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RESOLVED, That the American Bar Association urges the Department of Justice and the Federal Bureau of Prisons to amend their policies with respect to monitoring emails between attorneys and their incarcerated clients to permit attorneys and their incarcerated clients to communicate confidentially via email and thereby maintain the attorney-client privilege.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution encourages the Federal Bureau of Prisons (“BOP”) to voluntarily end its policy and practice of monitoring all email communications between attorneys and their incarcerated clients to permit attorneys and their incarcerated clients to communicate confidentially via email.

2. Summary of the Issue that the Resolution Addresses

The BOP provides all inmates with email access through the Trust Fund Limited Communication Systems (“TRULINCS”). Inmates naturally communicate with their attorneys via email. The BOP, however, maintains a policy of monitoring all emails, including emails between attorneys and their inmate clients. Further, the BOP does not provide any alternative form of unmonitored email communication for attorneys to communicate with their incarcerated clients. There is no meaningful difference between email and traditional letter mail. Letter mail between attorneys and their incarcerated clients has been provided constitutional protection for decades, preventing prison officials and prosecutors from reading such communications. Because there is no meaningful difference between emails and traditional letter mail, and because the benefits of unmonitored emails to inmates, their attorneys, and the BOP is substantial, the BOP’s policy obstructs inmates’ access to counsel and is ripe for constitutional challenge.

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

By adopting the proposed Resolution, the ABA will play a leading role in urging the United States government and other governmental bodies to amend or supplement existing policies in order to prevent the monitoring and reading of emails between attorneys and their incarcerated clients, which should be provided the same constitutional protection as traditional letter mail.

4. Summary of Minority Views

The minority view is that since attorneys and their incarcerated clients are forced to sign an acknowledgment that their email communications are subject to monitoring prior to using TRULINCS, attorneys and their incarcerated clients waive any claim that their email communications are protected by the attorney-client privilege. Since such mandatory waivers have been upheld in the context of telephone calls between attorneys and their incarcerated clients, the minority argues that such mandatory waivers are constitutional in the context of emails between attorneys and their inmate-clients as well.
RESOLUTION

RESOLVED, That the American Bar Association supports constitutional equality for women, and urges the extension of legal rights, privileges and responsibilities to all persons, regardless of sex.

FURTHER RESOLVED, That the American Bar Association reaffirm its support of and affirmatively act toward the goal of the ratification of the Equal Rights Amendment to the U.S. Constitution.

FURTHER RESOLVED, That the American Bar Association calls on all bar associations to support and take up the pursuit of ratification of the Equal Rights Amendment to the United States Constitution.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution seeks the affirmation of the American Bar Association’s support of the ratification of the Equal Rights Amendment to the U.S. Constitution. Further, it asks other legal entities to consider same, and, if approved, act to that effect.

2. Summary of the Issue that the Resolution Addresses

Ratification of the ERA was originally presented by Alice Paul in 1923. It was nearly successfully enacted in the 1970s, but fell short. While many aspects of the law have evolved to offer rights and protections to many in our society, basic legal protection against sex discrimination has not yet been realized and affirmed in the Constitution, even given the considerations of the 14th Amendment. The ERA would make clear the legal status of sex discrimination in the courts and would send a clear message to lawmakers that the highest law of the land does not tolerate men and women being treated as separate classes.

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

Adoption of this resolution would mobilize the nation’s largest lawyers organization, and hopefully activate the local, county and state bar associations around the country, to pressure public officials to make this necessary change that champions the defense of liberty and the pursuit of justice that informs the democratic question for a “more perfect union.” Through a chorus of voices in the legal profession the mission of advancing equality under the law can be fulfilled.

4. Summary of Minority Views

Some believe it is not necessary given other laws on discrimination and court decisions.
RESOLUTION

1 RESOLVED, That the American Bar Association urges lawyers and all interested parties to increase the informed and voluntary use of alternative dispute resolution (ADR) processes as an effective, efficient and appropriate means to resolve health care disputes.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution encourages the expanded use of the broad array of dispute resolution techniques to address the potential increase of disputes and conflicts arising from the enactment of health care reform, increased federal regulation of diverse aspects of the nation’s medical care delivery system, and the ever-increasing use of technology in the provision of health care. In health care today, there are a multitude of health care disputes that span all aspects of the provision of health care. The structure of healthcare delivery across the nation is changing with increasing emphasis on successful outcomes and reducing costs. Providers are becoming increasingly integrated in a variety of arrangements of increasing interdependence as a means of accomplishing these goals. Such complex relationships to achieve competing goals may give rise to conflict when the maintenance of such relationships is vital to the delivery of care to patients. ADR can be among the useful tools to resolve all of these disputes.

2. Summary of the Issue that the Resolution Addressed

With health care reform and the changing structure of the delivery of health care, increased use of technology and increasing federal and state regulation of healthcare, ADR can be a useful tool in addressing potential disputes and conflict arising from the present day, constant changes in healthcare.

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

The Resolution encourages the expanded use of the broad array of dispute resolution techniques as one means to promote the cost efficient, more timely resolution of a wide range of health care disputes across all health care settings.

4. Summary of Minority Views

This Resolution and Report have been revised in response to input received from several ABA entities. No minority views have come to our attention.
RESOLVED, That the American Bar Association approves the Bunker Hill Community
College, Paralegal Studies Program, Boston, MA.

FURTHER RESOLVED, That the American Bar Association reapproves the following
paralegal education programs: University of Alaska Fairbanks, Paralegal Studies
Program, Fairbanks, AK; Samford University, Division of Paralegal Studies,
Birmingham, AL; Coastline Community College, Paralegal Studies Program, Newport
Beach, CA; El Camino Community College, Paralegal Studies Program, Torrance, CA;
University of California Irvine, Paralegal Certificate Program, Irvine, CA; University of
California San Diego, Legal Assistant Training Program, La Jolla, CA; Vincennes
University, Paralegal Program, Vincennes, IN; Sullivan University Louisville, Institute
for Legal Studies, Louisville, KY; Baker College of Auburn Hills, Paralegal Program,
Auburn Hills, MI; Eastern Michigan University, Paralegal Studies Program, Ypsilanti,
MI; Henry Ford Community College, Paralegal Studies Program, Dearborn, MI;
Minnesota State University Moorhead, Paralegal Program, Moorhead, MN; University
of Southern Mississippi, Paralegal Studies Program, Hattiesburg, MS; University of
Montana Missoula, Paralegal Studies, Program, Missoula, MT; Metropolitan
Community College, Paralegal Studies Program, Omaha, NE; Brookdale Community
College, Paralegal Studies Program, Lincroft, NJ; Fairleigh Dickinson University,
Paralegal Studies Program, Madison, NJ; Raritan Valley Community College, Paralegal
Studies Program, Somerville, NJ; Genesee Community College, Paralegal Studies
Program, Batavia, NY; Capital University Law School, Law and Paralegal Programs,
Columbus, OH; Delaware County Community College, Paralegal Studies Program,
Media, PA; Orangeburg-Calhoun Technical College, Paralegal Program, Orangeburg,
SC; Technical College of the Low Country, Paralegal Program, Beaufort, SC; and
Kaplan College, General Practice Paralegal Program, Dallas, TX.

FURTHER RESOLVED, That the American Bar Association withdraws the approval of
LIU Post, Legal Studies Institute, Brookville, NY; Stautzenberger College, Paralegal
Studies Program, Brecksville, OH; and Western Dakota Technical Institute, Paralegal
Program, Rapid City, SD, at the request of the institutions.
FURTHER RESOLVED, That the American Bar Association extends the terms of approval until the August 2016 Annual Meeting of the House of Delegates for the following programs: Auburn University Montgomery, Paralegal Education Program, Montgomery, AL; NorthWest Arkansas Community College, Paralegal Studies Program, Bentonville, AR; University of Arkansas Fort Smith, Legal Assistance/Paralegal Program, Fort Smith, AR; Cerritos College, Paralegal Program, Norwalk, CA; Cuyamaca College, Paralegal Studies Program, El Cajon, CA; John F. Kennedy University, Legal Studies Program, Pleasant Hill, CA; Miramar College, Legal Assistant Program, San Diego, CA; Mt. San Antonio College, Paralegal/Legal Specialty Program, Walnut, CA; National University, Paralegal Studies Program, Los Angeles, CA; San Francisco State University, Paralegal Studies Program, San Francisco, CA; Santa Ana College, Paralegal Studies Program, Santa Ana, CA; University of California UCLA Ext, Paralegal Training Program, Los Angeles, CA; University of LaVerne, Legal Studies Program, LaVerne, CA; West Valley College, Paralegal Program, Saratoga, CA; Arapahoe Community College, Paralegal Program, Littleton, CO; Norwalk Community College, Legal Assistant Program, Norwalk, CT; Quinnipiac University, Legal Studies Program, Hamden, CT; Georgetown University, Paralegal Studies Program, Washington DC; Delaware Technical and Community College, Paralegal Technology Program, Georgetown, DE; Widener University Delaware Law School, Legal Education Institute, Wilmington, DE; Broward College, Legal Assisting Program, Pembroke Pines, FL; Seminole State College of Florida fka Seminole Community College, Legal Assistant/Paralegal Program, Sanford, FL; South University, Legal Studies/Paralegal Studies Program, Royal Palm Beach, FL; Athens Technical College, Paralegal Studies Program, Athens, GA; South University, Legal Studies/Paralegal Studies Program, Savannah, GA; Kirkwood Community College, Legal Assistant Program, Cedar Rapids, IA; College of Lake County, Paralegal Studies Program, Grayslake, IL; Northwestern College fka Northwestern Business College, Institute of Legal Studies, Bridgeview, IL; Roosevelt University, Paralegal Studies Program, Chicago, IL; Southern Illinois University Carbondale, Paralegal Studies Program, Carbondale, IL; William Rainey Harper College, Paralegal Studies Program, Palatine, IL; Bowling Green Community College of Western Kentucky University, Paralegal Studies Program, Bowling Green, KY; Morehead State University, Paralegal Studies Program, Morehead, KY; University of Louisville, Paralegal Studies Program, Louisville, KY; Herzing University, Legal Assisting/Paralegal Studies Program, Kenner, LA; Tulane University, Paralegal Studies Program, New Orleans, LA; Oakland Community College, Paralegal Program, Farmington Hills, MI; Oakland University, Paralegal Program, Rochester, MI; Missouri Western State University, Legal Studies Program, St. Joseph, MO; Mississippi University for Women, Legal Studies Program, Columbus, MS; Central Piedmont Community College, Cato Campus, Paralegal Technology Program, Charlotte, NC; Middlesex County College, Legal Studies Department, Edison, NJ; Montclair State University, Paralegal Studies Program, Montclair, NJ; Suffolk County Community College, Paralegal Studies Program, Selden, NY; Columbus State Community College, Paralegal Studies Program, Columbus, OH; Fortis College, Paralegal Program, Centerville, OH; Sinclair Community College, Paralegal Program, Dayton, OH; University of Cincinnati–Clermont, Paralegal Technology Program, Batavia, OH; University of Toledo, Paralegal Studies Program,
Toledo, OH; Ursuline College, Legal Studies Program, Pepper Pike, OH; Rose State College, Paralegal Studies Program, Midwest City, OK; University of Oklahoma Law Center, Legal Assistant Education, Norman, OK; Central Carolina Technical College, Legal Assistant/Paralegal Program, Sumter, SC; Greenville Technical College, Paralegal Program, Greenville, SC; Midlands Technical College, Paralegal Program, Columbia, SC; Kaplan Career College, Paralegal Studies Program, Nashville, TN; South College, Legal Studies and Paralegal Studies Programs, Knoxville, TN; Lee College, Paralegal Studies Program, Baytown, TX; Salt Lake Community College, Paralegal Studies Program, Salt Lake City, UT; J. Sargeant Reynolds Community College, Paralegal Studies Program, Richmond, VA; Marymount University, Paralegal Studies Program, Arlington, VA; Edmonds Community College, Paralegal Program, Lynnwood, WA; Chippewa Valley Technical College, Paralegal Program, Eau Claire, WI; Madison College, Paralegal Program, Madison, WI; Western Technical College fka Western Wisconsin Technical College, Paralegal Program, La Crosse, 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 requests that the House of Delegates grant approval to one program, grant reapproval to twenty-four programs, withdraw the approval of three programs, and extend the term of approval of sixty-seven programs.

