Education and Admissions to the Bar into compliance with United States Department of Education requirements for accrediting agencies.

D. Minority Views or Opposition

Not that the Section is aware of.

AMERICAN BAR ASSOCIATION
SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR
STANDING COMMITTEE ON CLIENT PROTECTION
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association adopts amendments to the Model Rule for
- 2 Admission by Motion, dated February 2011.

**ABA Model Rule on Admission by Motion
(February 2011)**

- 1 1. An applicant who meets the requirements of (a) through (g) of this Rule may, upon motion,
2 be admitted to the practice of law in this jurisdiction. The applicant shall:
3
- 4 (a) have been admitted to practice law in another state, territory, or the District of
5 Columbia;
- 6 (b) hold a ~~first professional degree in law (J.D. or LL.B.)~~ degree from a law school
7 approved by the Council of the Section of Legal Education and Admissions to the Bar
8 of the American Bar Association at the time the ~~graduate applicant~~ applicant matriculated or
9 graduated;
- 10 (c) have been primarily engaged in the active practice of law in one or more states,
11 territories or the District of Columbia for five of the seven years immediately
12 preceding the date upon which the application is filed;
- 13 (d) establish that the applicant is currently a member in good standing in all jurisdictions
14 where admitted;
- 15 (e) establish that the applicant is not currently subject to lawyer discipline or the subject
16 of a pending disciplinary matter in any ~~other~~ jurisdiction;
- 17 (f) establish that the applicant possesses the character and fitness to practice law in this
18 jurisdiction; and
- 19 (g) designate the Clerk of the jurisdiction's highest court for service of process.
20
- 21 2. For purposes of this rule, the "active practice of law" shall include the following activities, if
22 performed in a jurisdiction in which the applicant is admitted and authorized to practice, or if
23 performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted
24 in that jurisdiction; however, in no event shall any activities ~~listed under (2)(e) and (f)~~ that
25 were performed in advance of bar admission in some the state, territory, or the District of
26 Columbia jurisdiction to which application is being made be accepted toward the durational
27 requirement:
28
- 29 (a) Representation of one or more clients in the private practice of law;
- 30 (b) Service as a lawyer with a local, state, territorial or federal agency, including military
31 service;
- 32 (c) Teaching law at a law school approved by the Council of the Section of Legal
33 Education and Admissions to the Bar of the American Bar Association;
- 34 (d) Service as a judge in a federal, state, territorial or local court of record;
- 35 (e) Service as a judicial law clerk; or
- 36 (f) Service as in-house counsel as corporate counsel ~~provided to the lawyer's employer~~
37 or its organizational affiliates.
38
- 39 3. For purposes of this rule, the active practice of law shall not include work that, as
40 undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was
41 performed or in the jurisdiction in which the clients receiving the unauthorized services were
42 located.

100C

- 43 4. An applicant who has failed a bar examination administered in this jurisdiction within five
44 years of the date of filing an application under this rule shall not be eligible for admission on
45 motion.

EXECUTIVE SUMMARY**A. Summary of Recommendation**

The Section of Legal Education and Admissions to the Bar recommend that the House of Delegates adopts the proposed amendments to the Model Rule on Admission by Motion to eliminate the provision in paragraph 2 that prohibits in-house counsel and judicial law clerks from qualifying on the basis of practice performed in the jurisdiction where admission on motion is being sought.

B. Issue Recommendation Addresses

The recommendation addresses the concern that the current Model Rule creates “an unfair and unnecessary distinction” between in-house counsel and judicial clerks, and the other categories of lawyers listed in paragraph 2 of the rule.

C. How Proposed Policy Will Address the Issue

The recommendation eliminates the provision in paragraph 2 that prohibits in-house counsel and judicial law clerks from qualifying on the basis of practice performed in the jurisdiction where admission on motion is being sought.

D. Minority Views or Opposition

Not that the Section is aware of.

AMERICAN BAR ASSOCIATION

SECTION OF TAXATION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association adopts the Model Transactional Tax
- 2 Overpayment Act, dated February 2011, and recommends its adoption by appropriate legislative
- 3 bodies.

TRANSACTION TAX OVERPAYMENT MODEL ACT PROJECT
(February 2011)

1
2
3
4
5 **Section 1. Title.**
6

7 This Act may be cited as the Transaction Tax Overpayment Act.
8

9 **Section 2. Statement of Purpose and Scope.**
10

11 This Act applies to state and local taxes that a seller is required to collect from a purchaser on
12 taxable sales. The Act outlines procedures a purchaser may use to seek a refund of an
13 overpayment of those state and local taxes; limits the ability of a purchaser to assert claims
14 against a seller arising from or in any way related to an overpayment; and establishes rights and
15 obligations of purchasers, sellers, and the taxing jurisdiction with respect to such overpayments.
16

17 **Section 3. Definitions.**
18

19 As used in this Act:
20

21 (a) (1) The term “overpayment” means an amount charged by a seller to a purchaser as tax,
22 paid by the purchaser to the seller, and remitted by the seller to a taxing jurisdiction, if
23 and to the extent that such amount was paid by the purchaser--
24

25 (A) in error, including those instances in which the transaction would not have
26 been subject to tax if the purchaser had presented an exemption or resale
27 certificate or other documentation at the time of sale,
28

29 (B) when no tax was lawfully due to such taxing jurisdiction at the time of sale,
30 or
31

32 (C) in an amount greater than the amount of tax that was lawfully due to such
33 taxing jurisdiction at the time of sale.
34

35 (2) The term “overpayment” shall not include a payment of tax to a seller for which an
36 exemption may be available but where entitlement to the exemption is conditioned on the
37 purchaser paying the tax at the time of sale and seeking a refund directly from the taxing
38 jurisdiction.
39

40 (b) The term “purchaser” means a person who has been charged an amount by the seller as tax
41 and who has paid, or who is responsible for another person’s having paid, such amount to the
42 seller.
43

44 (c) (1) The term “refund” means the payment by the seller or the taxing jurisdiction to the
45 purchaser of an overpayment, or by the taxing jurisdiction to the seller of an amount
46 representing an overpayment.

47 (2) In the case of a refund paid by the seller to the purchaser, or by the taxing jurisdiction
48 to the seller, the term “refund” shall include a credit if and to the extent that—

49
50 (A) there is, at the time the credit is issued, a balance on the recipient’s account
51 against which to apply the credit, or

52
53 (B) the recipient consents to a credit applied to such recipient’s account.

54
55 (d) The term “purchase” or “sale” means any transaction on which the seller charges the
56 purchaser an amount as tax, collects such amount from or on behalf of the purchaser, and remits
57 such amount to the taxing jurisdiction.

58
59 (e) The term “seller” means a person licensed or registered under applicable law to make taxable
60 sales and with respect to such taxable sales is required to collect tax from purchasers and remit
61 such tax to the taxing jurisdiction.

62
63 (f) The term “tax” means the tax imposed by *[identify by statutory reference the tax or taxes to*
64 *which this Act applies]*.¹

65
66 (g) The term “taxing jurisdiction” means the State of _____, or the city, county or other
67 local jurisdiction of such State,² that imposes the subject tax; provided, however, that in the event
68 the governmental entity imposing the subject tax is different from the governmental entity
69 responsible for administration of such tax, the term “taxing jurisdiction” shall include, as the
70 context requires, the governmental entity that is responsible for administration of such tax.

71
72 **Section 4. Purchaser Recourse.**

73
74 (a) The provisions of this Act apply to any claim by a purchaser against a seller arising from or
75 in any way related to an overpayment, regardless of whether or not such claim is characterized as
76 a tax refund claim.

77
78 (b) The relief with respect to any claim by a purchaser against a seller related to an overpayment
79 shall be limited to a refund claim pursuant to Section 5(a)(1).

80
81 (c) In any action that arises from or relates to an overpayment, the seller shall not be named as a
82 party to such action by either the purchaser, the taxing jurisdiction or any other party to such
83 action. Nothing in this Act shall preclude a government agency or official from exercising any
84 powers such agency or official possesses to take action to prevent continuing over-collection of
85 tax.

¹ It is intended that this Act would apply to all transaction taxes that the seller is required to add to the sales price of taxable goods, products or services, collect from the purchaser, and remit to the taxing jurisdiction. The Act could also apply to fees and other impositions that have these characteristics.

² This Act could be adopted by any U.S. jurisdiction that imposes a transaction tax; and therefore the term “State” is intended to include not only any state of the United States but also other jurisdictions, such as the District of Columbia and Puerto Rico.

86 (d) Nothing in this Act shall limit any rights or remedies the purchaser may have against the
87 taxing jurisdiction arising from any overpayment under tax refund statutes or other applicable
88 law.

89

90 **Section 5. Refund Procedures.**

91

92 (a) (1) A purchaser seeking a refund of an overpayment may, within [*applicable limitations*
93 *period*] of payment of such amount to the seller, file a refund claim with such seller by
94 providing the seller written notice of the claim, and including with such notice
95 information reasonably necessary for the seller to determine whether all or part of the
96 amount claimed constitutes an overpayment. The seller may, within ninety (90) days
97 following receipt of such notice, refund the amount claimed by the purchaser or such
98 other amount that the seller has determined to be an overpayment. If the seller has not,
99 within ninety (90) days of receiving notice of a refund claim from the purchaser,
100 refunded the amount claimed by the purchaser, the seller shall be deemed to have denied
101 the claim with respect to such amounts not refunded to the purchaser. Notwithstanding
102 any provision of law to the contrary, no interest shall accrue or be paid with respect to
103 amounts refunded by a seller to a purchaser except as provided in Section 5(d)(2).

104

105 (2) A purchaser seeking a refund of an overpayment may, within [*limitations period*],
106 file a refund claim with the taxing jurisdiction pursuant to subsection (b) if—

107

108 (A) Such purchaser did not previously file a refund claim with the seller pursuant
109 to this subsection, or

110

111 (B) Such purchaser previously filed a refund claim with the seller under this
112 subsection and all or part of such claim was denied or deemed denied; provided,
113 however, that the filing by a purchaser of a refund claim with the seller under this
114 subsection shall extend for one hundred twenty (120) days the limitations period
115 for such purchaser to file a refund claim with the taxing jurisdiction.

