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Commission on Immigration
Commission on Domestic and Sexual Violence
Section of International Law
Commission on Hispanic Legal Rights and Responsibilities
Standing Committee on Pro Bono and Public Service
Section of Family Law
Section of Litigation
Commission on Youth at Risk
RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to enact legislation and regulation that will promote the following components in the provision of care to persons with advanced illness:

1. Finance and payment mechanisms that support access to person-centered care coordination and care management across all care settings, providers, medical conditions, and time;

2. Advance care planning through counseling, disclosure and meaningful discussion of prognosis, goals of care, personal values, and treatment preferences, including planning for family caregivers’ needs;

3. Access to palliative care, community-based supportive services, and caregiver support to enable persons with advanced illness to remain in the home and community in accord with their preferences and needs;

4. Expanded research to improve care delivery and payment practices that will benefit individuals and families facing advanced illness;

5. A strong health care workforce educated and equipped with the clinical and social skills to serve people with advanced illness and their families and caregivers; and

6. Health information technology that promotes advance care planning and effective information sharing across time, place, and provider.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   This resolution supports legislation and regulation that promotes access to and financing of high-quality, comprehensive long-term supportive services for persons with advanced illness. This is a growing population in our aging society whose needs, along with their family caregivers’ needs, have been largely unmet by current health delivery and financing systems. The resolution urges development and implementation of innovations that prioritize person-centered care planning and coordination, home-based supportive services, palliative care, expanded research in delivery practices and standards, greater workforce development, effective health information technology, and payment mechanisms that support these elements.

2. **Summary of the Issue that the Resolution Addresses**

   Most Americans today die in old age after an extended period of decline caused by chronic conditions. Most will face a time when one or more conditions become serious enough that general health and functioning decline, treatment aimed at cure begins to lose its effect, and quality of life increasingly becomes the focus of care. This is the transition point to advanced illness and progresses through an indefinite time period until death. Within our current health “system,” there are numerous barriers to access to quality care – clinical, social, and financial – that reinforce fragmented, uncoordinated, and unsupportive care currently to the sickest and most vulnerable Americans and that require simultaneous interventions to overcome them.

3. **Please Explain How the Proposed Policy Position will address the issue**

   Legislative and regulatory change at the federal level, especially in Medicare and Medicaid, can change the incentives that currently encourage unwanted and sometimes harmful treatment so that, instead, they encourage person-centered care planning and coordination, home-based supportive services, palliative care, expanded research in delivery practices and standards, greater workforce development, effective health information technology, and the payment mechanisms that support these elements.

4. **Summary of Minority Views**

   None as of this writing.
RESOLVED, That the American Bar Association reapproves the following paralegal education programs: Community College of the Air Force, Paralegal Program, Maxwell AFB, AL; California State University East Bay, Paralegal Studies Program, Hayward, CA; Johnson County Community College, Legal Studies Program, Overland Park, KS; Eastern Kentucky University, Paralegal Studies Program, Richmond, KY; Suffolk University, Applied Legal Studies Program, Boston, MA; Madonna University, Paralegal Studies Program, Livonia, MI; North Hennepin Community College, Paralegal Program, Brooklyn Park, MN; Pitt Community College, Paralegal Technology Program, Greenville, NC; Bronx Community College, Paralegal Studies Program, Bronx, NY; Mercy College, Legal Studies Program, Dobbs Ferry, NY; Rhodes State College, Paralegal/Legal Studies Program, Lima, OH; University of Cincinnati, Paralegal Program, Cincinnati, OH; University of Tulsa, Paralegal Studies Program, Tulsa, OK; Lehigh-Carbon Community College, Paralegal Studies Program, Schnecksville, PA; Horry-Georgetown Technical College, Legal Assistant/Paralegal Program, Conway, SC; Volunteer State Community College, Paralegal Studies Program, Gallatin, TN; Spokane Community College, Paralegal Program, Spokane, WA and Mountwest Community and Technical College, Paralegal Studies Program, Huntington, WV.

FURTHER RESOLVED, That the American Bar Association withdraws the approval of Daymar College, Paralegal Studies Program, Owensboro, KY, at the request of the institution.

FURTHER RESOLVED, That the American Bar Association extends the terms of approval until the August 2015 Annual Meeting of the House of Delegates for the following programs: University of Alaska Fairbanks, Paralegal Studies Program, Fairbanks, AK; Auburn University Montgomery, Paralegal Education Program, Montgomery, AL; Samford University, Division of Paralegal Studies, Birmingham, AL; University of Arkansas Fort Smith, Legal Assistance/Paralegals Program, Fort Smith, AR; Everest College Phoenix, Paralegal Program, Phoenix, AZ; Coastline Community College, Paralegal Studies Program, Fountain Valley, CA; El Camino Community College, Paralegal Studies Program, Torrance, CA; Fremont College, Paralegal Studies Program, Cerritos, CA; National University, Paralegal Studies Program, Los Angeles, CA; Pasadena City College, Paralegal Studies Program, Pasadena, CA; Santa Ana College, Paralegal Studies Program, Santa Ana, CA; University of California LA-UCLA Ext, Paralegal Training Program, Los Angeles, CA; University of California, Irvine Extension, Paralegal Certificate Program, Irvine, CA; University of California, San Diego, Legal Assistant Training Program, La Jolla, CA; University of California, Santa Barbara, Paralegal Professional Certificate Program, Santa Barbara, CA; Quinnipiac University, Legal Studies Program, Hamden, CT; Nova Southeastern University, Paralegal Studies Program, Fort Lauderdale, FL; Seminole State College of Florida fka Seminole Community College, Legal Assistant/Paralegal
Program, Sanford, FL; Clayton State University, Legal Studies Program, Morrow, GA;
Northwestern College fka Northwestern Business College, Institute of Legal Studies,
Bridgeview, IL; Robert Morris University, Chicago, Paralegal Studies Program, Chicago, IL;
Robert Morris University, Springfield, Paralegal Studies Program, Springfield, IL; Rockford
Career College fka Rockford Business College, Paralegal Program, Rockford, IL; William
Rainey Harper College, Paralegal Studies Program, Palatine, IL; Vincennes University, Paralegal
Program, Vincennes, IN; Sullivan University, Louisville, Institute for Legal Studies, Louisville,
KY; University of Louisville, Paralegal Studies Program, Louisville, KY; Tulane University,
Paralegal Studies Program, New Orleans, LA; Stevenson University fka Villa Julie College,
Paralegal Program, Owings Mills, MD; Baker College of Auburn Hills, Paralegal Program,
Auburn Hills, MI; Eastern Michigan University, Legal Assisting Program, Ypsilanti, MI; Henry
Ford Community College, Paralegal Studies Program, Dearborn, MI; Minnesota State University
Moorhead, Paralegal Program, Moorhead, MN; Missouri Western State University, Legal
Studies Program, St. Joseph, MO; Webster University, Legal Studies Program, St. Louis, MO;
University of Southern Mississippi, Paralegal Studies Program, Hattiesburg, MS; University of
Great Falls, Paralegal Studies Program, Great Falls, MT; University of Montana – Missoula,
Paralegal Studies Program, Missoula, MT; College of Saint Mary, Paralegal Studies Program,
Omaha, NE; Metropolitan Community College, Legal Assistant Program, Omaha, NE;
Brookdale Community College, Paralegal Studies Program, Lincroft, NJ; Fairleigh Dickinson
University, Paralegal Studies Program, Madison, NJ; Mercer County Community College,
Paralegal Program, Trenton, NJ; Middlesex County College, Legal Studies Department, Edison,
NJ; Raritan Valley Community College, Paralegal Studies Program, Somerville, NJ; Genesee
Community College, Paralegal Studies Program, Batavia, NY; Long Island University Brooklyn,
Paralegal Studies Program, Brooklyn, NY; Nassau Community College, Paralegal Program,
Garden City, NY; New York City College of Technology, Paralegal Studies Program, Brooklyn,
NY; Queen’s College, Paralegal Studies Program, Flushing, NY; St. John’s University, Paralegal
Studies Program, Jamaica, NY; Suffolk County Community College, Paralegal Studies Program,
Selden, NY; Capital University Law School, Paralegal Program, Columbus, OH; Cuyahoga
Community College, Paralegal Studies/Legal Nurse Consulting Program, Parma, OH; Kent State
University, Paralegal Studies Program, Kent, OH; Sinclair Community College, Paralegal
Program, Dayton, OH; University of Toledo (Scott Park), Paralegal Studies Program, Toledo,
OH; Ursuline College, Legal Studies Program, Pepper Pike, OH; East Central University, Legal
Studies Program, Ada, OK; Central Pennsylvania College, Paralegal Program, Summerdale, PA;
Delaware County Community College, Paralegal Studies Program, Media, PA; Harrisburg Area
Community College, Paralegal Studies Program, Harrisburg, PA; Orangeburg-Calhoun
Technical College, Paralegal Program, Orangeburg, SC; Technical College of the Low Country,
Paralegal Program, Beaufort, SC; Western Dakota Technical Institute, Paralegal Program, Rapid
City, SD; Walters State Community College, Paralegal Studies Program, Morristown, TN;
Kaplan College, General Practice Paralegal Program, Dallas, TX; Lamar State College, Paralegal
Studies Program, Port Arthur, TX; Marymount University, Paralegal Studies Program,
Arlington, VA; Tacoma Community College, Paralegal Program, Tacoma, WA; Northeast
Wisconsin Technical College, Paralegal Studies Program, Green Bay, WI; Casper College,
Paralegal Studies Program, Casper, WY; and Laramie County Community College, Paralegal
Studies Program, Cheyenne, WY.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Standing Committee on Paralegals resolve(s) that the House of Delegates grants reapproval to eighteen programs, withdraws the approval of one program, and extends the term of approval of seventy-three programs.

2. Summary of the issue which the Resolution Addresses

The programs recommended for 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 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 resolution have been taken by other Association entities, affiliated organizations or other interested groups.
RESOLVED, That the American Bar Association reaccredits for an additional five-year term the following designated specialty certification programs for lawyers:

Civil Trial Advocacy program of the National Board of Trial Advocacy, a division of the National Board of Legal Specialty Certification; and

Social Security Disability Law program of the National Board of Trial Advocacy, a division of the National Board of Legal Specialty Certification.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The recommendation requests that the American Bar Association grant reaccreditation to the Civil Trial Advocacy and Social Security Disability Law programs of the National Board of Trial Advocacy, a division of the National Board of Legal Specialty Certification.

2. Summary of the Issue that the Resolution Addresses

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. This Resolution acquits the Standing Committee’s obligation to periodically review programs that the House of Delegates has accredited and recommend their further reaccreditation or revocation of accreditation.

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

The recommendation addresses the issue by implementing previous House resolutions calling on the ABA to evaluate specialty certification organizations that apply for accreditation and reaccreditation.

4. Summary of Minority Views

The Standing Committee on Specialization approved the proposed recommendation unanimously. No opposition has been identified.
RESOLUTION

RESOLVED, That the American Bar Association approves the Uniform Fiduciary Access to Digital Assets Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law contained in the Act.
EXECUTIVE SUMMARY

1. Summary of the Resolution

RESOLVED, That the American Bar Association approves the Uniform Fiduciary Access to Digital Assets Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law contained in the Act.

2. Summary of the Issue that the Resolution Addresses

As the nature of our personal property has evolved, the law has failed to keep pace. As a result, fiduciaries have been unable to effectively administer estates containing digital property.

The Uniform Fiduciary Access to Digital Assets Act (UFADAA) extends a fiduciary’s traditional access to an account holder’s tangible assets to also include the account holder’s digital assets stored by a custodian and accessed via the Internet. The fiduciary’s access is subject to the account holder’s rights under any terms-of-service agreement and other laws, and the fiduciary remains bound by all the usual fiduciary duties. UFADAA provides default rules for access that may be overridden by the terms of an account holder’s estate plan or by the account holder’s affirmative act using an online account feature separate from the other terms of a terms-of-service agreement. UFADAA provides rules for four common types of fiduciaries: personal representatives of a decedent’s estate, conservators of a protected person’s estate, agents under a power of attorney, and trustees.

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

Approval of the Uniform Fiduciary Access to Digital Assets Act by the American Bar Association House of Delegates would demonstrate to states that the Act is an appropriate approach for addressing the issues described above. Enactment by a state legislature will extend a legally appointed fiduciary’s existing authority under other state laws to include authority over digital assets.

4. Summary of Minority Views

We know of no opposition at this time.
RESOLVED, That the American Bar Association approves the Uniform Recognition of Substitute Decision-Making Documents Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law contained in the Act.
EXECUTIVE SUMMARY

1. Summary of the Resolution

RESOLVED, That the American Bar Association approves the Uniform Recognition of Substitute Decision-Making Documents Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law contained in the Act.

2. Summary of the Issue that the Resolution Addresses

Substitute decision-making documents are called by different names in different jurisdictions (e.g. powers of attorney, proxies, and representation agreements), but are routinely used throughout the United States and Canada. In our modern, mobile society, legal recognition of documents executed in another jurisdiction is an increasingly common problem. New state laws are necessary to provide for legal recognition of foreign substitute decision-making documents while protecting persons asked to accept those documents from liability for good-faith compliance.

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

Approval of the Uniform Recognition of Substitute Decision-Making Documents Act by the American Bar Association House of Delegates would demonstrate to states that the Act is an appropriate approach for addressing the issues described above. Enactment by a state legislature will allow recognition of foreign-executed substitute decision-making documents and shield the persons who accept them from liability.

4. Summary of Minority Views

None known.
RESOLUTION

RESOLVED, That the American Bar Association approves the Uniform Voidable Transactions Act (as Amended in 2014), promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law contained in the act.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

That the American Bar Association approves the Uniform Voidable Transactions Act (as Amended in 2014) promulgated by the National Conference of Commissioners on Uniform State Laws in July 2013 as an appropriate Act for those states desiring to adopt the specific substantive law contained in the act.

2. **Summary of the Issue that the Resolution Addresses**

The Uniform Voidable Transactions Act (UVTA) (as Amended in 2014), formerly named the Uniform Fraudulent Transfer Act (UFTA), strengthens creditor protections by providing remedies for certain transactions by a debtor that are unfair to the debtor’s creditors. The 2014 amendments to the UVTA address a small number of narrowly defined issues, and are not a comprehensive revision of the UFTA/UVTA. The amendments, among other things, clarify terminology that was confusing to many courts and litigants. The amendments add a clear choice-of-law provision that offers predictability and reduces costs. The amendments also improve provisions for determining a debtor’s insolvency, address emerging legal developments, and provide crucial guidance to courts and litigants regarding key evidentiary matters.

3. **Please Explain How the Proposed Policy Position will address the issue**

Approval of the Uniform Voidable Transactions Act (as Amended in 2014) by the American Bar Association House of Delegates would demonstrate to states that the Act is an appropriate approach for addressing the issues described above.

4. **Summary of Minority Views**

We know of no opposition at this time.
RESOLVED, That the American Bar Association urges Congress to amend 31 U.S.C. § 330(a) and (b) to include within the scope of those provisions non-attorney “tax return preparers,” as that term is defined by 26 U.S.C. § 7701(a)(36) and Treasury Department regulations promulgated thereunder.

FURTHER RESOLVED, That the American Bar Association urges Congress to amend 31 U.S.C. § 330(d) to clarify that the Treasury Department has the authority to regulate persons who advise taxpayers with respect to the reporting of items on Federal tax returns, provided that the scope of any such regulation should not exceed the scope set forth in Treasury Department Circular 230 as published on June 12, 2014.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

The Resolution urges Congress to amend 31 U.S.C. § 330(a) and (b) to include within the scope of those provisions non-attorney “tax return preparers,” as that term is defined by 26 U.S.C. § 7701(a)(36) and Treasury Department regulations promulgated thereunder. The Resolution also urges Congress to amend 31 U.S.C. § 330(d) to clarify that the Treasury Department has the authority to regulate persons who advise taxpayers with respect to the reporting of items on Federal tax returns, provided that the scope of any such regulation should not exceed the scope set forth in Treasury Department Circular 230 as published on June 12, 2014. These changes would reverse the effect of recent judicial decisions limiting Treasury’s authority to regulate the conduct of paid tax advisors, including tax return preparers, to protect consumers and safeguard the tax system.

2. **Summary of the Issue that the Resolution Addresses**

In 2011 the Treasury Department promulgated regulations under 31 U.S.C. § 330 to regulate paid tax return preparers. The Court of Appeals for the D.C. Circuit held in *Loving v. Internal Revenue Service*, 742 F.3d 1013 (D.C. Cir. 2014), that those regulations exceeded the Treasury Department’s authority. More recently, in *Ridgely v. Lew*, 2014 U.S. Dist. LEXIS 96447 (D.D.C. July 16, 2014), the U.S. District Court for the District of Columbia invalidated other regulations promulgated by the Treasury Department under 31 U.S.C. § 330 that limited certain contingent fee arrangements charged by tax practitioners. These and other cases have limited the Treasury Department’s authority to regulate the conduct of persons who, for compensation, advise or represent taxpayers with respect to any matters arising under the Internal Revenue Code, including the reporting of items on Federal tax returns.

3. **Explanation of how the Resolution Will Address the Issue**

By urging Congress to amend 31 U.S.C. § 330 to allow the Treasury Department to regulate paid tax return preparers, as that term is defined by 26 U.S.C. § 7701(a)(36) and the regulations thereunder, and provide a clear affirmative grant of authority of the Treasury Department to regulate a broader range of conduct engaged in by paid tax advisors, including applicable due diligence standards, fee arrangements and other activities of paid tax advisors that do not involve direct interaction with the Internal Revenue Service in an adversarial proceeding but nonetheless have a significant impact on the public fisc and on taxpayers’ compliance with their obligations under the tax law, the proposed Resolution would directly address the concerns presented in *Loving*. By approving this Resolution, the Association would (1) promote competence, ethical conduct and professionalism, (2) protect our members and the public from unscrupulous unregulated tax return preparers, and (3) promote accountability through oversight of paid tax advisors by the Internal Revenue Service’s Office of Professional Responsibility.

4. **Summary of Any Minority Views of Opposition Which Have Been Identified**

No minority views have been identified in opposition to the proposed Resolution.
RESOLVED, That the American Bar Association urges all federal, state, local, and territorial legislative bodies and/or governmental agencies to enact comprehensive laws that prohibit the private possession, sale, breeding, import, or transfer of dangerous wild animals, such as big cats, bears, wolves, primates, and dangerous reptiles, in order to protect public safety and health, and to ensure the humane treatment and welfare of such animals.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution urges all federal, state, territorial, and local legislative bodies and/or governmental agencies to enact comprehensive laws that prohibit the private possession, sale, breeding, import, or transfer of dangerous wild animals, such as big cats, bears, wolves, primates, and dangerous reptiles, in order to protect public safety and health, and to ensure the humane treatment and welfare of such animals.

2. Summary of the Issue that the Resolution Addresses

Since 1990, there have been more than 1,200 dangerous incidents involving captive big cats, bears, primates, and large constrictor snakes nationwide, resulting in more than 40 human deaths (including eight children) and nearly 700 injuries. With no federal laws directly addressing the private possession of dangerous wild animals in the U.S., the issue currently is governed by an inconsistent regulatory patchwork of state and local laws. Twenty-one states and Washington, D.C. already prohibit the possession of some wild animals (big cats, bears, wolves, non-human primates, and most dangerous reptiles). Another thirteen states ban some, but not all, of these species. Eleven other states allow private possession but regulate the keeping of these animals by requiring a permit. However, five U.S. states still have absolutely no laws regulating the possession of dangerous wild animals.

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

The proposed policy position urges all federal, state, territorial, and local legislative bodies and/or governmental agencies to enact comprehensive laws that prohibit the private possession, sale, breeding, import, or transfer of dangerous wild animals. By encouraging such legislative action the proposed policy position will assist implementation of a uniform U.S. legal regime that safeguards the public, protects animals, allocates legal liability and insurance risk properly, furthers a policy of respect for nature, and considers the interests of present and future generations in accordance with the goals of the American Bar Association.

4. Summary of Minority Views

It was asked that an exemption for assistance monkeys be included in the Report. However, the American Veterinary Medical Association (AVMA) has a formal policy position stating, “The AVMA does not support the use of nonhuman primates as assistance animals because of animal welfare concerns, the potential for serious injury, and zoonotic risks.” Furthermore, in 2011, the Department of Justice removed monkeys from the definition of service animals covered by the Americans with Disabilities Act (ADA). This was a deliberate move to close a loophole that many primate owners were exploiting to flout restrictions on owning dangerous wild animals.
Because assistance monkeys (trained or untrained) are no longer recognized as service animals by the Department of Justice under the ADA, and because the American Veterinary Medical Association also officially opposes the practice, we believe it would not be appropriate to recommend that these animals be exempted from future laws prohibiting private possession of dangerous wild animals.
RESOLVED, That the American Bar Association encourages law schools to offer comprehensive debt counseling and debt management education to all currently admitted and enrolled law students.

FURTHER RESOLVED, That the American Bar Association encourages bar associations to offer similar debt counseling and debt management education to young and newly admitted lawyers.
EXECUTIVE SUMMARY

1. Summary of the Resolution.

The purpose of this resolution is to encourage law schools to offer and comprehensive debt counseling and debt management education to all currently admitted and enrolled law students. Bar associations are encouraged to offer similar debt counseling and debt management education to young and newly admitted lawyers.

2. Summary of the Issue(s) that the Resolution Addresses.

In recent years the federal government has enacted several laws in an attempt to facilitate more manageable student loan borrowing and debt repayment programs. While borrower assistance programs exist for the benefit of the borrower, it is rarely easy to figure out what types of relief exist and how to qualify. Moreover, while borrowers may change their repayment program at any time, they may face varying degrees of helpfulness from for-profit loan servicers.

3. Please Explain How the Proposed Policy will address the issue(s).

Instead of the current baseline approach where law schools provide the minimum amount of required loan counseling, law schools should expand their debt counseling programs to include (1) pre-enrollment counseling for new admittees who have received an offer of enrollment, including information regarding borrowing options and the true cost of a law school education; (2) post-enrollment periodic counseling to educate students on an ongoing basis (e.g., annual seminars); and (3) robust pre-graduation counseling to help students implement the complex information transmitted in the required exit counseling. Such expanded debt counseling curriculum would help all law students understand their financial future. Bar associations should also play an important role in helping young lawyers succeed financially. Rather than assume that each graduate sorts out their student loans by the time they graduate, bar associations should also take a proactive role to offer the type of expanded debt counseling program described above. As the needs of borrowers and applicable laws change over time, bar associations can play an important role in keeping new lawyers above water with their loan repayment choices.


The ABA Young Lawyers Division has not identified any minority views or opposition to this resolution.
RESOLUTION

RESOLVED, That the American Bar Association urges all federal, state, local, territorial and tribal governments to adopt a presumption against the use of restraints on juveniles in court and to permit a court to allow such use only after providing the juvenile with an in-person opportunity to be heard and finding that the restraints are the least restrictive means necessary to prevent flight or harm to the juvenile or others.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution urges federal, state and local governments and agencies to restrict the use of restraints on juveniles in court to those juveniles who present a risk of harm or flight, employing a presumption against the use of restraints in court, and giving the juvenile an opportunity to be heard on whether restraints are the least restrictive alternative. The resolution does not seek to impose limitations on security measures for transporting juveniles to and from the courtroom.

2. Summary of the Issue that the Resolution Addresses

The overwhelming majority of juveniles are in court for non-violent offenses. In 2011, the juvenile violent crime arrest index rate was the lowest in three decades. Yet in many courts across the country, all youth, regardless of their alleged offense, are shackled in juvenile proceedings. Some jurisdictions extend this to children charged with status offenses – non-criminal misbehavior.

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

This resolution promotes fairness and the rule of law in juvenile proceedings, provides for the imposition of restraints when needed for safety, protects the due process rights and well-being of youth, and upholds the rehabilitative principles of juvenile courts. Shackling of children in the courtroom without compelling justification is an inherently stigmatizing and traumatic practice that compromises the presumption of innocence. Wholesale reliance on shackles in the juvenile court without an individualized determination that they are actually necessary is contrary to law, undermines the purpose of the juvenile court, and is inimical to the interests of children and youth in conflict with the law.

4. Summary of Minority Views

None are known.
RESOLVED, That the American Bar Association urges federal, state, local and tribal
governments to protect the integrity of criminal proceedings, in its truth seeking function, by (1)
seeking to hold accountable those who unlawfully intimidate or tamper with victims and
prosecution and defense witnesses by any source or means, including the use of social media;
and (2) examining practices, procedures, and training, and revising them as needed to assure that
victims and witnesses are not improperly intimidated or tampered with by lawyers or law
enforcement personnel, and that they receive adequate protection against intimidation and
tampering by any person.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution addresses the corrupting influence that unlawful and improper intimidation can have on the testimony of witnesses, including victims, in criminal trials and the reality that intimidation undermines the rule of law and the credibility of the judicial process. The possibility that victims and witnesses will be targeted by individuals who seek to influence their testimony is not new. It has been present since the founding of the Nation. In 1789, intimidation usually required personal contact or delivery of written threats. With the development of the telephone, intimidation from a distance became a new threat. In the current digital age, communication with victims and witnesses is possible in an ever expanding array of ways. And many victims and witnesses have wittingly or unwittingly exposed a vast array of information about themselves on social media, making it easier for any one seeking to find them and influence them, to attempt to do so.

2. Summary of the Issue that the Resolution Addresses

Prosecutors and law enforcement have consistently reported that the highest rates of witness intimidation exist in cases involving domestic violence, gangs and drug dealing. However, witness intimidation can occur in any type of case, from white collar crimes to petty offenses. Domestic and intimate partner violence cases arise from the complex web of family and intimate relationships.

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

The Resolution highlights the threat to the integrity of the criminal justice system as a result of victim and witness intimidation. Meaningful participation in the criminal justice system cannot exist when victims and witnesses are too fearful to come forward or are afraid to tell the truth about what they know. When victims and witnesses are too fearful to participate in the judicial process, the system of justice no longer retains credibility within society and the rule of law as a great arbiter, withers and dies. The Internet has created an explosion of new methods by which a victim or witness can be intimidated with ease, thus making witness intimidation a graver problem than ever before. The prevention of witness intimidation requires renewed, dedicated focus and should be a high priority for all members of the criminal justice system. Legislature must assure that laws are updated and adequate to deal with new challenges, prosecutors and defense counsel must be alert to the new dangers associated with social media. And all participants in the criminal justice system must be aware of the various ways in which victims and witnesses can feel that they are being improperly pressured. The most egregious forms of intimidation must be investigated and prosecuted, but the more subtle forms must not be ignored.

4. Summary of Minority Views

None are known.
RESOLVED, That the American Bar Association urges federal, state, local, tribal, and territorial, governments to adopt sentencing laws and procedures that both protect public safety and appropriately recognize the mitigating considerations of age and maturity of youthful offenders i.e., those under age 18 at the time of their offense who are subject to adult penalties upon conviction, by enacting sentencing laws and rules of procedure that will:

1. Eliminate life without the possibility of release or parole for youthful offenders both prospectively and retroactively;

2. Provide youthful offenders with meaningful periodic opportunities for release based on demonstrated maturity and rehabilitation beginning at a reasonable point into their incarceration, considering the needs of the victims.
EXECUTIVE SUMMARY

1. Summary of the Resolution
   This resolution urges elimination of life without the possibility of release or parole sentences for youthful offenders both prospectively and retroactively and provides youthful offenders with meaningful periodic opportunities for release based on demonstrated maturity and rehabilitation beginning at a reasonable point into their incarceration, considering the needs of the victims.