2. Summary of the Issue which the Resolution Addresses

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

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

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

4. Summary of Minority Views

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 urges state, territorial, local, and tribal
legislatures to review all statutes criminalizing consensual noncommercial sexual conduct, in
private and between persons who have the legal capacity to consent, and, to repeal or amend
such statutes to criminalize only sexual acts that are nonconsensual, commercial, public, or that
involve individuals who lack the legal capacity to consent.

FURTHER RESOLVED, That the American Bar Association urges state, territorial, local, and
tribal legislatures to repeal or amend any statutes, regulations, or policies that denigrate persons
who engage in constitutionally protected sexual conduct.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges several states to review all statutes criminalizing consensual noncommercial sexual conduct, in private and between persons legally able to consent, and to repeal or amend such statutes to criminalize only sexual acts that are nonconsensual, commercial, public, or that involve minors below the age of consent. Additionally, this resolution urges several states to repeal or amend any statutes, regulations, or policies that denigrate persons who engage in constitutionally protected sexual conduct.

2. Summary of the Issue that the Resolution Addresses

Only eighteen states retain anti-sodomy provisions in their current criminal codes. These statutes have been declared unenforceable in twelve of these states, and are of doubtful application in the remaining six. Furthermore, the Uniform Code of Military Justice was recently amended to de-list consensual oral or anal sex from the list of offenses, and to ensure punishment only for forcible acts. This is an important step toward every adult’s freedom from government intrusion into his or her private sexual expression with other adults, and freedom from the criminal stigma that attaches to prosecution for one’s intimate sexual conduct.

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

This resolution urges the legislatures of the several states to repeal all laws classifying consensual, private, noncommercial adult sexual conduct as criminal.

4. Summary of Minority Views

None.
RESOLVED, That the American Bar Association amends the black letter of Rule 5.5 of the ABA Model Rules of Professional Conduct as follows (insertions underlined, deletions struck through):

RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
(b) A lawyer who is not admitted to practice in this jurisdiction shall not:
   (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
   (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
   (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
   (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
   (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or
(4) are not within paragraphs (c) (2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

1) are provided to the lawyer's employer or its organizational affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

For purposes of paragraph (d) only, the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and the foreign lawyer or foreign in-house counsel must be subject to effective regulation and discipline by a duly constituted professional body or a public authority, or, in its discretion, be otherwise authorized by [this highest court of appellate jurisdiction] to practice in this jurisdiction as an in-house counsel.

FURTHER RESOLVED, That the American Bar Association amends the ABA Model Rule for Registration of In-House Counsel and the Commentary (deletions struck through, additions underlined), dated February 2016.

Model Rule for Registration of In-House Counsel

GENERAL PROVISIONS:

A. A lawyer who is admitted to the practice of law in another United States jurisdiction or is a foreign lawyer, who is employed as a lawyer and has a continuous presence in this jurisdiction by an organization, the business of which is lawful and consists of activities other than the practice of law or the provision of legal services, and who has a systematic and continuous presence in this jurisdiction as permitted pursuant to Rule 5.5(d)(1) of the Model Rules of Professional Conduct, shall register as in-house counsel within [180 days] of the commencement of employment as a lawyer or if currently so employed then within [180 days] of the effective date of this Rule, by submitting to the [registration authority] the following:

1) A completed application in the form prescribed by the [registration authority];

2) A fee in the amount determined by the [registration authority];

3) Documents proving admission to practice law and current good standing
in all jurisdictions, U.S. and foreign, in which the lawyer is admitted to practice law.

4) If the jurisdiction is foreign and the documents are not in English, the lawyer shall submit an English translation and satisfactory proof of the accuracy of the translation; and

5) An affidavit from an officer, director, or general counsel of the employing entity attesting to the lawyer’s employment by the entity and the capacity in which the lawyer is so employed, and stating that the employment conforms to the requirements of this Rule.

For purposes of this Rule, a “foreign lawyer” is a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority. For purposes of this Rule only, the [state’s highest court of appellate jurisdiction] may, in its discretion, allow a lawyer lawfully practicing as in-house counsel in a foreign jurisdiction who does not meet the above requirements to register as an in-house counsel after consideration of other criteria, including the lawyer’s legal education, references, and experience.

SCOPE OF AUTHORITY OF REGISTERED LAWYER:

B. A lawyer registered under this Rule shall have the rights and privileges otherwise applicable to members of the bar of this jurisdiction with the following restrictions:

1. The registered lawyer is authorized to provide legal services to the entity client or its organizational affiliates, including entities that control, are controlled by, or are under common control with the employer, and for employees, officers and directors of such entities, but only on matters directly related to their work for the entity and only to the extent consistent with Rule 1.7 of the Model Rules of Professional Conduct [or jurisdictional equivalent];

2. The registered lawyer shall not:

   a. Except as otherwise permitted by the rules of this jurisdiction, appear before a court or any other tribunal as defined in Rule 1.0(m) of the Model Rules of Professional Conduct [or jurisdictional equivalent]; or

   b. Offer or provide legal services or advice to any person other than as described in paragraph B.1., or hold himself or herself out as being authorized to practice law in this jurisdiction other than as described in paragraph B.1; and

   c. If a foreign lawyer, provide advice on the law of this or another jurisdiction of the United States except on the basis of advice from a lawyer who is duly licensed and authorized to provide such advice.

PRO BONO PRACTICE:

C. Notwithstanding the provisions of paragraph B above, a lawyer registered under
this Rule is authorized to provide pro bono legal services through an established not-
for-profit bar association, pro bono program or legal services program or through
such 60 organization(s) specifically authorized in this jurisdiction.

OBLIGATIONS:

D. A lawyer registered under this Rule shall:
   1. Pay an annual fee in the amount of $_____________;
   2. Pay any annual client protection fund assessment;
   3. Fulfill the continuing legal education requirements that are required of
      active members of the bar in this jurisdiction;
   4. Report within [___] days to the jurisdiction the following:
      a. Termination of the lawyer’s employment as described in paragraph
         A.5)4.;
      b. Whether or not public, any change in the lawyer’s license status in
         another jurisdiction, whether U.S. or foreign, including by the
         lawyer's resignation;
      c. Whether or not public, any disciplinary charge, finding, or sanction
         concerning the lawyer by any disciplinary authority, court, or other
         tribunal in any jurisdiction, U.S. or foreign.

LOCAL DISCIPLINE:

E. A registered lawyer under this Rule shall be subject to the [jurisdiction’s Rules of
   Professional Conduct], [jurisdiction’s Rules of Lawyer Disciplinary Enforcement],
   and all other laws and rules governing lawyers admitted to the active practice of law
   in this jurisdiction. The [jurisdiction’s disciplinary counsel] has and shall retain
   jurisdiction over the registered lawyer with respect to the conduct of the lawyer in this
   or another jurisdiction to the same extent as it has over lawyers generally admitted in
   this jurisdiction.

AUTOMATIC TERMINATION:

F. A registered lawyer’s rights and privileges under this Rule automatically
   terminate when:
   1. The lawyer’s employment terminates;
   2. The lawyer is suspended or disbarred or the equivalent thereof in any
      jurisdiction or any court or agency before which the lawyer is admitted,
      U.S. or foreign; or
   3. The lawyer fails to maintain active status in at least one jurisdiction, U.S.
      or foreign.

REINSTATEMENT:

G. A registered lawyer whose registration is terminated under paragraph F.1. above,
   may be reinstated within [___] months of termination upon submission to the
   [registration authority] of the following:
   1. An application for reinstatement in a form prescribed by the [registration
      authority];
   2. A reinstatement fee in the amount of $_____________;
3. An affidavit from the current employing entity as prescribed in paragraph A.5).

SANCTIONS:

H. A lawyer under this Rule who fails to register shall be:

1. Subject to professional discipline in this jurisdiction;
2. Ineligible for admission on motion in this jurisdiction;
3. Referred by the [registration authority] to this [jurisdiction’s bar admissions authority]; and
4. Referred by the [registration authority] to the disciplinary authority or to any duly constituted organization overseeing the lawyer’s profession, or that granted authority to practice law in the jurisdictions of licensure, U.S. and/or foreign.

Comment

[1] Paragraph A of this Rule provides that the [state’s highest court of appellate jurisdiction] may, in its discretion, allow someone who does not meet the Rule’s other definitional requirements of a foreign lawyer, but who is lawfully practicing as in-house counsel in their home foreign jurisdiction, to register. The exercise of such discretion by the court may be necessary, because some foreign jurisdictions may not permit otherwise qualified in-house counsel to be members of or admitted to the bar. Lawyers in such foreign jurisdictions who are employed as in-house counsel may be required to relinquish any bar membership or admission while so employed or they may never have obtained such admission or membership status.

[2] Paragraph F of this Rule sets forth three circumstances that result in automatic termination of in-house counsel’s registrations status. In situations where a court has exercised its discretion pursuant to Paragraph A of this Rule, a registered foreign in-house counsel lacking bar admission or licensure in that individual’s home country cannot “fail to maintain active status” as set forth in Paragraph F(3). There is no active status in existence. Absent the circumstances set forth in Paragraph F(2), the triggering event to terminate registration status of such foreign in-house counsel would be the termination of employment of that individual by the employer as set forth in Paragraph F(1).
EXECUTIVE SUMMARY

1. Summary of the Resolution
This Report supports amending ABA Model Rule 5.5 and the ABA Model Rule for Registration of In-House Counsel to include language specifying that the court of highest appellate jurisdiction may, in its discretion, allow foreign in-house lawyers who do not meet the ABA definition of foreign lawyer because they cannot be “members of the bar” to be able to practice as in-house counsel in the U.S. and to be so registered.