116

117 (b) A refund claim filed by a purchaser with the taxing jurisdiction shall be in writing and shall
118 include the information reasonably required by the taxing jurisdiction, which may include, but is
119 not limited to, the purchaser's name and address, the name and address of the seller, the amount
120 of the claimed overpayment that has not previously been refunded by the seller (or a reasonable
121 estimate thereof), the approximate date or dates of the claimed overpayment, evidence that the
122 amount claimed was paid to the seller, and a brief explanation of why the purchaser believes that
123 the amount claimed constitutes an overpayment.

124

125 (c) (1) The taxing jurisdiction shall, within ninety days following receipt of a refund claim
126 from a purchaser, notify the purchaser in writing of any specific information or records
127 needed for purposes of determining whether and in what amount an overpayment was
128 made.

129

130 (2) The taxing jurisdiction may seek information, documents or records in the seller's
131 possession that are needed in processing the purchaser's refund claim; provided,

132 however, that any such requests must be consistent with the taxing jurisdiction's
133 authority to examine the seller's books and records to determine whether the correct
134 amount of tax has been remitted.

135

136 (3) (A) The taxing jurisdiction shall notify the purchaser in writing of its
137 determination with respect to the purchaser's refund claim.

138

139 (B) If the purchaser's refund claim is approved in whole or in part, and such
140 approval is based on a new policy or interpretation that would apply to the tax
141 treatment of other transactions, the taxing jurisdiction shall provide guidance
142 concerning such policy or interpretation in the manner generally used for
143 providing informal guidance to taxpayers with respect to the subject tax.

144

145 (C) If the purchaser's refund claim is denied in whole or in part, the notification
146 shall include the specific legal and factual reasons for denial. A purchaser's
147 refund claim shall be deemed to have been denied if the taxing jurisdiction does
148 not approve or deny such refund claim within six (6) months of the later of (i) the
149 taxing jurisdiction's receipt of the purchaser's refund claim, or (ii) the taxing
150 jurisdiction's receipt of the purchaser's response to a request for information or
151 records made by the taxing jurisdiction pursuant to this subsection.

152

153 (4) If the taxing jurisdiction determines that an overpayment was made, the taxing
154 jurisdiction shall refund such amount to the purchaser and shall allow and pay interest on
155 such amount for the time period and at the rate prescribed by law for overpayments of the
156 subject tax.

157

158 (d) Nothing in this Act shall be construed to preclude a seller from acting on its own initiative to
159 refund to a purchaser an overpayment that the seller has determined to have been made or to file
160 a refund claim with the taxing jurisdiction in its own name and have the taxing jurisdiction
161 determine whether an overpayment was made by ruling on such refund claim. Notwithstanding
162 the foregoing, a seller that has received a ruling on a refund claim that an overpayment was made
163 shall only be entitled to receive a refund of such overpayment from the taxing jurisdiction if such
164 seller either—

165

166 (1) establishes that the seller has refunded the overpayment to the purchaser or
167 purchasers from whom the amount was collected; or

168

169 (2) agrees that, within 30 days or such longer period agreed to by the taxing jurisdiction,
170 the seller will refund the overpayment to the purchaser or purchasers from whom the
171 amount was collected, together with any interest paid by the taxing jurisdiction.

172

173 (e) A seller that has previously refunded an overpayment to a purchaser may, within *[the*
174 *applicable limitations period]*, file a refund claim or take credit for the amount of such
175 overpayment against remittances of the tax; provided, however, that any such credit shall be
176 subject to examination by the taxing jurisdiction, and provided further that the seller shall not be
177 allowed or paid any interest on such amount for the period of time prior to the date the seller

178 refunded the overpayment to the purchaser, and on or after that date interest shall be paid only in
179 accordance with applicable law.

180
181 (f) Nothing in this Act shall be construed to preclude a seller from obtaining a refund of an
182 overpayment from a taxing jurisdiction if such seller establishes that it is obligated to pay or has
183 paid tax in the amount of such overpayment on the same transaction(s) to another taxing
184 jurisdiction pursuant to a valid assessment or claim by such other taxing jurisdiction.

185
186 (g) The taxing jurisdiction may establish procedures for assuring that the amount of any
187 overpayment is not refunded by the taxing jurisdiction to both the seller and the purchaser, as
188 well as other procedures necessary to administer this Act.

189
190 (h) In the event that a taxing jurisdiction determines, in connection with three or more refund
191 claims from purchasers that it has approved, that there are numerous similar transactions with
192 respect to which tax should not have been collected, the taxing jurisdiction shall send written or
193 electronic notice to all affected registered sellers advising them not to collect tax on such
194 transactions. The taxing jurisdiction shall also post an announcement prominently on its official
195 website notifying affected purchasers of the procedures they must follow in order to request a
196 refund of tax on any such purchase transactions.

EXECUTIVE SUMMARY

1. Summary of the Resolution

That the Association urge all state, territorial and local legislative bodies to adopt the Model Transactional Tax Overpayment Act or an adaptation thereof appropriate to conform with existing state, territorial or local tax procedural requirements. The Act applies to state and local taxes that a seller is required to collect from a purchaser on taxable sales and obligated to remit to state and local tax collectors. The Act provides protections for sellers who merely act as a conduit for such taxes, as required by state and local law, and who have no interest in the amounts collected.

2. Summary of the Issue that the Resolution Addresses

The typical state refund procedure requires a purchaser to file any claim for refund after the collected tax is paid over to the taxing authority and, in fairness, the seller should be immune from any liability to the purchaser once the tax is paid over.

3. Please Explain How the Proposed Policy Position will address the Issue

The Act outlines procedures a purchaser may use to seek a refund of an overpayment of those state and local taxes; limits the ability of a purchaser to assert claims against a seller arising from or in any way related to an overpayment because sellers typically are required by state law to participate in the tax collection system and have no material interest in amounts collected as tax; and establishes rights and obligations of purchasers, sellers, and the taxing jurisdiction with respect to such overpayments. The Act balances the competing interests of tax collectors, purchasers and sellers and promotes compliance with and administration of sound tax policy.

4. Summary of Minority Views

No minority views have been identified at this time.

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON SPECIALIZATION
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association grant accreditation of the Pretrial
- 2 Practice specialty program of the National Board of Legal Specialty Certification of
- 3 Wrentham, Massachusetts until the adjournment of the House of Delegates meeting
- 4 in February 2016.

EXECUTIVE SUMMARY

1. Summary of Recommendation

That the American Bar Association accredit the Civil Pretrial Practice certification program of the National Board of Legal Specialty Certification to February 2016. This program has been reviewed under procedures adopted by the Standing Committee on Specialization in accordance with the Standards for the Accreditation of Specialty Certification Programs for Lawyers, adopted by the House of Delegates in February 1993.

2. Summary of Issue

To respond to a need to regulate certifying organizations, the House of Delegates adopted standards for accreditation of specialty certification programs for lawyers, and delegated to the Standing Committee the task of evaluating organizations that apply to the ABA for accreditation and reaccreditation.

3. Explanation of How Proposed Policy Position Will Address Issue

The recommendation addresses the issue by implementing previous House resolutions calling on the ABA to evaluate certifying organizations that apply for accreditation, reaccreditation and the desire to certify programs and to keep them intact.

4. Summary of Minority Views or Opposition

No opposition has been identified.

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON ARMED FORCES LAW
CRIMINAL JUSTICE SECTION
GENERAL PRACTICE, SOLO, AND SMALL FIRM DIVISION
GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION
YOUNG LAWYERS DIVISION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association urges states and territories to adopt the Model
- 2 State Code of Military Justice and the Model Manual for Courts-Martial to provide an updated
- 3 body of law for military forces not subject to the Uniform Code of Military Justice when military
- 4 forces are serving under the exclusive jurisdiction of Chapter 47 of Title 10, United States Code.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

The Standing Committee on Armed Forces Law urges the ABA to pass a resolution urging states and territories to adopt the Model State Code of Military Justice and the Model Manual for Courts-Martial to provide an updated body of law for military forces not subject to the Uniform Code of Military Justice when military forces are serving under the exclusive jurisdiction of Chapter 47 of Title 10, United States Code.

2. Summary of the Issue that the Resolution Addresses

National Guard may serve either in State or in Federal status. When in Federal status, they are subject to the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial applies. When in State status, they are subject to discipline at the hand of the State Chief Executive (Governor), and there is not a consistent or uniform code in place. What results from 50 States and 4 Territories is a patchwork of laws and rules with few effective disciplinary tools and limited means to enforce military orders.

Two examples are provided to further explain the need for uniformity.

a. While performing security duties during the Southwest Border missions, a National Guard airman in Title 32 status is accused of committing a violent offense against another military member. The local district attorney, facing scarce resources, declines to prosecute under the assumption that the military could court-martial the airman. If the airman was from a State which had adopted the Model Code of Military Justice, the airman could be prosecuted for the offense and if convicted, he could be incarcerated. Conversely, if the airman was from a State that had not adopted the Model Code of Military Justice, he could be reduced in rank, administratively separated, but would not face a felony conviction or incarceration for his crime.

b. A National Guard airman in Title 32 status works side-by-side with an active duty (Title 10) airman and both refuse to follow a lawful order. The active duty airman could be court-martialed for his insolence whereas the National Guard airman could not be court-martialed if he was from a State that had not adopted the Model Code of Military Justice. At most he would face a reduction in rank or an administrative separation but not a court-martial. The disparate treatment and the failure to properly hold the Title 32 airman accountable serves to undermine good order, discipline, and morale within the unit.

3. Please Explain How the Proposed Policy Position will Address the Issue

A Model State Code of Military Justice would provide more effective disciplinary tools for commanders and make more consistent the application of such discipline from one state to another. Such uniformity thereby facilitates Total Force Integration and inter-operability, and it prepares State National Guard members for Federal Title 10 duty, where the UCMJ applies.