2. Summary of the Issue that the Resolution Addresses
   In 2008, the American Bar Association (ABA) approved Resolution 105C (see conclusion of the report), urging governments to authorize and implement sentences for youthful offenders that are generally less punitive than comparable sentences for older offenders, and by requiring that such offenders generally be eligible for parole consideration at a reasonable point during their sentences and, if parole is denied, be reconsidered for parole periodically thereafter. This resolution was based on the considerations endorsed by the United States Supreme Court in Roper v. Simmons, 543 U.S. 551 (2005). Subsequent to the passage of Resolution 105C, the Supreme Court issued two additional decisions addressing sentencing for youthful offenders.

3. Please Explain How the Proposed Policy Position will address the issue
   The purpose of this resolution is to build on the prior work of the ABA by recognizing the further developments in law set forth by the United States Supreme Court in Graham v. Florida, 130 S.Ct. 2011 (2010) and Miller v. Alabama, 132 S.Ct. 2455 (2012).

4. Summary of Minority Views
   None are known.
AMERICAN BAR ASSOCIATION

Fourth Edition of the
CRIMINAL JUSTICE STANDARDS
for the
PROSECUTION and DEFENSE FUNCTIONS
(encompassing proposed revisions to the
Third Edition approved in 1993)

Presented by the
CRIMINAL JUSTICE SECTION
for Adoption by the House of Delegates
Midyear Meeting, Houston, TX
February 2015

CRIMINAL JUSTICE STANDARDS

for the

PROSECUTION FUNCTION

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Reporter’s Notes

1. Each Standard begins on a separate page. There are 57 proposed Prosecution Function
Standards here, up from 42 Standards in the 1993 Edition. Where there is no 1993 equivalent
Standard (or a subsection of a 1993 Standards is now made into a separate Standard), the proposed
revision is designated a “New” Standard.

2. This draft reflects final revisions approved by the Council of the Criminal Justice Section
at its April 2014 meeting.
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PART I. GENERAL STANDARDS

Standard 3-1.1 The Scope and Function of These Standards

(a) As used in these standards, “prosecutor” means any attorney, regardless of agency, title, or full or part-time assignment, who acts as an attorney to investigate or prosecute criminal cases or who provides legal advice regarding a criminal matter to government lawyers, agents, or offices participating in the investigation or prosecution of criminal cases. These Standards are intended to apply in any context in which a lawyer would reasonably understand that a criminal prosecution could result.

(b) These Standards are intended to provide guidance for the professional conduct and performance of prosecutors. They are written and intended to be entirely consistent with the ABA’s Model Rules of Professional Conduct, and are not intended to modify a prosecutor's obligations under applicable rules, statutes, or the constitution. They are aspirational or describe “best practices,” and are not intended to serve as the basis for the imposition of professional discipline, to create substantive or procedural rights for accused or convicted persons, to create a standard of care for civil liability, or to serve as a predicate for a motion to suppress evidence or dismiss a charge. For purposes of consistency, these Standards sometimes include language taken from the Model Rules of Professional Conduct; but the Standards often address conduct or provide details beyond that governed by the Model Rules of Professional Conduct. No inconsistency is ever intended; and in any case a lawyer should always read and comply with the rules of professional conduct and other authorities that are binding in the specific jurisdiction or matter, including choice of law principles that may regulate the lawyer’s ethical conduct.

(c) Because the Standards for Criminal Justice are aspirational, the words “should” or “should not” are used in these Standards, rather than mandatory phrases such as “shall” or “shall not,” to describe the conduct of lawyers that is expected or recommended under these Standards. The Standards are not intended to suggest any lesser standard of conduct than may be required by applicable mandatory rules, statutes, or other binding authorities.

(d) These Standards are intended to address the performance of prosecutors in all stages of their professional work. Other ABA Criminal Justice Standards should also be consulted for more detailed consideration of the performance of prosecutors in specific areas.
Standard 3-1.2 Functions and Duties of the Prosecutor

(a) The prosecutor is an administrator of justice, a zealous advocate, and an officer of the court. The prosecutor’s office should exercise sound discretion and independent judgment in the performance of the prosecution function.

(b) The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.

(c) The prosecutor should know and abide by the standards of professional conduct as expressed in applicable law and ethical codes and opinions in the applicable jurisdiction. The prosecutor should avoid an appearance of impropriety in performing the prosecution function. A prosecutor should seek out, and the prosecutor’s office should provide, supervisory advice and ethical guidance when the proper course of prosecutorial conduct seems unclear. A prosecutor who disagrees with a governing ethical rule should seek its change if appropriate, and directly challenge it if necessary, but should comply with it unless relieved by court order.

(d) The prosecutor should make use of ethical guidance offered by existing organizations, and should seek to establish and make use of an ethics advisory group akin to that described in Defense Function Standard 4-1.11.

(e) The prosecutor should be knowledgeable about, consider, and where appropriate develop or assist in developing alternatives to prosecution or conviction that may be applicable in individual cases or classes of cases. The prosecutor’s office should be available to assist community efforts addressing problems that lead to, or result from, criminal activity or perceived flaws in the criminal justice system.

(f) The prosecutor is not merely a case-processor but also a problem-solver responsible for considering broad goals of the criminal justice system. The prosecutor should seek to reform and improve the administration of criminal justice, and when inadequacies or injustices in the substantive or procedural law come to the prosecutor’s attention, the prosecutor should stimulate and support efforts for remedial action. The prosecutor should provide service to the community, including involvement in public service and Bar activities, public education, community service activities, and Bar leadership positions. A prosecutorial office should support such activities, and the office’s budget should include funding and paid release time for such activities.
The prosecutor generally serves the public and not any particular government agency, law enforcement officer or unit, witness or victim. When investigating or prosecuting a criminal matter, the prosecutor does not represent law enforcement personnel who have worked on the matter and such law enforcement personnel are not the prosecutor’s clients. The public’s interests and views are should be determined by the chief prosecutor and designated assistants in the jurisdiction.
(a) In light of the prosecutor’s public responsibilities, broad authority and discretion, the prosecutor has a heightened duty of candor to the courts and in fulfilling other professional obligations. However, the prosecutor should be circumspect in publicly commenting on specific cases or aspects of the business of the office.

(b) The prosecutor should not make a statement of fact or law, or offer evidence, that the prosecutor does not reasonably believe to be true, to a court, lawyer, witness, or third party, except for lawfully authorized investigative purposes. In addition, while seeking to accommodate legitimate confidentiality, safety or security concerns, a prosecutor should correct a prosecutor’s representation of material fact or law that the prosecutor reasonably believes is, or later learns was, false, and should disclose a material fact or facts when necessary to avoid assisting a fraudulent or criminal act or to avoid misleading a judge or factfinder.

(c) The prosecutor should disclose to a court legal authority in the controlling jurisdiction known to the prosecutor to be directly adverse to the prosecution’s position and not disclosed by others.
At every stage of representation, the prosecutor should take steps necessary to make a clear and complete record for potential review. Such steps may include: filing motions including motions for reconsideration, and exhibits; making objections and placing explanations on the record; requesting evidentiary hearings; requesting or objecting to jury instructions; and making offers of proof and proffers of excluded evidence.
(a) The prosecutor should not manifest or exercise, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity, or socioeconomic status. A prosecutor should not use other improper considerations, such as partisan or political or personal considerations, in exercising prosecutorial discretion. A prosecutor should strive to eliminate implicit biases, and act to mitigate any improper bias or prejudice when credibly informed that it exists within the scope of the prosecutor’s authority.

(b) A prosecutor’s office should be proactive in efforts to detect, investigate, and eliminate improper biases, with particular attention to historically persistent biases like race, in all of its work. A prosecutor’s office should regularly assess the potential for biased or unfairly disparate impacts of its policies on communities within the prosecutor’s jurisdiction, and eliminate those impacts that cannot be properly justified.
Standard 3-1.7 Conflicts of Interest

(a) The prosecutor should know and abide by the ethical rules regarding conflicts of interest that apply in the jurisdiction, and be sensitive to facts that may raise conflict issues. When a conflict requiring recusal exists and is non-waivable, or informed consent has not been obtained, the prosecutor should recuse from further participation in the matter. The office should not go forward until a non-conflicted prosecutor, or an adequate waiver, is in place.

(b) The prosecutor should not represent a defendant in criminal proceedings in the prosecutor’s jurisdiction.

(c) The prosecutor should not participate in a matter in which the prosecutor previously participated, personally and substantially, as a non-prosecutor, unless the appropriate government office, and when necessary a former client, gives informed consent confirmed in writing.

(d) The prosecutor should not be involved in the prosecution of a former client. A prosecutor who has formerly represented a client should not use information obtained from that representation to the disadvantage of the former client.

(e) The prosecutor should not negotiate for private employment with an accused or the target of an investigation, in a matter in which the prosecutor is participating personally and substantially, or with an attorney or agent for such accused or target.

(f) The prosecutor should not permit the prosecutor’s professional judgment or obligations to be affected by the prosecutor’s personal, political, financial, professional, business, property, or other interests or relationships. A prosecutor should not allow interests in personal advancement or aggrandizement to affect judgments regarding what is in the best interests of justice in any case.

(g) The prosecutor should disclose to appropriate supervisory personnel any facts or interests that could reasonably be viewed as raising a potential conflict of interest. If it is determined that the prosecutor should nevertheless continue to act in the matter, the prosecutor and supervisors should consider whether any disclosure to a court or defense counsel should be made, and make such disclosure if appropriate. Close cases should be resolved in favor of disclosure to the court and the defense.

(h) The prosecutor whose current relationship to another lawyer is parent, child, sibling, spouse or sexual partner should not participate in the prosecution of a person who the prosecutor knows is represented by the other lawyer. A prosecutor who has a significant personal, political, financial, professional, business, property, or other relationship with another lawyer should not participate in the prosecution of a person who is represented by the other lawyer, unless the relationship is disclosed to the prosecutor's supervisor and supervisory approval is given, or unless there is no other prosecutor who can be authorized to act in the prosecutor's stead. In the latter rare case, full disclosure should be made to the defense and to the court.

(i) The prosecutor should not recommend the services of particular defense counsel to accused persons or witnesses in cases being handled by the prosecutor’s office. If requested to make such a recommendation, the prosecutor should consider instead referring the person to the
public defender, or to a panel of available criminal defense attorneys such as a bar association lawyer-referral service, or to the court. In the rare case where a specific recommendation is made by the prosecutor, the recommendation should be to an independent and competent attorney, and the prosecutor should not make a referral that embodies, creates or is likely to create a conflict of interest. A prosecutor should not comment negatively upon the reputation or abilities of a defense counsel to an accused person or witness who is seeking counsel in a case being handled by the prosecutor’s office.

(j) The prosecutor should promptly report to a supervisor all but the most obviously frivolous misconduct allegations made, publicly or privately, against the prosecutor. If a supervisor or judge initially determines that an allegation is serious enough to warrant official investigation, reasonable measures, including possible recusal, should be instituted to ensure that the prosecution function is fairly and effectively carried out. A mere allegation of misconduct is not a sufficient basis for prosecutorial recusal, and should not deter a prosecutor from attending to the prosecutor’s duties.
Standard 3.1.8  Appropriate Workload  [from current 3-2.9(e)]

(a) The prosecutor should not carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation, endangers the interests of justice in fairness, accuracy, or the timely disposition of charges, or has a significant potential to lead to the breach of professional obligations. A prosecutor whose workload prevents competent representation should not accept additional matters until the workload is reduced, and should work to ensure competent representation in existing matters. A prosecutor within a supervisory structure should notify supervisors when counsel’s workload is approaching or exceeds professionally appropriate levels.

(b) The prosecutor’s office should regularly review the workload of individual prosecutors, as well as the workload of the entire office, and adjust workloads (including intake) when necessary to ensure the effective and ethical conduct of the prosecution function.

(c) The chief prosecutor for a jurisdiction should inform governmental officials of the workload of the prosecutor’s office, and request funding and personnel that are adequate to meet the criminal caseload. The prosecutor should consider seeking such funding from all appropriate sources. If workload exceeds the appropriate professional capacity of a prosecutor or prosecutor’s office, that office or counsel should also alert the court(s) in its jurisdiction and seek judicial relief.
Standard 3-1.9  Diligence, Promptness and Punctuality

(a) The prosecutor should act with diligence and promptness to investigate, litigate, and dispose of criminal charges, consistent with the interests of justice and with due regard for fairness, accuracy, and rights of the defendant, victims, and witnesses. The prosecutor’s office should be organized and supported with adequate staff and facilities to enable it to process and resolve criminal charges with fairness and efficiency.

(b) When providing reasons for seeking delay, the prosecutor should not knowingly misrepresent facts or otherwise mislead. The prosecutor should use procedures that will cause delay only when there is a legitimate basis for such use, and not to secure an unfair tactical advantage.

(c) The prosecutor should not unreasonably oppose requests for continuances from defense counsel.

(d) The prosecutor should know and comply with timing requirements applicable to a criminal investigation and prosecution, so as to not prejudice a criminal matter.

(e) The prosecutor should be punctual in attendance in court, in the submission of motions, briefs, and other papers, and in dealings with opposing counsel, witnesses and others. The prosecutor should emphasize to assistants and prosecution witnesses the importance of punctuality in court attendance.
Standard 3-1.10  Relationship with the Media

(a) For purposes of this Standard, a “public statement” is any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication or media, including social media. An extrajudicial statement is any oral, written, or visual presentation not made either in a courtroom during criminal proceedings or in court filings or correspondence with the court or counsel regarding criminal proceedings.

(b) The prosecutor’s public statements about the judiciary, jurors, other lawyers, or the criminal justice system should be respectful even if expressing disagreement.

(c) The prosecutor should not make, cause to be made, or authorize or condone the making of, a public statement that the prosecutor knows or reasonably should know will have a substantial likelihood of materially prejudicing a criminal proceeding or heightening public condemnation of the accused, but the prosecutor may make statements that inform the public of the nature and extent of the prosecutor’s or law enforcement actions and serve a legitimate law enforcement purpose. The prosecutor may make a public statement explaining why criminal charges have been declined or dismissed, but must take care not to imply guilt or otherwise prejudice the interests of victims, witnesses or subjects of an investigation. A prosecutor’s public statements should otherwise be consistent with the ABA Standards on Fair Trial and Public Discourse.

(d) A prosecutor should not place statements or evidence into the court record to circumvent this Standard.

(e) The prosecutor should exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the prosecutor from making an extrajudicial statement or providing non-public information that the prosecutor would be prohibited from making or providing under this Standard or other applicable rules or law.

(f) The prosecutor may respond to public statements from any source in order to protect the prosecution’s legitimate official interests, unless there is a substantial likelihood of materially prejudicing a criminal proceeding, in which case the prosecutor should approach defense counsel or a court for relief. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(g) The prosecutor has duties of confidentiality and loyalty, and should not secretly or anonymously provide non-public information to the media, on or off the record, without appropriate authorization.

(h) The prosecutor should not allow prosecutorial judgment to be influenced by a personal interest in potential media contacts or attention.

(i) A prosecutor uninvolved in a matter who is commenting as a media source may offer generalized commentary concerning a specific criminal matter that serves to educate the public about the criminal justice system and does not risk prejudicing a specific criminal proceeding. A prosecutor acting as such a media commentator should make reasonable efforts to be well-informed about the facts of the matter and the governing law. The prosecutor should not offer commentary
regarding the specific merits of an ongoing criminal prosecution or investigation, except in a rare case to address a manifest injustice and the prosecutor is reasonably well-informed about the relevant facts and law.

(j) During the pendency of a criminal matter, the prosecutor should not re-enact, or assist law enforcement in re-enacting, law enforcement events for the media. Absent a legitimate law enforcement purpose, the prosecutor should not display the accused for the media, nor should the prosecutor invite media presence during investigative actions without careful consideration of the interests of all involved, including suspects, defendants, and the public. However, a prosecutor may reasonably accommodate media requests for access to public information and events.
Standard 3-1.11  Literary or Media Rights Agreements Prohibited

(a) Before the conclusion of all aspects of a matter in which a prosecutor participates, the prosecutor should not enter into any agreement or informal understanding by which the prosecutor acquires an interest in a literary or media portrayal or account based on or arising out of the prosecutor’s involvement in the matter.

(b) The prosecutor should not allow prosecutorial judgment to be influenced by the possibility of future personal literary or other media rights.

(c) In creating or participating in any literary or other media account of a matter in which the prosecutor was involved, the prosecutor’s duty of confidentiality must be respected even after government service is concluded. When protected confidences are involved, a prosecutor or former prosecutor should not make disclosure without consent from the prosecutor’s office. Such consent should not be unreasonably withheld, and the public’s interest in accurate historical accounts of significant events after a lengthy passage of time should be considered.
Standard 3-1.12    Duty to Report and Respond to Prosecutorial Misconduct

(a) The prosecutor’s office should adopt policies to address allegations of professional misconduct, including violations of law, by prosecutors. At a minimum such policies should require internal reporting of reasonably suspected misconduct to supervisory staff within the office, and authorize supervisory staff to quickly address the allegations. Investigations of allegations of professional misconduct within the prosecutor’s office should be handled in an independent and conflict-free manner.

(b) When a prosecutor reasonably believes that another person associated with the prosecutor's office intends or is about to engage in misconduct, the prosecutor should attempt to dissuade the person. If such attempt fails or is not possible, and the prosecutor reasonably believes that misconduct is ongoing, will occur, or has occurred, the prosecutor should promptly refer the matter to higher authority in the prosecutor's office including, if warranted by the seriousness of the matter, to the chief prosecutor.

(c) If, despite the prosecutor's efforts in accordance with sections (a) and (b) above, the chief prosecutor permits, fails to address, or insists upon an action or omission that is clearly a violation of law, the prosecutor should take further remedial action, including revealing information necessary to address, remedy, or prevent the violation to appropriate judicial, regulatory, or other government officials not in the prosecutor's office.
Standard 3-1.13 Training Programs

(a) The prosecutor’s office should develop and maintain programs of training and continuing education for both new and experienced prosecutors and staff. The prosecutor’s office, as well as the organized Bar or courts, should require that current and aspiring prosecutors attend a reasonable number of hours of such training and education.

(b) In addition to knowledge of substantive legal doctrine and courtroom procedures, a prosecutor’s core training curriculum should address the overall mission of the criminal justice system. A core training curriculum should also seek to address: investigation, negotiation, and litigation skills; compliance with applicable discovery procedures; knowledge of the development, use, and testing of forensic evidence; available conviction and sentencing alternatives, reentry, effective conditions of probation, and collateral consequences; civility, and a commitment to professionalism; relevant office, court, and defense policies and procedures and their proper application; exercises in the use of prosecutorial discretion; civility and professionalism; appreciation of diversity and elimination of improper bias; and available technology and the ability to use it. Some training programs might usefully be open to, and taught by, persons outside the prosecutor’s office such as defense counsel, court staff, and members of the judiciary.

(c) A prosecution office’s training program should include periodic review of the office’s policies and procedures, which should be amended when necessary. Specialized prosecutors should receive training in their specialized areas. Individuals who will supervise attorneys or staff should receive training in how effectively to supervise.

(d) The prosecutor’s office should also make available opportunities for training and continuing education programs outside the office, including training for non-attorney staff.

(e) Adequate funding for continuing training and education, within and outside the office, should be requested and provided by funding sources.
PART II.

ORGANIZATION OF THE PROSECUTION FUNCTION

Standard 3-2.1 Prosecution Authority to be Vested in Full-time, Public-Official Attorneys

(a) The prosecution function should be performed by a lawyer who is
   (i) a public official,
   (ii) authorized to practice law in the jurisdiction, and
   (iii) subject to rules of attorney professional conduct and discipline.
Prosecutors whose professional obligations are devoted full-time and exclusively to the prosecution function are preferable to part-time prosecutors who have other potentially conflicting professional responsibilities.

(b) A prosecutor’s office should have open, effective, and well-publicized methods for communicating with, and receiving communications from, the public in the jurisdiction that it serves.

(c) If a particular matter requires the appointment of a special prosecutor from outside the office, adequate funding for this purpose should be made available. Such special prosecutors should know and are governed by applicable conflict of interest standards for prosecutors. A private attorney who is paid by, or who has an attorney-client relationship with, an individual or entity that is a victim of the charged crime, or who has a personal or financial interest in the prosecution of particular charges, or who has demonstrated any impermissible bias relevant to the particular matter, should not be permitted to serve as prosecutor in that matter.

(d) Unless impractical or unlawful, the prosecutor’s office should implement a system for allowing qualified law students, cross-designated prosecutors from other offices, and private attorneys temporarily assigned to the prosecutor’s office, to learn about and assist with the prosecution function.
Standard 3-2.2 Assuring Excellence and Diversity in the Hiring, Retention, and Compensation of Prosecutors

(a) Strong professional qualifications and performance should be the basis for selection and retention for prosecutor positions. Effective measures to retain excellent prosecutors should be encouraged, while recognizing the benefits of some turnover. Supervisory prosecutors should select and promote personnel based on merit and expertise, without regard to partisan, personal or political factors or influence.

(b) In selecting personnel, the prosecutor’s office should also consider the diverse interests and makeup of the community it serves, and seek to recruit, hire, promote and retain a diverse group of prosecutors and staff that reflect that community.

(c) The function of public prosecution requires highly developed professional skills and a variety of backgrounds, talents and experience. The prosecutor’s office should promote continuing professional development and continuity of service, while providing prosecutors the opportunity to gain experience in all aspects of the prosecution function.

(d) Compensation and benefits for prosecutors and their staffs should be commensurate with the high responsibilities of the office, sufficient to compete with the private sector, and regularly adjusted to attract and retain well-qualified personnel. Compensation for prosecutors should be adequate and also comparable to that of public defense counsel in the jurisdiction.
Standard 3-2.3 Investigative Resources and Experts

The prosecutor should be provided with funds for qualified experts as needed for particular matters. When warranted by the responsibilities of the office, funds should be available to the prosecutor’s office to employ professional investigators and other necessary support personnel, as well as to secure access to forensic and other experts.
(a) Each prosecutor's office should seek to develop general policies to guide the exercise of prosecutorial discretion, and standard operating procedures for the office. The objectives of such policies and procedures should be to achieve fair, efficient, and effective enforcement of the criminal law within the prosecutor’s jurisdiction.

(b) In the interest of continuity and clarity, the prosecution office’s policies and procedures should be memorialized and accessible to relevant staff. The office policies and procedures should be regularly reviewed and revised. The office policies and procedures should be augmented by instruction and training, and are not a substitute for regular training programs.

(c) Prosecution office policies and procedures whose disclosure would not adversely affect the prosecution function should be made available to the public.

(d) The prosecutor’s office should have a system in place to regularly review compliance with office policies.
Standard 3-2.5 Removal or Suspension and Substitution of Chief Prosecutor

(a) Fair and objective procedures should be established by appropriate legislation that empowers the governor or other public official or body to suspend or remove, and supersede, a chief prosecutor for a jurisdiction and designate a replacement, upon making a public finding after reasonable notice and hearing that the prosecutor is incapable of fulfilling the duties of office due to physical or mental incapacity or for gross deviation from professional norms.

(b) The governor or other public official or body should be similarly empowered by law to substitute, in a particular matter or category of cases, special counsel in the place of the chief prosecutor, by consent or upon making a finding after fair process that substitution is required due to a serious conflict of interest or a gross deviation from professional norms.

(c) Removal, suspension or substitution of a prosecutor should not be permitted for improper or irrelevant partisan or personal reasons.
Standard 3-3.1  Structure of, and Relationships Among, Prosecution Offices

(a) When possible, the geographic jurisdiction of a prosecution office should be determined on the basis of population, caseload, and other relevant factors sufficient to warrant at least one full-time prosecutor and necessary support staff.

(b) In all States, there should be coordination of the prosecution policies of local prosecution offices to improve the administration and consistency of justice throughout the State. To the extent needed, a central pool of supporting resources, forensic laboratories, and personnel such as investigators, additional prosecutors, accountants and other experts, should be maintained by the state government and should be available to assist local prosecutors. A coordinated forum for prosecutors to discuss issues of professional responsibility should also be available. In some jurisdictions, it may be appropriate to create a unified statewide system of prosecution, in which the state attorney general is the chief prosecutor and district or county or other local prosecutors are the attorney general’s deputies.

(c) Regardless of the statewide structure of prosecution offices, a state-wide association of prosecutors should be established. When questions or issues arise that could create important statewide precedents, local prosecutors should advise and consult with the attorney general, the state-wide association, and the prosecutors in other local prosecution offices.

(d) Federal, state, and local prosecution offices should develop practices and procedures that encourage useful coordination with prosecutors within the jurisdiction and in other jurisdictions. Prosecutors should work to identify potential issues of conflict, coordinate with other prosecution offices in advance, and resolve inter-office disputes amicably and in the public interest.
Standard 3-3.2 Relationships With Law Enforcement

(a) The prosecutor should maintain respectful yet independent judgment when interacting with law enforcement personnel.

(b) The prosecutor may provide independent legal advice to law enforcement about actions in specific criminal matters and about law enforcement practices in general.

(c) The prosecutor should become familiar with and respect the experience and specialized expertise of law enforcement personnel. The prosecutor should promote compliance by law enforcement personnel with applicable legal rules, including rules against improper bias. The prosecutor’s office should keep law enforcement personnel informed of relevant legal and legal ethics issues and developments as they relate to prosecution matters, and advise law enforcement personnel of relevant prosecution policies and procedures. Prosecutors may exercise supervision over law enforcement personnel involved in particular prosecutions when in the best interests of justice and the public.

(d) Representatives of the prosecutor’s office should meet and confer regularly with law enforcement agencies regarding prosecution as well as law enforcement policies. The prosecutor’s office should assist in developing and administering training programs for law enforcement personnel regarding matters and cases being investigated, matters submitted for charging, and the law related to law enforcement activities.
Standard 3-3.3  Relationship With Courts, Defense Counsel and Others

(a) In all contacts with judges, the prosecutor should maintain a professional and independent relationship. A prosecutor should not engage in unauthorized *ex parte* discussions with, or submission of material to, a judge relating to a particular matter which is, or is likely to be, before the judge. With regard to generalized matters requiring judicial discussion (for example, case-management or administrative matters), the prosecutor should invite a representative defense counsel to join in the discussion to the extent practicable.

(b) When *ex parte* communications or submissions are authorized, the prosecutor should inform the court of material facts known to the prosecutor, including facts that are adverse, sufficient to enable the court to make a fair and informed decision. Except when non-disclosure is authorized, counsel should notify opposing counsel that an *ex parte* contact has occurred, without disclosing its content unless permitted.

(c) In written filings, the prosecutor should respectfully evaluate and respond as appropriate to opposing counsel’s arguments and representations, and avoid unnecessary personalized disparagement.

(d) The prosecutor should develop and maintain courteous and civil working relationships with judges and defense counsel, and should cooperate with them in developing solutions to address ethical, scheduling, or other issues that may arise in particular cases or generally in the criminal justice system. Prosecutors should cooperate with courts and organized bar associations in developing codes of professionalism and civility, and should abide by such codes that apply in their jurisdiction.
Standard 3-3.4  Relationship With Victims and Witnesses

(a) “Witness” in this Standard means any person who has or might have information about a matter, including victims.