2. Summary of the Issue that the Resolution Addresses
Under Model Rule 5.5 (d), a foreign lawyer is "a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as attorneys or counselors at law or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or a public authority." However, this definition does not account for the unique way in which foreign lawyers are permitted to practice in-house in most foreign countries. This Report supports amending ABA Model Rule 5.5 and the ABA Model Rule for Registration of In-House Counsel to include language specifying that the court of highest appellate jurisdiction may, in its discretion, allow foreign in-house lawyers who do not meet the ABA definition of foreign lawyer because they cannot be “members of the bar” to be able to practice as in-house counsel in the U.S. and to be so registered. These courts possess the inherent authority to regulate the practice of law and the legal profession, as long recognized by the ABA, and such an exercise of discretion would be within their purview. The proposed amendments would not only bring these foreign lawyers under the regulatory umbrella, but they also would offer better protection for the advice provided by these foreign lawyers to U.S.-based clients and, thus, to clients relying on such advice. One of the cornerstones is the protection afforded to their communications by the attorney-client privilege.

3. Please Explain How the Proposed Policy Position will address the issue
With the proposed resolution, Model Rule 5.5 and the ABA Model Rule for the Registration of In-House Counsel will include the discretion of a court of highest appellate jurisdiction to license to practice in the U.S. a foreign in-house lawyer, who otherwise, due to his or her country’s rules, would not fall under the current definition of foreign lawyer. Allowing such discretion will ensure not only that such competent and trained foreign in-house lawyers are legally able and, as a result, encouraged to seek registration in the U.S., but also that U.S.-based clients would effectively receive the full benefit of these regulations and the freedom to choose the foreign in-house lawyer who best fits their needs, including better protection of the attorney-client privilege.

4. Summary of Minority Views
None.
RESOLUTION

RESOLVED, That the American Bar Association reaccredits the Civil Pretrial Practice Law program of the National Board of Trial Advocacy of Wrentham, Massachusetts for an additional five-year term as a designated specialty certification program for lawyers.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution will grant reaccreditation to the Civil Pretrial Practice certification program of the National Board of Trial Advocacy.

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.
RESOLVED, That the American Bar Association adopts the ABA Model Regulatory Objectives for the Provision of Legal Services, dated February, 2016.

ABA Model Regulatory Objectives for the Provision of Legal Services

A. Protection of the public
B. Advancement of the administration of justice and the rule of law
C. Meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems
D. Transparency regarding the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections
E. Delivery of affordable and accessible legal services
F. Efficient, competent, and ethical delivery of legal services
G. Protection of privileged and confidential information
H. Independence of professional judgment
I. Accessible civil remedies for negligence and breach of other duties owed, and disciplinary sanctions for misconduct
J. Diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system

FURTHER RESOLVED, That the American Bar Association urges that each state’s highest court, and those of each territory and tribe, be guided by the ABA Model Regulatory Objectives for the Provision of Legal Services when they assess the court’s existing regulatory framework and any other regulations they may choose to develop concerning non-traditional legal service providers.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Commission on the Future of Legal Services is proposing for House of Delegates adoption ABA Model Regulatory Objectives for the Provision of Legal Services. The Commission also requests that the House adopt the part of the Resolution that recommends that each state’s highest court, and those of each territory and tribe, be guided by clearly identified regulatory objectives such as those contained in the proposed ABA Model Regulatory Objectives for the Provision of Legal Services.

The adoption of ABA Model Regulatory Objectives for the Provision of Legal Services would create a valuable framework to guide the courts as they, in the face of the burgeoning access to justice crisis and fast paced change affecting the delivery of legal services assess their existing regulatory framework and any other regulations they may choose to develop concerning non-traditional legal service providers. Use of ABA Model Regulatory Objectives for the Provision of Legal Services would also help courts continue to ensure credibility and transparency in the regulatory process, and that enhances not only the public’s trust in judicial regulation, but also the confidence of those who are regulated.

2. Summary of the Issue that the Resolution Addresses

The ABA Commission on the Future of Legal Services was created in August 2014 to examine how legal services are delivered in the U.S. and other countries and to recommend innovations that improve the delivery of, and the public’s access to, those services. As one part of its multifaceted work, the Commission engaged in extensive research about regulatory developments in the U.S. and abroad. The ABA has long supported state-based judicial regulation; its policies doing so do not, however, set forth a centralized framework of broad and explicit regulatory objectives to serve as a guide for such regulation. This Resolution, if adopted, would fill this policy void and serve as a useful tool to help courts easily identify the explicit goals they seek to achieve when they assess their existing regulatory framework and any other regulations they may choose to develop concerning non-traditional legal service providers. Given that supreme courts in the U.S. are beginning to consider the adoption of broad regulatory objectives, and given that providers of legal assistance other than lawyers are already actively serving the American public, the Commission believes that it is timely and important for the ABA to offer guidance in this area.

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

The adoption of ABA Model Regulatory Objectives for the Provision of Legal Services would create the valuable and needed framework to help courts as they, in the face of the burgeoning access to justice crisis and fast paced change affecting the delivery of legal services: (1) assess their existing regulatory framework and (2) identify and implement regulations related to legal services beyond the traditional regulation of the legal profession. While allowing for jurisdictional flexibility, the centralized framework set forth in the ABA Model Regulatory Objectives for the Provision of Legal Services would also facilitate jurisdictional consistency.
Use of ABA Model Regulatory Objectives for the Provision of Legal Services would also help courts continue to ensure credibility and transparency in the regulatory process, which enhances not only the public’s trust in judicial regulation, but also the confidence of those who are regulated.

4. Summary of Minority Views

From the outset, the Commission on the Future of Legal Services has been committed to and implemented a process that is transparent and open. The Commission has engaged in broad outreach and provided full opportunity for input into its work. Inherent in any undertaking of this scope and complexity is the recognition that there will be disagreements about the approach to issues as well as the substance of proposals.

On September 29, 2015 the Commission released for comment to all ABA entities, state and local bar associations, and affiliated entities a draft of this Resolution and the accompanying draft Report. At the time this Executive Summary was filed with the House of Delegates, the Commission was aware only that the following disagree with the Resolution:

The New Jersey State Bar Association has expressed its belief that the Resolution is contrary to the profession’s core values and promotes a tiered system of justice.

Larry Fox filed comment in opposition in his individual capacity.
RESOLVED, That the American Bar Association urges Congress to amend 5 U.S.C. §552(a)(1) of the Freedom of Information Act (FOIA) to require that when a standard drafted by a private organization is exempted from Federal Register publication because it has been “incorporated by reference” (IBR) into a substantive rule of general applicability, the rulemaking agency must ensure meaningful free public availability of the incorporated text, such as through online access in a centralized online location or access in all government depository libraries.

FURTHER RESOLVED, That the American Bar Association urges Congress to amend 5 U.S.C. §553, the Administrative Procedure Act’s rulemaking provisions, to require meaningful free public availability of a proposed IBR standard’s text during the public comment period.

FURTHER RESOLVED, That the American Bar Association urges Congress to ensure that private organizations, where appropriate, have access to compensation for financial losses attributable to making their standards publicly available.
EXECUTIVE SUMMARY

1. Summary of the Resolution

To effectuate the bedrock principle of meaningful public access to the law, the resolution urges Congress to strengthen public availability to the text of all federal regulations. Meaningful free access should be afforded both when agencies propose adoption of these standards and after promulgation as final rules.

2. Summary of the Issue that the Resolution Addresses

Federal agencies currently “incorporate by reference” thousands of outside standards into binding federal regulations. Free public access to the text is reliably provided only in the Office of the Federal Register’s reading room in Washington, D.C. Otherwise a reader may be required to pay substantial access fees set by drafting organizations, significantly obstructing public access, particularly by individuals and small businesses. The right to comment on an agency’s proposed “incorporation by reference” of such standards into federal regulations is also impeded by the lack of public access to the text.

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

The resolution urges Congress to amend the Freedom of Information Act to ensure meaningful levels of free public availability to all federal regulations, including text that is “incorporated by reference.” Such public access could be afforded through centralized online access, for example, or in government depository libraries. The resolution also urges Congress to amend the Administrative Procedure Act’s rulemaking provisions to require meaningful free public availability of such text during the public comment period.

As a safeguard against the (probably remote) possibility that the prospect of free public access might induce a drafting organization to decline to make its standard available for incorporation, the report also recommends that Congress should ensure that agencies have access to the ability to compensate such organizations where appropriate.

4. Summary of Minority Views

None identified.
RESOLVED, That the American Bar Association urges Congress to amend the rulemaking provisions of the Administrative Procedure Act (“APA”). Specifically, Congress should:

1. Codify the requirement that an agency fully disclose data, studies, and other information upon which it proposes to rely in connection with a rulemaking, including factual material that is critical to the rule that becomes available to the agency after the comment period has closed and on which the agency proposes to rely;

2. Provide for the systematic development by the agency in each rulemaking of a rulemaking record as a basis for agency factual determinations and a record for judicial review. The record should include any material that the agency considered during the rulemaking, in addition to materials required by law to be included in the record, as well as all comments and materials submitted to the agency during the comment period. The record should be accessible to the public via an online docket, with limited exceptions allowed, such as for privileged, copyrighted, or sensitive material;

3. Establish a minimum comment period of 60 days for “major” rules as defined by the Congressional Review Act, subject to an exemption for good cause;

4. Clarify the definition of “rule” by deleting the phrases “or particular” and “and future effect”; update the term “interpretative rules” to “interpretive rules”; and substitute “rulemaking” for “rule making” throughout the Act;

5. Authorize a new presidential administration to (i) delay the effective date of rules finalized but not yet effective at the end of the prior administration while the new administration examines the merits of those rules, and (ii) allow the public to be given the opportunity to comment on whether such rules should be amended, rescinded or further delayed;

6. Promote retrospective review by requiring agencies:

   a. When promulgating a major rule, to publish a plan (which would not be subject to judicial review) for assessing experience under the rule that describes (i) information the agency believes will enable it to assess the effectiveness of the rule in accomplishing its objectives, potentially in conjunction with other rules or other program activities, and (ii) how the agency intends to compile such information over time;
b. On a continuing basis, to invite interested persons to submit, by electronic means, suggestions for rules that warrant review and possible modification or repeal;

7. Add provisions related to the Unified Regulatory Agenda that would require each participating agency to (i) maintain a website that contains its regulatory agenda, (ii) update its agenda in real time to reflect concrete actions taken with respect to rules (such as initiation, issuance or withdrawal of a rule or change of contact person), (iii) explain how all rules were resolved rather than removing rules without explanation, (iv) list all active rulemakings, and (v) make reasonable efforts to accurately classify all agenda items. All agencies with rulemaking plans for a given year should also participate in the annual Regulatory Plan published in the spring Unified Agenda. These provisions should not be subject to judicial review;

8. Repeal the exemptions from the notice-and-comment process for “public . . . loans, grants [and] benefits” and narrow the exemptions for “public property [and] contracts” and for “military or foreign affairs functions”; and

9. Require that when an agency promulgates a final rule without notice–and-comment procedure on the basis that such procedure is impracticable or contrary to the public interest, it (i) invite the public to submit post-promulgation comments and (ii) set a target date by which it expects to adopt a successor rule after consideration of the comments received; provided that:

   a. If the agency fails to replace the interim final rule with a successor rule by the target date, it should explain its failure to do so and set a new target date;

   b. The adequacy of the agency’s compliance with the foregoing obligation would not be subject to judicial review, but existing judicial remedies for undue delay in rulemaking would be unaffected; and

   c. The preamble and rulemaking record accompanying the successor rule should support the lawfulness of the rule as a whole, rather than only the differences between the interim final rule and the successor rule.