4. Summary of Minority Views

Some concerns over States' rights have been expressed, suggesting there may be reluctance by some to accept a more "federal" military code. Otherwise, there are no minority or dissenting views of the members of the Standing Committee on Armed Forces Law.

AMERICAN BAR ASSOCIATION
CRIMINAL JUSTICE SECTION
COMMISSION ON DOMESTIC VIOLENCE
COMMISSION ON IMMIGRATION
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association urges federal, state, territorial, tribal, and
2 local courts to adopt a procedure whereby a criminal trial court shall, at a reasonable time prior to a
3 criminal trial, disseminate to the prosecution and defense a written checklist delineating in detail the
4 general disclosure obligations of the prosecution under Brady v. Maryland, 373 U.S. 83 (1963), and
5 its progeny and applicable ethical standards.
6

7 FURTHER RESOLVED, That the American Bar Association urges federal, state,
8 territorial, tribal, and local courts in implementing the above procedure to require a criminal trial
9 court to create a standing committee of local prosecutors and criminal defense attorneys to assist the
10 court in formulating and updating the written checklist delineating in detail the prosecution's general
11 disclosure obligations.

104A

EXECUTIVE SUMMARY

A. Summary of Recommendation.

The recommendation calls for courts' policymaking bodies to require that criminal trial courts: (1) provide to prosecutors and defense attorneys at a reasonable time prior to trial written checklists of their disclosure obligations under Brady, its progeny, and applicable ethical standards and (2) create standing committees of prosecutors and defense attorneys to assist the courts in formulating and updating the checklists.

B. Issue Recommendation Addresses.

The recommendation addresses the need for timely and thorough pretrial disclosure by the prosecution of information that is covered by Brady, its progeny and applicable ethical standards.

C. How Proposed Policy Will Address the Issue.

The recommendation will urge court policymakers to require criminal trial courts to provide detailed checklists of disclosure obligations to prosecutors and defense attorneys at a reasonable time prior to trial and to establish committees of prosecutors and defense attorneys to help the courts keep these checklists updated and specific to the unique situations encountered by the particular jurisdiction.

D. Minority Views or Opposition.

There is no known opposition.

AMERICAN BAR ASSOCIATION

**CRIMINAL JUSTICE SECTION
COMMISSION ON IMMIGRATION**

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association urges Congress to amend 28 U.S.C. §§
2 2241(d)(1) and 2255(f)(1) to provide for equitable tolling of the one year statute of limitations
3 for filing for post conviction relief when the prisoner shows good cause, including situations in
4 which a prisoner who has an attorney has timely requested the attorney to file a § 2254 petition
5 or § 2255 motion, the attorney has failed to do so timely, and the prisoner has exercised
6 appropriate diligence in pursuit of his rights.

EXECUTIVE SUMMARY**A. Summary of Recommendation.**

The proposed resolution would urge Congress to amend 28 USC §§ 2241(d) and 2255(f)(1) to provide for equitable tolling of the one-year statute of limitations for filing for post-conviction relief when the prisoner shows good cause, including in situations in which a prisoner who has a post-conviction attorney has timely requested the attorney to file a § 2254 petition or § 2255 motion and the attorney has failed to do so timely, and the prisoner has exercised appropriate diligence in pursuit of his rights.

B. Issue Recommendation Addresses.

The proposed resolution addresses the situation where prisoners have relied upon their attorneys to file requested post-conviction claims in a timely manner but their attorneys have failed to do so.

C. How Proposed Policy Will Address the Issue.

The proposed policy will address the issue by urging federal legislation allowing for equitable tolling of the one-year statute of limitations for filing for post-conviction relief when a prisoner shows good cause.

D. Minority Views or Opposition.

None known.

AMERICAN BAR ASSOCIATION**CRIMINAL JUSTICE SECTION****REPORT TO THE HOUSE OF DELEGATES****RESOLUTION**

1 RESOLVED, That the American Bar Association urges the United States Sentencing
2 Commission to complete a rigorous and comprehensive assessment of the Federal Sentencing
3 Guidelines for high loss economic crimes to ensure that the Guidelines for such crimes are
4 proportional to offense severity and adequately take into consideration individual culpability and
5 circumstances by:

6 (1) reducing the emphasis on

7 (a) monetary loss; and

8 (b) multiple specific offense characteristics that, in combination, tend to
9 overstate the seriousness of the offense; and

10 (2) placing greater emphasis on

11 (a) mens rea and motive in relation to an offense;

12 (b) the defendant's role in the offense;

13 (c) whether and to what extent the defendant received a monetary gain from
14 the offense; and

15 (d) the nature of the harm suffered by victims.

16
17 FURTHER RESOLVED, That the American Bar Association urges the United States
18 Sentencing Commission to examine the ways that states with sentencing guideline systems
19 address economic crimes.

EXECUTIVE SUMMARYA. Summary of Recommendation.

The proposed resolution urges the U.S. Sentencing Commission to assess current federal policy regarding sentences for economic crimes and, based on that assessment, to reconsider its approach to ensure that the guidelines are proportional to offense severity by reducing emphasis on monetary loss and combinations of multiple specific offense characteristics that overstate the seriousness of the offense and by placing greater emphasis on *mens rea* and motive, the defendant's role in the offense, and the defendant's monetary gain from the offense.

B. Issue Recommendation Addresses.

The proposed resolution addresses the ratcheting up of federal advisory guideline sentences for economic crimes by the Sentencing Commission so that a typical officer or director of a public company who is convicted of a securities fraud and any employee convicted of a serious securities fraud causing over \$100 million faces an advisory guideline sentence of life without parole (43 years) in virtually every case. Because the guidelines are now advisory, some judges follow them and mete out maximum guideline sentences while other judges find them onerous and therefore sentence well below them, so that instead of encouraging uniformity of sentences for economic offenses, the guidelines are resulting in considerable sentencing disparities.

C. How Proposed Policy Will Address the Issue.

The proposed resolution would enable the ABA to encourage the Sentencing Commission to heed the Congressional directive to revisit the penalties in securities and bank fraud cases by recalibrating the guidelines for economic crimes in such a manner that the respect of the judiciary would be restored – to reduce the reliance on loss as the primary measure of culpability; to take into account the defendant's actual and/or intended gain; to reduce multiple upward adjustments that produce a “piling on” effect; and to pay increased attention to the harm intended by the defendant, the defendant's motivation, purpose, role, etc.

D. Minority Views or Opposition.

None are known.

AMERICAN BAR ASSOCIATION

CRIMINAL JUSTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association urges federal, state, local and territorial
2 governments to use electronic monitoring and home detention at government expense for
3 juvenile offenders who are legally subject to secure detention but whose risk of flight or further
4 offending does not necessitate secure pre-trial detention or incarceration.

EXECUTIVE SUMMARY

A. Summary of Recommendation.

Electronic monitoring can be a beneficial alternative to juvenile detention, and therefore, no child should be excluded from this option based solely on his or her families' economic status or inability to afford the proper equipment or service fees. If deemed appropriate by a court, every qualifying child should have equal access to it regardless of wealth or indigence. Therefore, United States and state, local and territorial governments should fund electronic monitoring programs in their entirety including the cost of installation and other fees associated with landlines, if one is required for an EM program, and should not seek to defray the costs of these programs by requiring families to pay to participate in them. Many states and counties already cover electronic monitoring costs. For instance, Florida requires both the state and the counties to fully fund the program.¹ The rest should follow its example

The ABA urges United States and state, local and territorial governments to fully fund electronic monitoring programs and cover all costs of electronic monitoring so that the juvenile offender and his or her parents or guardians pay no costs or fees associated with the programs. Furthermore, the American Bar Association urges the United States and state, local and territorial governments to enact laws that allow all qualified juveniles to utilize electronic monitoring programs based on a proper risk-assessment in lieu of pre-trial detention and secure residential placement.

B. Issue Recommendation Addresses.

Indigent juvenile offenders are excluded from electronic monitoring programs even if they qualify based on their risk assessment evaluation whereas offenders who can afford the service will receive it. Moreover, when an indigent juvenile offender is dependant on his or her family to make payments, if he or she has a poor relationship with his or her guardian or family, that family can refuse to make payments, thus further excluding that child from the electronic monitoring program.

However, while it is important to promote EM programs when necessary, it is just as important to prevent net widening. Net widening applies to juvenile electronic monitoring when judges and law enforcement officials order juveniles to utilize an electronic monitoring program even though they score low enough on a risk assessment to go home to simply go home without electronic monitoring. As one study showed, "only three out of four of those given home confinement would actually have gone to prison. In the remaining quarter of cases the cost of electronic monitoring is probably added on to an existing probation or supervision order."² Thus, net-widening can be avoided as long as courts conduct a proper risk assessment and do not assign electronic monitoring to juveniles who score below the alternative level placement option and well below the detainment option.

¹ Juvenile Detention, Counties Role in Juvenile Justice, *supra* note 42.

² *Electronic Monitoring of Criminals*, THE FUTURIST, Sept. 1, 1990 available at <http://www.allbusiness.com/professional-scientific/scientific-research/129280-1.html>.

104D

C. How Proposed Policy Will Address the Issue.

Electric monitoring programs offer a wide variety of benefits over pre-trial detention and residential facilities. For instance, EM programs reduce the number of juvenile offenders who are placed in residential facilities by allowing them to remain under surveillance at home and while they attend school, work, place of worship, or doctors' appointments.³ Moreover, various reports announce that EM programs improve the chances of a successful rehabilitation for youths by allowing them to remain at home and continue attending school.⁴ These programs therefore have the advantage of restricting an offender's activities while minimally disrupting productive social behavior.

In addition, it is more cost effective for communities to fund electronic monitoring programs for at least some juvenile offenders rather than place them in detention or residential facilities. By reducing net widening effects by refraining from placing juveniles who do not need electronic monitoring based on their risk assessment on such programs, communities can save money. Likewise, by conducting these proper risk assessments, juveniles who might otherwise be placed in detention centers or secure residential facilities may instead qualify for electronic monitoring, thus further saving communities money. Therefore, by taking these extra steps, communities can find the funds necessary to fully cover electronic monitoring program costs.