(b) The prosecutor should know and follow the law and rules of the jurisdiction regarding victims and witnesses. In communicating with witnesses, the prosecutor should know and abide by law and ethics rules regarding the use of deceit and engaging in communications with represented, unrepresented, and organizational persons.

(c) The prosecutor or the prosecutor’s agents should seek to interview all witnesses, and should not act to intimidate or unduly influence any witness.

(d) The prosecutor should not use means that have no substantial purpose other than to embarrass, delay, or burden, and not use methods of obtaining evidence that violate legal rights. The prosecutor and prosecution agents should not misrepresent their status, identity or interests when communicating with a witness.

(e) The prosecutor should be permitted to compensate a witness for reasonable expenses such as costs of attending court, depositions pursuant to statute or court rule, and pretrial interviews, including transportation and loss of income. No other benefits should be provided to witnesses unless authorized by law, regulation, or well-accepted practice. All benefits provided to witnesses should be documented and disclosed to the defense. A prosecutor should not pay or provide a benefit to a witness in order to, or in an amount that is likely to, affect the substance or truthfulness of the witness’s testimony.

(f) A prosecutor should avoid the prospect of having to testify personally about the content of a witness interview. The prosecutor’s interview of most routine or government witnesses (for example, custodians of records or law enforcement agents) should not require a third-party observer. But when the need for corroboration of an interview is reasonably anticipated, the prosecutor should be accompanied by another trusted and credible person during the interview. The prosecutor should avoid being alone with any witness who the prosecutor reasonably believes has potential or actual criminal liability, or foreseeably hostile witnesses.

(g) The prosecutor should advise a witness who is to be interviewed of his or her rights against self-incrimination and the right to independent counsel when the law so requires. Even if the law does not require it, a prosecutor should consider so advising a witness if the prosecutor reasonably believes the witness may provide self-incriminating information and the witness appears not to know his or her rights. However, a prosecutor should not so advise, or discuss or exaggerate the potential criminal liability of, a witness with a purpose, or in a manner likely, to intimidate the witness, to influence the truthfulness or completeness of the witness’s testimony, or to change the witness’s decision about whether to provide information.

(h) The prosecutor should not discourage or obstruct communication between witnesses and the defense counsel, other than the government’s employees or agents if consistent with applicable ethical rules. The prosecutor should not advise any person, or cause any person to be advised, to decline to provide defense counsel with information which such person has a right to give. The
prosecutor may, however, fairly and accurately advise witnesses as to the likely consequences of
their providing information, but only if done in a manner that does not discourage communication.

(i) Consistent with any specific laws or rules governing victims, the prosecutor should
provide victims of serious crimes, or their representatives, an opportunity to consult with and to
provide information to the prosecutor, prior to making significant decisions such as whether or not
to prosecute, to pursue a disposition by plea, or to dismiss charges. The prosecutor should seek to
ensure that victims of serious crimes, or their representatives, are given timely notice of:

   (i) judicial proceedings relating to the victims’ case;
   (ii) proposed dispositions of the case;
   (iii) sentencing proceedings; and
   (iv) any decision or action in the case that could result in the defendant’s provisional
or final release from custody, or change of sentence.

(j) The prosecutor should ensure that victims and witnesses who may need protections
against intimidation or retaliation are advised of and afforded protections where feasible.

(k) Subject to ethical rules and the confidentiality that criminal matters sometimes require,
and unless prohibited by law or court order, the prosecutor should information about the status of
matters in which they are involved to victims and witnesses who request it.

(l) The prosecutor should give witnesses reasonable notice of when their testimony at a
proceeding is expected, and should not require witnesses to attend judicial proceedings unless their
testimony is reasonably expected at that time, or their presence is required by law. When witnesses’
attendance is required, the prosecutor should seek to reduce to a minimum the time witnesses must
spend waiting at the proceedings. The prosecutor should ensure that witnesses are given notice as
soon as practicable of scheduling changes which will affect their required attendance at judicial
proceedings.

(m) The prosecutor should not engage in any inappropriate personal relationship with any
victim or other witness.
Standard 3-3.5   Relationship with Expert Witnesses

(a) An expert may be engaged for consultation only, or to prepare an evidentiary report or testimony. The prosecutor should know relevant rules governing expert witnesses, including possibly different disclosure rules governing experts who are engaged for consultation only.

(b) A prosecutor should evaluate all expert advice, opinions, or testimony independently, and not simply accept the opinion of a government or other expert based on employer, affiliation or prominence alone.

(c) Before engaging an expert, the prosecutor should investigate the expert’s credentials, relevant professional experience, and reputation in the field. The prosecutor should also examine a testifying expert’s background and credentials for potential impeachment issues. Before offering an expert as a witness, the prosecutor should investigate the scientific acceptance of the particular theory, method, or conclusions about which the expert would testify.

(d) A prosecutor who engages an expert to provide a testimonial opinion should respect the independence of the expert and should not seek to dictate the substance of the expert’s opinion on the relevant subject.

(e) Before offering an expert as a witness, the prosecutor should seek to learn enough about the substantive area of the expert’s expertise, including ethical rules that may be applicable in the expert’s field, to enable effective preparation of the expert, as well as effective cross-examination of any defense expert on the same topic. The prosecutor should explain to the expert that the expert’s role in the proceeding will be as an impartial witness called to aid the fact-finders, explain the manner in which the examination of the expert is likely to be conducted, and suggest likely impeachment questions the expert may be asked.

(f) The prosecutor should not pay or withhold any fee or provide or withhold a benefit for the purpose of influencing the substance of an expert’s testimony. The prosecutor should not fix the amount of the fee contingent upon the expert’s testimony or the result in the case. Nor should the prosecutor promise or imply the prospect of future work for the expert based on the expert’s testimony.

(g) The prosecutor should provide the expert with all information reasonably necessary to support a full and fair opinion. The prosecutor should be aware, and explain to the expert, that all communications with, and documents shared with, a testifying expert may be subject to disclosure to opposing counsel. The prosecutor should be aware of expert discovery rules and act to protect confidentiality and the public interest, for example by not sharing with the expert confidences and work product that the prosecutor does not want disclosed.

(h) The prosecutor should timely disclose to the defense all evidence or information learned from an expert that tends to negate the guilt of the accused or mitigate the offense, even if the prosecutor does not intend to call the expert as a witness.
When physical evidence is delivered to the prosecutor consistent with Defense Function Standard 4-4.7, the prosecutor should not offer the fact of delivery as evidence before a fact-finder for purposes of establishing the culpability of defense counsel’s client. The prosecutor may, however, offer evidence of the fact of such delivery in response to a foundational objection to the evidence based on chain-of-custody concerns, or in a subsequent proceeding for the purpose of proving a crime or fraud regarding the evidence.
PART IV

INVESTIGATION; DECISIONS TO CHARGE, NOT CHARGE, OR DISMISS; AND GRAND JURY

Standard 3-4.1 Investigative Function of the Prosecutor

(a) When performing an investigative function, prosecutors should be familiar with and follow the ABA Standards on Prosecutorial Investigations.

(b) A prosecutor should not use illegal or unethical means to obtain evidence or information, or employ, instruct, or encourage others to do so. Prosecutors should research and know the law in this regard before acting, understanding that in some circumstances a prosecutor’s ethical obligations may be different from those of other lawyers.
Standard 3-4.2  Decisions to Charge Are the Prosecutor’s

(a) While the decision to arrest is often the responsibility of law enforcement personnel, the decision to institute formal criminal proceedings is the responsibility of the prosecutor. Where the law permits a law enforcement officer or other person to initiate proceedings by complaining directly to a judicial officer or the grand jury, the complainant should be required to present the complaint for prior review by the prosecutor, and the prosecutor’s recommendation regarding the complaint should be communicated to the judicial officer or grand jury.

(b) The prosecutor’s office should establish standards and procedures for evaluating complaints to determine whether formal criminal proceedings should be instituted.

(c) In determining whether formal criminal charges should be filed, prosecutors should consider whether further investigation should be undertaken. After charges are filed the prosecutor should oversee law enforcement investigative activity related to the case.

(d) If the defendant is not in custody when charged, the prosecutor should consider whether a voluntary appearance rather than a custodial arrest would suffice to protect the public and ensure the defendant’s presence at court proceedings.
(a) A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice.

(b) After criminal charges are filed, a prosecutor should maintain them only if the prosecutor continues to reasonably believe that probable cause exists and that admissible evidence will be sufficient to support conviction beyond a reasonable doubt.

(c) If a prosecutor has significant doubt about the guilt of the accused or the quality, truthfulness, or sufficiency of the evidence in any criminal case assigned to the prosecutor, the prosecutor should disclose those doubts to supervisory staff. The prosecutor’s office should then determine whether it is appropriate to proceed with the case.

(d) A prosecutor’s office should not file or maintain charges if it believes the defendant is innocent, no matter what the state of the evidence.
Standard 3-4.4 Discretion in Filing, Declining, Maintaining, and Dismissing Criminal Charges

(a) In order to fully implement the prosecutor’s functions and duties, including the obligation to enforce the law while exercising sound discretion, the prosecutor is not obliged to file or maintain all criminal charges which the evidence might support. Among the factors which the prosecutor may properly consider in exercising discretion to initiate, decline, or dismiss a criminal charge, even though it meets the requirements of Standard 3-4.3, are:

(i) the strength of the case;
(ii) the prosecutor’s doubt that the accused is in fact guilty;
(iii) the extent or absence of harm caused by the offense;
(iv) the impact of prosecution or non-prosecution on the public welfare;
(v) the background and characteristics of the offender, including any voluntary restitution or efforts at rehabilitation;
(vi) whether the authorized or likely punishment or collateral consequences are disproportionate in relation to the particular offense or the offender;
(vii) the views and motives of the victim or complainant;
(viii) any improper conduct by law enforcement;
(ix) unwarranted disparate treatment of similarly situated persons;
(x) potential collateral impact on third parties, including witnesses or victims;
(xi) cooperation of the offender in the apprehension or conviction of others;
(xii) the possible influence of any cultural, ethnic, socioeconomic or other improper biases;
(xiii) changes in law or policy;
(xiv) the fair and efficient distribution of limited prosecutorial resources;
(xv) the likelihood of prosecution by another jurisdiction; and
(xvi) whether the public’s interests in the matter might be appropriately vindicated by available civil, regulatory, administrative, or private remedies.

(b) In exercising discretion to file and maintain charges, the prosecutor should not consider:

(i) partisan or other improper political or personal considerations;
(ii) hostility or personal animus towards a potential subject, or any other improper motive of the prosecutor; or
(iii) the impermissible criteria described in Standard 1.6 above.

(c) A prosecutor may file and maintain charges even if juries in the jurisdiction have tended to acquit persons accused of the particular kind of criminal act in question.

(d) The prosecutor should not file or maintain charges greater in number or degree than can reasonably be supported with evidence at trial and are necessary to fairly reflect the gravity of the offense or deter similar conduct.

(e) A prosecutor may condition a dismissal of charges, nolle prosequi, or similar action on the accused’s relinquishment of a right to seek civil redress only if the accused has given informed consent, and such consent is disclosed to the court. A prosecutor should not use a civil waiver to
avoid a bona fide claim of improper law enforcement actions, and a decision not to file criminal
charges should be made on its merits and not for the purpose of obtaining a civil waiver.

(f) The prosecutor should consider the possibility of a noncriminal disposition, formal or
informal, or a deferred prosecution or other diversionary disposition, when deciding whether to
initiate or prosecute criminal charges. The prosecutor should be familiar with the services and
resources of other agencies, public or private, that might assist in the evaluation of cases for
diversion or deferral from the criminal process.
Standard 3-4.5  Relationship with a Grand Jury

(a) In presenting a matter to a criminal grand jury, and in light of its ex parte character, the prosecutor should respect the independence of the grand jury and should not preempt a function of the grand jury, mislead the grand jury, or abuse the processes of the grand jury.

(b) Where the prosecutor is authorized to act as a legal advisor to the grand jury, the prosecutor should appropriately explain the law and may, if permitted by law, express an opinion on the legal significance of the evidence, but should give due deference to the grand jury as an independent legal body.

(c) The prosecutor should not make statements or arguments to a grand jury in an effort to influence grand jury action in a manner that would be impermissible in a trial.

(d) The entirety of the proceedings occurring before a grand jury, including the prosecutor’s communications with and presentations and instructions to the grand jury, should be recorded in some manner, and that record should be preserved. The prosecutor should avoid off-the-record communications with the grand jury and with individual grand jurors.
Standard 3-4.6    Quality and Scope of Evidence Before a Grand Jury

(a) A prosecutor should not seek an indictment unless the prosecutor reasonably believes
the charges are supported by probable cause and that there will be admissible evidence sufficient to
support the charges beyond reasonable doubt at trial. A prosecutor should advise a grand jury of the
prosecutor’s opinion that it should not indict if the prosecutor believes the evidence presented does
not warrant an indictment.

(b) In addition to determining what criminal charges to file, a grand jury may properly be
used to investigate potential criminal conduct, and also to determine the sense of the community
regarding potential charges.

(c) A prosecutor should present to a grand jury only evidence which the prosecutor believes
is appropriate and authorized by law for presentation to a grand jury. The prosecutor should be
familiar with the law of the jurisdiction regarding grand juries, and may present witnesses to
summarize relevant evidence to the extent the law permits.

(d) When a new grand jury is empanelled, a prosecutor should ensure that the grand jurors
are appropriately instructed, consistent with the law of the jurisdiction, on the grand jury’s right and
ability to seek evidence, ask questions, and hear directly from any available witnesses, including
eyewitnesses.

(e) A prosecutor with personal knowledge of evidence that directly negates the guilt of a
subject of the investigation should present or otherwise disclose that evidence to the grand jury.
The prosecutor should relay to the grand jury any request by the subject or target of an investigation
to testify before the grand jury, or present other non-frivolous evidence claimed to be exculpatory.

(f) If the prosecutor concludes that a witness is a target of a criminal investigation, the
prosecutor should not seek to compel the witness’s testimony before the grand jury absent
immunity. The prosecutor should honor, however, a reasonable request from a target or subject
who wishes to testify before the grand jury.

(g) Unless there is a reasonable possibility that it will facilitate flight of the target, endanger
other persons, interfere with an ongoing investigation, or obstruct justice, the prosecutor should give
notice to a target of a grand jury investigation, and offer the target an opportunity to testify before
the grand jury. Prior to taking a target’s testimony, the prosecutor should advise the target of the
privilege against self-incrimination and obtain a voluntary waiver of that right.

(h) The prosecutor should not seek to compel the appearance of a witness whose activities
are the subject of the grand jury’s inquiry, if the witness states in advance that if called the witness
will claim the constitutional privilege not to testify, and provides a reasonable basis for such claim.
If warranted, the prosecutor may judicially challenge such a claim of privilege or seek a grant of
immunity according to the law.

(i) The prosecutor should not issue a grand jury subpoena to a criminal defense attorney or
defense team member, or other witness whose testimony reasonably might be protected by a
recognized privilege, without considering the applicable law and rules of professional responsibility in the jurisdiction.

(j) Except where permitted by law, a prosecutor should not use the grand jury in order to obtain evidence to assist the prosecution’s preparation for trial of a defendant who has already been charged. A prosecutor may, however, use the grand jury to investigate additional or new charges against a defendant who has already been charged.

(k) Except where permitted by law, a prosecutor should not use a criminal grand jury solely or primarily for the purpose of aiding or assisting in an administrative or civil inquiry.
PART V

PRETRIAL ACTIVITIES and NEGOTIATED DISPOSITIONS

Standard 3-5.1 Role in First Appearance and Preliminary Hearing

(a) A prosecutor should be present at any first appearance of the accused before a judicial officer, and at any preliminary hearing.

(b) At or before the first appearance, the prosecutor should consider:
(i) whether the accused has counsel, and if not, whether and when counsel will be made available or waived;
(ii) whether the accused appears to be mentally competent, and if not, whether to seek an evaluation;
(iii) whether the accused should be released or detained pending further proceedings, and, if released, whether supervisory conditions should be imposed; and
(iv) what further proceedings should be scheduled to move the matter toward timely resolution.

(c) The prosecutor handling the first appearance should ensure that the charges are consistent with the conduct described in the available law enforcement reports and any other information the prosecutor possesses.

(d) If the accused does not yet have counsel and has not waived counsel, the prosecutor should ask the court not to engage in substantive proceedings, other than a decision to release the accused. The prosecutor should not obtain a waiver of other important pretrial rights, such as the right to a preliminary hearing, from an unrepresented accused unless that person has been judicially authorized to proceed pro se.

(e) The prosecutor should not approach or communicate with an accused unless a voluntary waiver of counsel has been entered or the accused’s counsel consents. If the accused does not have counsel, the prosecutor should make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel, and is given reasonable opportunity to obtain counsel.

(f) If the prosecutor believes pretrial release is appropriate, or it is ordered, the prosecutor should cooperate in arrangements for release under the prevailing pretrial release system.

(g) If the prosecutor has reasonable concerns about the accused’s mental competence, the prosecutor should bring those concerns to the attention of defense counsel and, if necessary, the judicial officer.

(h) The prosecutor should not seek to delay a prompt judicial determination of probable cause for criminal charges without good cause, particularly if the accused is in custody.
Standard 3-5.2 The Decision to Recommend Release or Seek Detention

(a) The prosecutor should favor pretrial release of a criminally accused, unless detention is necessary to protect individuals or the community or to ensure the return of the defendant for future proceedings.

(b) The prosecutor’s decision to recommend pretrial release or seek detention should be based on the facts and circumstances of the defendant and the offense, rather than made categorically. The prosecutor should consider information relevant to these decisions from all sources, including the defendant.

(c) The prosecutor should cooperate with pretrial services or other personnel who review or assemble information to be provided to the court regarding pretrial release determinations.

(d) The prosecutor should be open to reconsideration of pretrial detention or release decisions based on changed circumstances, including an unexpectedly lengthy period of detention.
Standard 3-5.3 Preparation for Court Proceedings, and Recording and Transmitting Information

(a) The prosecutor should prepare in advance for court proceedings unless that is impossible. Adequate preparation depends on the nature of the proceeding and the time available, and will often include: reviewing available documents; considering what issues are likely to arise and the prosecution’s position regarding those issues; how best to present the issues and what solutions might be offered; relevant legal research and factual investigation; and contacting other persons who might be of assistance in addressing the anticipated issues. If the prosecutor has not had adequate time to prepare and is unsure of the relevant facts or law, the prosecutor should communicate to the court the limits of the prosecutor’s knowledge or preparation.

(b) The prosecutor should make effort to appear at all hearings in cases assigned to the prosecutor. A prosecutor who substitutes at a court proceeding for another prosecutor assigned to the case should make reasonable efforts to be adequately informed about the case and issues likely to come up at the proceeding, and to adequately prepare.

(c) The prosecutor handling any court appearance should document what happens at the proceeding, to aid the prosecutor’s later memory and so that necessary information will be available to other prosecutors who may handle the case in the future.

(d) The prosecutor should take steps to ensure that any court order issued to the prosecution is transmitted to the appropriate persons necessary to effectuate the order.

(e) The prosecutor’s office should be provided sufficient resources and be organized to permit adequate preparation for court proceedings.
Standard 3-5.4 Identification and Disclosure of Information and Evidence

(a) After charges are filed if not before, the prosecutor should diligently seek to identify all information in the possession of the prosecution or its agents that tends to negate the guilt of the accused, mitigate the offense charged, impeach the government’s witnesses or evidence, or reduce the likely punishment of the accused if convicted.

(b) The prosecutor should diligently advise other governmental agencies involved in the case of their continuing duty to identify, preserve, and disclose to the prosecutor information described in (a) above.

(c) Before trial of a criminal case, a prosecutor should make timely disclosure to the defense of information described in (a) above that is known to the prosecutor, regardless of whether the prosecutor believes it is likely to change the result of the proceeding, unless relieved of this responsibility by a court’s protective order. (Regarding discovery prior to a guilty plea, see Standard 3-5.6(f) below.) A prosecutor should not intentionally attempt to obscure information disclosed pursuant to this standard by including it without identification within a larger volume of materials.

(d) The obligations to identify and disclose such information continue throughout the prosecution of a criminal case.

(e) A prosecutor should timely respond to legally proper discovery requests, and make a diligent effort to comply with legally proper disclosure obligations, unless otherwise authorized by a court. When the defense makes requests for specific information, the prosecutor should provide specific responses rather than merely a general acknowledgement of discovery obligations. Requests and responses should be tailored to the case and “boilerplate” requests and responses should be disfavored.

(f) The prosecutor should make prompt efforts to identify and disclose to the defense any physical evidence that has been gathered in the investigation, and provide the defense a reasonable opportunity to examine it.

(g) A prosecutor should not avoid pursuit of information or evidence because the prosecutor believes it will damage the prosecution's case or aid the accused.

(h) A prosecutor should determine whether additional statutes, rules or caselaw may govern or restrict the disclosure of information, and comply with these authorities absent court order.
[New] Standard 3-5.5 Preservation of Information and Evidence [New]

(a) The prosecutor should make reasonable efforts to preserve, and direct the prosecutor’s agents to preserve, relevant materials during and after a criminal case, including
   (i) evidence relevant to investigations as well as prosecutions, whether or not admitted at trial;
   (ii) information identified pursuant to Standard 3-5.4(a); and
   (iii) other materials necessary to support significant decisions made and conclusions reached by the prosecution in the course of an investigation and prosecution.

(b) The prosecutor’s office should develop policies regarding the method and duration of preservation of such materials. Such policies should be consistent with applicable rules and laws (such as public records laws) in the jurisdiction. These policies, and individual preservation decisions, should consider the character and seriousness of each case, the character of the particular evidence or information, the likelihood of further challenges to judgments following conviction, and the resources available for preservation. Physical evidence should be preserved so as to reasonably preserve its forensic characteristics and utility.

(c) Materials should be preserved at least until a criminal case is finally resolved or is final on appeal and the time for further appeal has expired. In felony cases, materials should be preserved until post-conviction litigation is concluded or time-limits have expired. In death penalty cases, information should be preserved until the penalty is carried out or is precluded.

(d) The prosecutor should comply with additional statutes, rules or caselaw that may govern the preservation of evidence.
Standard 3-5.6  Conduct of Negotiated Disposition Discussions

(a) The prosecutor should be open, at every stage of a criminal matter, to discussions with defense counsel concerning disposition of charges by guilty plea or other negotiated disposition.

(b) A prosecutor should not engage in disposition discussions directly with a represented defendant, except with defense counsel's approval. Where a defendant has properly waived counsel, the prosecutor may engage in disposition discussions with the defendant, and should make and preserve a record of such discussions.

(c) The prosecutor should not enter into a disposition agreement before having information sufficient to assess the defendant’s actual culpability. The prosecutor should consider collateral consequences of a conviction before entering into a disposition agreement. The prosecutor should consider factors listed in Standard 3-4.4(a), and not be influenced in disposition discussions by inappropriate factors such as those listed in Standards 3-1.6 and 3-4.4(b).

(d) The prosecutor should not set unreasonably short deadlines, or demand conditions for a disposition, that are so coercive that the voluntariness of a plea or the effectiveness of defense counsel is put into question. A prosecutor may, however, set a reasonable deadline before trial or hearing for acceptance of a disposition offer.

(e) A prosecutor should not knowingly make false statements of fact or law in the course of disposition discussions.

(f) Before entering into a disposition agreement, the prosecutor should disclose to the defense a factual basis sufficient to support the charges in the proposed agreement, and information currently known to the prosecutor that tends to negate guilt, mitigates the offense or is likely to reduce punishment.

(g) A prosecutor should not agree to a guilty plea if the prosecutor reasonably believes that sufficient admissible evidence to support conviction beyond reasonable doubt would be lacking if the matter went to trial.


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Standard 3-5.7   Establishing and Fulfilling Conditions of Negotiated Dispositions

(a) A prosecutor should not demand terms in a negotiated disposition agreement that are unlawful or in violation of public policy.

(b) The prosecutor may properly promise the defense that the prosecutor will or will not take a particular position concerning sentence and conditions. The prosecutor should not, however, imply a greater power to influence the disposition of a case than is actually possessed.

(c) The prosecutor should memorialize all promises and conditions that are part of the agreement, and ensure that any written disposition agreement accurately and completely reflects the precise terms of the agreement including the prosecutor’s promises and the defendant’s obligations. At any court hearing to finalize a negotiated disposition, the prosecutor should ensure that all relevant details of the agreement have been placed on the record. The presumption is that the hearing and record will be public, but in some cases the hearing or record (or a portion) may be sealed for good cause.

(d) Once a disposition agreement is final and accepted by the court, the prosecutor should comply with, and make good faith efforts to have carried out, the government’s obligations. The prosecutor should construe agreement conditions, and evaluate the defendant’s performance including any cooperation, in a good-faith and reasonable manner.

(e) If the prosecutor believes that a defendant has breached an agreement that has been accepted by the court, the prosecutor should notify the defense regarding the prosecutor’s belief and any intended adverse action. If the defense presents a good-faith disagreement and the parties cannot quickly resolve it, the prosecutor should not act before judicial resolution.

(f) If the prosecutor reasonably believes that a court is acting inconsistently with any term of a negotiated disposition, the prosecutor should raise the matter with the court.

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Waiver of Rights as Condition of Disposition Agreements

(a) A prosecutor should not condition a disposition agreement on a waiver of the right to
appeal the terms of a sentence which exceeds an agreed-upon or reasonably anticipated sentence.
Any waiver of appeal of sentence should be comparably binding on the defendant and the
prosecution.

(b) A prosecutor should not suggest or require, as a condition of a disposition agreement,
any waiver of post-conviction claims addressing ineffective assistance of counsel, prosecutorial
misconduct, or destruction of evidence, unless such claims are based on past instances of such
conduct that are specifically identified in the agreement or in the transcript of proceedings that
address the agreement. If a proposed disposition agreement contains such a waiver regarding
ineffective assistance of counsel, the prosecutor should ensure that the defendant has been provided
the opportunity to consult with independent counsel regarding the waiver before agreeing to the
disposition.

(c) A prosecutor may propose or require other sorts of waivers on an individualized basis if
the defendant’s agreement is knowing and voluntary. No waivers of any kind should be accepted
without an exception for manifest injustice based on newly-discovered evidence, or actual
innocence.

(d) Although certain claims may have been waived, a prosecutor should not condition a
disposition agreement on a complete waiver of the right to file a habeas corpus or other comparable
post-conviction petition.

(e) A prosecutor should not request or rely on waivers to hide an injustice or material flaw
in the case which is undisclosed to the defense.
Standard 3-5.9    Record of Reasons for Dismissal of Charges

When criminal charges are dismissed on the prosecution’s motion, including by plea of nolle prosequi or its equivalent, the prosecutor should make and retain an appropriate record of the reasons for the dismissal, and indicate on the record whether the dismissal was with or without prejudice.
COURT HEARINGS AND TRIAL

Standard 3-6.1 Scheduling Court Hearings

Final control over the scheduling of court appearances, hearings and trials in criminal matters should rest with the court rather than the parties. When the prosecutor is aware of facts that would affect scheduling, the prosecutor should advise the court and, if the facts are case-specific, defense counsel.
Standard 3-6.2  Civility With Courts, Opposing Counsel, and Others

(a) As an officer of the court, the prosecutor should support the authority of the court and the dignity of the courtroom by adherence to codes of professionalism and civility, and by manifesting a professional and courteous attitude toward the judge, opposing counsel, witnesses, defendants, jurors, court staff and others. In court as elsewhere, the prosecutor should not display or act out of any improper or unlawful bias.