FURTHER RESOLVED, That the American Bar Association recommends that federal agencies experiment with reply comment processes in rulemaking, such as by (a) providing in advance for a specific period for reply comments; (b) re-opening the comment period for the purpose of soliciting reply comments; or (c) permitting a reply only from a commenter who demonstrates a particular justification for that opportunity, such as a specific interest in responding to specified comments that were filed at or near the end of the regular comment period.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   The resolution urges Congress to modernize the rulemaking provisions of the Administrative Procedure Act.

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

   While it remains a cornerstone of the administrative state, the Administrative Procedure Act has grown outdated in a number of respects as agency practice, technology, and judicial doctrine have evolved. Congress has entertained a broad variety of proposed reforms to the Act, most of which have proven highly controversial. The resolution proposes reforms to modernize the Act that are widely supported within (and outside of) the Section of Administrative Law and Regulatory Practice. These reforms are intended to help enhance public participation in the rulemaking process and to provide clearer direction to agencies. Some codify case law or executive order and many of them build on prior recommendations of the ABA or Administrative Conference of the United States.

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

   The resolution urges Congress to amend the Administrative Procedure Act to: 1) codify the requirement that an agency fully disclose data and other information used in rulemaking; 2) codify the requirement that agencies develop a rulemaking record and a public docket for each rulemaking; 3) establish a minimum comment period of 60 days for “major” rules, subject to an exemption for good cause; 4) tighten and clarify several outdated definitions; 5) authorize new presidential administrations to delay the effective date of rules finalized at the end of the prior administration; 6) promote retrospective review of major rules; 7) codify some provisions of the Unified Regulatory Agenda; 8) repeal or narrow several outdated exemptions from the notice-and-comment process; and 9) require agencies to seek post-promulgation comments on some rules issued without notice and comment. The resolution also encourages agencies to experiment with “reply comment” processes.

4. **Summary of Minority Views**

   None.
RESOLVED, That the American Bar Association encourages all state, territorial, and tribal courts, bar associations and other licensing and regulatory authorities, that have mandatory or minimum continuing legal education requirements (MCLE) to modify their rules to:

1. include as a separate credit programs regarding diversity and inclusion in the legal profession of all persons regardless of race, ethnicity, gender, sexual orientation, gender identity, or disabilities, and programs regarding the elimination of bias ("D&I CLE"); and

2. require a designated minimum number of hours for this separate credit without increasing the total number of required MCLE hours and without changing the criteria for MCLE credit.

FURTHER RESOLVED, That the American Bar Association, through its Goal III and other entities, assist in the development and creation of diversity and inclusion continuing legal education programs to ensure attorneys can meet their MCLE requirements.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution encourages all state, territorial, and tribal courts, bar associations and other licensing and regulatory authorities who require mandatory continuing legal education (MCLE) to modify their rules to include, as a separate credit, programs regarding diversity and inclusion in the legal profession of all persons regardless of race, ethnicity, gender, sexual orientation, gender identity, or disabilities, and programs regarding the elimination of bias (“D&I CLE”). Further, this resolution while requiring a designated minimum number of hours for a separate credit, will not increase the total number of required MCLE hours or in any way change or alter the criteria for MCLE credit.

2. Summary of the Issue that the Resolution Addresses

This Resolution addresses the need to provide stand-alone Diversity and Inclusion CLE requirements for all attorneys who practice in MCLE states. The Resolution also advances Diversity and Inclusion by assisting in the development and creation of diversity and inclusion continuing legal education programs to ensure all attorneys can meet their MCLE requirements. The Resolution is in accordance with Goal III of the American Bar Association, which is to eliminate bias and enhance diversity in the profession.

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

This Resolution will increase the legal profession’s understanding and awareness of issues relating to diversity and inclusion, and the elimination of bias, by ensuring that all attorneys who are obligated to comply with MCLE requirements receive education related to diversity and inclusion, and the elimination of bias.

4. Summary of Minority Views

No minority views or opposition to this Resolution have been identified.
RESOLVED, That the American Bar Association opposes intellectual property laws and agency and court interpretations of intellectual property laws that impose the payment of the government’s attorney fees on a party challenging a decision of the United States Patent and Trademark Office in federal district court, unless the statute in question explicitly directs the courts to award attorney fees.

FURTHER RESOLVED, That the American Bar Association supports an interpretation or a statutory clarification of 15 U.S.C. § 1071(b)(3) and 35 U.S.C. § 145, that the term “expenses” as provided for in those sections does not include government attorney fees.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution calls for the Association to adopt policy opposing statutes and interpretations of statutes that establish financial penalties for prosecuting a lawsuit and limits access to federal district courts in cases challenging government action, and opposing agency and court interpretations of statutes that shift the burden of paying the government’s attorney fees to a party challenging government action unless the statute specifically and explicitly directs the courts to award attorney fees.

2. Summary of the Issue that the Resolution Addresses

The Fourth Circuit’s decision to award the U.S.P.T.O. its attorney fees raises important questions relating to the application of the American Rule as well as concerns regarding access to justice and the ability of less well-to-do trademark and patent applicants to obtain complete judicial review of agency decisions. By requiring dissatisfied trademark registration and patent applicants to pay the U.S.P.T.O.’s legal fees in civil actions brought by the applicant to show that they are entitled to a trademark registration or patent, the case establishes a financial obstacle or barrier to complete judicial review of the agency’s decisions and punishes applicants for filing a civil action.

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

The resolution expresses opposition to statutes, and interpretations of statutes in a manner that establish financial penalties for prosecuting a lawsuit and limits access to federal district courts in cases challenging government action.

The resolution also expresses opposition to agency and court interpretations of statutes that shift the burden of paying the government’s attorney fees to a party challenging government action unless the statute specifically and explicitly directs the courts to award attorney fees.

4. Summary of Minority Views

None known at this time.
RESOLUTION

RESOLVED, That the American Bar Association supports interpretation and application of the statutory six-year patent damages period (35 U.S.C. § 286) as limiting availability of the judicially created laches defense as a bar to legal damages for patent infringement; and

FURTHER RESOLVED, That the American Bar Association supports interpretation and application of the statutory six-year patent damages period as not limiting availability of laches as a defense where equitable relief is sought.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   The Resolution expresses ABA policy in support of a clarification of the law relating to the judicially created laches defense to patent infringement. Congress enacted a statutory six-year patent damages period (35 U.S.C. § 286). That statutory provision limits the availability of the laches defense, which cannot bar legal damages for patent infringement within that six-year damages period authorized by Congress. Of course, laches remains available as a defense where equitable relief is sought (such as injunctive relief and ongoing royalties). This is consistent with the U.S. Supreme Court’s treatment of the same defense in the copyright context.

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

   The U.S. Supreme Court eliminated the laches defense for copyright cases in *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1962 (2014). The Court reasoned that the judicially created laches defense must give way to the statutory three-year damages period in copyright. However, on September 18, 2015, the U.S. Court of Appeals for the Federal Circuit, sitting *en banc*, preserved the defense of laches for patent cases and distinguished *Petrella*. *SCA Hygiene Products AB v. First Quality Baby Products LLC*, 2015 WL 5474261 (Fed. Cir. Sept. 18, 2015) (*en banc*).

   The resolution addresses whether the judicially created laches defense should bar legal relief in a patent infringement suit during the six-year damages period authorized by Section 286.

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

   The issue relates to roles of the judicial and legislative branches of the federal government. In *Petrella*, the U.S. Supreme Court explained that congressional enactment of a statutory three-year copyright damages period (17 U.S.C. § 507(b)) has the effect of limiting availability of the judicially created laches defense as a bar to legal damages for copyright infringement.

   The Resolution seeks a clarification that the same principle should apply to the patent law. Congressional enactment of a statutory six-year patent damages period (35 U.S.C. § 286) also has the effect of limiting availability of a laches defense as a bar to legal damages for patent infringement, although laches may still be a defense where equitable relief is sought (such as injunctive relief and ongoing royalties).

4. **Summary of Minority Views**

   None known at this time.
RESOLUTION

RESOLVED, That the American Bar Association supports the traditional rule that the first sale of patented goods (as opposed to a mere license) by United States patent owners or their licensees (“Sellers”) triggers the defense of patent exhaustion with respect to an allegation of patent infringement related to those goods;

FURTHER RESOLVED, That the American Bar Association supports the traditional rule that, to impose contractual post-sale restrictions during the first sale of patented goods, the restrictions imposed by a Seller must: (1) relate to products reasonably within the scope of the patent grant (i.e., be related to subject matter within the scope of patent claims) and; (2) not have anticompetitive effects except those justifiable under the rule of reason;

FURTHER RESOLVED, That the American Bar Association urges the courts to clarify that authorized sales of patented goods by the Sellers in the United States exhaust United States patent rights, and that a violation of contractual post-sale restrictions may not be remedied by an action for patent infringement but instead may be remedied by an action for breach of contract; and

FURTHER RESOLVED, That the American Bar Association urges the courts to clarify that authorized sales of patented goods by the Sellers outside of the United States do not exhaust United States patent rights if, at the time of sale, the Sellers expressly reserve or exclude United States patent rights by contract from such foreign sales, in which event remedies lie in both an action for patent infringement and an action for breach of contract.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution expresses ABA policy in support of traditional, common-law patent exhaustion. After an authorized sale under a United States patent, the patent holder’s ability to impose restrictions on patented goods is limited. Such a sale prevents later enforcement of the patent against those goods. Contractual restrictions (if imposed at the time of the first sale) may be enforced under contract; not patent law. However, an overseas sale of patented goods may have little or no connection with the United States. Such sellers should be permitted to expressly reserve or exclude United States patent rights from the foreign sale and to prevent application of patent exhaustion.

2. Summary of the Issue that the Resolution Addresses

_Lexmark International, Inc. v. Impression Products, Inc._, Appeal No. 14-1617, is pending before the U.S. Court of Appeals for the Federal Circuit (en banc). The questions under consideration are:


2) The case involves (i) sales of patented articles to end users under a restriction that they use the articles once and then return them and (ii) sales of the same patented articles to resellers under a restriction that resales take place under the single-use-and-return restriction. Do any of those sales give rise to patent exhaustion? In light of _Quanta Computer, Inc. v. LG Electronics, Inc._, 553 U.S. 617 (2008), should this court overrule _Mallinckrodt, Inc. v. Medipart, Inc._, 976 F.2d 700 (Fed. Cir. 1992), to the extent it ruled that a sale of a patented article, when the sale is made under a restriction that is otherwise lawful and within the scope of the patent grant, does not give rise to patent exhaustion?