D. Minority Views or Opposition.

None that we are aware of.

³ *Supra* note 13.

⁴ *Supra* note 15.

AMERICAN BAR ASSOCIATION

**SECTION OF REAL PROPERTY, TRUST AND ESTATE LAW
COMMISSION ON LAW AND AGING
COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW
STANDING COMMITTEE ON ARMED FORCES LAW**

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 **RESOLVED**, That the American Bar Association urges Congress to enact legislation
- 2 amending Title 10, United States Code, to permit the payment of military Survivor Benefit
- 3 Plan (SBP) benefits to a special needs trust for the benefit of a disabled beneficiary.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

The resolution supports the enactment of Congressional legislation to amend Title 10, United States Code, to permit the payment of military Survivor Benefit Plan (SBP) benefits to a special needs trust for the benefit of a disabled beneficiary.

2. Summary of the Issue that the Resolution Addresses

Under current federal law, Survivor Benefits Plan (SBP) payments provided to the survivors of deceased military retirees and to the survivors of active military who die with more than 20 years of active service cannot be paid to a special needs trust. Because Medicaid benefits are income dependent, the payment of an SBP benefit to a disabled individual often causes the disabled individual to exceed the income limits under Medicaid law, thereby disqualifying the individual from Medicaid benefits. Military members or retirees, in planning for their families, are often forced to choose between the SBP benefits to which they are entitled by law or declining to participate in the SBP program so that the disabled family member can receive the needed Medicaid benefits. The military member or retiree is forced to make this choice because the disabled beneficiary desperately needs the Medicaid benefit. The result is that career military and military retirees are treated worse than civilians with similar family situations, who are free to designate special needs and other types of trusts to receive their retirement benefits.

3. Please Explain How the Proposed Policy Position will Address the Issue

The proposed resolution, by allowing SBP payments to be made to a special needs trust for the benefit of a disabled beneficiary, would enable the disabled beneficiary to qualify for Medicaid benefits, thereby allowing for an enhanced quality of life.

4. Summary of Minority Views

There is no known opposition to this resolution.

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON PARALEGALS
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association grant approval
2 to Los Angeles City College, Paralegal Program, Los Angeles, CA; Wilbur Wright
3 College, Paralegal Program, Chicago, IL; Union County College, Paralegal Studies
4 Program, Cranford, NJ; Pioneer Pacific College, Paralegal/Legal Assisting Program,
5 Wilsonville and Clackamas, OR; and National American University, Paralegal Studies
6 Program, Sioux Falls, SD.

7 FURTHER RESOLVED, That the American Bar Association
8 reapprove the following paralegal education programs: University of Alaska Anchorage,
9 Paralegal Studies Certificate Program, Anchorage, AK; University of Arkansas Fort
10 Smith, Legal Assistance/Paralegal Program, Fort Smith, AR; Pima Community College,
11 Paralegal Program, Tucson, AZ; Santa Ana College, Paralegal Program, Santa Ana, CA;
12 University of California Irvine Ext, Paralegal Certificate Program, Irvine, CA; West
13 Valley College, Paralegal Program, Saratoga, CA; Arapahoe Community College,
14 Paralegal Program, Littleton, CO; Broward College, Legal Assisting Program,
15 Pembroke Pines, FL; Edison State College, Paralegal Studies Program, Fort Myers, FL;
16 Athens Technical College, Paralegal Studies Program, Athens, GA; Loyola University
17 Chicago, Institute for Paralegal Studies, Chicago, IL; Roosevelt University, Paralegal
18 Studies Program, Chicago, IL; Southern Illinois University, Paralegal Studies Program,
19 Carbondale, IL; William Rainey Harper College, Paralegal Studies Program, Palatine, IL;
20 Daymar College Owensboro Campus, Paralegal Studies Program, Owensboro, KY;
21 Sullivan University Lexington Campus, Institute for Legal Studies, Lexington, KY;
22 Herzing University, Legal Assisting/Paralegal Studies Program, Kenner, LA; Pellissippi
23 State Technical Community College, Paralegal Studies Program, Knoxville, TN; South
24 College, Paralegal Education Program, Knoxville, TN; and Texas State University, Legal
25 Studies Program, San Marcos, TX.

26 FURTHER RESOLVED, That the American Bar Association withdraw
27 the approval of the University of New Orleans, Paralegal Studies Program, New Orleans,
28 LA, and Chancellor University fka David N. Myers University, Paralegal Education
29 Program, Cleveland, OH at the request of the institutions.

30 FURTHER RESOLVED, That the American Bar Association extend the
31 terms of approval until the August 2011 Annual Meeting of the House of Delegates for
32 the following programs: Faulkner University, Legal Studies Program, Montgomery, AL;
33 South University, Paralegal/Legal Studies Program, Montgomery, AL; Cuyamaca
34 College, Paralegal Studies Program, El Cajon, CA; MTI College, Paralegal Studies

35 Program, Sacramento, CA; San Francisco State University, Paralegal Studies Program,
36 San Francisco, CA; Georgetown University, Paralegal Studies Program, Washington,
37 DC; Florida State College at Jacksonville, Legal Studies Institute, Jacksonville, FL; St.
38 Petersburg College, Paralegal Studies Program, Clearwater, FL; South University,
39 Paralegal/Legal Studies Program, Savannah, GA; Morehead State University, Paralegal
40 Program, Morehead, KY; Lake Superior State University, Legal Assistant Studies
41 Program, Sault Ste. Marie, MI; Mississippi University for Women, Paralegal Studies
42 Program, Columbus, MS; Central Piedmont Community College, Cato Campus,
43 Paralegal Studies Program, Charlotte, NC; Fayetteville Technical Community College,
44 Paralegal Technology Program, Fayetteville, NC; Montclair State University, Paralegal
45 Studies Program, Upper Montclair, NJ; Finger Lakes Community College, Paralegal
46 Program, Canandaigua, NY; Monroe Community College, Legal Assistant Program,
47 Rochester, NY; SUNY Rockland Community College, Paralegal Studies Program,
48 Suffern, NY; College of Mount St. Joseph, Paralegal Studies Program, Cincinnati, OH;
49 Columbus State Community College, Legal Assisting Program, Columbus, OH; Bucks
50 County Community College, Paralegal Studies Program, Newtown, PA; Northampton
51 Community College, Paralegal Program, Bethlehem, PA; South University, Paralegal/
52 Legal Studies Program, Columbia, SC; University of Tennessee at Chattanooga, Legal
53 Assistant Studies Program, Chattanooga, TN; and Lee College, Legal Assistant Program,
54 Baytown, TX.

EXECUTIVE SUMMARY

1. Summary of the Recommendation(s)

The Standing Committee on Paralegals recommends that the House of Delegates grant approval to five paralegal education program, grant reapproval to twenty programs, withdraw the approval of two programs, and extend the term of approval of twenty-five programs.

2. Summary of the Issue which the Recommendation(s) Address

The programs recommended for approval and reapproval in the enclosed report meet the Guidelines for the Approval of Paralegal Education Programs.

3. An Explanation of How the Proposed Policy Position Will Address the Issue

The programs recommended for approval and reapproval in this report have followed the procedures required by the Association and are in compliance with the Guidelines for the Approval of Paralegal Education Programs.

4. A Summary of any Minority Views or Opposition which have been Identified

No other positions on this recommendation have been taken by other Association entities, affiliated organizations or other interested groups.

AMERICAN BAR ASSOCIATION
COMMISSION ON YOUTH AT RISK
COALITION ON RACIAL AND ETHNIC JUSTICE
COMMISSION ON WOMEN IN THE PROFESSION
SECTION OF FAMILY LAW

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association urges federal, state, territorial, and local
2 officials, to prevent and remediate the existence and dangers of bullying, including cyberbullying
3 and youth-to-youth sexual and physical harassment, by
- 4 (1) developing education programs to assist teachers, parents, and children in identifying
 - 5 victims of these acts and enhancing appropriate interventions,
 - 6 (2) adopting, revising, and monitoring laws and policies designed to prevent these acts
 - 7 and foster interventions successfully implemented to reduce and respond to them,
 - 8 (3) providing training,
 - 9 (4) reporting of collected data,
 - 10 (5) providing notice to families and guardians of incidents of bullying, and
 - 11 (6) affording institutional protections particularly for those children at risk of these acts
- 12 resulting from actual or perceived characteristics such as race, religion, national origin, sex,
13 disability, sexual orientation, or gender identity.
- 14
- 15 FURTHER RESOLVED, That the American Bar Association urges federal, state, territorial and
16 local, officials and school administrators to adopt policies that discourage (1) inappropriate
17 referral of youth to the juvenile justice system for acts of bullying and student-on-student
18 harassment, and (2) inappropriate use of expulsion and out-of-school suspension for such acts.
- 19
- 20 FURTHER RESOLVED, That the American Bar Association urges government, private, and
21 academic institutions to fund programs, research and evaluation that addresses prevention of and
22 responses to these acts, including efforts to study and enhance evidence-based, and culturally and
23 linguistically competent approaches.
- 24
- 25 FURTHER RESOLVED, That the American Bar Association urges all law enforcement agencies
26 to cooperate with the FBI's data collection program related to hate crimes committed by and
27 against juveniles under the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of
28 2009.

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29 FURTHER RESOLVED, That the American Bar Association urges Internet Service Providers
30 and social networking platforms to adopt Terms of Service that define and prohibit cyberbullying
31 and cyberhate, provide a readily identifiable and monitored address for reporting improper
32 activity, and review complaints in a timely manner.