(b) When court is in session, unless otherwise permitted by the court, the prosecutor should address the court and not address other counsel or the defendant directly on any matter related to the case.

(c) The prosecutor should comply promptly and civilly with a court’s orders or seek appropriate relief from such order. If the prosecutor considers an order to be significantly erroneous or prejudicial, the prosecutor should ensure that the record adequately reflects the events. The prosecutor has a right to make respectful objections and reasonable requests for reconsideration, and to seek other relief as the law permits. If a judge prohibits making an adequate objection, proffer, or record, the prosecutor may take other lawful steps to protect the public interest.
Standard 3-6.3  Selection of Jurors

(a) The prosecutor’s office should be aware of legal standards that govern the selection of jurors, and train prosecutors to comply. The prosecutor should prepare to effectively discharge the prosecution function in the selection of the jury, including exercising challenges for cause and peremptory challenges. The prosecutor’s office should also be aware of the process used to select and summon the jury pool and bring legal deficiencies to the attention of the court.

(b) The prosecutor should not strike jurors based on any criteria rendered impermissible by the constitution, statutes, applicable rules of the jurisdiction, or these standards, including race, sex, religion, national origin, disability, sexual orientation or gender identity. The prosecutor should consider contesting a defense counsel’s peremptory challenges that appear to be based upon such criteria.

(c) In cases in which the prosecutor conducts a pretrial investigation of the background of potential jurors, the investigative methods used should not harass, intimidate, or unduly embarrass or invade the privacy of potential jurors. Absent special circumstances, such investigation should be restricted to review of records and sources of information already in existence and to which access is lawfully allowed. If the prosecutor uses record searches that are unavailable to the defense, such as criminal record databases, the prosecutor should share the results with defense counsel or seek a judicial protective order.

(d) The opportunity to question jurors personally should be used solely to obtain information relevant to the well-informed exercise of challenges. The prosecutor should not seek to commit jurors on factual issues likely to arise in the case, and should not intentionally present arguments, facts or evidence which the prosecutor reasonably should know will not be admissible at trial. Voir dire should not be used to argue the prosecutor’s case to the jury, or to unduly ingratiate counsel with the jurors.

(e) During voir dire, the prosecutor should seek to minimize any undue embarrassment or invasion of privacy of potential jurors, for example by seeking to inquire into sensitive matters outside the presence of other potential jurors, while still enabling fair and efficient juror selection.

(f) If the court does not permit voir dire by counsel, the prosecutor should provide the court with suggested questions in advance, and request specific follow-up questions during the selection process when necessary to ensure fair juror selection.

(g) If the prosecutor has reliable information that conflicts with a potential juror’s responses, or that reasonably would support a “for cause” challenge by any party, the prosecutor should inform the court and, unless the court orders otherwise, defense counsel.
Standard 3-6.4  Relationship With Jurors

(a) The prosecutor should not communicate with persons the prosecutor knows to be summoned for jury duty or impaneled as jurors, before or during trial, other than in the lawful conduct of courtroom proceedings. The prosecutor should avoid even the appearance of improper communications with jurors, and minimize any out-of-court proximity to or contact with jurors. Where out-of-court contact cannot be avoided, the prosecutor should not communicate about or refer to the specific case.

(b) The prosecutor should treat jurors with courtesy and respect, while avoiding a show of undue solicitude for their comfort or convenience.

(c) After discharge of a juror, a prosecutor should avoid contacts that may harass or embarrass the juror, that criticize the jury's actions or verdict, or that express views that could otherwise adversely influence the juror's future jury service. The prosecutor should know and comply with applicable rules and law governing the subject.

(d) After a jury is discharged, the prosecutor may, if no statute, rule, or order prohibits such action, communicate with jurors to investigate whether a verdict may be subject to legal challenge, or to evaluate the prosecution's performance for improvement in the future. The prosecutor should consider requesting the court to instruct the jury that, if it is not prohibited by law, it is not improper for jurors to discuss the case with the lawyers, although they are not required to do so. Any post-discharge communication with a juror should not disparage the criminal justice system and the jury trial process, and should not express criticism of the jury's actions or verdict.

(e) A prosecutor who learns reasonably reliable information that there was a problem with jury deliberations or conduct that could support an attack on a judgment of conviction and that is recognized as potentially valid in the jurisdiction, should promptly report that information to the appropriate judicial officer and, unless the court orders otherwise, defense counsel.
Standard 3-6.5 Opening Statement at Trial

(a) The prosecutor should give an opening statement before the presentation of evidence begins.

(b) The prosecutor’s opening statement at trial should be confined to a fair statement of the case from the prosecutor’s perspective, and discussion of evidence that the prosecutor reasonably believes will be available, offered and admitted to support the prosecution case. The prosecutor’s opening should avoid speculating about what defenses might be raised by the defense unless the prosecutor knows they will be raised.

(c) The prosecutor’s opening statement should be made without expressions of personal opinion, vouching for witnesses, inappropriate appeals to emotion or personal attacks on opposing counsel. The prosecutor should scrupulously avoid any comment on a defendant’s right to remain silent.

(d) When the prosecutor has reason to believe that a portion of the opening statement may be objectionable, the prosecutor should raise that point with defense counsel and, if necessary, the court, in advance. Similarly, visual aids or exhibits that the prosecutor intends to use during opening statement should be shown to defense counsel in advance.
Standard 3-6.6  Presentation of Evidence

(a) The prosecutor should not offer evidence that the prosecutor does not reasonably believe to be true, whether by documents, tangible evidence, or the testimony of witnesses. When a prosecutor has reason to doubt the truth or accuracy of particular evidence, the prosecutor should take reasonable steps to determine that the evidence is reliable, or not present it.

(b) If the prosecutor reasonably believes there has been misconduct by opposing counsel, a witness, the court or other persons that affects the fair presentation of the evidence, the prosecutor should challenge the perceived misconduct by appealing or objecting to the court or through other appropriate avenues, and not by engaging in retaliatory conduct that the prosecutor knows to be improper.

(c) During the trial, if the prosecutor discovers that false evidence or testimony has been introduced by the prosecution, the prosecutor should take reasonable remedial steps. If the witness is still on the stand, the prosecutor should attempt to correct the error through further examination. If the falsity remains uncorrected or is not discovered until the witness is off the stand, the prosecutor should notify the court and opposing counsel for determination of an appropriate remedy.

(d) The prosecutor should not bring to the attention of the trier of fact matters that the prosecutor knows to be inadmissible, whether by offering or displaying inadmissible evidence, asking legally objectionable questions, or making impermissible comments or arguments. If the prosecutor is uncertain about the admissibility of evidence, the prosecutor should seek and obtain resolution from the court before the hearing or trial if possible, and reasonably in advance of the time for proffering the evidence before a jury.

(e) The prosecutor should exercise strategic judgment regarding whether to object or take exception to evidentiary rulings that are materially adverse to the prosecution, and not make every possible objection. The prosecutor should not make objections without a reasonable basis, or for improper reasons such as to harass or to break the flow of opposing counsel’s presentation. The prosecutor should make an adequate record for appeal, and consider the possibility of an interlocutory appeal regarding significant adverse rulings if available.

(f) The prosecutor should not display tangible evidence (and should object to such display by the defense) until it is admitted into evidence, except insofar as its display is necessarily incidental to its tender, although the prosecutor may seek permission to display admissible evidence during opening statement. The prosecutor should avoid displaying even admitted evidence in a manner that is unduly prejudicial.
Standard 3-6.7 Examination of Witnesses in Court

(a) The prosecutor should conduct the examination of witnesses fairly and with due regard for dignity and legitimate privacy concerns, and without seeking to intimidate or humiliate a witness unnecessarily.

(b) The prosecutor should not use cross-examination to discredit or undermine a witness’s testimony, if the prosecutor knows the testimony to be truthful and accurate.

(c) The prosecutor should not call a witness to testify in the presence of the jury, or require the defense to do so, when the prosecutor knows the witness will claim a valid privilege not to testify. If the prosecutor is unsure whether a particular witness will claim a privilege to not testify, the prosecutor should alert the court and defense counsel in advance and outside the presence of the jury.

(d) The prosecutor should not ask a question that implies the existence of a factual predicate for which a good faith belief is lacking.
Standard 3-6.8  Closing Arguments to the Trier of Fact

(a) In closing argument to a jury (or to a judge sitting as trier of fact), the prosecutor should present arguments and a fair summary of the evidence that proves the defendant guilty beyond reasonable doubt. The prosecutor may argue all reasonable inferences from the evidence in the record, unless the prosecutor knows an inference to be false. The prosecutor should, to the extent time permits, review the evidence in the record before presenting closing argument. The prosecutor should not knowingly misstate the evidence in the record, or argue inferences that the prosecutor knows have no good-faith support in the record. The prosecutor should scrupulously avoid any reference to a defendant’s decision not to testify.

(b) The prosecutor should not argue in terms of counsel’s personal opinion, and should not imply special or secret knowledge of the truth or of witness credibility.

(c) The prosecutor should not make arguments calculated to appeal to improper prejudices of the trier of fact. The prosecutor should make only those arguments that are consistent with the trier’s duty to decide the case on the evidence, and should not seek to divert the trier from that duty.

(d) If the prosecutor presents rebuttal argument, the prosecutor may respond fairly to arguments made in the defense closing argument, but should not present or raise new issues. If the prosecutor believes the defense closing argument is or was improper, the prosecutor should timely object and request relief from the court, rather than respond with arguments that the prosecutor knows are improper.
Standard 3-6.9  Facts Outside the Record

When before a jury, the prosecutor should not knowingly refer to, or argue on the basis of, facts outside the record, unless such facts are matters of common public knowledge based on ordinary human experience, or are matters of which a court clearly may take judicial notice, or are facts the prosecutor reasonably believes will be entered into the record at that proceeding. In a nonjury context the prosecutor may refer to extra-record facts relevant to issues about which the court specifically inquires, but should note that they are outside the record.
Standard 3-6.10  Comments by Prosecutor After Verdict or Ruling

(a) The prosecutor should respectfully accept acquittals. Regarding other adverse rulings (including the rare acquittal by a judge that is appealable), while the prosecutor may publicly express respectful disagreement and an intention to pursue lawful options for review, the prosecutor should refrain from public criticism of any participant. Public comments after a verdict or ruling should be respectful of the legal system and process.

(b) The prosecutor may publicly praise a jury verdict or court ruling, compliment government agents or others who aided in the matter, and note the social value of the ruling or event. The prosecutor should not publicly gloat or seek personal aggrandizement regarding a verdict or ruling.
PART VII
POST-TRIAL MOTIONS AND SENTENCING


The prosecutor should conduct a fair evaluation of post-trial motions, determine their merit, and respond accordingly and respectfully. The prosecutor should not oppose motions at any stage without a reasonable basis for doing so.
Standard 3-7.2 Sentencing

(a) The severity of sentences imposed should not be used as a measure of a prosecutor’s effectiveness.

(b) The prosecutor should be familiar with relevant sentencing laws, rules, consequences and options, including alternative non-imprisonment sentences. Before or soon after charges are filed, and throughout the pendency of the case, the prosecutor should evaluate potential consequences of the prosecution and available sentencing options, such as forfeiture, restitution, and immigration effects, and be prepared to actively advise the court in sentencing.

(c) The prosecutor should seek to assure that a fair and informed sentencing judgment is made, and to avoid unfair sentences and disparities.

(d) In the interests of uniformity, the prosecutor’s office should develop consistent policies for evaluating and making sentencing recommendations, and not leave complete discretion for sentencing policy to individual prosecutors.

(e) The prosecutor should know the relevant laws and rules regarding victims’ rights, and facilitate victim participation in the sentencing process as the law requires or permits.
Standard 3-7.3  Information Relevant to Sentencing

(a) The prosecutor should assist the court in obtaining complete and accurate information for use in sentencing, and should cooperate fully with the court’s and staff’s presentence investigations. The prosecutor should provide any information that the prosecution believes is relevant to the sentencing to the court and to defense counsel. A record of such information provided to the court and counsel should be made, so that it may be reviewed later if necessary. If material incompleteness or inaccuracy in a presentence report comes to the prosecutor's attention, the prosecutor should take steps to present the complete and correct information to the court and defense counsel.

(b) The prosecutor should disclose to the defense and to the court, at or before the sentencing proceeding, all information that tends to mitigate the sentence and is known to the prosecutor, unless the prosecutor is relieved of this responsibility by a court order.

(c) Prior to sentencing, the prosecutor should disclose to the defense any evidence or information it provides, whether by document or orally, to the court or presentence investigator in aid of sentencing, unless contrary to law or rule in the jurisdiction or a protective order has been sought.
APPEALS AND OTHER CONVICTION CHALLENGES  [NEW]

Standard 3-8.1  Duty To Defend Conviction Not Absolute [NEW]

The prosecutor has a duty to defend convictions obtained after fair process. This duty is not absolute, however, and the prosecutor should temper the duty to defend with independent professional judgment and discretion. The prosecutor should not defend a conviction if the prosecutor believes the defendant is innocent or was wrongfully convicted, or that a miscarriage of justice associated with the conviction has occurred.
Standard 3-8.2 Appeals -- General Principles

(a) All prosecutors should be sufficiently knowledgeable about appellate practice to be able to make a record sufficient to preserve issues and arguments for appeal, and should make such a record at the trial court level.

(b) When the prosecutor receives an adverse ruling, the prosecutor should consider whether it may be appealed. If the ruling may be appealed, the prosecutor should consider whether an appeal should be filed, and refer it to an appellate prosecutor if appropriate for decision.

(c) When considering whether an adverse ruling should be appealed, the prosecutor should evaluate not only the legal merits, but also whether it is in the interests of justice to pursue such an appeal, taking into account the benefits to the prosecution, the judicial system, and the public, as well as the costs of the appellate process and of delay to the prosecution, defendant, victims and witnesses.

(d) A prosecutor handling a criminal appeal should know the specific rules, practices and procedures that govern appeals in the jurisdiction.

(e) The prosecutor’s office should designate one or more prosecutors in the office to develop expertise regarding appellate law and procedure, and should develop contacts with other offices’ prosecutors who have such expertise. The prosecutor’s office should develop consistent policies and positions regarding issues that are common or recurring in the appellate process or court. The prosecutor’s office should regularly notify its prosecutors and law enforcement agents about new developments in the law or judicial decisions, and should provide regular training to such personnel on such topics.

(f) A prosecutor handling a criminal appeal who was not counsel in the trial court should consult with the trial prosecutor, but should exercise independent judgment in reviewing the record and the defense arguments. The appellate prosecutor should not make or oppose arguments in an appeal without a reasonable legal basis.
If a prosecutor learns of credible and material information creating a reasonable likelihood that a defendant was wrongfully convicted or sentenced or is actually innocent, the prosecutor should comply with ABA Model Rules of Professional Conduct 3.8(g) and (h). The prosecutor’s office should develop policies and procedures to address such information, and take actions that are consistent with applicable law, rules, and the duty to pursue justice.
Standard 3-8.4  Challenges to the Effectiveness of Defense Counsel

(a) In any post-conviction challenge to the effectiveness of defense counsel, the prosecutor should be cognizant of the defendant’s potential attorney-client privilege with former defense counsel as well as former defense counsel’s other ethical or legal obligations, and not seek to abrogate such privileges or obligations without an unambiguous legal basis, or court order.

(b) If a prosecutor observes, at any stage of a criminal proceeding, defense counsel conduct or omission that might reasonably constitute ineffective assistance of counsel, the prosecutor should take reasonable steps to preserve the defendant’s right to effective assistance as well as the public’s interest in obtaining a valid conviction, while not intruding on a defendant’s constitutional right to counsel. During an ongoing defense representation, the prosecutor should not express concerns regarding possible ineffective assistance on the public record without an unambiguous legal basis or court order, and should not communicate any such concerns directly to the defendant.
If required to respond to a collateral attack on a conviction, the prosecutor should consider all lawful responses, including applicable procedural or other defenses. The prosecutor need not, however, invoke every possible defense to a collateral attack, and should consider potential negotiated dispositions or other remedies, if the prosecutor and the prosecutor’s office reasonably conclude that the interests of justice are thereby served.

-- END of Proposed Revisions to the PROSECUTION FUNCTION Standards --
AMERICAN BAR ASSOCIATION

Proposed Fourth Edition of the
CRIMINAL JUSTICE STANDARDS
for the
PROSECUTION and DEFENSE FUNCTIONS
(encompassing proposed revisions to the
Third Edition approved in 1993)

Presented by the
CRIMINAL JUSTICE SECTION
for Adoption by the House of Delegates
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February 2015

CRIMINAL JUSTICE STANDARDS
for the
DEFENSE FUNCTION

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Reporter’s Notes
1. Each Standard begins on a separate page. There are 65 proposed Defense Function Standards here, up from 43 Standards in the 1993 Edition. Where there is no 1993 equivalent Standard (or a subsection of a 1993 Standards is now made into a separate Standard), the proposed revision is designated a “New” Standard.

2. This draft reflects final revisions approved by the Council of the Criminal Justice Section at its April 2014 meeting.
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[END]
PART I

GENERAL STANDARDS

Standard 4-1.1  The Scope and Function of these Standards

(a) As used in these Standards, “defense counsel” means any attorney – including
privately retained, assigned by the court, acting pro bono or serving indigent defendants
in a legal aid or public defender’s office – who acts as an attorney on behalf of a client
being investigated or prosecuted for alleged criminal conduct, or a client seeking legal
advice regarding a potential, ongoing or past criminal matter or subpoena, including as a
witness. These Standards are intended to apply in any context in which a lawyer would
reasonably understand that a criminal prosecution could result. The Standards are
intended to serve the best interests of clients, and should not be relied upon to justify any
decision that is counter to the client’s best interests. The burden to justify any exception
should rest with the lawyer seeking it.

(b) These Standards are intended to provide guidance for the professional conduct and
performance of defense counsel. They are not intended to modify a defense attorney’s
obligations under applicable rules, statutes or the constitution. They are aspirational or
describe “best practices,” and are not intended to serve as the basis for the imposition of
professional discipline, to create substantive or procedural rights for clients, or to create a
standard of care for civil liability. They may be relevant in judicial evaluation of
constitutional claims regarding the right to counsel. For purposes of consistency, these
Standards sometimes include language taken from the Model Rules of Professional
Conduct; but the Standards often address conduct or provide details beyond that governed
by the Model Rules of Professional Conduct. No inconsistency is ever intended; and in
any case a lawyer should always read and comply with the rules of professional conduct
and other authorities that are binding in the specific jurisdiction or matter, including
choice of law principles that may regulate the lawyer’s ethical conduct.

(c) Because the Standards for Criminal Justice are aspirational, the words
“should” or “should not” are used in these Standards, rather than mandatory phrases such
as “shall” or “shall not,” to describe the conduct of lawyers that is expected or
recommended under these Standards. The Standards are not intended to suggest any
lesser standard of conduct than may be required by applicable mandatory rules, statutes,
or other binding authorities.

(d) These Standards are intended to address the performance of criminal defense
counsel in all stages of their professional work. Other ABA Criminal Justice Standards
should also be consulted for more detailed consideration of the performance of criminal
defense counsel in specific areas.
Standard 4-1.2  Functions and Duties of Defense Counsel

(a) Defense counsel is essential to the administration of criminal justice. A court properly constituted to hear a criminal case should be viewed as an entity consisting of the court (including judge, jury, and other court personnel), counsel for the prosecution, and counsel for the defense.

(b) Defense counsel have the difficult task of serving both as officers of the court and as loyal and zealous advocates for their clients. The primary duties that defense counsel owe to their clients, to the administration of justice, and as officers of the court, are to serve as their clients’ counselor and advocate with courage and devotion; to ensure that constitutional and other legal rights of their clients are protected; and to render effective, high-quality legal representation with integrity.

(c) Defense counsel should know and abide by the standards of professional conduct as expressed in applicable law and ethical codes and opinions in the applicable jurisdiction. Defense counsel should seek out supervisory advice when available, and defense counsel organizations as well as others should provide ethical guidance when the proper course of conduct seems unclear. Defense counsel who disagrees with a governing ethical rule should seek its change if appropriate, and directly challenge it if necessary, but should comply with it unless relieved by court order.

(d) Defense counsel is the client’s professional representative, not the client’s alter-ego. Defense counsel should act zealously within the bounds of the law and standards on behalf of their clients, but have no duty to, and may not, execute any directive of the client which violates the law or such standards. In representing a client, defense counsel may engage in a good faith challenge to the validity of such laws or standards if done openly.

(e) Defense counsel should seek to reform and improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to defense counsel’s attention, counsel should stimulate and support efforts for remedial action. Defense counsel should provide services to the community, including involvement in public service and Bar activities, public education, community service activities, and Bar leadership positions. A public defense organization should support such activities, and the office’s budget should include funding and paid release time for such activities.

(f) Defense counsel should be knowledgeable about, and consider, alternatives to prosecution or conviction that may be applicable in individual cases, and communicate them to the client. Defense counsel should be available to assist other groups in the community in addressing problems that lead to, or result from, criminal activity or perceived flaws in the criminal justice system.

(g) Because the death penalty differs from other criminal penalties, defense counsel in a capital case should make extraordinary efforts on behalf of the accused and,
more specifically, review and comply with the ABA Guidelines for the Appointment and  
Performance of Defense Counsel in Death Penalty Cases.
Some duties of defense counsel run throughout the period of representation, and even beyond. Defense counsel should consider the impact of these duties at all stages of a criminal representation and on all decisions and actions that arise in the course of performing the defense function. These duties include:

(a) a duty of confidentiality regarding information relevant to the client’s representation which duty continues after the representation ends;

(b) a duty of loyalty toward the client;

(c) a duty of candor toward the court and others, tempered by the duties of confidentiality and loyalty;

(d) a duty to communicate and keep the client informed and advised of significant developments and potential options and outcomes;

(e) a duty to be well-informed regarding the legal options and developments that can affect a client’s interests during a criminal representation;

(f) a duty to continually evaluate the impact that each decision or action may have at later stages, including trial, sentencing, and post-conviction review;

(g) a duty to be open to possible negotiated dispositions of the matter, including the possible benefits and disadvantages of cooperating with the prosecution;

(h) a duty to consider the collateral consequences of decisions and actions, including but not limited to the collateral consequences of conviction.
(a) In light of criminal defense counsel’s constitutionally recognized role in the criminal process, defense counsel’s duty of candor may be tempered by competing ethical and constitutional obligations. Defense counsel must act zealously within the bounds of the law and applicable rules to protect the client’s confidences and the unique liberty interests that are at stake in criminal prosecution.

(b) Defense counsel should not knowingly make a false statement of fact or law or offer false evidence, to a court, lawyer, witnesses, or third party. It is not a false statement for defense counsel to suggest inferences that may reasonably be drawn from the evidence. In addition, while acting to accommodate legitimate confidentiality, privilege, or other defense concerns, defense counsel should correct a defense representation of material fact or law that defense counsel knows is, or later learns was, false.

(c) Defense counsel should disclose to a court legal authority in the controlling jurisdiction known to defense counsel to be directly adverse to the position of the client and not disclosed by others.
At every stage of representation, defense counsel should take steps necessary to make a clear and complete record for potential review. Such steps may include: filing motions, including motions for reconsideration, and exhibits; making objections and placing explanations on the record; requesting evidentiary hearings; requesting or objecting to jury instructions; and making offers of proof and proffers of excluded evidence.
(a) Defense counsel should not manifest or exercise, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity, or socioeconomic status. Defense counsel should strive to eliminate implicit biases, and act to mitigate any improper bias or prejudice when credibly informed that it exists within the scope of defense counsel’s authority.

(b) Defense counsel should be proactive in efforts to detect, investigate, and eliminate improper biases, with particular attention to historically persistent biases like race, in all of counsel’s work. A public defense office should regularly assess the potential for biased or unfairly disparate impacts of its policies on communities within the defense office’s jurisdiction, and eliminate those impacts that cannot be properly justified.
Standard 4-1.7 Conflicts of Interest

(a) Defense counsel should know and abide by the ethical rules regarding conflicts of interest that apply in the jurisdiction, and be sensitive to facts that may raise conflict issues. When a conflict requiring withdrawal exists and is non-waivable, or informed consent has not been obtained, defense counsel should decline to proceed further, or take only minimal actions necessary to protect the client’s interests, until an adequate waiver or new counsel is in place, or a court orders continued representation.

(b) Defense counsel should not permit their professional judgment or obligations regarding the representation of a client to be adversely affected by loyalties or obligations to other, former, or potential clients; by client obligations of their law partners; or by their personal political, financial, business, property, or other interests or relationships.

(c) Defense counsel should disclose to the client at the earliest feasible opportunity any information, including any interest in or connection to the matter or to other persons involved in the matter, that would reasonably be relevant to the client’s selection of unconflicted counsel or decision to continue counsel’s representation. The disclosure of conflicts of interest that would otherwise be prohibited by applicable rules or law should be in writing, and should be disclosed on the record to any court that the matter comes before. Disclosures to the client should include communication of information sufficient to permit the client to appreciate the material risks involved and available alternatives. Defense counsel should obtain informed consent from a client before proceeding with any representation where an actual or realistically potential conflict is present.

(d) Except where necessary to secure counsel for preliminary matters such as initial hearings or applications for bail, a defense counsel (or multiple counsel associated in practice) should not undertake to represent more than one client in the same criminal case. When there is not yet a criminal case, such multiple representation should be engaged in only when, after careful investigation and consideration, it is clear either that no conflict is likely to develop at any stage of the matter, or that multiple representation will be advantageous to each of the clients represented and that foreseeable conflicts can be waived.

(e) In instances of permissible multiple representation:
   (i) the clients should be fully advised that the lawyer may be unable to continue if a conflict develops, and that confidentiality may not exist between the clients;
   (ii) informed written consent should be obtained from each of the clients, and (iii) if the matter is before a tribunal, such consent should be made on the record with appropriate inquiries by counsel and the court.

(f) Defense counsel who has formerly represented a client should not thereafter use information related to the former representation to the disadvantage of the former client, unless the information has become generally known or the ethical obligations of
(g) In accepting payment of fees by one person for the representation of another, defense counsel should explain to the payor that counsel’s loyalty and confidentiality obligations are owed entirely to the person being represented and not to the payor, and that counsel may not release client information to the payor unless applicable ethics rules allow. Defense counsel should not permit a person who recommends, employs, or pays defense counsel to render legal services for another to direct or regulate counsel’s professional judgment in rendering such legal services. In addition, defense counsel should not accept such third-party compensation unless:

(i) the client gives informed consent after full disclosure and explanation;

(ii) defense counsel is confident there will be no interference with defense counsel’s independence or professional judgment or with the client-lawyer relationship; and

(iii) defense counsel is reasonably confident that information relating to the representation of the client will be protected from disclosure as required by counsel’s ethical duty of confidentiality.

(h) Defense counsel should not represent a client in a criminal matter in which counsel, or counsel’s partner or other lawyer in counsel’s law office or firm, is the prosecutor in the same or a substantially related matter, or is a prosecutor in the same jurisdiction.

(i) If defense counsel’s partner or other lawyer in counsel’s law office was formerly a prosecutor in the same or substantially related matter or was a prosecutor in the same jurisdiction, defense counsel should not take on representation in that matter unless appropriate screening and consent measures under applicable ethics rules are undertaken, and no confidential information of the client or of the government has actually been exchanged between defense counsel and the former prosecutor.