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

The Resolution supports traditional, common-law patent exhaustion. First, the Resolution supports overturning _Jazz Photo_ to the extent it has been interpreted as holding that an overseas sale can never exhaust a U.S. patent. Instead, the Resolution urges that an overseas seller of patented goods may avoid U.S. patent exhaustion by expressly excluding U.S. patent rights from the foreign sale. Second, the Resolution supports overturning _Mallinckrodt_. Patent holders are permitted to impose contractual restrictions at the time of the first sale, but such restrictions cannot avoid patent exhaustion.
4. **Summary of Minority Views**

None known at this time.
AMERICAN BAR ASSOCIATION

LAW STUDENT DIVISION
LAW PRACTICE DIVISION
NATIONAL CONFERENCE OF BAR EXAMINERS
SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR
SENIOR LAWYERS DIVISION
TORT TRIAL AND INSURANCE PRACTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association urges the bar admission authorities in each state and territory to adopt expeditiously the Uniform Bar Examination.
**EXECUTIVE SUMMARY**

1. **Summary of the Resolution**
   
The American Bar Association urges the bar admission authorities in each state and territory to expeditiously adopt the Uniform Bar Examination in their respective jurisdictions.

2. **Summary of the Issue that the Resolution Addresses**
   
   Currently, law students must often choose a bar admission jurisdiction before they know where they will be employed, limiting the applicability of their first bar admission given limitations on admission by motion and transferability. Some state bar examiners draft essay questions, even though the topics are those tested on the MEE and include little local variation. States may also have variability in bar exam grading. The Uniform Bar Exam addresses these concerns and is also consistent with several ABA policies.

3. **Please Explain How the Proposed Policy Position will address the issue**
   
   Through greater adoption of the UBE, the model of a portable exam becomes more effective because test-takers are able to transfer their scores to more jurisdictions.

4. **Summary of Minority Views**
   
   While some critics of the UBE wish to retain local bar exams, no known ABA entities have formally presented any opposing views to this resolution.
RESOLVED, That the American Bar Association urges the United States Supreme Court to record and make available video recordings of its oral arguments.
EXECUTIVE SUMMARY

1. Summary of the Resolution

   The purpose of this resolution is to urge the United States Supreme Court to provide video recordings of its oral arguments.

2. Summary of the Issue that the Resolution Addresses

   The United States Supreme Court is the only branch of government whose proceedings are not easily accessible to the public. The Supreme Court’s gallery can seat only 250 people—which severely limits the number of people who can view its proceedings—and necessitates travel to Washington, D.C. This limits the ability of citizens to view the process of deciding important constitutional issues.

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

   Video recordings of oral arguments will allow citizens to access—and better understand—the process through which the United States Supreme Court arrives at its decisions. This would enhance respect for the judiciary and the rule of law.

4. Summary of Minority Views

   No minority views were expressed; the resolution passed unanimously on the Young Lawyers Division Assembly’s consent calendar.
RESOLVED, That the American Bar Association urges state, territorial, local and tribal
child welfare and juvenile justice agencies to provide adequate resources for assessing and
treating emotional and behavioral disorders of children in their custody, including psychosocial
and clinical interventions, recreational opportunities and supportive services that can reduce the
need for prescribing psychotropic drugs.

FURTHER RESOLVED, That the American Bar Association urges state, territorial, local
and tribal child welfare and juvenile justice agencies to develop comprehensive policies, based
on best practice guidelines developed in collaboration with medical professional organizations
medical, mental health and disability experts, and other stakeholders designed to facilitate
medically appropriate use of psychotropic medications needed by children in the custody of child
welfare and juvenile justice systems, while ensuring that medications are not used solely to
control behavior.

FURTHER RESOLVED, That the American Bar Association urges state, territorial, local
courts to work with medical professional organizations and other stakeholder groups to
develop oversight protocols administered by child and adolescent psychiatrists to ensure that
these policies are successfully implemented in child welfare and juvenile justice cases under
their jurisdiction, and to ensure that medication regimens are evaluated, and, if appropriate,
continue without interruption when placement changes occur or when the child is transitioning
out of the foster care or juvenile justice systems.

FURTHER RESOLVED, That the American Bar Association urges attorneys, judges, bar
associations, and law school clinical programs on children’s issues to promote education and to
develop technical assistance resources on the rights of children in the custody of child welfare
and juvenile justice agencies, including legal issues related to appropriate use of psychotropic
medication.

FURTHER RESOLVED, That the American Bar Association urges Congress to enact
legislation requiring state, territorial, local and tribal governments to report de-identified data,
consistent with children’s privacy rights under federal and state law, to appropriate federal
agencies on the ongoing use of psychotropic medication for children in foster care and in the
juvenile justice system under their jurisdiction.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution urges state child welfare and juvenile justice agencies to develop comprehensive policies and state courts to improve oversight for the administration of psychotropic medications for children in state custody – those in the child welfare and/or the juvenile justice systems. The resolution also recommends that attorney and judges become better educated on this subject, and that Congress enact legislation to collect unidentified data from states to learn whether progress that is made on this subject.

2. Summary of the Issue that the Resolution Addresses

Children in foster care and youth in the juvenile justice system are a vulnerable population with significant unmet healthcare needs. Across the country, they are being prescribed anti-psychotic medications in percentages exceeding children and youth in the general population, often with insufficient medical justification. These medications are prescribed without medical histories or diagnostic assessments, in dosages exceeding manufacturer recommendations, often in combination with other psychotropic medications, and for off-label use. Little is done to monitor these medications, and no state insures these children or youth, or their parents or caretakers, informed consent. These medications are most often prescribed before any alternate therapies or psychosocial treatments are utilized and to control behavior, not in response to a mental health or behavioral health condition. Many concerns are raised by medical professionals about the short-term side effects of these medications, and little is known about long-term effects of these medications on children and youth.

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

The sponsor, co-sponsors and supporters hope that this resolution will assist states, courts, attorneys and judges, and the federal government to improve the adequacy and range of treatment for mental health conditions of children who are in state custody so that psychotropic medications are utilized only when medically appropriate. Some states are developing comprehensive policies on this issue, some have developed policies that are piecemeal and incomplete, and others have ignored this issue altogether. Court systems and the attorneys who represent children, youth and parents in these cases are beginning to recognize the importance of improving supervision over this subject, and this proposed policy position is consistent with the resolution passed in July, 2013, by the National Council of Juvenile and Family Court Judges, and with the Position Statement on the Oversight of Psychotropic Medication Use for Children in State Custody: A Best Principles Guideline by the American Academy of Child and Adolescent Psychiatrists. This policy resolution also encourages Congress to enact legislation requiring states to report on the use of psychotropic medications in youth in the juvenile justice system, which is currently absent, and to develop better data on this subject for children in foster care.

4. Summary of Minority Views

None are known.
RESOLVED, That the American Bar Association adopts the ABA Model Act Governing Assisted Reproductive Technology Agencies dated February 2016 and recommends consideration and adoption of the Model Act by appropriate governmental agencies and legislatures.
1 ARTICLE 1. DEFINITIONS
2 SECTION 101. SHORT TITLE
3 SECTION 102. DEFINITIONS
4
5 ARTICLE 2. LICENSING
6 SECTION 201. APPLICATION FOR LICENSE
7 SECTION 202. DISCIPLINARY ACTION
8 SECTION 203. FAILURE TO COMPLY
9
10 ARTICLE 3. RESPONSIBILITIES OF ART AGENCIES
11 SECTION 301. LICENSING REQUIRED
12 SECTION 302. AFFIRMATIVE DUTIES AND OBLIGATIONS
13 SECTION 303. SERVICE AGREEMENTS
14 SECTION 304. PREREQUISITES FOR CYCLE COMMENCEMENT
15 SECTION 305. RECORDKEEPING
16 SECTION 306. CONTINUING EDUCATION
17 SECTION 307. MANAGEMENT AND DISBURSEMENT OF FUNDS
18 SECTION 308. PROFESSIONAL LIABILITY INSURANCE
19
20 ARTICLE 4. MISCONDUCT
21 SECTION 401. UNLICENSED OPERATION
22 SECTION 402. AUTHORIZATION OF CIVIL ACTION
23 SECTION 403. CANDOR WITH THE COURT
24 SECTION 404. PAYMENT FOR GAMETES
25 SECTION 405. REMEDIES NOT EXCLUSIVE
26
27 ARTICLE 5. MISCELLANEOUS PROVISIONS
28 SECTION 501. AUDITS
29 SECTION 502. RULEMAKING
30
31 ARTICLE 6. PUBLIC INFORMATION
32 SECTION 601. DISSEMINATION OF INFORMATION
33
ARTICLE 1. DEFINITIONS

SECTION 101. SHORT TITLE
This Act is entitled a Model Act Governing ART Agencies.

SECTION 102. DEFINITIONS

1. “Assisted Reproductive Technology” or “ART” means a variety of clinical treatments and laboratory procedures, which include the handling of human oocytes, sperm, or Embryos, with the intent of establishing a pregnancy. This includes, but is not limited to, in vitro fertilization (IVF), Gamete intrafallopian transfer (GIFT), zygote intrafallopian transfer (ZIFT), Embryo biopsy, preimplantation genetic diagnosis (PGD), Embryo cryopreservation, oocyte or Embryo donation, and gestational surrogacy. This definition, for purposes of this Act, does not include artificial insemination, the process by which a man's fresh or frozen sperm sample is introduced into a woman's vagina, other than by sexual intercourse.

2. “Assisted Reproductive Technology Agency” or “ART Agency” means any Person that facilitates Collaborative Reproduction by:

(a) Planning or arranging the details of agency services with the Intended Parent(s);
(b) Setting the timeline for the services; establishing the type of services to be rendered; acquiring or coordinating the services of third party licensed professionals;
(c) Recruiting and/or obtaining personal information regarding Donors, Gametes or Surrogates;
(d) Making, negotiating, or completing the financial arrangements;
(e) Directing, having real or apparent authority over, or supervising, directly or indirectly, the matching process between the Intended Parent(s) and Donors, Gametes or Surrogates;
(f) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, the services to be provided by another licensed Person;
(g) Using in connection with one's name or employment the words or terms "Agency," "agency owner," or any other word, term, title, or picture, or combination of any of the above, that when considered in the context in which used would imply that such Person is engaged in the practice of agency ownership or that such Person is holding herself or himself out to the public as being engaged in the practice of providing services related to matching egg Donors or Surrogates; provided, however, that nothing in this paragraph shall prevent using the name of any Owner, department, or corporate director of an agency, who is not a licensee, in connection with the name of the agency with which such individual is affiliated, so long as such individual's affiliation is properly specified; or
(h) Managing or supervising the operation of an agency, except for administrative matters such as budgeting, accounting and personnel,
maintenance of buildings, equipment and grounds, and routine clerical and
recordkeeping functions.
(i) A Person who facilitates Collaborative Reproduction shall not be
considered an ART Agency under this Act, so long as that Person is not also
performing actions detailed above in (a)-(h).
(j) A Person who facilitates Collaborative Reproduction shall not provide
medical, legal, insurance or psychological services unless they are themselves
licensed within such profession.