33
34 FURTHER RESOLVED, That the American Bar Association urges school districts to follow the
35 October 2010 U.S. Department of Education Office of Civil Rights “Dear Colleague” letter on
36 bullying and harassment, and the Department to monitor compliance with the letter’s guidelines
37 and more aggressively utilize federal and state civil rights protection authority under Title IX of
38 the Education Amendments of 1972, Title VI of the Civil Rights Act of 1964, and Section 504 of
39 the Rehabilitation Act.

EXECUTIVE SUMMARY

1. Summary of the Recommendation:

This policy discourages inappropriate referral of youth to the juvenile justice system, and inappropriate use of expulsion or out-of-school suspension, simply because of an act of student bullying or harassment. It also calls for new anti-bullying/harassment policies, training, new relevant programs, research, and evaluation, urges law enforcement to provide data pursuant to the recent federal Hate Crimes Prevention Act, encourages Internet Service Providers and social networking websites to better address cyberbullying and cyberhate incidents, calls for expanding federal collaboration to improve best practices in addressing this issue within schools, and supports actions on this issue pursuant to recent U.S. Department of Education guidance to schools.

2. Summary of the issue which the Recommendation addresses:

Bullying, harassment, and hate crimes are serious issues that are affecting a very large number of youth. In a 2010 survey answered by 40,000 high school students, 47% reported they were the victims of bullying within the past 12 months, while 50% admitted to having bullied. 23% of these high school students admitted they are prejudiced against certain groups and 21% said they mistreated someone because that person belonged to a different group. 90% of lesbian, gay, bisexual, and transgender youth report having been verbally or physically harassed or assaulted

3. Explanation of how the proposed policy position will address the issue:

Since the ABA's August 2002 related policy, 45 states have enacted an anti-bullying law. Although these policies are to be commended since the rate of bullying, harassment, and hate crimes has decreased, the alarmingly high number of students still involved in bullying, harassment, and hate crimes lingers. Therefore, this Recommendation calls for additional actions to promote anti-bullying and anti-harassment policies that will further protect our youth.

4. Summary of any minority views or opposition which have been identified:

We are unaware of any minority views or opposition to this Recommendation

AMERICAN BAR ASSOCIATION
COMMISSION ON YOUTH AT RISK
COALITION ON RACIAL AND ETHNIC JUSTICE
COMMISSION ON WOMEN IN THE PROFESSION
SECTION OF FAMILY LAW
CRIMINAL JUSTICE SECTION
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association urges federal, state, territorial, and local
2 governments to create and provide appropriate support for Youth or Teen Courts that, through a
3 nondiscriminatory peer-driven restorative justice process involving family members, diverts
4 youth from the formal consequences of juvenile court petitions, proceedings, adjudications, or
5 juvenile justice sanctions by:
- 6 a) Providing civic education for all participants that builds respect for the rule of law and
7 the legal process, including mentorship and community service opportunities;
 - 8 b) Permitting program referrals from prosecutors, probation departments and police, as well
9 as from the courts, and not limiting program eligibility to first-time offenders;
 - 10 c) Encouraging judges, lawyers, law students, civic organizations and businesses to recruit
11 youth volunteers and to provide training, other assistance and support to create, sustain
12 and promote programs; and
 - 13 d) Supporting national, state, and local research and evaluation on all aspects of these
14 programs.

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EXECUTIVE SUMMARY

1. Summary of the Recommendation.

This calls for sustained support of Youth or Teen Courts (these programs are known by different names in various states) that can divert youth from the formal consequences of juvenile court involvements through participation in a volunteer program of youth civic engagement and peer restorative justice, and it outlines key provisions of and best practices for such programs.

2. Summary of the issue which the Recommendation addresses.

In these programs, young people have a chance to directly contribute to the justice system. They are specialized diversion opportunities for juveniles sentenced by their peers. Their primary purpose is to offer an alternative to the traditional juvenile justice system. In these proceedings, adults and young volunteers typically respond to those juveniles who have committed misconduct by devising a disposition or sentence that restores justice to victims, the respondents, and the community. The ABA is suggesting the appropriate parameters for these rapidly expanding alternatives to the formal juvenile justice system for non-violent offenses, given that there are now more than 1,250 such programs. This new set of recommendations is intended to help refine and further expand the youth court movement.

3. An explanation of how the proposed policy position will address the issue.

This policy will provide legislators, judges, attorneys, and others with the ABA's support of establishing and sustaining Youth or Teen Courts with certain essential key elements of, and best practices for, these programs. For example, the policy stresses the importance of providing a civic education opportunity for all program participants, the involvement of family members, and the importance of data collection and analysis to help measure youth outcomes and volunteer engagement.

4. A summary of any minority views or opposition which have been identified.

We are unaware of any minority views or opposition to this Recommendation

AMERICAN BAR ASSOCIATION
TORT TRIAL AND INSURANCE PRACTICE SECTION
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association urges Congress to amend the Medicare
2 Secondary Payer Act to provide clear, predictable, and consistent procedures for the submission,
3 uniform determination, and timely approval of third party medical set aside settlement proposals
4 (MSASP) submitted to the Centers for Medicare & Medicaid Services (CMS).
5

6 FURTHER RESOLVED, that legislation to accomplish these goals should incorporate the
7 following principles:
8

- 9 1. Specify statutory and regulatory requirements for determining Medicare Set Aside
10 payments and the process for approving claims subject to the Medicare Secondary
11 Payer Act.
- 12 2. Exempt from review by CMS all settlements in which there are no legal obligations to
13 pay medical benefits.
- 14 3. Establish an appeals process that must be completed by CMS within 60 days of
15 request by the claimant, insurer, or defendant's representative.
- 16 4. Prohibit CMS from seeking additional moneys from the settlement proceeds after
17 review and/or appeals processes have been concluded.
- 18 5. Prohibit recovery thresholds for MSASP that are linked to predetermined economic
19 indices.
- 20 6. Establish a statute of limitations for MSP claims.
- 21 7. Establish a 30 day deadline by which CMS must respond in writing of its acceptance
22 of the proposed MSASP.
- 23 8. Require CMS to timely ("timely" means within 60 days the information must be
24 delivered to the patient and patient's lawyers) and reasonably provide a detailed list
25 of any payments it made and/or may make a claim for set aside for, and if it does not,
26 cannot collect or require a set aside for that patient.
- 27 9. Prohibit the "certification" or claim of specialized by any private individual or person
28 or government entity of a process, practice or individual in the determination of
29 MSASP.
- 30 10. Prohibit the use of Social Security numbers and Health Card Numbers in the MSASP
31 reporting process.
- 32 11. Establish statutory and/or regulatory requirements and standards for set-aside trusts.

EXECUTIVE SUMMARY

1. Summary of the Resolution

The American Bar Association urges Congress to amend the Medicare Secondary Payer Act to provide uniform requirements for the Medicare set aside process concerning settlements of third-party liability matters and to establish appropriate levels of certainty, predictability, and efficiency in the Medicare set-aside process.

2. Summary of the Issue that the Resolution Addresses

The process currently used by CMS in the Medicare set-aside process continues to subject the parties and their respective attorneys and employers and insurance carriers to determinations which lack consistency, certainty, efficiency, and predictability with respect to the settlements reached by the parties in the resolution of claims which include reimbursement to CMS of certain medical payments to Medicare beneficiaries which may be subject to reimbursement to Medicare and the set aside of portions of settlements to fund future Medicare eligible medical expenses related to the claims settled. The process continues to subject all stakeholders to lengthy delays without recourse.

3. Please Explain How the Proposed Policy Position will address the Issue

Would expand the existing policy for Workers' Compensation cases adopted in 2005 to include liability claims.

4. Summary of Minority Views

No minority views have been identified. For more than five years, all stakeholders have supported legislation in Congress addressing the "set aside" problem in workers compensation cases.

AMERICAN BAR ASSOCIATION
TORT TRIAL AND INSURANCE PRACTICE SECTION
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association urges federal, state, territorial, and local
2 legislative bodies and governmental agencies to enact laws and implement policies to ensure the
3 humane treatment and disposition of seized animals in a timely manner that:

- 4
- 5 1. Establish effective evidence collection and identification of each animal at the scene
6 of the seizure;
 - 7
 - 8 2. Provide prompt and continuing veterinary attention for each animal as warranted by
9 each animal's medical condition;
 - 10
 - 11 3. Establish a protocol for humane and appropriate confinement for the animals;
 - 12
 - 13 4. Provide that the person who has ownership or control of the animals at the time of the
14 seizure must post a reasonable bond or security or, in the alternative, promptly
15 surrender the animals to the custody of the lawful authorities;
 - 16
 - 17 5. Utilize a timely process to determine the disposition of the animals and provide for
18 prompt transfer to an appropriate rescue organization or adoptive home with humane
19 euthanization occurring only if an animal's medical or behavioral condition warrants
20 such action or it is determined, after reasonable time and effort have been expended,
21 that no appropriate placement for an animal exists;
 - 22
 - 23 6. Provide that the localities and/or organizations caring for the animals be granted
24 restitution for the costs incurred for the care of the animals not covered by a
25 reasonable bond or security by any person who does not promptly surrender such
26 animals.

EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution calls for federal, state, territorial, and local legislative bodies and governmental agencies to adopt laws and policies to ensure the humane treatment and efficient disposition of seized animals.

2. Summary of the Issue that the Resolution Addresses

The Resolution is intended to address problems that arise when animals are seized as a result of civil actions or criminal prosecutions. Many jurisdictions do not have procedures and protocols in place in advance of the seizure of the animals which can lead to inefficiencies in the prosecution of these cases and harm to the animals. The animals seized in these cases may be in the temporary custody of the governmental authority for a lengthy period of time prior to the final determination of their legal status.

3. Please Explain How the Proposed Policy Position Will Address the Issue

This resolution sets forth actions that should be taken by governmental entities that will allow them to more efficiently and humanely deal with the seizure of animals.

4. Summary of Minority Views or Opposition Which Have been Identified

No minority or opposing view has been identified.