(j) If defense counsel is a candidate for a position, or seeking employment, as a prosecutor or judge, this should be promptly disclosed to the client, and informed consent to continue be obtained.

(k) Defense counsel who formerly participated personally and substantially in the prosecution or criminal investigation of a defendant should not thereafter represent any person in the same or a substantially related matter, unless waiver is obtained from both the client and the government. Defense counsel who acquired confidential information about a person when counsel was formerly a prosecutor should not use such information in the representation of a client whose interests are adverse to that other person, unless the information has become generally known or the ethical obligations of confidentiality and loyalty otherwise do not apply.

(l) Defense counsel whose current relationship to a prosecutor is parent, child, sibling, spouse, or sexual partner should not represent a client in a criminal matter in
which defense counsel knows the government is represented by that prosecutor. Nor
should defense counsel who has a significant personal or financial relationship with a
prosecutor represent a client in a criminal matter in which defense counsel knows the
government is represented in the matter by such prosecutor, except upon informed
consent by the client regarding the relationship.

(m) Defense counsel should not act as surety on a bond either for a client whom
counsel represents or for any other client in the same or a related case, unless it is
required by law or it is clear that there is no risk that counsel’s judgment could be
materially limited by counsel’s interest in recovering the amount ensured.

(n) Except as law may otherwise permit, defense counsel should not negotiate to
employ any person who is significantly involved as an attorney, employee, or agent of the
prosecution in a matter in which defense counsel is participating personally and
substantially.
Standard 4-1.8  Appropriate Workload

(a) Defense counsel should not carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation, endangers a client’s interest in independent, thorough, or speedy representation, or has a significant potential to lead to the breach of professional obligations. A defense counsel whose workload prevents competent representation should not accept additional matters until the workload is reduced, and should work to ensure competent representation in counsel’s existing matters. Defense counsel within a supervisory structure should notify supervisors when counsel’s workload is approaching or exceeds professionally appropriate levels.

(b) Defense organizations and offices should regularly review the workload of individual attorneys, as well as the workload of the entire office, and adjust workloads (including intake) when necessary and as permitted by law to ensure the effective and ethical conduct of the defense function.

(c) Publicly-funded defense entities should inform governmental officials of the workload of their offices, and request funding and personnel that are adequate to meet the defense caseload. Defense counsel should consider seeking such funding from all appropriate sources. If workload exceeds the appropriate professional capacity of a publicly-funded defense office or other defense counsel, that office or counsel should also alert the court(s) in its jurisdiction and seek judicial relief.
Standard 4-1.9 Diligence, Promptness and Punctuality

(a) Defense counsel should act with diligence and promptness in representing a client, and should avoid unnecessary delay in the disposition of cases. But defense counsel should not act with such haste that quality representation is compromised. Defense counsel and publically-funded defense entities should be organized and supported with adequate staff and facilities to enable them to represent clients effectively and efficiently.

(b) When providing reasons for seeking delay, defense counsel should not knowingly misrepresent facts or otherwise mislead. Defense counsel should use procedural devices that will cause delay only when there is a legitimate basis for their use. Defense counsel should not accept a representation for the purpose of delaying a trial or hearing.

(c) Defense counsel should not unreasonably oppose requests for continuances from the prosecutor.

(d) Defense counsel should know and comply with timing requirements applicable to a criminal representation so as to not prejudice the client’s rights.

(e) Defense counsel should be punctual in attendance at court, in the submission of motions, briefs, and other papers, and in dealings with opposing counsel, witnesses and others. Defense counsel should emphasize to the client, assistants, and defense witnesses the importance of punctuality in court attendance.
Standard 4-1.10   Relationship With Media

(a) For purposes of this Standard, a “public statement” is any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication or media, including social media. An extrajudicial statement is any oral, written, or visual presentation not made either in a courtroom during the criminal proceedings or in court filings or correspondence with the court or counsel regarding the criminal proceedings.

(b) Defense counsel’s public statements about the judiciary, jurors, other lawyers, or the criminal justice system should be respectful even if expressing disagreement.

(c) Defense counsel should not make, cause to be made, or authorize or condone the making of, a public statement that counsel knows or reasonably should know will have a substantial likelihood of materially prejudicing a criminal proceeding. Defense counsel’s public statements should otherwise be consistent with the ABA Standards on Fair Trial and Public Discourse.

(d) Defense counsel should not place statements or evidence into the court record to circumvent this Standard.

(e) Defense counsel should exercise reasonable care to prevent investigators, employees, or other persons assisting or associated with the defense from making an extrajudicial statement or providing non-public information that defense counsel would be prohibited from making or providing under this Standard or other applicable rules or law.

(f) Defense counsel may respond to public statements from any source in order to protect a client’s legitimate interests, unless there is a substantial likelihood of materially prejudicing a criminal proceeding, in which case defense counsel should approach the prosecutor or the Court for relief. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(g) In making any public statement regarding a representation, defense counsel should comply with ethical rules governing client confidentiality and loyalty, and should not provide confidential information to the media, on or off the record, without authorization from the client.

(h) Defense counsel should not allow the client’s representation to be adversely affected by counsel’s personal interest in potential media contacts or attention.

(i) A defense attorney uninvolved in a matter who is commenting as a media source may offer generalized media commentary concerning a specific criminal matter that serves to educate the public about the criminal justice system and does not risk prejudicing a specific criminal proceeding. Counsel acting as such a media commentator should make reasonable efforts to be well-informed about the facts of the matter and the
Counsel should not offer commentary regarding the specific merits of an ongoing prosecution or investigation, except in a rare case to address a manifest injustice and counsel is reasonably well-informed about the relevant facts and law.
Standard 4-1.11 Advisory Groups and Communications for Guidance on Issues of Professional Conduct

(a) In every jurisdiction, a group of lawyers with recognized experience, integrity, and standing in the criminal defense bar should be established to consider issues of professional conduct for defense attorneys in criminal matters. Members of this group should provide prompt and confidential guidance and advice to defense counsel seeking assistance in the application of standards of professional conduct in criminal representations.

(b) Defense counsel should initially take steps to ensure that the member from whom advice is sought does not have any conflicting interests, and the advisory group should establish procedures to avoid such conflicts.

(c) Communications between a defense lawyer and an advisory group member, and the seeking of advice itself, should be treated as confidential, and such communications should be afforded the same attorney-client privilege and other protections of the client’s confidences as exists between any other lawyer and client. A group member should be bound by statute or rule of court in the same manner as a lawyer is otherwise bound in that jurisdiction not to reveal confidences of the client of the consulting lawyer.

(d) In seeking advice from a group member, defense counsel should take steps to protect the client’s confidences (for example, by the use of anonymous hypotheticals), and reveal only such confidential information as may be necessary.

(e) Defense counsel should employ the foregoing confidentiality measures even when informally seeking advice from any other lawyer, and such informal consultations should be afforded confidentiality to the extent the law permits. Defense counsel should be cautious and protect confidences when seeking advice outside the advisory group context.

(f) Confidences regarding a consultation may later be revealed to the extent necessary if:

(i) defense counsel’s client challenges the effectiveness of counsel’s conduct of the matter and counsel has relied on the guidance received from an advisory group member, and the information is subpoenaed or otherwise judicially supervised; or

(ii) the defense counsel’s conduct is called into question in a disciplinary inquiry or other proceeding against which counsel must defend.
(a) The community of criminal defense attorneys, including public defense offices and State and local Bar Associations, should develop and maintain programs of training and continuing education for both new and experienced defense counsel. Defense offices, as well as the organized Bar or courts, should require that current and aspiring criminal defense counsel attend a reasonable number of hours of such training and education.

(b) In addition to knowledge of substantive legal doctrine and courtroom procedures, a core training curriculum for criminal defense counsel should seek to address: investigation, negotiation and litigation skills; knowledge of the development, use, and testing of forensic evidence; available sentencing structures including non-conviction and non-imprisonment alternatives and collateral consequences; professional responsibility, civility, and a commitment to professionalism; relevant office, court, and prosecution policies and procedures and their proper application; appreciation of diversity and elimination of improper bias; and available technology and the ability to use it. Some training programs might usefully be open to, and taught by, persons outside the criminal defense community, such as prosecutors, law enforcement agencies, court staff, and members of the judiciary.

(c) A public defense office’s training program should include periodic review of the office’s policies and procedures, which should be amended when necessary. Counsel defending in specialized subject areas should receive training in those specialized areas. Individuals who will supervise attorneys or staff should receive training in how effectively to supervise.

(d) A public criminal defense organization should also make available opportunities for training and continuing education programs outside the office, including training for non-attorney staff.

(e) Adequate funding for continuing training and education programs, within and outside of public defense offices, should be requested and provided by funding sources.
(a) Strong professional qualifications and performance should be the basis for selection and retention for public defense positions. Effective measures to retain excellent defenders should be encouraged, while recognizing the benefits of some turnover. Supervisory defenders should select and promote personnel based on merit and expertise, without regard to partisan, personal or political factors or influence.

(b) In selecting personnel, a public defense office should also consider the diverse interests and makeup of the community it serves, and seek to recruit, hire, promote and retain a diverse group of defenders and staff that reflect that community.

(c) The function of public criminal defense requires highly developed professional skills and a variety of backgrounds, talents and experience. A defender’s office should promote continuing professional development and continuity of service, while providing defenders the opportunity to gain experience in all aspects of the defense function.

(d) Compensation and benefits for public defense counsel and their staffs should be commensurate with the high responsibilities of the office, sufficient to compete with the private sector, and regularly adjusted to attract and retain well-qualified personnel. Compensation for public defense counsel should be adequate and also comparable to that of prosecutors in the same jurisdiction.
PART II

ACCESS TO DEFENSE COUNSEL

Standard 4-2.1 Duty to Make Qualified Criminal Defense Representation

(a) The government has an obligation to provide, and fully fund, services of qualified defense counsel for indigent criminal defendants. In addition, the organized Bar of all lawyers in a jurisdiction has a duty to make qualified criminal defense counsel available, including for the indigent, and to make lawyers’ expertise available in support of a fair and effective criminal justice system.

(b) The Bar should encourage the widest possible participation in the defense of criminal cases by qualified lawyers. Unqualified lawyers should not be assigned the primary role in criminal representation, but interested lawyers should be encouraged to qualify themselves for participation in criminal cases by formal training and by experience as associate counsel. Law firms should encourage and support efforts by their interested attorneys to become qualified and then take on criminal representations.

(c) Qualified defense counsel should be willing and ready to undertake the defense of a suspect or an accused regardless of public hostility or personal distaste for the offense or the client.

(d) Qualified defense counsel should not seek to avoid appointment by a tribunal to represent an accused except for good cause, such as: representing the accused is likely to result in violation of applicable ethical codes or other law; representing the accused is likely to result in an unreasonable financial burden on the lawyer; or the client or crime is so repugnant to the lawyer that it will likely prejudicially impair the lawyer’s ability to provide quality representation.

(e) Lawyers who are not qualified to serve as criminal defense counsel should

(i) be encouraged to seek qualification;

(ii) make their legal skills and expertise available to assist qualified counsel in providing indigent criminal defense; and

(iii) provide or assist in obtaining financial assistance and political support for indigent criminal defense budgets and resources.
Standard 4-2.2 Confidential Defense Communication with Detained Persons

[(c) and (d) are New]

(a) Every jurisdiction should guarantee by statute or rule the right of a criminally-detained or confined person to prompt, confidential, affordable and effective communication with a defense lawyer throughout a criminal investigation, prosecution, appeal, or other quasi-criminal proceedings such as habeas corpus.

(b) All detention or imprisonment institutions should provide reasonable, affordable access to confidential and unmonitored telephonic and other communication facilities to allow effective confidential communication between defense counsel and their detained clients. This should include providing or allowing access to language translation or other communication services when necessary.

(c) All detention or imprisonment institutions should provide adequate facilities for private, unmonitored meetings between defense counsel and an accused. Private facilities should also be provided for the review of evidence and discovery materials by counsel together with their detained clients.

(d) Absent a credible threat of immediate danger or violence, or advance judicial authorization, persons working in detention or imprisonment institutions should be prohibited from examining, monitoring, recording, or interfering with confidential communications between defense counsel and their detained clients.
A defense counsel should be made available in person to a criminally-accused person for consultation at or before any appearance before a judicial officer, including the first appearance.
Standard 4-2.4  Referral Service for Criminal Cases

(a) To assist persons who wish to retain defense counsel, every jurisdiction should have a referral service for qualified criminal defense counsel. The referral service should maintain a list of qualified counsel willing to undertake the defense of a criminal case, for a fee as well as pro bono, and should be organized so that it can provide prompt service at all times.

(b) A defense referral service should employ an objective set of standards for defense attorneys to qualify for placement on the referral list, and should employ fair and neutral criteria for admitting qualified attorneys to the list, making referrals, and striking counsel from the list. Such standards, criteria, and procedures concerning referral lists should be published and readily available.

(c) The availability of the referral service should be publicized, and information regarding fees should be included. Notices containing the essential information about the referral service and how to contact it should be posted in police stations, jails, and wherever else it is likely to give effective notice to criminally-accused persons, including the internet.
Standard 4-2.5  Referrals for Representation

(a) Defense counsel should not give anything of more than nominal value to a person for recommending the lawyer’s services, except that
   (i) counsel may pay reasonable costs of advertisements, or the usual charges for a legal services plan or qualified lawyer referral service, as described in ABA Model Rule
   7.2; and
   (ii) counsel may maintain nonexclusive reciprocal referral arrangements with other lawyers, if the client is fully informed of the arrangement and the arrangement does not constrain defense counsel’s independent professional judgment regarding the client’s best interests.

(b) Defense counsel should not have an ongoing or regular referral relationship with any source (such as prosecutors, public defender programs, law enforcement personnel, bondsmen, or court personnel) when such an ongoing relationship is likely to create conflicting loyalties for the lawyers involved or an appearance of impropriety. Defense counsel’s relationship with a referral source should be disclosed to the client.

(c) Referrals by one defense counsel to another should be based on merit, experience, competence for the particular matter, and other appropriate considerations.
PART III

LAWYER-CLIENT RELATIONSHIP

Standard 4-3.1 Establishing and Maintaining An Effective Client Relationship

(a) Immediately upon appointment or retention, defense counsel should work to establish a relationship of trust and confidence with each client. Defense counsel should explain, at an appropriate time, the necessity for frank and honest discussion of all facts known to the client in order to provide an effective defense. Defense counsel should explain that the attorney-client privilege protects the confidentiality of communications with counsel except in exceptional and well-defined circumstances, and explain what the client can do to help preserve confidentiality.

(b) At an early stage, counsel should discuss with the client the objectives of the representation and through what stages of a criminal matter the defense counsel will continue to represent the accused. An engagement letter as described in Standard 4-3.5 should also be provided.

(c) Counsel should consider whether the client appears to have a mental impairment or other disability that could adversely affect the representation. Even if a client appears to have such a condition, this does not diminish defense counsel’s obligations to the client, including maintaining a normal attorney-client relationship in so far as possible. In such an instance, defense counsel should also consider whether a mental examination or other protective measures are in the client’s best interest.

(d) In communicating with a client, defense counsel should use language and means that the client is able to understand, which may require special attention when the client is a minor, elderly, or suffering from a mental impairment or other disability.

(e) Defense counsel should ensure that space is available and adequate for confidential client consultations.

(f) Defense counsel should actively work to maintain an effective and regular relationship with all clients. The obligation to maintain an effective client relationship is not diminished by the fact that the client is in custody.
Standard 4-3.2  Seeking a Detained Client’s Release from Custody, or
Reduction in Custodial Conditions /New/

(a) In every case where the client is detained, defense counsel should discuss
with the client, as promptly as possible, the client’s custodial or release status and
determine whether release, a change in release conditions, or less restrictive custodial
conditions, should be sought. Counsel should be aware of applicable statutes and rules,
and all alternatives less restrictive than full institutional detention. Counsel should
investigate community and family resources that might be available to assist in
implementing such alternatives.

(b) Counsel should investigate the factual predicate that has been advanced to
support detention and custodial conditions, and not assume its accuracy.

(c) Once counsel has sufficient command of the facts, counsel should approach
the prosecutor to see if agreement to release or a change in release or custodial conditions
can be negotiated and submitted for approval by the court.

(d) If the prosecutor does not agree, counsel should submit to the court a
statement of facts, legal argument, and proposed conditions if necessary, to support the
client’s release or a reduction in release or custodial conditions.

(e) If a court orders release, counsel should fully explain all conditions of release
to the client, as well as the consequences of their violation. Counsel should assist the
client and others acting for the client in properly implementing the release conditions.

(f) If counsel is unable to secure the client’s release, counsel should, after
discussion with the client and with due regard to any relevant confidentiality concerns,
alert the court and institutional personnel to any special medical, psychiatric, religious,
dietary, or security needs of the client while in government custody, and request that the
court order the appropriate officials to take steps to meet such special needs.

(g) Counsel should reevaluate the client’s eligibility for release, or for reduced
release or custodial conditions, at all significant stages of a criminal matter and when
there is any relevant change in facts or circumstances. Counsel should request
reconsideration of detention or modification of conditions whenever it is in the client’s
best interests.
Standard 4-3.3 Interviewing the Client

(a) In the initial meeting with a client, defense counsel should begin the process of establishing an effective attorney-client relationship. This includes assuring the client of confidentiality, establishing trust, explaining the posture of the matter, discussing fees if applicable, and inquiring about the client’s objectives for the representation. Counsel may also discuss available evidentiary materials with the client, seek information from the client as to the facts and other potential sources of information, and ask what the client’s immediate objectives and needs are and how to fulfill them.

(b) Counsel should interview the client as many times as necessary for effective representation, which in all but the most simple and routine cases will mean more than once. Defense counsel should make every reasonable effort to meet in person with the client. Consultation with the client regarding available options, immediately necessary decisions, and next steps, should be a part of every meeting.

(c) As early as practicable in the representation, defense counsel should also discuss:

(i) and share with the client evidentiary materials relevant to the matter (consistent with the terms of any applicable protective order), and determine in depth the client’s view of the facts and other relevant facts known to the client;

(ii) the likely length and course of the pending proceedings;

(iii) potential sources of helpful information, evidence, and investigation;

(iv) the client’s wishes regarding, and the likelihood of and steps necessary to gain, release or reduction of supervisory conditions;

(v) likely legal options such as motions, trial, and potential negotiated dispositions;

(vi) the range of potential outcomes and alternatives, and if convicted, possible punishments;

(vii) if appropriate, the possibility and potential costs and benefits of a negotiated disposition, including one that might include cooperation with the government; and

(viii) relevant collateral consequences resulting from the current situation as well as from possible resolutions of the matter.

(d) When asking the client for information and discussing possible options and strategies with the client, defense counsel should not seek to induce the client to make factual responses that are not true. Defense counsel should encourage candid disclosure by the client to counsel and not seek to maintain a calculated ignorance.
Standard 4-3.4   Fees

(a) Counsel should be familiar with statutes and rules regarding fees and costs that govern in the jurisdiction(s) in which counsel practices. Before or within a reasonably short time after commencing a representation, defense counsel should discuss with the client:

   (i) the likely cost of the representation including the attorney’s fees, billing structure, and likely expenses;
   (ii) how fees and costs will be paid, and any available options regarding the fee structure;
   (iii) what services and expenses the fees will cover;
   (iv) what stages of the matter the fee covers, such as pre-charge investigation, preliminary hearing, negotiated disposition or trial, sentencing or appeal; and
   (v) whether the fee extends to addressing any related matters.

(b) In determining the amount of the fee in a criminal case, it is proper to consider the time and effort required, the responsibility assumed by counsel, the novelty and difficulty of the issues involved, the skill requisite to proper representation, the need for any special technology, experts, investigators, or other unusual expenses, the likelihood that other employment will be precluded, the fee customarily charged in the locality for similar services, the gravity of the charge, the experience, reputation, and expertise of defense counsel, and the ability of the client to pay the fee.

(c) Once agreed upon, the amount, rate, and terms of the fee should be promptly communicated to the client, in clear terms and in writing, as part of the Engagement Letter.

(d) Defense counsel should not enter into an agreement for, charge, or collect an illegal or unreasonable fee. Defense counsel should be aware that accepting a fee comprised of assets that are contraband or proceeds of crime may be a crime and may also subject those fee assets to seizure and forfeiture.

(e) Defense counsel should not permit a dispute or unhappiness regarding compensation to interfere with providing competent and zealous representation. A competent defense does not require all possible expenditures, and counsel is not required to spend out of counsel’s own pocket. If funding becomes an issue, counsel should discuss other possible sources of funds with the client and pursue those that are appropriate. If funding is inadequate, counsel may seek withdrawal in accordance with applicable laws, including court and ethics rules.

(f) A publically-paid defense counsel should not request or accept additional money or other compensation from non-public sources to represent a client in an appointed criminal case, unless permitted by rules of the jurisdiction.
(g) Retained defense counsel may accept compensation from third parties for the
representation of a client, subject to counsel’s duties of loyalty and confidentiality to the
client and the criteria in Standard 4-1.5(f) above.

(h) Defense counsel should not state or imply that their compensation is for any
unethical or secret influence.

(i) Defense counsel should not divide a fee with a nonlawyer, except as permitted
by applicable ethics rules.

(j) Defense counsel not in the same firm should not divide fees in a criminal
matter among lawyers unless consistent with the rules of the jurisdiction and the division
is in reasonable proportion to the experience, ability, and services performed by each
counsel and is disclosed to the client; or by written agreement with the client each
counsel assumes joint responsibility for the representation, the client is advised of and
does not object to the participation of all counsel involved, and the total fee is reasonable.

(k) Defense counsel should not enter into an arrangement for, charge, or collect a
contingent fee for representing a defendant in a criminal case or in a criminal forfeiture
action.

(l) Defense counsel may charge a non-refundable “flat rate” fee if such is
permitted by the law of the jurisdiction and the arrangement is fully explained in
advance, but defense counsel should refund any part of such a fee that constitutes an
undeserved windfall if exceptional and unanticipated developments arise such that a
significant amount of anticipated work is not done by counsel.

(m) When a representation ends, counsel should offer to return any unearned fee.
(a) Upon agreeing or being appointed to take on a criminal representation, defense counsel should promptly provide a new client with an engagement letter, email, or other written communication, as described below, written in plain language that the particular client can understand. If material conditions of the representation change during the representation, counsel should, after consultation with the client, promptly and specifically communicate the changes in writing to the client. Counsel should also provide an engagement letter to clients who have been previously-represented by the same counsel but have now engaged counsel on a new matter, explaining the scope of and any material changes in the terms of the new representation.

(b) While the content and level of detail may vary depending on the context, an engagement letter should include a description of:

(i) the identity of the client and the scope of, and limitations on, the representation;
(ii) the fee arrangement (including costs and expenses);
(iii) the fact that counsel’s duties of confidentiality and loyalty are owed to the client;
(iv) materials that counsel may retain although related to the representation (e.g., legal research for use in future cases);
(v) any other information that is particularly relevant to the specific representation.
Standard 4-3.6 Literary or Media Rights Agreements Prohibited

(a) Before the conclusion of all aspects of a criminal representation in which defense counsel participates, defense counsel should not enter into any agreement or informal understanding by which the defense counsel acquires an interest in a literary or media portrayal or account based on or arising out of defense counsel’s involvement in the matter.

(b) Defense counsel should not allow the client’s representation to be adversely affected by the possibility of future personal literary or other media rights.

(c) In creating or participating in any literary or other media account of a matter in which defense counsel was involved, counsel’s duty of confidentiality must be respected even after a matter is concluded or the client is deceased. When protected confidences are involved, defense counsel should not make disclosure without consent from the client or the client’s authorized representative.
Standard 4-3.7  Prompt and Thorough Actions to Protect the Client

(a) Many important rights of a criminal client can be protected and preserved only by prompt legal action. Defense counsel should inform the client of his or her rights in the criminal process at the earliest opportunity, and timely plan and take necessary actions to vindicate such rights within the scope of the representation.

(b) Defense counsel should promptly seek to obtain and review all information relevant to the criminal matter, including but not limited to requesting materials from the prosecution. Defense counsel should, when relevant, take prompt steps to ensure that the government’s physical evidence is preserved at least until the defense can examine or evaluate it.

(c) Defense counsel should work diligently to develop, in consultation with the client, an investigative and legal defense strategy, including a theory of the case. As the matter progresses, counsel should refine or alter the theory of the case as necessary, and similarly adjust the investigative or defense strategy.

(d) Not all defense actions need to be taken immediately. If counsel has evidence of innocence, mitigation, or other favorable information, defense counsel should discuss with the client and decide whether, going to the prosecution with such evidence is in the client’s best interest, and if so, when and how.

(e) Defense counsel should consider whether an opportunity to benefit from cooperation with the prosecution will be lost if not pursued quickly, and if so, promptly discuss with the client and decide whether such cooperation is in the client’s interest. Counsel should timely act in accordance with such decisions.

(f) For each matter, defense counsel should consider what procedural and investigative steps to take and motions to file, and not simply follow rote procedures learned from prior matters. Defense counsel should not be deterred from sensible action merely because counsel has not previously seen a tactic used, or because such action might incur criticism or disfavor. Before acting, defense counsel should discuss novel or unfamiliar matters or issues with colleagues or other experienced counsel, employing safeguards to protect confidentiality and avoid conflicts of interest.

(g) Whenever defense counsel is confronted with specialized factual or legal issues with which counsel is unfamiliar, counsel should, in addition to researching and learning about the issue personally, consider engaging or consulting with an expert in the specialized area.

(h) Defense counsel should always consider interlocutory appeals or other collateral proceedings as one option in response to any materially adverse ruling.
Standard 4-3.8  Anticipated Unlawful Conduct

(a) If defense counsel anticipates that a client may engage in unlawful conduct, defense counsel should advise the client concerning the meaning, scope and validity of the law and the possible consequences of violating the law, and should advise the client to comply with the law.

(b) Defense counsel should not knowingly propose, advise, or assist in a course of conduct which defense counsel knows to be criminal or fraudulent, but defense counsel may discuss the legal consequences of a proposed course of conduct with a client, and may counsel or assist a client in a good faith effort to determine the validity, scope, meaning, or application of the law.

(c) Defense counsel should not enter into an arrangement with persons or organizations counsel knows to be engaged in ongoing criminal conduct, to provide representation on a regular basis to the participants, if the legal services will knowingly assist the ongoing criminal conduct. Counsel may agree in advance to represent clients as part of a good faith effort to determine the validity, scope, meaning, or application of the law, or incident to a general retainer for providing legal services to a person or enterprise engaged in primarily legitimate activities, or if counsel’s services are intended to bring conduct into conformance with the law.

(d) When unlawful conduct by a client is anticipated or has taken place, defense counsel should be aware of and follow applicable ethical rules, including provisions that require confidentiality and provisions that mandate or permit disclosures.
Standard 4-3.9  Duty to Keep Client Informed and Advised About the Representation

(a) Defense counsel should keep the client reasonably and currently informed about developments in and the progress of the lawyer’s services, including developments in pretrial investigation, discovery, disposition negotiations, and preparing a defense. Information should be sufficiently detailed so that the client can meaningfully participate in the representation.

(b) Defense counsel should promptly comply with the client’s reasonable requests for information about the matter and for copies of or access to relevant documents, unless the client’s access to such information is restricted by law or court order. Counsel should challenge such restrictions on the client’s access to information unless, after consultation with the client, there is good reason not to do so.
(a) Defense counsel who withdraws from a representation at any stage of a criminal matter before its resolution should make reasonable efforts to assist the client in securing competent defense counsel as successor counsel, and to not leave the client unrepresented, unless the client otherwise directs.