3. “Client” means Intended Parent(s) working with an ART Agency.

4. “Collaborative Reproduction” means any ART in which an individual other than the
Intended Parent(s) provides genetic material or agrees to act as a Surrogate. It can
include, but is not limited to: (1) attempts by Intended Parent(s) to create a child through
means of a Surrogacy agreement, with or without the involvement of Donors; and (2)
assisted reproduction involving Donors where a Surrogate is not used.

5. “Conflict of Interest” means a situation where a Provider has financial interests that
could potentially influence the services rendered a Participant in Collaborative
Reproduction.

Legislative Note: States will insert conflict of interest standards as reflected by statute
and case law.

6. “Cycle” means an attempt to establish pregnancy, with the assistance of a Donor or
Surrogate, through the use of medical techniques or therapies including but not limited to
ART through IVF or artificial insemination.

7. “Department” means a division or department of the State government charged by
statute with authority to oversee the licensing, regulation and/or administration of
professionals in that State.

Legislative Note: States should determine the department under the State’s own
organizational scheme that is best suited to oversee ART Agencies.

8. “Donor” means an individual who produces eggs or sperm used for ART, whether or
not for consideration. The term does not include: (a) an Intended Parent who provides
Gametes, to be used for assisted reproduction; (b) a woman who gives birth to a child by
means of assisted reproduction; or (c) an Intended Parent. An “Embryo Donor” means
an individual or individuals with dispositional control of an Embryo who provide(s) it to
another for gestation and relinquish(es) all present and future parental and inheritance
rights and obligations to a resulting individual or individuals.

9. “Embryo” means a cell or group of cells containing a diploid complement of
chromosomes or group of such cells (not a Gamete or Gametes) that has the potential to
develop into a live born human being if transferred into the body of a woman under conditions in which gestation may be reasonably expected to occur.

10. “Escrow Account” means an independent, insured, bonded escrow depository maintained by a licensed, independent, bonded escrow company; or an insured and bonded trust account maintained by an attorney.

(a) For purposes of this section, a non-attorney ART Agency may not have a financial interest in any escrow company holding client funds. A non-attorney ART Agency and any of its officers, managers, owners of more than 5% ownership interest, directors or employees shall not be an agent of any escrow company holding client funds; and

(b) Client funds may only be disbursed by the attorney or Escrow Agent as set forth in the assisted reproduction agreement and the fund management agreement between the Intended Parent(s) and the Escrow Account holder.

11. “Escrow Agent” means the trustee for an Escrow Account.

12. “Gamete” means a cell containing a haploid complement of DNA that has the potential to form an Embryo when combined with another Gamete. Sperm and eggs are Gametes. A Gamete may consist of nuclear DNA from one human being combined with the cytoplasm, including cytoplasmic DNA, of another human being.

13. “Intended Parent” means an individual, married or unmarried, who manifests the intent as provided in this Act to be legally bound as the parent of a child resulting from assisted or Collaborative Reproduction.

Legislative Note: This definition is for guidance only and is not intended to change the standard of care for the delivery of professional services or shift the burden of proof otherwise required within the jurisdiction.

14. “Owner” means any and all Persons who, directly or acting by or through one or more Persons, owns more than a 5% interest in an ART Agency.

15. “Participant” means any Intended Parent, Donor or Surrogate, whether or not a written contractual relationship exists with the ART Agency.

16. “Person” means any and all persons, associations, businesses, corporations, partnerships, institutions, agencies, medical centers, and other organizations.

17. “Record” means information inscribed in a tangible medium or stored in an electronic or other medium that is retrievable in perceivable form.

18. “Service Agreement” means an agreement between an ART Agency and Intended Parent(s) describing the services to be performed.
19. “Surrogate” means an adult woman, not an Intended Parent, who enters into a surrogacy agreement to bear a child, whether or not she has any genetic relationship to the resulting child. Both a traditional surrogate (a woman who undergoes insemination and fertilization of her own eggs in vivo) and a gestational surrogate (a woman into whom an Embryo formed using eggs other than her own is transferred) are surrogates.

20. “Surrogacy” means an arrangement between Intended Parent(s) and a Surrogate.

ARTICLE 2. LICENSING

SECTION 201. IN-STATE APPLICATION FOR LICENSE

1. Every applicant for a license as an ART Agency must submit a written application for a license to the Department, in such form as prescribed by the Department.

2. The Department’s application, shall, at a minimum, require the following information to be provided in a sworn statement:

   (a) The business name, each business address, tax ID number, and date of incorporation if applicable, or the true full legal name of the primary agent for the business, date of birth, driver's license number, social security number, and each place of business address;
   (b) The true name, date of birth, driver's license number, social security number, and home address of all Owners;
   (c) Degrees and certifications and licenses or other professional designation of primary agent for the business and for all Owners;
   (d) Each business or occupation engaged in by all Owners during the five (5) years immediately preceding the date of the application, including place of employment and the location thereof;
   (e) The previous experience of all Owners as it relates to the field of ART;
   (f) A description of formal and informal education in the field of ART completed preceding the application date by all Owners;
   (g) Proof of applicable professional liability insurance, if available;
   (h) The applicant’s Conflict of Interest Policy (disclosure procedure/waiver procedure);
   (i) Statement of whether the applicant or any Owner:
      (i) has been charged with or indicted for a felony. If so, provide an explanation of the nature of the crime and a certified copy of the relevant court records;(ii) regardless of adjudication, has been convicted of, entered an admission of guilt or a plea of nolo contendere to a felony and a certified copy of the relevant court records; and/or
      (ii) regardless of adjudication, has previously been convicted of, has entered an admission of guilt or nolo contendere to racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property and a
certified copy of the relevant court records.

(j) Whether there has ever been a judicial or administrative finding that the applicant or any Owner has previously acted as an ART Agency without a license, or whether such a license has previously been refused, revoked, or suspended in any jurisdiction. If so, provide a detailed explanation.

(k) Whether the applicant or any Owner has worked for, or provided consulting services to, a company that has had entered against it an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice. If so, provide a detailed explanation;

(l) Whether the applicant or any Owner has had entered against him/her/it an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice. If so, provide a detailed explanation;

(m) Whether the applicant or any Owner has had any convictions for child abuse, child neglect or sexual misconduct as such is defined by the criminal code of his/her State of residence;

(n) A statement from each Owner specifying that he/she is not currently using any drugs in a manner which violates the laws of his/her State of residence, and is able to fulfill the duties of his/her job description;

(o) A statement of affirmative duties as further described under Section 302 of this Act;

(p) A statement of intent to comply with Department’s audit and review policy;

(q) Whether there have been any judicial or administrative findings that applicant or any Owner has been previously denied a license in the area of providing legal, medical, adoption, child-care, assisted reproductive services or counseling services; and

(r) Any material change in business following date of initial or renewal of licensure (as specified below).

3. The Department shall determine the minimum education and experience required for the issuance of licenses.

4. The Department shall implement procedures to obtain the following information regarding each Owner:
(a) State and federal criminal records; 
(b) Child abuse and neglect check for all states of residency from the age of eighteen (18); and 
(c) Sex offender registry check for all states of residency from the age of eighteen (18) as well as the federal database.

5. Upon the filing of an application for a license and payment of all applicable fees, unless the application is to renew or reactivate an existing license, the Department shall, in addition to reviewing the application:

(a) Review applicant’s policy for client file structure and management; 
(b) Review applicant’s written pro forma Service Agreement for clients to ensure compliance with this Act; 
(c) Review applicant’s accounting process; 
(d) Review the applicant’s system for protection of Participant funds in accordance with this Act; and 
(e) Review applicant’s Record retention policy.

6. The Department shall issue the license unless the application is incomplete, or grounds for denial of the license exist. Grounds for denial shall include, but is not limited to, a previous felony conviction, previous license revocation or failure to demonstrate sufficient experience or education within the field of ART. Any denial, and reversal of same, shall be governed by applicable State or federal law.

7. The Department may implement any application fees or other fees necessary or convenient to carry out the provisions of this section.

8. The Department may permit applicants to operate on an interim basis while license applications are pending. Interim licensure shall be permitted only if applicant is licensed within another State, all unearned or undisbursed funds of its Intended Parent Clients are deposited in an Escrow Account, and the applicant is covered by professional liability insurance if such is available.

9. Each licensee shall report, on a form prescribed the Department, any change to the information contained in any initial application form or any amendment to such application not later than thirty (30) days after the change is effective.

10. Each licensee shall report any changes in the Owners, partners, departments, members, joint venturers or directors of any licensee, or changes in the form of business organization, by written amendment in such form and at such time as the Department specifies by rule.

(a) When such change causes a new Person to acquire greater than 5% ownership, or be provided direct control over the activities of the licensee, such Person must submit an initial application for licensure before such purchase or acquisition at such time and in such form as the Department prescribes.
11. Licenses are not transferable or assignable.

12. A licensee may invalidate any license by delivering it to the Department with a written notice of the delivery, but such delivery does not affect any civil or criminal liability or the authority to enforce this chapter for acts committed in violation thereof.

13. A licensee who is the subject of a voluntary or involuntary bankruptcy filing must report such filing to the Department within seven (7) business days after the filing date.

14. A licensee that has been convicted or found guilty of a felony or has had entered against her or him an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice must immediately report such filing to the Department, together with a full explanation.

15. The Department shall implement procedures for the renewal of licenses.

16. Streamlined License Procedure

   (a) Any Owner who is a professional subject to regulation under other departments may opt for streamlined licensure requirements under this Act.

   (b) The Department shall determine categories of professionals that qualify for streamlined licensure. Such professionals shall include, but not be limited to, physicians, attorneys, registered nurses, licensed psychologists and licensed social workers.

   (c) An inactive, suspended or otherwise not active professional license shall not qualify for the streamlined licensure requirements.

   (d) The streamlined licensure procedure shall be determined by the Department.

17. This Chapter does not prevent a licensee from providing services to residents of any part of this State or any other State or country.

SECTION 202. OUT OF STATE APPLICATION FOR LICENSE

1. The Department shall establish a mechanism for recognition and licensure of a foreign ART Agency that desires to do business within its borders.

   (a) A licensed, nonresident ART Agency that does not have a substantial nexus within the State shall transmit a copy of their current license to the Department and pay any applicable fees, as determined by the Department, prior to transacting business in the State.
(b) A licensed, nonresident ART Agency, that has a substantial nexus within the State shall transmit to this State’s licensing body a copy of its current license, pay any applicable fees, as determined by the Department, and submit a completed application as required by the Department.

(c) An unlicensed, nonresident ART Agency shall satisfy all licensing requirements previously established for resident ART Agencies.

(d) If reciprocity of ART licensing exists between the State of residence of the licensed foreign Agency and this State, the Agency must transmit to the Department a copy of its current license, pay any applicable fees, as determined by the Department, and submit a completed application as required by the Department.