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association approves the Uniform Partition of Heirs
- 2 Property Act, promulgated by the National Conference of Commissioners on Uniform State
- 3 Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law
- 4 suggested therein.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

That the ABA approves the Uniform Partition of Heirs Property Act promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the issue which the recommendation addresses

The tenancy in common form of ownership is the most common form of common ownership of real property in the United States. This form of common ownership is so prevalent, in part, because under state law it is the default or presumptive ownership form for multiple owners of real property, including for common owners who are family members who acquire their real property interests under the law of intestate succession. Tenancy in common ownership, however, often can create serious problems for families that seek to maintain ownership of their property -- commonly referred to as "heirs property" in communities across the country -- for themselves and their heirs. For example, any cotenant may sell or give away his or her interest during his or her lifetime without the consent of fellow cotenants, making it easy for non-family members to acquire interests in family real estate. Such transfers to non-family members often increase the chances that the property may be forcibly sold because any cotenant, even one with a very small undivided interest, may initiate a partition action seeking the forced sale of the property against the expressed wishes of the other cotenants. Courts in many states routinely order tenancy in common property sold at public auctions that are notorious for yielding sales prices well below market value. This has resulted in many families losing both their real property and a substantial amount of their wealth. In addition to sustaining severe economic loss upon the forced sale of their property, many families who own "heirs property" also lose substantial non-economic, intrinsic value because the property, for example, often possesses strong ancestral or historical significance for family members or because it is used as shelter by family members who have no other viable housing alternatives.

The Uniform Partition of Heirs Property Act (UPHPA) establishes a hierarchy of remedies for use in those partition actions involving heirs property. The remedies are designed to help those who own heirs property to maintain ownership of their property when possible or to insure at the very least that any court-ordered sale of the property is conducted under commercially reasonable circumstances that will protect the owners from losing substantial wealth upon the sale of their property. Courts use the act's guideline to determine if tenancy in common property is heirs property that must be partitioned in accordance with the act. UPHPA provides the procedures by which notice is provided to cotenants and appraisers and brokers are hired. The act also mandates that any commissioners, referees, or partitioners that are appointed by the court must be disinterested. Importantly, UPHPA incorporates an option and statutory procedure for cotenants to buy-out the interests of those other cotenants seeking partition by sale. In those instances in which a buy-out doesn't resolve the action, the act retains the

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widespread current preference for a partition in kind but outlines specific criteria a court must consider in determining whether a partition by sale may be justified. The UPHPA provides a supplementary mechanism for existing state partition law to help preserve the character and integrity of family-owned property and to protect a family's property-based wealth while still allowing a fair partition action to proceed.

This project was initiated on the basis of a 2006 referral from the Property Preservation Task Force of the ABA Real Property, Trust and Estate Law Section to the Joint Editorial Board for Uniform Real Property Acts.

3. Please explain how the proposed policy position will address the issue

Approval of the Uniform Partition of Heirs Property Act by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

4. Summary of any minority views or opposition which have been identified

None known.

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association approves the Uniform Faithful Presidential
2 Electors Act, promulgated by the National Conference of Commissioners on Uniform State Laws
3 in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law
4 suggested therein.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

That the ABA approves the Uniform Faithful Presidential Electors Act promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the issue which the recommendation addresses

The **Uniform Faithful Presidential Electors Act (UFPEA)** addresses the problem of a presidential elector who decides to vote inconsistently with the way they were elected to vote by the people of the state. The UFPEA creates a procedure that assures that states attempting to appoint a complete complement of electors will succeed and maintains the sanctity of the electoral process. Under the UFPEA, electors take a pledge of faithfulness. A vote in violation of that pledge constitutes resignation from the office of elector. Correspondingly, the Act provides a mechanism for filling a vacancy created because of this constructive resignation. The UFPEA disallows faithless voting *and* assures that faithful votes are substituted for faithless ones. In doing so, it provides the voters of the state with the confidence that the votes they have cast will be honored when the electoral college meets.

3. Please explain how the proposed policy position will address the issue

Approval of the Uniform Faithful Presidential Electors Act by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

4. Summary of any minority views or opposition which have been identified

None known.

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association approves the Uniform Electronic Recordation
2 of Custodial Interrogations Act, promulgated by the National Conference of Commissioners on
3 Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific
4 substantive law suggested therein.

EXECUTIVE SUMMARY1. Summary of the Recommendation

That the ABA approves the Uniform Electronic Recordation of Custodial Interrogations Act promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the issue which the recommendation addresses

The Uniform Electronic Recordation of Custodial Interrogations Act addresses difficult problems that accompany interrogations conducted by law enforcement officials. These issues include false confessions and frivolous claims of abuse that ultimately waste court resources. By requiring law enforcement to electronically record custodial interrogations, the Act promotes truth-finding, judicial efficiency, and further protects the rights of law enforcement and those under investigation. The Act is carefully drafted to avoid undue burdens and technical pitfalls for law enforcement officials and prosecutors. The Act does not require law enforcement to make recordings that are unfeasible or that would endanger confidential informants, nor does it punish law enforcement for equipment failures. A uniform statute governing the electronic recordation of custodial interrogations will provide consistent rules between the states and improve the administration of justice.

3. Please explain how the proposed policy position will address the issue

Approval of the Uniform Electronic Recordation of Custodial Interrogations Act by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

4. Summary of any minority views or opposition which have been identified

None known.

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association approves the 2010 Amendments to Article 9 of
2 the Uniform Commercial Code, promulgated by the National Conference of Commissioners on
3 Uniform State Laws in 2010, as appropriate amendments to that Act for those states desiring to
4 adopt the specific substantive law suggested therein.

EXECUTIVE SUMMARY1. Summary of the Recommendation

That the ABA approves the 2010 Amendments to Article 9 of the Uniform Commercial Code Act promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the issue which the recommendation addresses

The 2010 amendments to Article 9, which governs secured transactions in personal property, address filing issues as well as other matters that have arisen in practice following over a decade of experience with the revised Article 9 (last revised in 1999 and enacted in all states and the District of Columbia). Of most importance, the 2010 amendments provide greater guidance as to the name of an individual debtor to be provided on a financing statement. The amendments also improve the system for filing financing statements. More detailed guidance is provided for the debtor's name on a financing statement when the debtor is a corporation, limited liability company or limited partnership and when the collateral is held in a statutory or common law trust or in a decedent's estate. Some extraneous information currently provided on financing statements will no longer be required. In addition, the amendments provide greater protection for an existing secured party having a security interest in after-acquired property when its debtor relocates to another state or merges with another entity. Finally, the amendments also contain a number of technical changes that respond to issues arising in the marketplace and a set of transition rules.

3. Please explain how the proposed policy position will address the issue

Approval of the 2010 Amendments to Article 9 of the Uniform Commercial Code Act by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

4. Summary of any minority views or opposition which have been identified

No opposition to this resolution or to the underlying amendments is known or expected.

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association approves the Uniform Military and Overseas
2 Voters Act, promulgated by the National Conference of Commissioners on Uniform State Laws
3 in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law
4 suggested therein.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

That the ABA approves the Uniform Military and Overseas Voters Act promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the issue which the recommendation addresses

Military personnel and overseas civilians face a variety of challenges to their participation as voters in U.S. elections, despite repeated congressional and state efforts to facilitate their ability to vote. The federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), as well as the various state efforts, have not been wholly effective in overcoming difficulties that these voters face. Further, American elections are conducted at the state and local levels under procedures that vary dramatically by jurisdiction, and many are conducted independent of the federal elections to which UOCAVA and the MOVE Act do apply. Lack of uniformity, and lack of application of the federal statutes to state and local elections, complicates efforts to more fully enfranchise these voters.

The 2010 Uniform Military and Overseas Voters Act (UMOVA) establishes reasonable, standard timetables for application, registration, provision of ballots and election information for covered voters, and submission of ballots, and provides for the determination of the address that should be used for active-duty military and overseas voters. The act simplifies and expands, in common sense fashion, the class of covered voters and covered elections. UMOVA allows voters to make use of electronic transmission methods for applications and receipt of registration and balloting materials, tracking the status of applications, and expands use of the Federal Post Card Application and Federal Write-In Absentee Ballot. Finally, UMOVA obviates non-essential requirements that could otherwise invalidate an overseas ballot. The new Act uses and builds upon the key requirements of UOCAVA and MOVE, and extends the important protections and benefits of these acts to voting in applicable state and local elections.

3. Please explain how the proposed policy position will address the issue

Approval of the Uniform Military and Overseas Voters Act by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

4. Summary of any minority views or opposition which have been identified

None known.

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association approves the Uniform Collaborative Law
- 2 Rules/Act, promulgated by the National Conference of Commissioners on Uniform State Laws
- 3 in 2010, as appropriate legislation for those states desiring to adopt the specific substantive law
- 4 suggested therein.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

That the ABA approves the Uniform Collaborative Law Rules/Act promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the issue which the recommendation addresses

The **Uniform Collaborative Law Rules/Act**, promulgated by the Uniform Law Commission in 2009 and amended in 2010, standardizes the most important features of collaborative law practice, mindful of ethical concerns as well as questions of evidentiary privilege. In recent years, the use of collaborative law as a form of alternative dispute resolution has expanded from its origin in family law to other areas of law, including insurance and business disputes. As the practice has grown it has come to be governed by a variety of statutes, court rules, formal, and informal standards. A comprehensive statutory framework is necessary in order to guarantee the benefits of the process and to further regulate its use. The Rules/Act encourages the development and growth of collaborative law as an option for parties that wish to use it as a form of alternative dispute resolution.

The Rules/Act mandates the essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent. The need for attorneys to provide clear and impartial descriptions of the options available to the party prior to deciding upon a course of action is stressed throughout the Rules/Act. Additionally, the Rules/Act mandates that the collaborative agreement contains the disqualification provisions that are essential to the collaborative process. The disqualification requirements create incentives for cooperation and settlement. By standardizing the collaborative process, the Rules/Act secures the benefits of collaborative law for the parties involved while providing ethical safeguards for the lawyers involved.