(b) Defense counsel should make reasonable efforts to establish and maintain a cooperative relationship with any prior, or successor, defense counsel in the representation.

(c) When successor counsel enters a representation, prior counsel should still act to protect the client’s privileges, confidences and secrets, and obtain consent (express or implied) from the client before providing such information to the new counsel.
Standard 4-3.11 The Client’s File

(a) When a representation ends, if the client requests the client’s file, defense counsel should provide it to the client or, with the client’s consent, to successor counsel or other authorized representative. Defense counsel should provide the client with notice of the file’s disposition. Unless rules or statutes in the jurisdiction require otherwise, defense offices may retain clients’ files unless a client requests the file. If the client’s file remains with defense counsel, counsel should retain copies of essential portions until the client provides further instructions or for at least the length of time consistent with statutes and rules of the jurisdiction.

(b) During a representation, defense counsel should provide the client with the client’s file upon request, even if fees or costs are disputed or unpaid in whole or in part.

(c) Not everything in defense counsel’s files on a matter is the client’s, and the definition of the contents of “the client’s file” may vary among jurisdictions. Original documents and property delivered to the attorney by the client are part of the client’s file, as are correspondence and court filings in the client’s matter.

(d) When a representation ends, defense counsel may seek a release from the client regarding the representation, but may not unreasonably withhold the client’s file pending such release.
PART IV

Standard 4-4.1 Duty to Investigate and Engage Investigators

(a) Defense counsel has a duty to investigate in all cases, and to determine whether there is a sufficient factual basis for criminal charges.

(b) The duty to investigate is not terminated by factors such as the apparent force of the prosecution’s evidence, a client’s alleged admissions to others of facts suggesting guilt, a client’s expressed desire to plead guilty or that there should be no investigation, or statements to defense counsel supporting guilt.

(c) Defense counsel’s investigative efforts should commence promptly and should explore appropriate avenues that reasonably might lead to information relevant to the merits of the matter, consequences of the criminal proceedings, and potential dispositions and penalties. Although investigation will vary depending on the circumstances, it should always be shaped by what is in the client’s best interests, after consultation with the client. Defense counsel’s investigation of the merits of the criminal charges should include efforts to secure relevant information in the possession of the prosecution, law enforcement authorities, and others, as well as independent investigation. Counsel’s investigation should also include evaluation of the prosecution’s evidence (including possible re-testing or re-evaluation of physical, forensic, and expert evidence) and consideration of inconsistencies, potential avenues of impeachment of prosecution witnesses, and other possible suspects and alternative theories that the evidence may raise.

(d) Defense counsel should determine whether the client’s interests would be served by engaging fact investigators, forensic, accounting or other experts, or other professional witnesses such as sentencing specialists or social workers, and if so, consider, in consultation with the client, whether to engage them. Counsel should regularly re-evaluate the need for such services throughout the representation.

(e) If the client lacks sufficient resources to pay for necessary investigation, counsel should seek resources from the court, the government, or donors. Application to the court should be made ex parte if appropriate to protect the client’s confidentiality. Publicly funded defense offices should advocate for resources sufficient to fund such investigative expert services on a regular basis. If adequate investigative funding is not provided, counsel may advise the court that the lack of resources for investigation may render legal representation ineffective.
Standard 4-4.2 Illegal and Unethical Investigation Prohibited

Defense counsel should not use illegal or unethical means to obtain evidence or information, or employ, instruct, or encourage others to do so.
Standard 4-4.3  Relationship With Witnesses

(a) “Witness” in this Standard means any person who has or might have
information about a matter, including victims and the client.

(b) Defense counsel should know and follow the law and rules of the jurisdiction
regarding victims and witnesses. In communicating with witnesses, counsel should know
and abide by law and ethics rules regarding the use of deceit and engaging in
communications with represented, unrepresented, and organizational persons.

(c) Defense counsel or counsel’s agents should seek to interview all witnesses,
including seeking to interview the victim or victims, and should not act to intimidate or
unduly influence any witness.

(d) Defense counsel should not use means that have no substantial purpose other
than to embarrass, delay, or burden, and not use methods of obtaining evidence that
violate legal rights. Defense counsel and their agents should not misrepresent their
status, identity or interests when communicating with a witness.

(e) Defense counsel should be permitted to compensate a witness for reasonable
expenses such as costs of attending court, depositions pursuant to statute or court rule,
and pre trial interviews, including transportation and loss of income. No other benefits
should be provided to witnesses, other than expert witnesses, unless authorized by law,
regulation, or well accepted practice. All benefits provided to witnesses should be
documented so that they may be disclosed if required by law or court order. Defense
counsel should not pay or provide a benefit to a witness in order to, or in an amount that
is likely to, affect the substance or truthfulness of the witness’s testimony.

(f) Defense counsel should avoid the prospect of having to testify personally
about the content of a witness interview. An interview of routine witnesses (for example,
custodians of records) should not require a third-party observer. But when the need for
corroboration of an interview is reasonably anticipated, counsel should be accompanied
by another trusted and credible person during the interview. Defense counsel should
avoid being alone with foreseeably hostile witnesses.

(g) It is not necessary for defense counsel or defense counsel’s agents, when
interviewing a witness, to caution the witness concerning possible self-incrimination or a
right to independent counsel. Defense counsel should, however, follow applicable ethical
rules that address dealing with unrepresented persons. Defense counsel should not
discuss or exaggerate the potential criminal liability of a witness with a purpose, or in a
manner likely, to intimidate the witness, to intimidate the witness, or to influence the
truthfulness or completeness of the witness’s testimony, or to change the witness’s
decision about whether to provide information.

(h) Defense counsel should not discourage or obstruct communication between
witnesses and the prosecution, other than a client’s employees, agents or relatives if
consistent with applicable ethical rules. Defense counsel should not advise any person, or cause any person to be advised, to decline to provide the prosecution with information which such person has a right to give. Defense counsel may, however, fairly and accurately advise witnesses as to the likely consequences of their providing information, but only if done in a manner that does not discourage communication.

(i) Defense counsel should give their witnesses reasonable notice of when their testimony at a proceeding is expected, and should not require witnesses to attend judicial proceedings unless their testimony is reasonably expected at that time, or their presence is required by law. When witnesses’ attendance is required, defense counsel should seek to reduce to a minimum the time witnesses must spend waiting at the proceedings. Defense counsel should ensure that defense witnesses are given notice as soon as practicable of scheduling changes which will affect their required attendance at judicial proceedings.

(j) Defense counsel should not engage in any inappropriate personal relationship with any victim or other witness.
Standard 4-4.4  Relationship With Expert Witnesses

(a)  An expert may be engaged to prepare an evidentiary report or testimony, or for consultation only. Defense counsel should know relevant rules governing expert witnesses, including possibly different disclosure rules governing experts who are engaged for consultation only.

(b)  Defense counsel should evaluate all expert advice, opinions, or testimony independently, and not simply accept the opinion of an expert based on employer, affiliation or prominence alone.

(c)  Before engaging an expert, defense counsel should investigate the expert’s credentials, relevant professional experience, and reputation in the field. Defense counsel should also examine a testifying expert’s background and credentials for potential impeachment issues. Before offering an expert as a witness, defense counsel should investigate the scientific acceptance of the particular theory, method, or conclusions about which the expert would testify.

(d)  Defense counsel who engages an expert to provide a testimonial opinion should respect the independence of the expert and should not seek to dictate the substance of the expert’s opinion on the relevant subject.

(e)  Before offering an expert as a witness, defense counsel should seek to learn enough about the substantive area of the expert’s expertise, including ethical rules that may be applicable in the expert’s field, to enable effective preparation of the expert, as well as to cross-examine any prosecution expert on the same topic. Defense counsel should explain to the expert that the expert’s role in the proceeding will be as an impartial witness called to aid the fact-finders, explain the manner in which the examination of the expert is likely to be conducted, and suggest likely impeachment questions the expert may be asked.

(f)  Defense counsel should not pay or withhold a fee, or provide or withhold a benefit, for the purpose of influencing an expert’s testimony. Defense counsel should not fix the amount of the fee contingent upon the substance of an expert’s testimony or the result in the case. Nor should defense counsel promise or imply the prospect of future work for the expert based on the expert’s testimony.

(g)  Subject to client confidentiality interests, defense counsel should provide the expert with all information reasonably necessary to support a full and fair opinion. Defense counsel should be aware, and explain to the expert, that all communications with, and documents shared with, a testifying expert may be subject to disclosure to opposing counsel. Defense counsel should be aware of expert discovery rules and act to protect confidentiality, for example by not sharing with the expert client confidences and work product that counsel does not want disclosed.
Standard 4-4.5 Compliance With Discovery Procedures

Defense counsel should timely respond to legally proper discovery requests, and make a diligent effort to comply with legally proper disclosure obligations, unless otherwise authorized by a court. When the prosecution makes requests for specific information, defense counsel should provide specific responses rather than merely a general acknowledgement of discovery obligations. Requests and responses should be tailored to the case, and “boilerplate” requests and responses should be disfavored.
Standard 4-4.6 Preparation for Court Proceedings, and Recording and Transmitting Information

(a) Defense counsel should prepare in advance for court proceedings. Adequate preparation depends on the nature of the proceeding and the time available, and will often include: reviewing available documents; considering what issues are likely to arise and the client’s position regarding those issues; how best to present the issues and what solutions might be offered; relevant legal research and factual investigation; and contacting other persons who might be of assistance in addressing the anticipated issues. If defense counsel has not had adequate time to prepare and is unsure of the relevant facts or law, counsel should communicate to the court the limits of the defense counsel’s knowledge or preparation.

(b) Defense counsel should appear at all hearings in cases assigned to them, unless with good cause a substitute counsel is arranged. A defense attorney who substitutes at a court proceeding for another attorney should be adequately informed about the case and issues likely to come up at the proceeding and should adequately prepare.

(c) Defense counsel handling any court appearance should document what happens at the proceeding, to aid counsel’s own memory and the client’s future reference, and so that necessary information will be available to counsel who may handle the case in the future.

(d) Defense counsel should take steps to ensure that any court order issued to the defense is transmitted to the appropriate persons necessary to effectuate the order.

(e) A public criminal defense office should be provided sufficient resources and be organized to permit adequate preparation for court proceedings.
Standard 4-4.7 Handling Physical Evidence With Incriminating Implications

(a) Counseling the client: If defense counsel knows that the client possesses physical evidence that the client may not legally possess (such as contraband or stolen property) or evidence that might be used to incriminate the client, counsel should examine and comply with the law and rules of the jurisdiction on topics such as obstruction of justice, tampering with evidence, and protection for the client’s confidentiality and against self-incrimination. Counsel should then competently advise the client about lawful options and obligations.

(b) Permissible actions of the client: If requested or legally required, defense counsel may assist the client in lawfully disclosing such physical evidence to law enforcement authorities. Counsel may advise destruction of a physical item if its destruction would not obstruct justice or otherwise violate the law or ethical obligations. Counsel may not assist the client in conduct that counsel knows is unlawful, and should not knowingly and unlawfully impede efforts of law enforcement authorities to obtain evidence.

(c) Confidentiality: Defense counsel should act in accordance with applicable confidentiality laws and rules. In some circumstances, applicable law or rules may permit or require defense counsel to disclose the existence of, or the client’s possession or disposition of, such physical evidence.

(d) Receipt of physical evidence: Defense counsel should not take possession of such physical evidence, personally or through third parties, and should advise the client not to give such evidence to defense counsel, except in circumstances in which defense counsel may lawfully take possession of the evidence. Such circumstances may include:

(i) when counsel reasonably believes the client intends to unlawfully destroy or conceal such evidence;
(ii) when counsel reasonably believes that taking possession is necessary to prevent physical harm to someone;
(iii) when counsel takes possession in order to produce such evidence, with the client’s informed consent, to its lawful owner or to law enforcement authorities;
(iv) when such evidence is contraband and counsel may lawfully take possession of it in order to destroy it; and
(v) when defense counsel reasonably believes that examining or testing such evidence is necessary for effective representation of the client.

(e) Compliance with legal obligations to produce physical evidence: If defense counsel receives physical evidence that might implicate a client in criminal conduct, counsel should determine whether there is a legal obligation to return the evidence to its source or owner, or to deliver it to law enforcement or a court, and comply with any such legal obligations. A lawyer who is legally obligated to turn over such physical evidence should do so in a lawful manner that will minimize prejudice to the client.
(f) **Retention of producible item for examination.** Unless defense counsel has a legal obligation to disclose, produce, or dispose of such physical evidence, defense counsel may retain such physical evidence for a reasonable time for a legitimate purpose. Legitimate purposes for temporarily obtaining or retaining physical evidence may include: preventing its destruction; arranging for its production to relevant authorities; arranging for its return to the source or owner; preventing its use to harm others; and examining or testing the evidence in order to effectively represent the client.

(g) **Testing physical evidence.** If defense counsel determines that effective representation of the client requires that such physical evidence be submitted for forensic examination and testing, counsel should observe the following practices:

(i) The item should be properly handled, packaged, labeled and stored, in a manner designed to document its identity and ensure its integrity.

(ii) Any testing or examination should avoid, when possible, consumption of the item, and a portion of the item should be preserved and retained to permit further testing or examination.

(iii) Any person conducting such testing or examination should not, without prior approval of defense counsel, conduct testing or examination in any manner that will consume the item or otherwise destroy the ability for independent re-testing or examination by the prosecution.

(iv) Before approving a test or examination that will entirely consume the item or destroy the prosecution’s opportunity and ability to re-test the item, defense counsel should provide the prosecution with notice and an opportunity to object and seek an appropriate court order.

(v) If a motion objecting to consumptive testing or examination is filed, the court should consider ordering procedures that will permit independent evaluation of the defense’s analysis, including but not limited to:

(A) permitting a prosecution expert to be present during preparation and testing of the evidence;
(B) video recording the preparation and testing of the evidence;
(C) still photography of the preparation and testing of evidence; and
(D) access to all raw data, notes and other documentation relating to the defense preparation and testing of the evidence.

(h) **Client consent to accept a physical item.** Before voluntarily taking possession from the client of physical evidence that defense counsel may have a legal obligation to disclose, defense counsel should advise the client of potential legal implications of the proposed conduct and possible lawful alternatives, and obtain the client’s informed consent.
(i) Retention or return of item when law permits. If defense counsel reasonably determines that there is no legal obligation to disclose physical evidence in counsel’s possession to law enforcement authorities or others, the lawyer should deal with the physical evidence consistently with ethical and other rules and law. If defense counsel retains the evidence for use in the client’s representation, the lawyer should comply with applicable law and rules, including rules on safekeeping property, which may require notification to third parties with an interest in the property. Counsel should maintain the evidence separately from privileged materials of other clients, and preserve it in a manner that will not impair its evidentiary value. Alternatively, counsel may deliver the evidence to a third-party lawyer who is also representing the client and will be obligated to maintain the confidences of the client as well as defense counsel.

(j) Adoption of judicial and legislated procedures for handling physical evidence. Courts and legislatures, as appropriate, should adopt procedures regarding defense handling of such physical evidence, as follows:

(i) When defense counsel notifies the prosecution of the possession of such evidence or produces such evidence to the prosecution, the prosecution should be prohibited from presenting testimony or argument identifying or implying the defense as the source of the evidence, except as provided in Standard 3-3.6;

(ii) When defense counsel reasonably believes that contraband does not relate to a pending criminal investigation or prosecution, counsel may take possession of the contraband and destroy it.
PART V.

CONTROL AND DIRECTION OF LITIGATION

Standard 4-5.1 Advising the Client

(a) Defense counsel should exercise independent professional judgment when advising a client.

(b) Defense counsel should keep the client reasonably and regularly informed about the status of the case. Before significant decision-points, and at other times if requested, defense counsel should advise the client with candor concerning all aspects of the case, including an assessment of possible strategies and likely as well as possible outcomes. Such advisement should take place after counsel is as fully informed as is reasonably possible in the time available about the relevant facts and law. Counsel should act diligently and, unless time does not permit, advise the client of what more needs to be done or considered before final decisions are made.

(c) Defense counsel should promptly communicate to the client every plea offer and all significant developments, motions, and court actions or rulings, and provide advice as outlined in this Standard.

(d) In rendering advice to the client, counsel should consider the client’s desires and views, and may refer not only to law but also to other considerations such as moral, economic, social or political factors that may be relevant to the client’s situation. Counsel should attempt to distinguish for the client between legal advice and advice based on such other considerations.

(e) Defense counsel should provide the client with advice sufficiently in advance of decisions to allow the client to consider available options, and avoid unnecessarily rushing the accused into decisions.

(f) Defense counsel should not intentionally understate or overstate the risks, hazards, or prospects of the case or exert undue influence on the client’s decisions regarding a plea.

(g) Defense counsel should advise the client to avoid communication about the case with anyone, including victims or other possible witnesses, persons in custody, family, friends, and any government personnel, except with defense counsel’s approval, although where the client is a minor consultation with parents or guardians may be useful. Counsel should advise the client to avoid any contact with jurors or persons called for jury duty; and to avoid either the reality or the appearance of any other improper activity.

(h) Defense counsel should consider and advise the client of potential benefits as well as negative aspects of cooperating with law enforcement or the prosecution.
(i) After advising the client, defense counsel should aid the client in deciding on the best course of action and how best to pursue and implement that course of action.
Standard 4-5.2  Control and Direction of the Case

(a) Certain decisions relating to the conduct of the case are for the accused; others are for defense counsel. Determining whether a decision is ultimately to be made by the client or by counsel is highly contextual, and counsel should give great weight to strongly held views of a competent client regarding decisions of all kinds.

(b) The decisions ultimately to be made by a competent client, after full consultation with defense counsel, include:
   (i) whether to proceed without counsel;
   (ii) what pleas to enter;
   (iii) whether to accept a plea offer;
   (iv) whether to cooperate with or provide substantial assistance to the government;
   (v) whether to waive jury trial;
   (vi) whether to testify in his or her own behalf;
   (vii) whether to speak at sentencing;
   (viii) whether to appeal; and
   (ix) any other decision that has been determined in the jurisdiction to belong to the client.

(c) If defense counsel has a good faith doubt regarding the client’s competence to make important decisions, counsel should consider seeking an expert evaluation from a mental health professional, within the protection of confidentiality and privilege rules if applicable.

(d) Strategic and tactical decisions should be made by defense counsel, after consultation with the client where feasible and appropriate. Such decisions include how to pursue plea negotiations, how to craft and respond to motions and, at hearing or trial, what witnesses to call, whether and how to conduct cross-examination, what jurors to accept or strike, what motions and objections should be made, what stipulations if any to agree to, and what and how evidence should be introduced.

(e) If a disagreement on a significant matter arises between defense counsel and the client, and counsel resolves it differently than the client prefers, defense counsel should consider memorializing the disagreement and its resolution, showing that record to the client, and preserving it in the file.
Standard 4-5.3  Obligations of Stand-By Counsel

(a) An attorney whose assigned duty is to actively assist a pro se criminally accused person should permit the accused to make the final decisions on all matters, including strategic and tactical matters relating to the conduct of the case, while still providing the attorney’s best advice.

(b) An attorney whose assigned duty is to assist a pro se criminally accused person only when the accused requests assistance may bring to the attention of the accused steps that could be potentially beneficial or dangerous to the accused, but should not actively participate in the conduct of the defense unless requested by the accused or as directed by the court.

(c) In either case, the assigned attorney should respect the accused’s right to develop and present the accused’s own case, while still advising the accused of potential benefits and dangers the attorney perceives in the course of the litigation. Such an attorney should be fully prepared about the matter, in order to offer such advice and in case the court and the accused determine that the full representation role should be transferred to defense counsel at some point during the criminal proceedings.
Standard 4-5.4 Consideration of Collateral Consequences [New]

(a) Defense counsel should identify, and advise the client of, collateral consequences that may arise from charge, plea or conviction. Counsel should investigate consequences under applicable federal, state, and local laws, and seek assistance from others with greater knowledge in specialized areas in order to be adequately informed as to the existence and details of relevant collateral consequences. Such advice should be provided sufficiently in advance that it may be fairly considered in a decision to pursue trial, plea, or other dispositions.

(b) When defense counsel knows that a consequence is particularly important to the client, counsel should advise the client as to whether there are procedures for avoiding, mitigating or later removing the consequence, and if so, how to best pursue or prepare for them.

(c) Defense counsel should include consideration of potential collateral consequences in negotiations with the prosecutor regarding possible dispositions, and in communications with the judge or court personnel regarding the appropriate sentence or conditions, if any, to be imposed.
Standard 4.5.5 Special Attention to Immigration Status and Consequences

(a) Defense counsel should determine a client’s citizenship and immigration status, assuring the client that such information is important for effective legal representation and that it should be protected by the attorney-client privilege. Counsel should avoid any actions that might alert the government to information that could adversely affect the client.

(b) If defense counsel determines that a client may not be a United States citizen, counsel should investigate and identify particular immigration consequences that might follow possible criminal dispositions. Consultation or association with an immigration law expert or knowledgeable advocate is advisable in these circumstances. Public and appointed defenders should develop, or seek funding for, such immigration expertise within their offices.

(c) After determining the client’s immigration status and potential adverse consequences from removal, immigration detention, denial of citizenship, and adverse consequences to the client’s immediate family, counsel should advise the client of all such potential consequences and determine with the client the best course of action for the client’s interests and how to pursue it.

(d) If a client is convicted of a removable offense, defense counsel should advise the client of the serious consequences if the client illegally returns to the United States.
PART VI

DISPOSITION WITHOUT TRIAL

Standard 4-6.1  Duty to Explore Disposition Without Trial

(a) Defense counsel should be open, at every stage of a criminal matter and after consultation with the client, to discussions with the prosecutor concerning disposition of charges by guilty plea or other negotiated disposition. Counsel should be knowledgeable about possible dispositions that are alternatives to trial or imprisonment, including diversion from the criminal process.

(b) In every criminal matter, defense counsel should consider the individual circumstances of the case and of the client, and should not recommend to a client acceptance of a disposition offer unless and until appropriate investigation and study of the matter has been completed. Such study should include discussion with the client and an analysis of relevant law, the prosecution’s evidence, and potential dispositions and relevant collateral consequences. Defense counsel should advise against a guilty plea at the first appearance, unless, after discussion with the client, a speedy disposition is clearly in the client’s best interest.
Standard 4-6.2  Negotiated Disposition Discussions

(a) As early as practicable, and preferably before engaging in disposition discussions with the prosecutor, defense counsel should discuss with and advise the client about possible disposition options.

(b) Once discussions with the prosecutor begin, defense counsel should keep the accused advised of relevant developments. Defense counsel should promptly communicate and explain to the client any disposition proposals made by the prosecutor, while explaining that presenting the prosecution’s offer does not indicate counsel’s unwillingness to go to trial.

(c) Defense counsel should ensure that the client understands any proposed disposition agreement, including its direct and possible collateral consequences.

(d) Defense counsel should not recommend to a defendant acceptance of a disposition without appropriate investigation. Before accepting or advising a disposition, defense counsel should request that the prosecution disclose any information that tends to negate guilt, mitigates the offense or is likely to reduce punishment.

(e) Defense counsel may make a recommendation to the client regarding disposition proposals, but should not unduly pressure the client to make any particular decision.

(f) Defense counsel should not knowingly make false statements of fact or law in the course of disposition discussions.

(g) Defense counsel should be aware of possible benefits from early cooperation with the government, but should also consider possible disadvantages. Counsel should fully advise the client about the client’s overall interests before recommending any cooperation-dependent disposition.

(h) Defense counsel should not negotiate an aggregate disposition for multiple clients, even if joint representation was initially appropriate under applicable conflict provisions.

(i) Defense counsel should not recommend concessions favorable to one client by any agreement which is detrimental to the legitimate interests of a client in another case, unless both clients give their fully-informed consent.
[New] Standard 4-6.3 Plea Agreements and Other Negotiated Dispositions

(a) Defense counsel should ensure that any written disposition agreement accurately and completely reflects the precise terms of the agreement, including the prosecution’s promises and the client’s obligations and whether any dismissal of charges will be with or without prejudice to later reinstatement.

(b) During any court hearing regarding a negotiated disposition, defense counsel should ensure that all relevant details of the negotiated agreement are placed on the record, and that the record fully reflects any factors necessary to protect the client’s best interests. Although the presumption is that the record will be public, in some cases the record (or a portion) may be sealed for good cause or as required by applicable rule or statute.

(c) Defense counsel should fully prepare the client for any hearing before a court related to entering or accepting a negotiated disposition, and for any pre-disposition or post-disposition interview conducted by the prosecution or by court agents such as presentence investigators or probation officers. Counsel should ordinarily be present at any such interview to protect the client’s interests there.

(d) In appropriate cases counsel should consider, and with the consent of the client seek, entry of a disposition and immediate sentencing without a presentence investigation.

(e) Defense counsel should investigate and be knowledgeable about sentencing procedures, law, and alternatives, collateral consequences and likely outcomes, and the practices of the sentencing judge, and advise the client on these topics before permitting the client to enter a negotiated disposition. Counsel should also consider and explain to the client how specific terms of an agreement are likely to be implemented.

(f) If defense counsel believes that prosecutorial conduct or conditions (such as unreasonably speedy deadlines or refusal to provide discovery) have unfairly influenced the client’s disposition decision, defense counsel should bring the circumstances to the attention of the court on the record, unless after consultation with the client, it is agreed that the risk of losing the negotiated disposition outweighs other considerations.
Standard 4-6.4  Opposing Waivers of Rights in Disposition Agreements

(a) Defense counsel should not accept disposition agreement waivers of post-conviction claims addressing ineffective assistance of counsel, prosecutorial misconduct, or destruction of evidence, unless such claims are based on past instances of such conduct that are specifically identified in the agreement or in the transcript of proceedings that address the agreement. If a proposed disposition agreement contains such a waiver regarding ineffective assistance of counsel, defense counsel should ensure that the defendant has consulted with independent counsel regarding the waiver before agreeing to the disposition.

(b) In addition to claims addressed in (a), defense counsel should not agree to waivers of any other important defense rights such as the right to appeal (including sentencing appeals), to receive Brady discovery, or to contest the conviction or sentence in collateral proceedings, unless after consultation with the client it is agreed that the risk of losing the negotiated disposition outweighs other considerations. In negotiations, counsel should request the prosecution to provide specific, individualized reasons for the inclusion of such waivers. Counsel should also consult with the client about whether to object to such waivers in court.

(c) Counsel should not recommend acceptance of any disposition agreement waivers without fully assessing and discussing with the client the impact of any waiver on the defendant’s individualized circumstances. Defense counsel should demand that any such waiver include at the very least an exception for a subsequent showing of manifest injustice based on newly discovered evidence, or actual innocence.

(d) Even if the client wishes to agree to such waivers after fully informed consultation, defense counsel should consider challenging the legitimacy of any such waiver if the challenge can be made without harming the client’s interests.
PART VII

COURT HEARINGS AND TRIAL

/NEW/ Standard 4-7.1 Scheduling Court Hearings /NEW/

Final control over the scheduling of court appearances, hearings and trials in criminal matters should rest with the court rather than the parties. When defense counsel is aware of facts that would affect scheduling, defense counsel should advise the court and, if the facts are case-specific, the prosecutor.
Standard 4-7.2  Civility with Courts, Prosecutors, and Others

(a) As an officer of the court, defense counsel should support the authority and dignity of the court by adherence to codes of professionalism and by manifesting a courteous and professional attitude toward the judge, opposing counsel, witnesses, jurors, courtroom staff and others. In court as elsewhere, the defense counsel should not display or act out of any improper or unlawful bias.