2. The Department shall, upon receipt of the required documents and fees, make an expedient determination for licensing.

(a) The Department can reject the application with direction for reapplying.

(b) The Department can accept the application and issue a license.

(c) The Department can accept the application and issue a provisional license, with a remedial program to run concurrent with the timeline of the provisional admission. The Department shall issue a full license upon completion of the remedial program.

SECTION 203. DISCIPLINARY ACTION

1. The following acts are violations of this chapter and constitute grounds for disciplinary action.

(a) A material misstatement of fact in an application for a license.

(b) The violation, either knowingly or without the exercise of due care, of any provision of this chapter, any rule or order adopted under this Act, or any written agreement entered into with the Department.

(c) Any act of fraud, misrepresentation, non-waived conflict of interest, or deceit, regardless of reliance by or damage to a client, or any illegal activity, where such acts are in connection with providing agency services under this chapter. Such acts include, but are not limited to:

(i) Willful imposition of charges in violation of this Act, or previously undisclosed charges, or charges in excess of 10% over the amount originally disclosed in the Service Agreement without reasonable cause;

(ii) Misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a third Person;
(iii) The use of false, deceptive, or misleading advertising; and

(iv) Failure to disclose material information in its possession to Participants.

(d) Failure to maintain, preserve, and keep available for examination, all books, accounts, or other documents required by this Act, by any rule or order adopted under this Act, or by any agreement entered into with the Department.

(e) Refusal to permit inspection of books and Records in an investigation or examination by the Department or refusal to comply with a validly issued subpoena issued by the Department.

(f) Pleading nolo contendere to, or having been convicted or found guilty of, a crime involving fraud, dishonest dealing, or any act of moral turpitude, regardless of whether adjudication is withheld.

(g) Allowing any Person other than the licensee to use the licensee's business name, address, or telephone number.

(h) Failure to pay any fee, charge, or fine imposed or assessed pursuant to this chapter or any rule adopted under this chapter.

(i) Using the name or logo of another Person when marketing or soliciting existing or prospective customers if such marketing materials are used without the consent of that institution and in a manner that would lead a reasonable individual to believe that the material or solicitation originated from, was endorsed by, or is related to or the responsibility of that institution or its affiliates or subsidiaries.

(j) Payment to the Department for a license or permit with a check or electronic transmission of funds that is dishonored by the applicant's or licensee's financial institution.

(k) Failure to maintain continuing education as otherwise set out in this Statute. [Legislative Note: Optional, depending on adoption of continuing education requirements]

(l) Failure to meet and/or maintain minimum standards as set forth above constitute grounds for denial of an application.

2. Under this section, a licensee is responsible for acts of its Owners, members of the partnership, any department or director of the corporation or association, or any Person with power to direct the management or policies of the partnership, corporation, or association.

3. Under this section, a licensee is responsible for the acts of its employee or agents if, with knowledge or reckless disregard of such acts, the licensee retained profits, benefits, or advantages accruing from such acts or ratified the conduct of the employee or agent as
a matter of law or fact.

4. Disciplinary action that may be imposed under this section includes:

(a) Denial of the issuance of a license or renewal of a license;

(b) Issuance of a probationary or conditional license;

(c) Fines up to $25,000 per violation;

(d) Suspension of a license;

(e) Revocation of a license; and

(f) Ordering restitution to aggrieved Participant(s) to the full extent of their damages. Restitution includes, but is not limited to, all amounts paid by the aggrieved Participant(s) to the ART Agency as well as all other economic and non-economic losses incurred by the aggrieved Participant(s) as a result of the ART Agency’s and/or Owner’s misconduct.

5. The Department shall follow the State’s administrative procedures act when exercising its duties under this Section, and all remedies available under the administrative procedures act shall be available to the Department and licensee or applicant.

6. In the event that the Department takes action under this Section, it shall arrange for the provision of ongoing services to the active Participants.

SECTION 204. FAILURE TO COMPLY

1. The Failure of any ART Agency or any other Person to comply with any provision(s) of this Act shall not affect the validity and enforceability of any lawful direct agreement(s) among the Participants.

2. Action taken by the Department against any licensee shall not impair the obligation of any lawful agreement(s) between the licensee and Participant(s).

ARTICLE 3. RESPONSIBILITIES OF ART AGENCIES

SECTION 301. LICENSING REQUIRED

1. ART Agencies must be licensed by the Department to operate in this State.

SECTION 302. AFFIRMATIVE DUTIES AND OBLIGATIONS

1. An ART Agency shall provide services to its Participants in a non-discriminatory manner. Nothing herein shall inhibit the ART Agency’s ability to accept or decline prospective Participants based on its own policies and screening procedures.
2. An ART Agency shall respect the autonomy of Participants by not engaging in coercion, fraud, misrepresentation, or unethical behavior.

3. An ART Agency shall not provide legal, medical, psychological, insurance or other advice that it is not licensed or otherwise qualified to give.

4. An ART Agency shall respect Participant confidences by first obtaining the appropriate HIPAA releases, attorney-client privilege waivers, or other such written consent from the Participant prior to conversation with other relevant ART professionals on behalf of the Participant.

5. An ART Agency shall not present a Surrogate or Donor for matching to Intended Parent(s), that they reasonably know or should know has not or will not pass medical and/or psychological testing or is otherwise unavailable.

SECTION 303. SERVICE AGREEMENTS

1. Prior to entering into a Service Agreement, an ART Agency shall provide the following items to the Intended Parent:
   (a) A detailed description of the services to be provided by the ART Agency;
   (b) The estimated costs of the services to be provided by the ART Agency;
   (c) An explanation of refund and cancellation policies; and
   (d) The estimated timing for the services to be provided by the ART Agency, as well as a statement that the projected time frame may be subject to variables outside of the control of the ART Agency.

2. All Service Agreements must be in writing and include the following provisions:
   (a) The information required by Article 3, Section 303 of this Act;
   (b) The name and address, phone number and email of Agency, the corporate identity if any, the main contact person of the agency, and the license number, if one has been provided by the Department;
   (c) The full legal names, addresses, phone numbers and emails for the Intended Parent(s);
   (d) A detailed description of the services to be provided by the ART Agency;
   (e) A detailed description of the estimated costs of the services to be provided by the ART Agency;
   (f) A description of other known fees and expenses that may be incurred, including, but not limited to, legal fees and medical costs;
   (g) A timetable for the payment of known costs, fees and expenses;
   (h) The name and address, phone number and email of the Escrow Agent;
   (i) The estimated time for completion of the services to be provided, as well as a statement that the projected time frame may be subject to variables outside of the control of the ART Agency;
   (j) Notification of the right, and an opportunity, to have the Service Agreement reviewed by independent legal counsel, and right to separate counsel for applicable agreements with third parties for each Participant involved;
(k) An explanation of recordkeeping procedures for Records required to be kept under Section 305 of this Act;
(l) An explanation of the ART Agency’s policies regarding future contact between the Participants following the completion of the direct agreement between the Participants or a statement that the ART Agency does not provide such services;
(m) Disclosure of any and all relationships, activities, financial or other interests of the Owners of the ART Agency that may constitute an actual or potential conflict of interest as such is defined within the State and to offer the Participant an ability to waive said conflict if such is permitted within the jurisdiction; and
(n) The name of the ART Agency’s professional liability insurance carrier(s) or a statement that the ART Agency does not carry professional liability insurance where none is applicable.

SECTION 304. PREREQUISITES FOR CYCLE COMMENCEMENT

1. No ART Agency shall permit, encourage or facilitate an egg Donor or Surrogate to begin a Cycle until the following tasks have been completed:
   (a) A Service Agreement has been signed by the Intended Parent(s);
   (b) All Participants have each had an opportunity to consult with a licensed attorney of their own choosing;
   (c) A direct agreement between the Participants has been executed (i.e., a direct agreement between Intended Parents and a Donor, or a direct agreement between Intended Parents and a Surrogate);
   (d) The Intended Parent(s) have made the deposit to the Escrow Account, in accordance with the direct agreement(s) between the Participants.
   (e) The Participants are informed to seek advice regarding their life insurance and health insurance/benefits policies and the respective coverage of the fertility treatment, complications, and obstetric costs and fees;
   (f) The Participants are informed to seek advice from medical, psychological, legal, and any other relevant third party professionals to discuss the potential risks and outcomes of the process; and
   (g) The Participants are informed to seek advice regarding their guardianship and estate planning options.

SECTION 305. RECORDKEEPING

1. The ART Agency shall create and maintain reasonable and ordinary business Records.
2. The ART Agency shall maintain copies of direct agreements between Participants, unless the Participants decline to share their direct agreement with the ART Agency.
3. All Records required to be kept under this section shall be maintained for a minimum of eighteen (18) years following the completion of the Service Agreement.
The ART Agency shall have and follow a written policy that covers the following:
(a) The protocol for creating, storing, backing up, accessing, transferring and disposing Records under the ART Agency’s control; and
(b) The policy for transfer of such Records in the event that the ART Agency ceases to exist or is otherwise unable to continue to maintain the Records for the required time period.

Such Records shall be held in strict confidence by the ART Agency and only released upon the written permission of the Participant(s) addressed by the information stored in such Records. This provision applies even when the information is identified and used in a database, for archival research, education, advertising, or for any other purpose. If the Participant is defined in the Record as a couple, both persons shall provide permission prior to release of information.

Such Records shall be confidential and the Records and their contents shall not be disclosed nor shall disclosure be compelled except as follows:
(a) For the ART Agency Owner to carry out any and all duties under a Service Agreement;
(b) With the consent of the Participant(s) whose information is contained in the Record to be disclosed; or
(c) Pursuant to a valid court order or subpoena.

SECTION 306. CONTINUING EDUCATION

Legislative Note: States can choose to implement alternative educational requirements in lieu of yearly continuing education.

1. Owners of ART Agencies must complete _____ hours of continuing education each calendar year.

2. Such continuing education may consist of such topics as ethics, communicable diseases, FDA screening, financial responsibility, psycho-social aspects of assisted reproduction, reproductive medicine/biology and reproductive law or other relevant topics. To the extent that the subject matter is identical, licensees that hold other professional licenses may satisfy these requirements through continuing education approved by their respective licensing authority.

SECTION 307. MANAGEMENT AND DISBURSEMENT OF FUNDS

1. All unearned or undisbursed funds of Intended Parent(s) must be held in an Escrow Account established pursuant to this Act. Trust accounting rules of the jurisdiction of the Escrow Account shall control the disbursement of funds as further reflected in the fund management agreement between Intended Parent and Escrow Agent as well as within the direct agreement between Intended Parent and Surrogate or Donor.
2. An ART Agency must provide proof of insurance and bonding as required pursuant to this Act, as may be required by the Department.

SECTION 308. PROFESSIONAL LIABILITY INSURANCE

1. An ART Agency must carry professional liability insurance coverage, if available.

ARTICLE 4. MISCONDUCT

Legislative Note: States should customize this article to comport with the State’s criminal code.