3. Please explain how the proposed policy position will address the issue

Approval of the Uniform Collaborative Law Rules/Act by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

4. Summary of any minority views or opposition which have been identified

Representatives of the ABA Section on Litigation and the Tort Trial and Insurance Practice Section previously expressed opposition to the UCLR/A as proposed in 2009. Other sections and divisions expressed concerns, including representatives of the Judicial Division and Young Lawyers Division. While it is anticipated that the 2010 amendments will address many of the stated concerns, we are unsure of the current position of these entities with respect to the Rules/Act as revised.

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON THE LAW LIBRARY OF CONGRESS
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association supports efforts by the Law Library of
2 Congress and the Library of Congress to create and continue programs that:
3
4 1) Develop, maintain, and enhance the Law Library's services, facilities, operations,
5 and staff;
6 2) Develop, maintain, and enhance the Law Library's acquisition of materials and
7 their preservation and care; and
8 3) Utilize the best technologies and methods available to make the Law Library's
9 vast and growing collections accessible.

EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution supports efforts by the Law Library of Congress and the Library of Congress to create and continue programs that (1) develop, maintain and enhance the Law Library's services, facilities, operations and staff; (2) develop, maintain, and enhance the Law Library's acquisition of materials and their preservation and care; and (3) utilize the best technologies and methods available for making accessible the Law Library's vast and growing collections.

2. Summary of the issues which the Resolution addresses

The Law Library of Congress critically needs adequate funding to support its services, operations, materials acquisition and preservation, staffing, and the use of appropriate technologies to make its collections accessible. Without sufficient funding, the Law Library, with its unparalleled law collections, will fall further behind in serving the needs of Congress, the legal community, and the public. The risk is particularly unacceptable as the Law Library of Congress is increasingly being turned to for knowledge and information, including in critical areas such as foreign and international law. This Resolution addresses the Law Library's need for ABA policy to support the Law Library's current congressional funding needs.

3. Explanation of how the proposed policy resolution will address the issue

This Resolution recognizes that the Law Library of Congress is extremely valuable to the work of Congress; lawyers; federal, state, and local governments; private sector organizations; and the public as well in promoting the rule of law worldwide. Inadequate funding is jeopardizing the Law Library's ability to fulfill its unique responsibilities, with some needs having reached critical status. In recognizing the current needs of the Law Library of Congress and expressing support for areas requiring funding, the ABA will position itself to participate fully and effectively in upcoming congressional deliberations on these matters.

4. Summary of minority views of opposition which have been identified

No known minority views or opposition.

AMERICAN BAR ASSOCIATION
SECTION OF INTELLECTUAL PROPERTY LAW
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association supports continued recognition of judicially-
2 created exceptions to patent eligibility for laws of nature, abstract ideas, and physical phenomena
3 under 35 U.S.C. § 101, and the statutory requirements for patentability under 35 U.S.C. §§ 102
4 and 103 for novelty and non-obviousness;
5
- 6 FURTHER RESOLVED, That the American Bar Association supports application of standards
7 used in assessing patent eligibility under the provisions of 35 U.S.C. § 101 in a non-
8 discriminatory manner that treats isolated DNA compounds no differently from other materials
9 that are derived from or otherwise relate to natural materials or sources.
10
- 11 FURTHER RESOLVED, That the American Bar Association opposes disqualifying from patent
12 eligibility under 35 U.S.C. § 101 isolated DNA compounds that are compositions of matter that
13 do not occur in nature in the isolated form;
14
- 15 FURTHER RESOLVED, That the American Bar Association opposes any “products of nature”
16 doctrine that would have the effect of producing a subject matter exclusion from patent eligibility
17 for isolated DNA compounds.

EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution calls for the ABA to adopt policy supporting evaluation of inventions relating to DNA technology by the same uniform standards that apply in evaluating patent eligibility of inventions relating to other natural materials or subject matter, and to oppose new exclusionary rules for DNA that go beyond the long-standing exceptions to patent eligibility recognized by the U.S. Supreme Court.

2. Summary of the Issue that the Resolution Addresses

For more than two decades, patents on biotechnological inventions utilizing DNA technology have been issued by the United States and upheld in the courts. However, challenges to the eligibility of any and all DNA technology to be considered for patenting are continuing, if not increasing. One federal court has ruled that such technology is categorically ineligible, and that ruling is under appeal in the U.S. Court of Appeals for the Federal Circuit. Further review by the full *en banc* Federal Circuit and/or appeal to the Supreme Court of the United States are distinct possibilities.

Congress has also shown interest in the issue, as demonstrated by the introduction of legislation that would provide a statutory ban on patenting of DNA technology.

3. Please Explain How the Proposed Policy Position will Address the Issue

The policy would provide authority for the ABA to express views to any appropriate and relevant policy-making body (judicial, legislative, or executive) in support of continued evaluation of patent eligibility of DNA inventions by the same standards that apply to other subject matter, and in opposition to expanding exclusions from patent eligibility beyond the narrow exceptions established by the Supreme Court, such expansion to result in the categorical exclusion from patent eligibility of DNA based inventions.

4. Summary of Minority Views

None known at this time.

AMERICAN BAR ASSOCIATION
NATIONAL CONFERENCE OF THE ADMINISTRATIVE LAW JUDICIARY
JUDICIAL DIVISION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association continues to support the judicial
2 independence and authority granted to the Central Panel Administrative Law Judges in the
3 Model Act Creating a State Central Hearing Agency (Office of Administrative Hearings),
4 adopted by the ABA House of Delegates on February 3, 1997.
5

6 FURTHER RESOLVED, That the American Bar Association urges states considering the
7 adoption of legislation creating a Central Panel to enact the 1997 Model Act Creating State
8 Central Hearing Agency in preference to the Article 6 (Office of Administrative Hearings) of the
9 2010 Revised Model State Administrative Procedure Act.

EXECUTIVE SUMMARY

a) Summary of the Recommendation.

Over half the states have separate agencies (Central Panels or Offices of Administrative Hearings) composed entirely of Administrative Law Judges whose sole function is to conduct administrative hearings for other agencies. The ABA House of Delegates adopted a Model Act for states to follow in creating such agencies on February 3, 1997. Article 6 of the 2010 Revised Model State Administrative Procedure Act (MSAPA) recommended by the Uniform Law Commissioners would weaken the authority of the Central Panels to dispense impartial justice in cases in which agencies are litigants. It would strip them of much of the authority granted under the February 3, 1997 ABA Model Act to reach decisions independently of the agency litigants. The National Conference of the Administrative Law Judiciary recommends continuing to support the authority granted to the Administrative Law Judges under the 1997 ABA Model Act.

b) Summary of the issue which the Recommendation addresses.

This recommendation addresses the issue on whether Central Panels of State Administrative Law Judges will continue to exercise wide-ranging decision making authority independently of the agencies which appear before them as litigants or become more subservient to the agencies.

c) An explanation of how the proposed policy position will address the issue.

It will recommend that the states continue to follow the ABA Model Act as approved in February 1997 by the ABA HOD instead of Article 6 of the 2010 Uniform Law Commissioners MSAPA which reduces and compromises the authority of Central Panel Judges.

d.) Minority Views or Opposition.

No opposition to this recommendation is known to exist at this time.

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON MEDICAL PROFESSIONAL LIABILITY
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association supports the development and use of evidence-
2 based, clinical, or medical practice guidelines or standards regarding patient care and safety
3 created by independent experts;
4
5 FURTHER RESOLVED, That the American Bar Association opposes legislation that provides
6 that a healthcare provider is not negligent, or is presumptively not negligent, for the adverse
7 outcome of treatment on the sole basis that the healthcare provider followed, or practiced in
8 conformity with, evidence-based, clinical or medical practice guidelines or standards.

EXECUTIVE SUMMARY

1. Summary of the Resolution:

The resolution urges support of patient safety and use of medical, clinical or evidence - based guidelines to accomplish that goal.

2. Summary of the issue which the resolution addresses:

The resolution addresses issues, which supplement and further inform existing ABA policy and legislative priorities. At its meeting in February 2006, the House passed a resolution that “reaffirms opposition to legislation that places a dollar limit on recoverable damages that operate to deny full compensation to a plaintiff in a medical malpractice action; recognizes the nature and extent of damages in a medical malpractice case are triable issue of fact (that may be decided by a jury) and should not be subject to formulas or standardized schedules; and opposes the creation of health care tribunals that would deny patients injured by medical negligence the right to request a trial by jury or the right to receive full compensation for their injuries.”

The issue addressed in this resolution is whether legislation, which would allow doctors to use guidelines (which would theoretically assist in promoting patient safety and avoiding medical mistakes) as shields from liability while at the same time prohibiting the patient from showing a doctor’s failure to follow these guidelines as evidence of deviation from the standard of care, is fundamentally unfair and contrary to existing ABA policy.

3. An explanation of how the proposed policy position will address the issue:

A policy opposing one-sided use of guidelines will further promote patient rights and fundamental fairness principals and supplement and enhance existing ABA policy.

4. A summary of any minority views or opposition which have been identified:

No minority views or opposition have been communicated thus far to the Standing Committee on Medical Professional Liability to this recommendation and report from the entities to which it was referred.

AMERICAN BAR ASSOCIATION
SECTION OF STATE AND LOCAL GOVERNMENT LAW
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association endorses the Recommendations for an
2 Effective National Mitigation Effort, a white paper on national mitigation prepared by the
3 Association of the Directors of Emergency Management of the U.S. States and Territories
4 and the District of Columbia.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

Legal standards and regulations relating to hazard mitigation should be developed in a manner consistent with federalism and respect for the appropriate role of state and local governments, as well as with respect for property rights. The ABA should endorse the white paper entitled *Recommendations for an Effective National Mitigation Effort*, prepared by the National Mitigation prepared by the National Emergency Management Association and already endorsed by 16 other national organizations. The endorsement will help to implement ABA policy in this area.

2. Summary of the Issue that the Resolution Addresses

The development of hazard and disaster mitigation programs and strategies by all levels of government that reduce disaster risk while recognizing principles of federalism and respecting property rights.