(b) In all contacts with judges, defense counsel should maintain a professional and independent relationship. Defense counsel should not engage in unauthorized ex parte discussions with, or submission of material to, a judge relating to a particular matter which is, or is likely to be, before the judge. With regard to generalized matters requiring judicial discussion (for example, case-management or administrative matters), defense counsel should invite a representative prosecutor to join in the discussion to the extent practicable.

(c) When ex parte communications or submissions are authorized, defense counsel should inform the court of material facts known to counsel (other than those protected by a valid privilege), including facts that are adverse, sufficient to enable the court to make an informed decision. Except when non-disclosure is authorized, counsel should notify opposing counsel that an ex parte contact has occurred, without disclosing its content unless permitted.

(d) When court is in session, unless otherwise permitted by the court, defense counsel should address the court and should not address other counsel directly on any matter relating to the case.

(e) In written filings, defense counsel should respectfully evaluate and respond as appropriate to opposing counsel’s arguments and representations, and avoid unnecessary personalized disparagement.

(f) Defense counsel should comply promptly and civilly with a court’s orders or seek appropriate relief from such order. If defense counsel considers an order to be significantly erroneous or prejudicial, counsel should ensure that the record adequately reflects the events. Defense counsel has a right to make respectful objections and reasonable requests for reconsideration, and to seek other relief as the law permits. If a judge prohibits making an adequate objection, proffer, or record, counsel may take other lawful steps to protect the client’s rights.

(g) Defense counsel should develop and maintain courteous and civil working relationships with judges and prosecutors, and should cooperate with them in developing solutions to address ethical, scheduling, or other issues that may arise in particular cases or generally in the criminal justice system. Defense counsel should cooperate with courts and organized bar associations in developing codes of professionalism and civility, and should abide by such codes that apply in their jurisdiction.
Standard 4-7.3  Selection of Jurors

(a) Defense counsel should be aware of legal standards that govern the selection of jurors, and be prepared to discharge effectively the defense function in the selection of the jury, including raising appropriate issues concerning the method by which the jury panel was selected and exercising challenges for cause and peremptory challenges.

(b) Defense counsel should not strike jurors based on any criteria rendered impermissible by the constitution, statutes, or applicable rules of the jurisdiction or these standards, including race, sex, religion, national origin, disability, sexual orientation or gender identity. Defense counsel should consider challenging a prosecutor’s peremptory challenges that appear to be based on such criteria.

(c) In cases in which defense counsel conducts a pretrial investigation of the background of potential jurors, the investigative methods used should not harass, intimidate, unduly embarrass, or invade the privacy of potential jurors. Absent special circumstances, such investigation should be restricted to review of records and sources of information already in existence and to which access is lawfully allowed.

(d) The opportunity to question jurors personally should be used solely to obtain information relevant to the well-informed exercise of challenges. Defense counsel should not seek to commit jurors on factual issues likely to arise in the case, or to suggest facts or arguments that the defense counsel reasonably should know are likely to be barred at trial. Voir dire should not be used to argue counsel’s case to the jury, or to unduly ingratiate counsel with the jurors.

(e) During voir dire, defense counsel should seek to minimize any undue embarrassment or invasion of privacy of potential jurors, for example by seeking to inquire into sensitive matters outside the presence of other potential jurors, while still enabling fair and efficient juror selection.

(f) If the court does not permit voir dire by counsel, defense counsel should provide the court with suggested questions in advance if possible, and request specific follow-up questions during the selection process when necessary to ensure fair juror selection.

(g) If defense counsel has reliable information that conflicts with a potential juror’s responses, or that reasonably would support a “for cause” challenge by any party, defense counsel should inform the court and, unless the court orders otherwise, the prosecutor.
Standard 4-7.4  Relationship With Jurors

(a) Defense counsel should not communicate with persons counsel knows to be summoned for jury duty or impaneled as jurors, prior to or during trial, other than in the lawful conduct of courtroom proceedings. Defense counsel should avoid even the appearance of improper communications with jurors, and minimize any out-of-court proximity to or contact with jurors. Where out-of-court contact cannot be avoided, counsel should not communicate about or refer to the specific case.

(b) Defense counsel should treat jurors with courtesy and respect, while avoiding a show of undue solicitude for their comfort or convenience.

(c) After discharge of a juror, defense counsel should avoid contacts that may harass or embarrass the juror, that criticize the jury’s actions or verdict, or that express views that could otherwise adversely influence a juror’s future jury service. Defense counsel should know and comply with applicable rules and law governing the subject.

(d) After a jury is discharged, defense counsel may, if no statute, rule or order prohibits such action, communicate with jurors to investigate whether a verdict may be subject to legal challenge, or to evaluate counsel’s performance for improvements in the future. Counsel should consider requesting the court to instruct the jury that, if it is not prohibited by law, it is not improper for jurors to discuss the case with the lawyers, although they are not required to do so. Any post-discharge communication with a juror should not disparage the criminal justice system and the jury trial process, and should not express criticism of the jury’s actions or verdict.

(e) Defense counsel who learns reasonably reliable information that there was a problem with jury deliberations or conduct that could support an attack on the client’s judgment of conviction and that is recognized as potentially valid in the jurisdiction, should promptly report that information to the appropriate judicial officer and, unless the court orders otherwise, to the prosecution.
Standard 4-7.5  Opening Statement at Trial

(a) Defense counsel should be aware of the importance of an opening statement and, except in unusual cases, give an opening statement immediately after the prosecution’s, before the presentation of evidence begins. Any decision to defer the opening statement should be fully discussed with the client, and a record of the reasons for such decision should be made for the file.

(b) Defense counsel’s opening statement at trial should be confined to a fair statement of the case from defense counsel’s perspective, and discussion of evidence that defense counsel reasonably believes in good faith will be available, offered, and admitted. A deferred opening should focus on the defense evidence and theory of the case and not be a closing argument.

(c) Defense counsel’s opening statement should be made without expressions of personal opinion, vouching for witnesses, inappropriate appeals to emotion, or personal attacks on opposing counsel.

(d) When defense counsel has reason to believe that a portion of the opening statement may be objectionable, counsel should raise that point with opposing counsel and, if necessary, the court, in advance. Similarly, visual aids or exhibits that defense counsel intends to use during opening statement should be shown to the prosecutor in advance.
Standard 4-7.6  Presentation of Evidence

(a) Defense counsel has no obligation to present evidence, and should always consider, in consultation with the client, whether a decision not to present evidence may be in the client’s best interest. In making this decision, defense counsel should consider the impact of any evidence the defense would present and the potential damage that prosecution cross-examination or a rebuttal case could do, as well as the quality of the prosecution’s evidence.

(b) Defense counsel should not knowingly offer false evidence for its truth, whether by documents, tangible evidence, or the testimony of witnesses, or fail to take reasonable remedial measures upon discovery of material falsity in evidence offered by the defense, unless the court or specific authority in the jurisdiction otherwise permits.

(c) If defense counsel reasonably believes that there has been misconduct by opposing counsel, a witness, the court or other persons that affects the fair presentation of the evidence, defense counsel should challenge the perceived misconduct by appealing or objecting to the court or through other appropriate avenues, and not by engaging in retaliatory conduct that defense counsel knows is improper.

(d) Defense counsel should not bring to the attention of the trier of fact matters that defense counsel knows to be inadmissible, whether by offering or displaying inadmissible evidence, asking legally objectionable questions, or making impermissible comments or arguments. If defense counsel is uncertain about the admissibility of evidence, counsel should seek and obtain resolution from the court before the hearing or trial if possible, and reasonably in advance of the time for proffering the evidence before a jury.

(e) Defense counsel should exercise strategic judgment regarding whether to object or take exception to evidentiary rulings that are materially adverse to the client, and not make every possible objection. Defense counsel should not make objections without a reasonable basis, or for improper reasons such as to harass or to break the flow of opposing counsel’s presentation. Defense counsel should make an adequate record for appeal, and consider the possibility of an interlocutory appeal regarding significant adverse rulings if available.

(f) Defense counsel should not display tangible evidence (and should object to such display by the prosecutor), until it is admitted into evidence, except insofar as its display is necessarily incidental to its tender, although counsel may seek permission to display admissible evidence during opening statement. Defense counsel should avoid displaying even admitted evidence in a manner that is unduly prejudicial.
Standard 4-7.7 Examination of Witnesses in Court

(a) Defense counsel should conduct the examination of witnesses fairly and with due regard for dignity and legitimate privacy concerns, and without seeking to intimidate or humiliate a witness unnecessarily.

(b) Defense counsel’s belief or knowledge that a witness is telling the truth does not preclude vigorous cross-examination, even though defense counsel’s cross-examination may cast doubt on the testimony.

(c) Defense counsel should not call a witness in the presence of the jury when counsel knows the witness will claim a valid privilege not to testify. If defense counsel is unsure whether a particular witness will claim a privilege to not testify, counsel should alert the court and the prosecutor in advance and outside the presence of the jury.

(d) Defense counsel should not ask a question which implies the existence of a factual predicate for which a good faith belief is lacking.
Standard 4-7.8  Closing Argument to the Trier of Fact

(a) In closing argument to a jury (or to a judge sitting as trier of fact), defense counsel may argue all reasonable inferences from the evidence in the record. Defense counsel should, to the extent time permits, review the evidence in the record before presenting closing argument. Defense counsel should not knowingly misstate the evidence in the record, or argue inferences that counsel knows have no good-faith support in the record.

(b) Defense counsel should not argue in terms of counsel’s personal opinion, and should not imply special or secret knowledge of the truth or of witness credibility.

(c) Defense counsel should not make arguments calculated to appeal to improper prejudices of the jury.

(d) Defense counsel should not argue to the jury that the jury should not follow its oath to consider the evidence and follow the law.

(e) Defense counsel may respond fairly to arguments made in the prosecution’s initial closing argument. Defense counsel should object and request relief from the court regarding prosecution arguments it believes are improper, rather than responding with arguments that counsel knows are improper.

(f) If the prosecution is permitted a rebuttal argument, defense counsel should craft the defense closing argument to anticipate the government’s rebuttal. If defense counsel believes the prosecution’s rebuttal closing argument is or was improper, defense counsel should timely object and consider requesting relief from the court, including an instruction that the jury disregard the improper portion of the argument or an opportunity to reopen argument and respond before the factfinder.
Standard 4-7.9   Facts Outside the Record

When before a jury, defense counsel should not knowingly refer to, or argue on the basis of, facts outside the record, unless such facts are matters of common public knowledge based on ordinary human experience or are matters of which a court clearly may take judicial notice, or are facts that counsel reasonably believes will be entered into the record at that proceeding. In a nonjury context counsel may refer to extra-record facts relevant to issues about which the court specifically inquires, but should note that they are outside the record.
(a) Defense counsel may publicly express respectful disagreement with an adverse court ruling or jury verdict, and may indicate that the defendant maintains innocence and intends to pursue lawful options for review. Defense counsel should refrain from public criticism of any participant. Public comments after a verdict or ruling should be respectful of the legal system and process.

(b) Defense counsel may publicly praise a favorable court verdict or ruling, compliment participants, supporters, and others who aided in the matter, and note the social value of the ruling or event. Defense counsel should not publicly gloat or seek personal aggrandizement regarding a verdict or ruling.
Defense counsel should move, outside the presence of the jury, for acquittal after the close of the prosecution’s evidence and at the close of all evidence, and be aware of applicable rules regarding waiver and preservation of issues when no or an inadequate motion is made.
PART VIII

POST-TRIAL MOTIONS AND SENTENCING

Standard 4-8.1   Post-Trial Motions

(a) Defense counsel should know the relevant rules governing post-trial motions and, if the trier of fact renders a judgment of guilty, timely present all motions necessary to protect the client’s rights, including the defendant’s right to appeal all aspects of the case. A motion for acquittal notwithstanding a verdict should be filed absent rare and unusual circumstances, and counsel should consider the strategic value of a motion for a new trial. Defense counsel should file only those motions that have a non-frivolous legal basis.

(b) Unless contrary to the client’s best interests or otherwise agreed or provided by law, defense counsel should ordinarily represent the client in post-trial proceedings in the trial court. Defense counsel should consider, however, whether the client’s best interests would be served by substitution of new counsel for post-trial motions.

(c) If a post-trial motion is based on ineffective assistance of counsel, defense counsel should seek to withdraw in accordance with the law regarding withdrawal and aid the client in obtaining substitute counsel.
After a guilty verdict and before sentencing, defense counsel should, in consultation with the client, reassess prior decisions made in the case, whether by counsel or others, in light of all changed circumstances, and pursue options that now seem appropriate, including possible motions to set or reduce bail or conditions, and possible cooperation with the prosecution if in the client’s best interests.
Standard 4-8.3  Sentencing

(a) Early in the representation, and throughout the pendency of the case, defense counsel should consider potential issues that might affect sentencing. Defense counsel should become familiar with the client’s background, applicable sentencing laws and rules, and what options might be available as well as what consequences might arise if the client is convicted. Defense counsel should be fully informed regarding available sentencing alternatives and with community and other resources which may be of assistance in formulating a plan for meeting the client’s needs. Defense counsel should also consider whether consultation with an expert specializing in sentencing options or other sentencing issues is appropriate.

(b) Defense counsel’s preparation before sentencing should include learning the court’s practices in exercising sentencing discretion; the collateral consequences of different sentences; and the normal pattern of sentences for the offense involved, including any guidelines applicable for either sentencing and, where applicable, parole. The consequences (including reasonably foreseeable collateral consequences) of potential dispositions should be explained fully by defense counsel to the client.

(c) Defense counsel should present all arguments or evidence which will assist the court or its agents in reaching a sentencing disposition favorable to the accused. Defense counsel should ensure that the accused understands the nature of the presentence investigation process, and in particular the significance of statements made by the accused to probation officers and related personnel. Defense counsel should cooperate with court presentence officers unless, after consideration and consultation, it appears not to be in the best interests of the client. Unless prohibited, defense counsel should attend the probation officer’s presentence interview with the accused and meet in person with the probation officer to discuss the case.

(d) Defense counsel should gather and submit to the presentence officers, prosecution, and court as much mitigating information relevant to sentencing as reasonably possible; and in an appropriate case, with the consent of the accused, counsel should suggest alternative programs of service or rehabilitation or other non-imprisonment options, based on defense counsel’s exploration of employment, educational, and other opportunities made available by community services.

(e) If a presentence report is made available to defense counsel, counsel should seek to verify the information contained in it, and should supplement or challenge it if necessary. Defense counsel should either provide the client with a copy or (if copying is not allowed) discuss counsel’s knowledge of its contents with the client. In many cases, defense counsel should independently investigate the facts relevant to sentencing, rather than relying on the court’s presentence report, and should seek discovery or relevant information from governmental agencies or other third-parties if necessary.

(f) Defense counsel should alert the accused to the right of allocution. Counsel should consider with the client the potential benefits of the judge hearing a personal
statement from the defendants as contrasted with the possible dangers of making a statement that could adversely impact the sentencing judge’s decision or the merits of an appeal.

(g) If a sentence of imprisonment is imposed, defense counsel should seek the court’s assistance, including an on-the-record statement by the court if possible, recommending the appropriate place of confinement and types of treatment, programming and counseling that should be provided for the defendant in confinement.

(h) Once the sentence has been announced, defense counsel should make any objections necessary for the record, seek clarification of any unclear terms, and advise the client of the meaning and effects of the judgment, including any known collateral consequences. Counsel should also note on the record the intention to appeal, if that decision has already been made with the client.

(i) If the client has received an imprisonment sentence and an appeal will be taken, defense counsel should determine whether bail pending appeal is appropriate and, if so, request it.
Standard 4-9.1 Preparing to Appeal

(a) If a client is convicted, defense counsel should explain to the client the meaning and consequences of the court’s judgment and the client’s rights regarding appeal. Defense counsel should provide the client with counsel’s professional judgment as to whether there are meritorious grounds for appeal and the possible, and likely, results of an appeal. Defense counsel should also explain to the client the advantages and disadvantages of an appeal including the possibility that the government might cross-appeal, and the possibility that if the client prevails on appeal, a remand could result in a less favorable disposition. Counsel should also be familiar with, and discuss with the client, possible interactions with other post-conviction procedures such as habeas corpus rules and actions.

(b) The ultimate decision whether to appeal should be the client’s. Defense counsel should consider engaging or consulting with an expert in criminal appeals in order to determine issues related to making a decision to appeal.

(c) Defense counsel should take whatever steps are necessary to protect the client’s rights of appeal, including filing a timely notice of appeal in the trial court, even if counsel does not expect to continue as counsel on appeal.

(d) Defense counsel should explain to the client that the client has a right to counsel on appeal (appointed, if the client is indigent), and that there are lawyers who specialize in criminal appeals. Defense counsel should candidly explore with the client whether trial counsel is the appropriate lawyer to represent the client on appeal, or whether a lawyer specializing in appellate work should be consulted, added or substituted.
Standard 4-9.2  Counsel on Appeal

(a) Appellate defense counsel should seek the cooperation of the client’s trial counsel in the evaluation of potential appellate issues. A client’s trial counsel should provide such assistance as is possible, including promptly providing the file of the case to appellate counsel.

(b) When evaluating the case for appeal, appellate defense counsel should consider all issues that might affect the validity of the judgment of conviction and sentence, including any that might require initial presentation in a trial court. Counsel should consider raising on appeal even issues not objected to below or waived or forfeited, if in the best interests of the client.

(c) After examining the record and the relevant law, counsel should provide counsel’s best professional evaluation of the issues that might be presented on appeal. Counsel should advise the client about the probable and possible outcomes and consequences of a challenge to the conviction or sentence.

(d) Even if a client has agreed to a waiver of appeal, counsel should follow a client’s direction to file an appeal if there are non-frivolous grounds to argue that the waiver is not binding or that the appeal should otherwise be heard.

(e) Appellate defense counsel should not file a brief that counsel reasonably believes is devoid of merit. However, counsel should not conclude that a defense appeal lacks merit until counsel has fully examined the trial court record and the relevant legal authorities. If appellate counsel does so conclude, counsel should fully discuss that conclusion with the client, and explain the “no merit” briefing process applicable in the jurisdiction if available. Counsel should endeavor to persuade the client to abandon a frivolous appeal, and to eliminate appellate contentions lacking in substance. If the client ultimately demands that a no-merit brief not be filed, defense counsel should seek to withdraw.

(f) If the client chooses to proceed with a non-frivolous appeal against the advice of counsel, counsel should present the appeal. When counsel cannot continue without misleading the court, counsel may request permission to withdraw.

(g) Appellate counsel should discuss with the client the arguments to present in appellate briefing and at argument, and should diligently attempt to accommodate the client’s wishes. If the client desires to raise an argument that is colorable, counsel should work with the client to an acceptable resolution regarding the argument. If appellate counsel decides not to brief all of the issues that the client wishes to include, appellate counsel should inform the client of pro se briefing rights and consider providing the appellate court with a list of additional issues the client would like to present.

(h) In a jurisdiction that has an intermediate appellate court, appellate defense counsel should ordinarily continue to represent the client after the intermediate court
renders a decision if further appeals are likely, unless a retainer agreement provides otherwise, new counsel is substituted, or a court permits counsel to withdraw. Similarly, unless a retainer agreement provides otherwise, new counsel is substituted, or a court permits counsel to withdraw, appellate counsel should ordinarily continue to represent the client through all stages of a direct appeal, including review in the United States Supreme Court.

(i) If trial defense counsel will not remain as appellate counsel, trial counsel should notify the client of any applicable time limits, act to preserve the client’s appellate rights if possible, and cooperate and assist in securing qualified appellate counsel. If appellate counsel’s representation ends but further appellate review is possible, appellate counsel should advise the client of further options and deadlines, such as for a petition for certiorari.

(j) When the prosecution appeals a ruling that was favorable to the client, defense counsel should analyze the issues and possible implications for the client and act to zealously protect the client’s interests. If the prosecution is appealing, defense counsel should consider adding or consulting with an appellate expert about the matter.

(k) When the law permits the filing of interlocutory appeals or writs to challenge adverse trial court rulings, defense counsel should consider whether to file an interlocutory appeal and, after consultation with the client, vigorously pursue such an appeal if in the client’s interest. If the prosecution files an interlocutory appeal, defense counsel should act in accordance with the foregoing paragraphs.


**Standard 4-9.3  Conduct of Appeal**

(a) Before filing an appellate brief, appellate defense counsel should consult with the client about the appeal, and seek to meet with the client unless impractical.

(b) Appellate counsel should be aware of opportunities to favorably affect or resolve a defendant’s appeal by motions filed in the appellate court, before filing a merits brief.

(c) Counsel should understand the complex rules that govern whether arguments listed or omitted on direct appeal can limit issues available in later collateral proceedings, and not unnecessarily or unknowingly abandon arguments that should be preserved. Counsel should explicitly label federal constitutional arguments as such, in order to preserve later federal litigation options.

(d) Appellate counsel should be aware of applicable rules relating to securing all necessary record documents, transcripts, and exhibits, and ensure that all such items necessary to effectively prosecute the appeal are properly and timely ordered. Before filing the brief, appellate counsel should ordinarily examine the docket sheet, all transcripts, trial exhibits and record documents, not just those designated by another lawyer or the client. Counsel should consider whether, and how appropriately, to augment the record with any other matters, documents or evidence relevant to effective prosecution of the client’s appeal. Appellate counsel should seek by appropriate motion, filed in either the trial or the appellate court, to make available for the appeal any necessary, relevant extra-record matters.

(e) Appellate counsel should be diligent in perfecting appeals and expediting their prompt submission to appellate courts, and be familiar with and follow all applicable appellate rules, while also protecting the client’s best interests on appeal.

(f) Appellate counsel should be accurate in referring to the record and the authorities upon which counsel relies in the presentation to the court of briefs and oral argument. Appellate counsel should present directly adverse authority in the controlling jurisdiction of which counsel is aware and that has not been presented by other counsel in the appeal.

(g) Appellate counsel should not intentionally refer to or argue on the basis of facts outside the record on appeal, unless such facts are matters of common public knowledge based on ordinary human experience or are other matters of which the court properly may take judicial notice.

(h) If the appeal is set for oral argument, appellate counsel should explain to an out-of-custody client that the client is permitted to attend, and that attending the argument may have certain strategic advantages and disadvantages. If after consultation the client desires to attend the argument, counsel should help the client to be present. If the client
is in custody, counsel should request a tape or transcript of the oral argument, and consider filing a motion for the government to transport client to the argument.

(i) Appellate counsel should be aware of local rules and practices that may apply to oral arguments, including, for example, rules that apply to the submission of subsequent authorities or the use of demonstrative aids or exhibits during argument.

(j) If appellate counsel’s study of the record reveals that an ineffective assistance of trial counsel claim should be made, appellate counsel should weigh the advantages and disadvantages of raising an ineffective assistance claim on the existing record versus pursuing such a claim in the trial court either before, or after, the appeal is heard. Counsel should also learn the rules, if any, of the particular jurisdiction regarding this issue.

(k) Appellate counsel should consider, in preparing the appellate briefing, whether there might be any potential grounds for relief using other post-conviction remedies (such as habeas corpus), and consult with the client regarding timing and who might represent the client in such actions.
Standard 4-9.4 New or Newly-Discovered Law or Evidence of Innocence or Wrongful Conviction or Sentence

(a) When defense counsel becomes aware of credible and material evidence or law creating a reasonable likelihood that a client or former client was wrongfully convicted or sentenced or was actually innocent, counsel has some duty to act. This duty applies even after counsel’s representation is ended. Counsel must consider, and act in accordance with, duties of confidentiality. If such a former client currently has counsel, former counsel may discharge the duty by alerting the client’s current counsel.

(b) If such newly discovered evidence or law (whether due to a change in the law or not) relevant to the validity of the client’s conviction or sentence, or evidence or law tending to show actual innocence of the client, comes to the attention of the client’s current defense counsel at any time after conviction, counsel should promptly:
   (i) evaluate the information, investigate if necessary, and determine what potential remedies are available;
   (ii) advise and consult with the client; and
   (iii) determine what action if any to take.

(c) Counsel should determine applicable deadlines for the effective use of such evidence or law, including federal habeas corpus deadlines, and timely act to preserve the client’s rights. Counsel should determine whether -- and if so, how best -- to notify the prosecution and court of such evidence.
Standard 4- 9.5 Post-Appellate Remedies

(a) Once a defendant’s direct appellate avenues have been exhausted, appellate counsel is not obligated to represent the defendant in a post-appellate collateral proceeding unless counsel has agreed, or has been appointed, to do so. But counsel should still reasonably advise and act to protect the client’s possible collateral options.

(b) If appellate counsel believes there is a reasonable prospect of a favorable result if collateral proceedings are pursued, counsel should explain to the client the advantages and disadvantages of pursuing collateral proceedings, and any timing deadlines that apply. Appellate defense counsel should assist the client to the extent practicable in locating competent counsel for any post-appellate collateral proceedings.

(c) Post-appellate counsel should seek the cooperation of the client’s prior counsel in the evaluation and briefing of potential post-conviction issues. Prior counsel should provide such assistance as is possible, including providing the file or copies of the file to post-appellate counsel.
Standard 4- 9.6  Challenges to the Effectiveness of Counsel

(a) If appellate or post-appellate counsel is satisfied after appropriate investigation and legal research that another defense counsel who served in an earlier phase of the case did not provide effective assistance, new counsel should not hesitate to seek relief for the client.

(b) If defense counsel concludes that he or she did not provide effective assistance in an earlier phase of the case, counsel should explain this conclusion to the client. Unless the client clearly wants counsel to continue, counsel in this situation should seek to withdraw from further representation of the client with an explanation to the court of the reason, consistent with the duty of confidentiality to the client. Counsel should recommend that the client consult with independent counsel if the client desires counsel to continue with the representation. Counsel should continue with the representation only if the client so desires after informed consent and such further representation is consistent with applicable conflict of interest rules.

(c) Defense counsel whose conduct in a criminal case is drawn into question is permitted to testify concerning the matters at issue, and is not precluded from disclosing the truth concerning the matters raised by his former client, even though this involves revealing matters which were given in confidence. Former counsel must act consistently with applicable confidentiality rules, and ordinarily may not reveal confidences unless necessary for the purposes of the proceeding and under judicial supervision.

(d) In a proceeding challenging counsel’s performance, counsel should not rely on the prosecutor to act as counsel’s lawyer in the proceeding, and should continue to consider the former client’s best interests.

-- END of Proposed Revisions to the DEFENSE FUNCTION Standards --
EXECUTIVE SUMMARY

1. Summary of the Resolution
   The Criminal Justice Section recommends that the ABA adopt the black letter standards, dated February 2015, to chapter three “The Prosecution Function” and chapter 4, “The Defense Function” of the *American Bar Association Standards for Criminal Justice*.

2. Summary of the Issue that the Resolution Addresses
   Since these chapters were last amended, there have been dramatic developments in the area of legal ethics. Thousands of new judicial decisions have been handed down. Hundreds of new books and articles touching upon the ethics of our profession have been published. Indeed, the proper role and function of defense counsel has been a particularly topical focus of discussion, debate and controversy in recent years.