3. Please Explain How the Proposed Policy Position will Address the Issue

The proposed policy addresses this issue by acknowledging the roles of state and local government in land use and building code regulatory regimes. It also acknowledges the need to consider private property ownership. Lastly, the ABA's endorsement of *Recommendations for an Effective National Mitigation Effort*, makes the ABA a nationally recognized stakeholder in further deliberations in support of the Association's adopted policies.

4. Summary of Minority Views

None known at this time.

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON JUDICIAL INDEPENDENCE
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association urges states to establish clearly articulated
2 procedures for judicial disqualification determinations and review of denials of requests to
3 disqualify. These procedures should be designed to produce resolutions of judicial
4 disqualification issues that are both prompt and meaningful.

5 FURTHER RESOLVED, That the American Bar Association urges states in which judges are
6 subject to elections of any kind to establish the following procedures:

- 7 A. Adoption of disclosure requirements for litigants and lawyers who have provided,
8 directly or indirectly, campaign support in an election involving a judge before
9 whom they are appearing. These disclosure requirements would facilitate a
10 determination of whether the judge's impartiality might reasonably be questioned.
- 11 B. Adoption of guidelines for judges about their disclosure obligations and the
12 circumstances in which presiding over a case involving litigants or lawyers who
13 previously contributed to an election involving the judge might reasonably be
14 perceived as calling the judge's impartiality into question.
- 15 C. Adoption of improved case management systems or other resources to help judges
16 promptly identify recusal issues.

EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution contains a menu of procedural and substantive options for states to consider as they reassess their individual judicial disqualification rules, policies, and procedures in the wake of significant recent Supreme Court decisions and major changes to the landscape of judicial election campaigns. The menu will provide guidance and assistance to the states as they seek to improve such rules, practices, and procedures and will promote public confidence in the state courts.

2. Summary of the Issue that the Resolution Addresses

This Resolution addresses one of the most significant issues impacting the public's trust and confidence in a fair, impartial and independent judiciary: the disqualification of a judge when the impartiality of the judge might reasonably be questioned either through specific conduct or the appearance of impropriety.

3. Please Explain How the Proposed Policy Position will Address the Issue

The proposed policy position will provide state judiciaries and legislatures with guidance and up-to-date information on a variety of options for improving judicial disqualification and recusal practices.

4. Summary of Minority Views

The Standing Committee on Judicial Independence was unanimous in its vote to support the Resolution and Report.

SCJI has received letters expressing concern with the Resolution and Report from the Standing Committee on Ethics and Professional Responsibility, the Standing Committee on Professional Discipline, and the Judicial Division. Hervey P. Levin, the House of Delegates representative of the Tort Trial and Insurance Practice Section (TIPS), has also relayed two suggested revisions to SCJI. SCJI is working with these groups to further edit the Resolution and Report and address any concerns.

AMERICAN BAR ASSOCIATION
SECTION OF PUBLIC CONTRACT LAW
SECTION OF ADMINISTRATIVE LAW AND REGULATORY PRACTICE
REPORT TO THE HOUSE OF DELEGATES
RESOLUTION

1 RESOLVED, That the American Bar Association opposes the adoption of legislation by
2 Congress that would mandate suspension or debarment of a single entity or class from bidding
3 on or receiving federal contracts and grants without regard to the existing regulatory framework,
4 which provides for agency discretion in suspension and debarment determinations.

EXECUTIVE SUMMARY

1. Summary of Recommendation

The Congress is urged not to adopt legislation that would mandate suspension or debarment of a single entity or class without reliance on the existing and carefully developed regulatory framework for suspension and debarment determinations.

2. Summary of the Issue that the Resolution Addresses

Recent legislative proposals have been introduced in Congress that would mandate the suspension or debarment of a single entity or class without reliance on the existing and carefully developed regulatory framework for suspension and debarment determinations. Many of these proposals raise serious concerns regarding the protection of due process rights of federal contractors and grantees. Moreover, these proposals would undermine the existing regulatory suspension and debarment mechanisms by removing or limiting the discretion of suspension and debarment officials and arbitrarily excluding contractors and grantees from receiving government contracts and grants without regard to present responsibility. The adoption of these proposals is likely to impose significant and unjustified economic harm on many contractors and grantees without any corresponding benefit to the government.

3. Please Explain How the Proposed Policy Position Will Address this Issue

It will enable the Association to educate Congress, the courts, and the public of the negative consequences of proposed legislation that eliminates the exercise of agency discretion in suspension and debarment decisions. It will also provide opportunities for the Association to participate in the continuing dialogue concerning the suspension and debarment statutory and regulatory framework.

4. Summary of Minority Views

No minority views have been expressed.

AMERICAN BAR ASSOCIATION

**SECTION OF ADMINISTRATIVE LAW AND REGULATORY PRACTICE
CRIMINAL JUSTICE SECTION**

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association urges Congress to amend subsection 13(p) of the
- 2 Securities Exchange Act of 1934 (15 U.S.C. § 78m(p)) to define a person subject to the
- 3 requirements of that subsection as “an issuer with securities registered under section 12 of the
- 4 Exchange Act”.

EXECUTIVE SUMMARY

1) Summary of the Recommendation

The recommendation urges Congress to amend subsection 13(p) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(p)) to define a person subject to the requirements of that subsection as “an issuer with securities registered under section 12 of the Exchange Act”.

2) Summary of the issue which the Recommendation addresses:

The current definition of “person” in subsection 13(p) of the Exchange Act is circular and vague. It therefore fails to give the Securities and Exchange Commission (SEC), the Department of State, and private-sector entities any meaningful guidance about the intended scope of coverage of its requirements.

3) An explanation of how the proposed policy position will address the issue:

It will recommend the specific adoption of language -- “an issuer with securities registered under section 12 of the Exchange Act” -- that is widely used and understood in securities regulation. The recommended change would provide a clearer delegation of authority to the SEC in implementing subsection 13(p)’s requirements, and make it substantially easier for both the SEC, in carrying out its regulatory responsibilities under subsection 13(p), and manufacturing entities, in seeking to comply with subsection 13(p), to determine whether that subsection’s requirements pertain to specific business entities.

4) A summary of any minority views or opposition which have been identified:

None that the Section is aware of.

AMERICAN BAR ASSOCIATION
SECTION OF ENVIRONMENT, ENERGY, AND RESOURCES
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association urges Congress to enact legislation to reform
2 the Toxic Substances Control Act (TSCA) that :

- 3 1. Enhances the Environmental Protection Agency's ability to ensure the safety of chemical
4 substances in commerce by considering developments in the state of science and
5 regulatory policy in the U.S. and abroad that have occurred since the TSCA was enacted;
- 6 2. Encourages public confidence in, and broad stakeholder understanding of, federal
7 chemical control authorities and regulatory policies and practices;
- 8 3. Recognizes the critical role that chemical substances play in all aspects of contemporary
9 society;
- 10 4. Maintains the nation's international competitiveness;
- 11 5. Acknowledges and accounts for the considerable investment of resources required to
12 develop and maintain a world-class regulatory system;
- 13 6. Leverages the extensive and growing wealth of governance experience and credible
14 scientific data and information on chemical substances being developed in the European
15 Union, Canada, and other countries;
- 16 7. Incorporates U.S. obligations under international treaties;
- 17 8. Provides the public with useful and relevant information on chemical safety, product
18 safety, and chemical risk management; and
- 19 9. Provides appropriate intellectual property protections to entities investing in new science
20 and innovation.

EXECUTIVE SUMMARY

1. Summary of the Recommendation.

The American Bar Association urges the Congress of the United States to promote a robust dialogue on the necessary principles and considerations in any future Toxic Substances Control Act (TSCA) reform legislation and to enact legislation amending TSCA that reflects advances in the state of science and regulatory developments world-wide and enhances EPA's ability to ensure the safety of chemicals substances in commerce while retaining the country's competitiveness in the international marketplace for chemicals substances and products produced using chemicals.

2. Summary of the issue which the Recommendation addresses.

There is bipartisan agreement that preventing and mitigating chemicals-related risks is necessary to maintaining a sustainable chemical industry and a sound environment in the United States, and that the nation's current chemical control framework, as embodied in the Toxic Substances Control Act, may not provide regulators or regulated entities all of the tools needed to identify and manage the risks from an ever-expanding variety of chemical substances and materials used in, or intended for, domestic or international commerce.¹ Since Title I of TSCA was enacted in 1976, there have been significant developments in the sciences and the regulatory models related to chemical detection, risk assessment, and managing risks from chemical and chemical-containing products. The ABA Recommendations encourage Congress to review the current federal chemical control framework in light of these developments, and offers certain practical considerations for lawmakers in crafting new legislation.

3. An explanation of how the proposed policy position will address the issue.

The proposed policy calls upon the U.S. Congress to encourage a robust debate about U.S. chemical regulatory policies and to enact legislation that provides federal regulators with the legal authority, flexibility, and resources necessary to encourage a safe, sustainable, and commercially competitive chemical industry as well as the many industries that rely on chemical substances. It also identifies specific practical imperatives for any draft bill to consider.

4. A summary of any minority views or opposition which have been identified.

The proposed policy has been circulated and discussed extensively within the leadership of the Committee on Pesticides, Chemical Regulation, and Right-to-Know. It has also been circulated and discussed within the Section of Environment, Energy, and Resources as well as the Standing Committee on Environmental Law. Changes have been made in the proposal in response to the comments and suggestions received.

¹ While a number of publications have addressed the need for TSCA reform in recent months, unique insights also appear in a "White Paper" addressing this topic written by a bipartisan group of former senior officials from the U.S. Environmental Protection Agency (EPA) entitled *Practical Advice for TSCA Reform: An Insider Perspective*, by James A. Aidala, Jr., Charles M. Auer, Lynn R. Goldman, M.D., and James B. Gulliford. The White Paper was prepared under the auspices of the Special Committee on TSCA Reform, Pesticides, Chemical Regulation, and Right-to-Know Committee, Section of the Environment, Energy, and Resources.