3. Please Explain How the Proposed Policy Position will address the issue
   The Fourth Edition of the Standards substantively revises all of the Standards in the previous edition. In addition, this edition proposes 21 new Prosecution Function Standards including standards handling incriminating evidence, plea agreements and improper bias. This edition also proposes 21 new Defense Function Standards including standards on handling incriminating evidence, plea agreements and improper bias.

   The Standards that are new are noted in the Table of Contents in this resolution. While there are too many changes to list here, you can find a copy of the third edition Standards at [http://www.americanbar.org/groups/criminal_justice/standards/prosecution_function_standards.html](http://www.americanbar.org/groups/criminal_justice/standards/prosecution_function_standards.html) (Prosecution Function) and [http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_dfunc_toc.html](http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_dfunc_toc.html) (Defense Function).

   The Criminal Justice Section urges prompt consideration of the proposed Standards by the House due to the ABA’s continuing obligation to see to it that the *ABA Standards for Criminal Justice* reflect current developments in the law.

4. Summary of Minority Views
   None are known.
RESOLVED, That the American Bar Association urges all federal, state, and territorial governments, that impose capital punishment, and the military, to require that:

(1) Before a court can impose a sentence of death, a jury must unanimously recommend or vote to impose that sentence; and

(2) The jury in such cases must also unanimously agree on the existence of any fact that is a prerequisite for eligibility for the death penalty and on the specific aggravating factors that have each been proven beyond a reasonable doubt.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Recommendation addresses the particular significance of the sentencing determination in a death penalty case and calls upon all jurisdictions with capital punishment to require the jury to unanimously recommend or vote for a death sentence before such punishment can be imposed. Additionally, a capital sentencing jury should unanimously agree on the existence of any fact whose existence is a prerequisite for eligibility for death, and unanimously agree on the specific aggravating factors that have each been proven beyond a reasonable doubt.

2. Summary of the Issue that the Resolution Addresses

This resolution addresses the outlier policies in a handful of states that do not require a jury to be unanimous before imposing the sentence of death. This resolution clarifies that the ABA’s long-standing policies in favor of unanimous jury verdicts also extends to the profoundly significant decision by a jury of whether a person convicted of a capital crime should be put to death.

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

The proposed policy will clarify the ABA’s view on the best practice in this area of criminal law and highlight the outlier status of the three places that still allow non-unanimous decisions to lead to a recommendation of death.

4. Summary of Minority Views

There has been no opposition raised or any minority views expressed within the American Bar Association to this Recommendation. The opposition in the outlier states is usually based on a claim that a unanimity requirement would reduce the number of sentences of death imposed in that jurisdiction and lead to a reduction in the availability of the death sentence generally.
RESOLVED, That the American Bar Association urges federal, state, and territorial legislative bodies and governmental agencies, including departments of corrections, and the military that impose or implement capital punishment, to:

1. promulgate execution protocols in an open and transparent manner and allow public comment prior to final adoption; and,

2. require disclosure to the public, to condemned prisoners facing execution, and to courts all relevant information regarding execution procedures, including but not limited to:
   a. the steps to be followed in preparation for, during, and after an execution,
   b. the qualifications and background of execution team members, and
   c. details about any drugs to be used, including the names, manufacturers or suppliers, doses, expiration date(s), and testing results concerning use of the drugs.

3. require that an execution process, including the process of setting IVs, be viewable by media and other witnesses from the moment the condemned prisoner enters the execution chamber until the prisoner is declared dead or the execution is called off;

4. create and maintain contemporaneous records of what transpires during the execution, including but not limited to the drugs administered, the timing of administration, and any complications, errors or unanticipated events;

5. disclose the entirety of records and logs on the execution process upon order of the court or as otherwise required in discovery or by law upon request of a death-sentenced prisoner, the prisoner’s counsel, or successors; and,

6. provide an immediate, thorough, and independent review of any execution where the condemned prisoner struggles or appears to suffer, where the execution is otherwise prolonged, or where the execution deviates from the adopted protocols and regulations concerning the execution process.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution seeks to ensure that states’ lethal injection procedures fully comport with the ABA’s longstanding position that the death penalty be administered only when performed in accordance with constitutional principles. The resolution aims to accomplish this goal by calling on jurisdictions to make detailed information available to the public about lethal injection drug protocols and execution procedures, to protect media and witness rights to view the entirety of the execution process, to conduct and make publicly available contemporaneous records of the minute-to-minute events of executions, and to provide for independent investigations of all flawed or troubled executions.

2. Summary of the Issue that the Resolution Addresses

In 2011, the sole U.S.-based manufacturer of sodium thiopental, a key component in lethal injection protocols across the country, ceased producing the drug. Since that time, death penalty states have been experimenting with new and untested lethal injection drug combinations and dosages. The results of this experimentation have been troubling. In recent years there has been a marked increase in the number of botched executions, and states’ lethal injection procedures have been questioned by death row prisoners, experts, advocates, and the public. Death penalty states responded to this scrutiny by implementing measures that undermine important constitutional protections. Many states have enacted secrecy laws that prohibit disclosure of information about the drugs used in lethal injection protocols, including the identity of the drug manufacturers, and the types, dosages, and expiration dates of the drugs. These secrecy laws prevent prisoners from obtaining the information necessary to determine if the drugs will cause death in a humane manner that comports with Eighth Amendment standards. Secrecy laws also violate prisoners’ due process rights and First Amendment rights by withholding information essential to a constitutional claim. In addition to enacting secrecy laws, states are moving toward only allowing witnesses and the media to view certain parts of the execution process, rather than the whole procedure. Like the secrecy laws, these measures pose a significant threat to fundamental First Amendment freedoms.

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

States’ secrecy laws and limitations on information about execution protocols and access to viewing execution procedures create a grave risk that executions will be carried out in a manner that fails to comport with important U.S. constitutional and public policy principles. Condemned prisoners need access to the types of information detailed in the resolution in order to challenge the constitutionality of the procedures in state and federal court. The public needs this information so that it can properly evaluate death penalty procedures and decide whether or not they comport with current standards of decency. This resolution will encourage all death penalty jurisdictions to provide the type of information about execution protocols and drugs that is essential for our society and legal system to be able to evaluate death penalty cases and ensure that they are administered fairly and impartially, in accordance with due process, and not in violation of the Eighth Amendment’s prohibition against cruel and unusual punishment.
4. **Summary of Minority Views**

There has been no opposition raised or minority views expressed within the American Bar Association to this Recommendation. However, externally, proponents of lethal injection drug secrecy laws have asserted the contentions that state officials want to provide confidentiality for drug suppliers in order to protect those suppliers from purported threats or harassment and to prevent anti-death penalty advocates from pressuring them to stop selling the drugs.
RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to enact civil protection order statutes that extend protection to minor and adult victims of sexual assault, rape, and stalking, outside of the context of an intimate partner relationship, and without the requirement of any relationship between the parties.
EXECUTIVE SUMMARY

1. **Summary of the Resolution.**
The Resolution urges federal, state, territorial, local, and tribal governments to enact civil protection order statutes that provide protection to victims of sexual assault, rape, and stalking, outside of the context of intimate partner, and without the requirement of any relationship between the parties.

2. **Summary of the issue that the resolution addresses.**
Though some states permit sexual assault, rape, and stalking victims to access civil protection orders for their safety and protection, not all jurisdictions provide for protection orders in cases of sexual assault, unless there is an intimate partner relationship between the parties. This resolution seeks to expand access to civil protection orders so as to better protect sexual assault, rape, and stalking victims.

3. **Please explain how the proposed policy position will address the issue.**
The proposed policy position will urge federal, state, territorial, local, and tribal governments to expand civil protections available to victims of sexual assault, rape, and stalking.

4. **Summary of any minority views.**
None to date.
RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal
governments and regulators to amend existing laws and regulations, or to enact new laws or regulations,
to:

(1) ensure that victims of domestic violence, dating violence, sexual assault, and stalking have
meaningful access to safety and autonomy in their homes (whether owned, leased, subsidized,
offered incident to work or school, or otherwise), including prompt access to the criminal and
civil justice systems, by—

a. providing options such as no-penalty early lease termination, lease bifurcation, lease
   transfer, eviction defense, and lock changes; and

b. prohibiting retaliation, discrimination, or penalties in housing due to perpetrator behavior
   or status as a victim; and

c. preserving privacy and confidentiality to the greatest extent possible; and

(2) enable public and assisted housing agencies, tribally designated housing entities, private
landlords, property management companies, campus housing administrators and other housing
providers and agencies to respond appropriately to victims and perpetrators of domestic violence,
dating violence, sexual assault, and stalking, while maintaining a safe environment for all
housing residents;

consistent with the Congressional findings and policies expressed at 42 U.S.C. 14043e et seq.
(“Addressing the Housing Needs of Victims of Domestic Violence, Dating Violence, Sexual
Assault, and Stalking”).
EXECUTIVE SUMMARY

1. Summary of the Resolution

This policy seeks to expand housing protections for victims of domestic violence, dating violence, sexual assault and stalking, using the federal Violence Against Women Act, as well as some emerging state practices, as a model.

2. Summary of the Issue that the Resolution Addresses

Survivors of domestic violence, dating violence, sexual assault and stalking can often face a terrible choice: the choice between staying in their housing and potentially subjecting themselves to ongoing and repeated violence; or fleeing to preserve their safety, but in the process losing their housing and often becoming homeless.

VAWA’s housing protections have preserved housing and prevented homelessness for thousands of survivors and their families. In early 2013, Congress expanded VAWA protections to include nearly all federally subsidized housing units, including HUD funded housing, USDA rural housing, and housing funded through the Low Income Housing Tax Credit (LIHTC) program.

However, a survivor’s ability to preserve both housing and safety should not depend on their status as a public or subsidized housing tenant. Consequently, this resolution urges that all governments enacting housing laws aim to mirror VAWA’s housing provisions. This would help save lives, and have the added benefit of ensuring uniform treatment for all tenants and their landlords, without regard for how the rent gets paid.

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

This policy supports specific types of housing protections for survivors, modelled on VAWA and as well as some emerging state practices.

4. Summary of Minority Views

None reported.
RESOLVED, That the American Bar Association urges federal, state, local, tribal and territorial authorities to identify and address the special needs of vulnerable populations, including but not limited to individuals with disabilities, children, the frail, elderly, the impoverished, and persons with language barriers, when planning for and responding to disasters.

FURTHER RESOLVED, That Congress, state legislatures, territorial legislatures, tribal and local authorities should adequately fund departments and entities charged with responding to and assisting disaster survivors to cover the increased and unique needs of and disparate impact upon vulnerable populations in planning for, responding to, and recovering from major disasters.

FURTHER RESOLVED, That lawyers should participate in community-wide disaster planning activities to ensure that plans comply with legal and regulatory requirements applicable to the provision of government services and benefits to all disaster survivors, and to identify and help address gaps in policy, practice, and regulation that disproportionately and adversely affect vulnerable populations in times of major disaster.
EXECUTIVE SUMMARY

1. Summary of the Resolution

   This resolution urges federal, state, local, tribal, and territorial authorities and legislative bodies to proactively identify and address the special needs of vulnerable populations that are disproportionately affected by disasters and to provide appropriate funding. It also urges lawyers to participate in community planning to help ensure that plans comport with legal requirements applicable to services and benefits offered disaster survivors, especially for the most vulnerable.

2. Summary of the Issue that the Resolution Addresses

   This resolution seeks to address and remediate the tragic, devastating and disproportionate impact of major disasters on disadvantaged and vulnerable populations. Examples of such impact are many: The disabled may have difficulty or be unable to access services and benefits, the frail and elderly may be isolated from emergency responders, the poor do not have disposable income or means to find alternative housing or replace lost wages, the non-English speaker may not understand evacuation instructions or have service providers fluent in their language, children may experience multiple and disruptive school changes.

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

   There is widespread consensus in the emergency management community that the best way to address problems that may be caused by a disaster is to eliminate or alleviate the problem beforehand, through disaster planning. This Resolution addresses the human tragedies identified above by urging all levels of government to identify populations in their communities most vulnerable and to plan for their need should disaster strike. Additionally, the resolution, mindful of the important contributions lawyers can make in advocating for the legal protections and rights of the most vulnerable and in serving their communities, urges lawyers to participate in these planning processes.

4. Summary of Minority Views

   We are unaware of any minority views or opposition to this Resolution.
RESOLUTION

RESOLVED, That the American Bar Association adopts all of the recommendations contained in the Indian Law and Order Commission’s November 2013 Report to the President and Congress of the United States, entitled *A Roadmap for Making Native America Safer* ("Commission's Report");

FURTHER RESOLVED, That the American Bar Association urges the Administration, Congress, state governments, and tribal governments to promptly implement the recommendations of the Commission’s Report; and

FURTHER RESOLVED, That the American Bar Association, through its appropriate bodies, should work with governmental entities, law schools, bar associations, and legal service providers to promote improvements to criminal justice in Indian country, and help implement and promote the recommendations proposed in the Commission’s Report.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges the United States Administration, the United States Congress, state governments, and tribal governments to promptly implement all the recommendations contained in the Indian Law and Order Commission’s November 2013 Report to the President and Congress of the United States, entitled *A Roadmap for Making Native America Safer*, and urges the American Bar Association to work with governmental entities, law schools, bar associations, and legal service providers to promote improvements to criminal justice in Indian country, and help implement and promote the recommendations proposed in the Commission’s Report.

2. Summary of the Issue that the Resolution Addresses

In July 2010, the Indian Law and Order Commission, an independent national advisory commission, was created as part of the Tribal Law and Order Act (“TLOA”) of 2010. The Commission was extended by the Violence Against Women Reauthorization Act of 2013. The Commission was charged with conducting a comprehensive study of law enforcement and criminal justice in tribal communities, including criminal jurisdiction, the tribal jail and Federal prisons systems, tribal and federal juvenile justice systems, and the impact of the Indian Civil Rights Act on tribes, defendants, and the overall tribal criminal system.

As part of that comprehensive study, the Commission was charged with assessing justice in Indian country and developing long-term recommendations on necessary modifications and improvements to justice systems at the tribal, federal, and state levels. In November 2013, after months of hearings and listening sessions around the country, the Indian Law and Order Commission’s findings and recommendations were released as a single report, entitled *A Roadmap for Making Native America Safer: Report to the President & Congress of the United States* (“ILOC Report”). The ILOC Report contains six chapters, addressing: (1) Jurisdiction; (2) Reforming Justice for Alaska Natives; (3) Strengthening Tribal Justice; (4) Intergovernmental Cooperation (5) Detention and Alternatives; and (6) Juvenile Justice.

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

This Resolution will encourage Congress, as well as state, local, and tribal governments, to promptly implement all the recommendations offered in the Indian Law and Order Commission’s 2013 Report, which should directly lead to improvements in criminal justice in Indian country.

4. Summary of Minority Views

No minority views or opposition have been identified at this time.
RESOLVED, That the American Bar Association urges the United States Congress to enact legislation that supports the following principles regarding consumer data privacy:

1. Individual Control: Consumers have a right to exercise control over what personal data companies collect from them and how they use it.

2. Transparency: Consumers have a right to easily understandable and accessible information about privacy and security practices.

3. Respect for Context: Consumers have a right to expect that companies will collect, use, and disclose personal data in ways that are consistent with the context in which consumers provide the data.

4. Security: Consumers have a right to secure and responsible handling of personal data.

5. Access and Accuracy: Consumers have a right to access and correct personal data in usable formats, in a manner that is appropriate to the sensitivity of the data and the risk of adverse consequences to consumers if the data is inaccurate.

6. Focused Collection: Consumers have a right to reasonable limits on the personal data that companies collect and retain.

7. Accountability: Consumers have a right to have personal data handled by companies with appropriate measures in place to assure they adhere to the Consumer Privacy Bill of Rights.

FURTHER RESOLVED, That the American Bar Association urges state, local, territorial and tribal governments to enact legislation, regulations and practices that are consistent with and supportive of these principles.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges the United States Congress to enact legislation that supports the principles set forth in the Consumer Privacy Bill of Rights contained in the 2012 White House Report *Consumer Data Privacy In a Networked World* and urges state, local, territorial and tribal governments to enact legislation, regulations and practices that are consistent with and supportive of these principles.

2. Summary of the Issue that the Resolution Addresses

American consumers are exposed to data privacy violations through gaps in the coverage offered by federal consumer privacy law in the United States. The law is comprised of sector-specific statutes, leaving some areas of consumer privacy well-protected and others entirely exposed. The methods of enforcement and the means of redress vary across the statutes, depriving consumers of a consistent baseline of privacy protections.

While other countries have dedicated data privacy commissions, the United States lacks even a core set of data privacy rules with which businesses must comply. In response to this void, the White House proposed in 2012 a Consumer Privacy Bill of Rights (“CPBR”), based on the widely known Fair Information Practices (“FIPs”). Despite being articulated as long ago as 1973, the FIPs have not been incorporated into legislation that addresses baseline consumer protections directed at American businesses. To date, the FIPs have been incorporated only into statutes that address administrative agency behavior, leaving the United States without a general floor of privacy protection for consumers.

The CPBR is the most significant formulation of the FIPs in the United States. It provides a comprehensive framework that lists seven substantive privacy protections for consumers: Individual Control, Transparency, Respect for Context, Security, Access and Accuracy, Focused Collection, Accountability.

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

By enacting the CPBR and making it into law, Congress could ensure that the personal data of consumers is protected throughout the data’s lifecycle. More importantly, Congress could put in place the baseline privacy standards that are widely recognized around the world and necessary to protect the interests of consumers. This Resolution will encourage Congress, as well as state, local, territorial and tribal governments, to enact legislation that establishes a floor of consumer privacy protections and thus enables a consistent and uniform articulation of data privacy rights within the United States.

4. Summary of Minority Views

No minority views or opposition have been identified at this time.
RESOLVED, That the American Bar Association urges federal, state, local, territorial and tribal
governments to continue to enforce and to enact rules or legislation that strengthen consumer
protections regarding deceptive or fraudulent loan foreclosure rescue practices;

FURTHER RESOLVED, That the American Bar Association supports ongoing efforts of state
courts and lawyer disciplinary agencies to investigate allegations of deceptive or fraudulent loan
foreclosure rescue practices by lawyers and, when appropriate, to prosecute and discipline law-
yers who commit this type of misconduct;

FURTHER RESOLVED, That the American Bar Association supports programs by federal, state, local, territorial, and tribal bar associations to educate lawyers and consumers about deceptive or fraudulent foreclosure rescue practices, including those involving lawyers.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution urges federal, state, local, territorial and tribal governments to continue to enforce and enact rules or legislation that strengthen consumer protections regarding deceptive or fraudulent loan foreclosure rescue practices; supports ongoing efforts of state courts and lawyer disciplinary agencies to investigate allegations of deceptive or fraudulent loan foreclosure rescue practices by lawyers and, when appropriate, to prosecute and discipline lawyers who commit this type of misconduct; and encourages national, state, local, territorial, and tribal bar associations to establish and support programs to educate lawyers and consumers about deceptive or fraudulent foreclosure rescue practices, including those involving lawyers.

2. Summary of the Issue that the Resolution Addresses

In the midst of the current economic turmoil and foreclosure crisis, millions of distressed homeowners have become vulnerable targets to unscrupulous and sometimes criminal third-party scammers posing as "loan modification specialists," an increasing number of whom are lawyers. The alleged "rescuers" employ various scams with disastrous consequences for homeowners: phantom foreclosure counseling, lease-back or repurchase scams, fraudulent refinance, fraudulent loan modification, bankruptcy foreclosure, and reverse mortgage fraud. While waiting for the promised relief, homeowners not only lose their money but often fall deeper into default and lose valuable time.

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

Since 2010, the Lawyers’ Committee for Civil Rights Under Law and its partners in the Loan Modification Scam Prevention Network (LMSPN) have lead a national complaint and data collection effort to track foreclosure rescue scams. The LMSPN has compiled over 40,000 complaints with total reported losses of $90 million from homeowners. According to the data collected, complaints of rescue scams involving attorneys has risen every year since 2010, and by the end of 2013, attorney-involved complaints were 59% of all complaints received. This percentage continues to climb and is expected to surpass 70% of all complaints by the end of 2014. This resolution will help the ABA and others educate lawyers about the ethical pitfalls of engagement in foreclosure rescue schemes and encourage the enactment and enforcement of rules and legislation to strengthen consumer protections against these fraudulent practices.

4. Summary of Minority Views

No minority views or opposition have been identified.
RESOLVED, That the American Bar Association urges all federal, state, local, and
territorial legislative bodies and governmental agencies to:

(a) refrain from enacting Stand Your Ground Laws that eliminate the duty to
retreat before using force in self-defense in public spaces, or repeal such existing
Stand Your Ground Laws;

(b) eliminate Stand Your Ground Law civil immunity provisions that prevent
victims and/or innocent bystanders and their families from seeking compensation
and other civil remedies for injuries sustained;

(c) eliminate the Stand Your Ground defense in circumstances where deadly force
is used against a law enforcement officer; and

(d) develop strategies for implementing safeguards to prevent racially disparate
impact and inconsistent outcomes in the application of Stand Your Ground Laws;

(e) modify existing or proposed Stand Your Ground laws to ensure that the laws
do not protect the use of deadly force against a person who is in retreat; and

(f) modify existing or proposed Stand Your Ground laws to ensure that the laws
do not protect a person who is the initial aggressor in an encounter.

FURTHER RESOLVED, That the American Bar Association urges that jury instructions
be drafted in plain language to enhance clarity and the jurors’ understanding of the
applicable Stand Your Ground Laws and their limitations;
FURTHER RESOLVED, that the American Bar Association urges law enforcement agencies to:

(a) develop training materials for officers on best practices for investigating Stand Your Ground cases; and

(b) create or participate in a national database to track Stand Your Ground cases from the investigative stage through prosecution and final disposition;

FURTHER RESOLVED, That the American Bar Association:

(a) implement a national educational campaign to provide accurate information about Stand Your Ground Laws to the general public; and

(b) investigate the impact that gun laws have in Stand Your Ground states.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

The resolutions urge applicable legislative bodies to repeal or refrain from enacting Stand Your Ground Laws, which eliminate the duty to retreat before using force in self-defense in public spaces.

In the event that states elect not to repeal Stand Your Ground laws, the resolutions further urge applicable bodies to modify existing or proposed laws to: (1) eliminate the civil immunity provisions, (2) prohibit the use of the Stand Your Ground defense when force is used against a law enforcement officer; (3) develop strategies to combat the apparent racially disparate impact; (4) ensure jury instructions are drafted to enhance clarity of the application and limitations; (5) protect the use of deadly force against a person who is in retreat; and (6) protect a person who is the initial aggressor in an encounter.

With respect to the law enforcement function, the resolution urges the development of training materials on best practices for investigating Stand Your Ground Laws in addition to the creation of a national database for tracking Stand Your Ground cases.

Finally, the resolution urges the American Bar Association to implement a national educational campaign regarding Stand Your Ground Laws to the general public as well as to undertake efforts to investigate the impacts that gun laws have in Stand Your Ground states.

2. **Summary of the Issue that the Resolution Addresses**

The call for amendment or repeal of Stand Your Ground laws addresses the empirical evidence which shows that states with statutory Stand Your Ground laws have not experienced decreased theft, burglary, or assault crimes and have experienced increased homicide rates.

In addition to the issues referenced in Section 1 above, the call for modification of existing or proposed Stand Your Ground laws addresses these issues:

- Implicit racial bias has been identified as a significant factor causing inconsistent outcomes in Stand Your Ground cases.

- The statutory immunity provisions of certain Stand Your Ground laws prevent victims from obtaining redress through the criminal justice system and prohibits subsequent civil suit and thus substantially restricts the available remedies, such as compensation, typically available to innocent bystander and other victims.

- Evidence of inconsistent outcomes in Stand Your Ground cases that were factually similar due to divergent judicial rulings due to judicial confusion, or juror misunderstanding of the proper application of these laws.
• The creation of additional difficulties for law enforcement that impede the pursuit of fair and consistent outcomes in self-defense cases.

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

Given that there is no existing ABA policy with respect to Stand Your Ground laws, the proposed policy positions will permit the ABA to make inroads in addressing a significant legal issue by engaging federal, state, territorial and local legislative bodies and governmental agencies to develop solutions to the aforementioned issues through education, advising and collaboration.

4. Summary of Minority Views

None.
RESOLVED, That the American Bar Association urges federal, state, territorial and tribal
governments, courts, and agencies to establish laws, rules, regulations, and policies to implement
the following principles:

(1) Counsel should be appointed for unaccompanied children at government expense at
all stages of the immigration process including initial interviews before United States
Citizenship and Immigration Services Asylum Offices and at all proceedings
necessary to obtain Special Immigrant Juvenile Status, asylum and other remedies;

(2) Immigration courts should not conduct any hearings, including final hearings,
involving the taking of pleadings or presentation of evidence before an
unaccompanied child has had a meaningful opportunity to consult with counsel about
the child’s specific legal options;

(3) State court judges and staff should receive training to learn to effectively and timely
hear and adjudicate petitions or motions on behalf of immigrant children, including
for the purpose of making the predicate findings that are required for a child to obtain
Special Immigrant Juvenile Status; and

(4) Due to firm deadlines in federal immigration laws which limit certain immigration
remedies by age, state, territorial and tribal courts with jurisdiction should consider
implementing specialized calendars to timely hear and adjudicate petitions on behalf
of immigrant children to determine predicate matters that are required for the children
to apply for Special Immigrant Juvenile Status, including creating expedited processes
for children aged 16 and older.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution supports government appointed counsel for unaccompanied children in immigration proceedings and urges that immigration courts should not conduct any hearings, including final hearings, involving the taking of pleadings or presentation of evidence before an unaccompanied child has had a meaningful opportunity to consult with counsel about his or her specific legal options. Because obtaining Special Immigrant Juvenile Status is one key immigration remedy available to many of these children, the resolution seeks to secure training for state, territorial and tribal courts to help them promptly provide the prerequisites for these visas that fall within their jurisdiction. Finally, the resolution urges state, territorial and tribal courts to consider creating specialized dockets to adjudicate SIJ cases and establishing expedited processes for children age 16 and over.

2. Summary of the Issue that the Resolution Addresses

Each year thousands of unaccompanied children enter the U.S. and are placed in immigration removal proceedings. A significant number of these children do not have legal representation because they cannot find and/or afford a lawyer.

One of the few avenues of potential relief for unaccompanied children under the immigration laws is obtaining Special Immigrant Juvenile Status (SIJS). But there are challenges to obtaining SIJS, including that a state court must first make certain factual findings. Some state court judges are confused by the federal immigration laws related to SIJS and others are unaware that they have the authority to grant the special findings. In addition, deadlines in federal law require adjudication of all three steps - immigration filing, state court orders, and return to USCIS - before the child turns 18 in many instances.

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

The policy would ensure that all children are afforded legal representation by supporting government appointed counsel where necessary and would help ensure the children’s due process rights are protected by urging immigration courts not to set hearings where an unaccompanied child has not had a meaningful opportunity to consult with counsel about his or her specific legal options.

For SIJS cases, additional training can help ensure that state, territorial and tribal court judges are aware of and understand their role in these cases. In addition, creating dedicated calendars for SIJ cases and providing expedited processes for children who are 16 years and older will help to ensure that no child is deprived of the opportunity to obtain SIJ status simply because they aged out of eligibility before their court proceedings were finished.

4. Summary of Minority Views

We are not aware of any minority views to date.