SECTION 401. UNLICENSED OPERATION

1. No ART Agency shall operate without a license issued in accordance with this Act. Violation of this paragraph shall be punishable by a civil penalty.

2. No Person shall knowingly operate or permit the operation in this State of an ART Agency that is not licensed in accordance with this Act. Violation of this paragraph shall be punishable by a civil penalty.

Legislative Note: States should incorporate the existing statutory scheme for civil penalties for unlicensed activities.

SECTION 402. AUTHORIZATION OF CIVIL ACTION

1. An aggrieved Person may bring a civil action against an ART Agency or Owner in the event of negligent conduct or misappropriation of funds.

2. An aggrieved Person may bring a civil action against an ART Agency or Owner for a breaching the Service Agreement or violating the terms of this ACT.

3. In the event of knowing or purposeful misconduct, an award of punitive damages is authorized.

4. In the event of a civil action against an ART Agency or Owner, attorney's fees and costs shall be paid by the unsuccessful litigant.

SECTION 403. CANDOR WITH THE COURT

1. No ART Agency or Operator shall provide, attempt to provide, or solicit another to provide false or misleading information to an administrative agency or court during the parental establishment of a child. Violation of this section shall be a felony and punishable accordingly.

2. Destruction of ART Agency records during or in anticipation of a civil action shall be spoliation of evidence for which the court may shift the burden of proof to the ART
Agency to prove non-liability or lack of damages.

SECTION 404. PAYMENT FOR GAMETES

1. No program of an ART Agency or Owner shall compensate or provide that a Donor, as defined in Section 102.8, be compensated, based on the number or quality of Gametes or Embryos donated. Violation of this section shall be a misdemeanor and punishable accordingly.

SECTION 405. REMEDIES NOT EXCLUSIVE

1. This Article is not intended to limit the rights of any Person or government entity to bring an action against the ART Agency or Owner under any other provision of law or equity.

ARTICLE 5. MISCELLANEOUS PROVISIONS

SECTION 501. AUDITS

1. The Department may audit the ART Agency to ensure compliance with any and all provisions of this Act and the ART Agency shall fully cooperate in any such audit.

SECTION 502. RULEMAKING

1. The Department shall adopt rules to implement the Department’s responsibilities under this Act, in accordance with the State administrative procedures act, if any.

ARTICLE 6. PUBLIC INFORMATION

SECTION 601. DISSEMINATION OF INFORMATION

1. The Department shall publish a list of all ART Agencies licensed within the State.

2. The Department shall publish a list of all ART Agencies subject to its sanctions and the sanction levied.

3. Such lists shall be updated and published as otherwise required of the Department by its administrative regulations.
EXECUTIVE SUMMARY

1. Summary of the Resolution
The Resolution recommends consideration and adoption by appropriate governmental agencies and legislatures of the Model Act Governing ART Agencies, which provides model licensing legislation governing ART agencies.

2. Summary of the Issue that the Resolution Addresses
Assisted Reproductive Technologies (ART) is the intersection of various professions all synchronized to resolve infertility visited upon an Intended Parent. Certain aspects of infertility are respectively addressed by licensed professionals including psychologists, physicians, and attorneys. Each of these professions is guided and regulated to some extent by the substantive and ethical rules of their various professional organizations and their licensing requirements.

When assisted reproduction requires collaboration with persons outside of the intended parent – professional relationship, this is referred to as third party ART. Third party ART (gamete or embryo donation and surrogacy) is impacted by the services provided by certain recruiting and matching agencies (“ART agencies”). ART agencies receive and manage prospective intended parents’ funds for the purpose of matching them with desirable donors/surrogates as well as administering various aspects of their ongoing fertility program. ART agencies can be owned and operated by anyone without the professional training, licensing or regulation that governs most other aspects of the ART process.

The reliance upon and use of assisted reproduction as a method of family formation continues to increase every year. The lack of law and regulation of third party ART agencies increases the potential for exploitation of vulnerable intended parents, surrogates and gamete donors as more unlicensed and unregulated third party ART agencies enter the industry and provide third party ART services.

3. Please Explain How the Proposed Policy Position will address the issue
The Model Act Governing Assisted Reproductive Technology Agencies will provide states a model licensing structure which will promote predictability and accountability for the benefit of Intended Parents and all ART participants with respect to the services provided by currently unlicensed third party ART agencies. Such a licensing structure will also help to minimize exploitation of the ART participants, foster professionalism and provide a mechanism for dispute resolution.

4. Summary of Minority Views
At the time of the writing of this Resolution with Report and summary, we are not aware of any formal reported direct opposition to the approval of the Model Act Governing ART Agencies.
RESOLVED, That the American Bar Association urges the United States Department of State to seek the following in negotiations concerning a possible Hague Convention on private international law concerning children, including international surrogacy arrangements:

a. That any Convention should focus on the conflict of laws and comity problems inherent in international citizenship and parentage proceedings and that any such collective international approach should allow for cross-border recognition of parentage judgments so that the parental relationship and citizenship status of all children, no matter the circumstance of their birth, will be certain; and

b. That any such collective international approach allows individual member countries to regulate surrogacy within their own borders as deemed appropriate by that country without imposing new international restrictions on surrogacy arrangements; and

c. That a Central Authority model to regulate surrogacy arrangements is not an appropriate model for any collective international approach regarding surrogacy; and

d. That any Convention should recognize the clear distinctions between adoption and surrogacy; and

e. That the Hague Convention on the Protection of Children and Co-Operation In Respect of Intercountry Adoption (1993) is not an appropriate model for any Convention regarding surrogacy; and

f. That rather than requiring a genetic link, an intent-based parentage analysis is the most appropriate parentage doctrine for surrogacy; and

g. That human rights abuses are not necessarily inherent in or exclusive to surrogacy arrangement; and, therefore should be addressed separately.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

The Resolution urges the United States Department of State to seek, in negotiations concerning a possible Hague Convention on private international law concerning children, including international surrogacy arrangements, the following:

a. That any Convention should focus on the conflict of laws and comity problems inherent in international citizenship and parentage proceedings and that any such collective international approach should allow for cross-border recognition of parentage judgments so that the parental relationship and citizenship status of all children, no matter the circumstance of their birth, will be certain; and

b. That any such collective international approach allows individual member countries to regulate surrogacy within their own borders as deemed appropriate by that country without imposing new international restrictions on surrogacy arrangements,

c. That any such Convention recognizes the clear distinctions between adoption and surrogacy and that The Hague Convention on the Protection of Children and Co-Operation In Respect of Intercountry Adoption (1993) is not an appropriate model for any Convention regarding surrogacy.

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

Recent advancements in medical technology have enabled the global expansion of third-party assisted reproduction (surrogacy) for both infertile couples and single individuals. When surrogacy arrangements involve individuals from more than one nation, the legal status of the individuals and that of the resulting children may be uncertain. Situations where “stateless” children were born through international surrogacy arrangements have prompted discussion about whether a Hague Convention on private international law concerning children, including international surrogacy arrangements is needed. Of additional concern are the potential for exploitation of individuals in the international surrogacy process, particularly the exploitation of women.

The United States Department of State has requested the ABA to weigh in on the possibility of an international Convention and what it should or should not address, and the Sponsors have prepared a position paper (the Report) on these issues. Additionally, it is the Sponsors’ view that international regulation of surrogacy arrangements could lead to other problems that will complicate the issues rather than resolve them.
3. **Please Explain How the Proposed Policy Position will address the issue**

While the Sponsors support the notion of an international Convention on private international law concerning children, including international surrogacy arrangements, conflict of laws and comity (i.e., cross-border recognition of parentage judgments) should be the cornerstone of any such collective international approach as opposed to regulation of the surrogacy industry itself. A Convention of this type should recognize the clear distinctions between adoption and surrogacy rather than reflexively applying legal frameworks created for adoptions, such as the existing Hague Convention on Adoption, to surrogacy arrangements. The Hague Conference itself has acknowledged that the existing adoption Convention may not be suited to address the issues raised by international surrogacy. The Sponsors’ position is that the Hague Convention on the Protection of Children and Co-Operation In Respect of Intercountry Adoption (1993) is not an appropriate model for any Convention regarding surrogacy.

The Sponsors strongly urge that any Convention allows individual member countries to regulate surrogacy as deemed appropriate by that country without imposing new international restrictions on surrogacy arrangements.

Most importantly, the Sponsors’ position is that rather than regulating the details and mechanics of surrogacy itself, what is most needed is an agreement among countries to recognize parentage judgments validly issued by participating countries so that the parental relationship and citizenship status of all children, no matter the circumstance of their birth, are not left to the uncertainties of the varied legal approaches of individual nations.

4. **Summary of Minority Views**

At the time of the writing of this Resolution with Report and summary, we are not aware of any formal reported direct opposition to the approval of this Resolution.
AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON LAWYER REFERRAL AND INFORMATION SERVICE
ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
AUSTIN BAR ASSOCIATION
BROOKLYN BAR ASSOCIATION
CINCINNATI BAR ASSOCIATION
OREGON STATE BAR
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
STANDING COMMITTEE ON DISASTER RESPONSE AND PREPAREDNESS
STANDING COMMITTEE ON GROUP AND PREPAID LEGAL SERVICES
LAW PRACTICE DIVISION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, tribal, and territorial courts and legislative bodies to adopt rules or enact legislation to establish an evidentiary privilege for confidential communications between a client and a lawyer referral service, thereby ensuring that a client consulting a lawyer referral service for the purpose of retaining a lawyer or obtaining legal advice from a lawyer may refuse to disclose, and may prevent the lawyer referral service from disclosing, those confidential communications.

FURTHER RESOLVED, That the American Bar Association urges federal, state, tribal, and territorial courts and legislative bodies to adopt rules or enact legislation protecting the confidentiality of information relating to a client’s consultation with a lawyer referral service, including the identity of the client.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   This resolution urges federal, state, tribal, and territorial courts and legislatures to adopt rules or enact legislation establishing a new evidentiary privilege for confidential communications between a client and a lawyer referral service for the purpose of retaining a lawyer or obtaining legal advice from a lawyer. The new LRS-client privilege established by these rules or legislation should be similar to the privilege that currently exists for confidential communications between attorneys and their clients. The resolution also urges courts and legislative bodies to adopt rules or enact legislation protecting the confidentiality of other information relating to the client’s consultation with the LRS, such as the identity of the client.

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

   Lawyer referral services provide a public service in helping clients to find legal representation (and attorneys find clients). In order to provide this service, lawyer referral services must first obtain information from each client about their case or issue, to ensure that they are referred to the appropriate attorney or attorneys for their specific legal needs. In most states, it is unclear under existing statutory or case law whether any statutory or common law privilege would protect these confidential communications between a client and a lawyer referral service, meaning that they are potentially subject to compelled discovery and disclosure. Lawyer referral services have been regularly questioned by clients about this issue, and most are unable to reassure clients that their communications are clearly privileged. This can hamper the kind of open communication required to make the right referral. Moreover, in recent years in a number of instances, litigants have sought discovery into such communications.

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

   This resolution would urge federal, state, tribal, and territorial courts and legislatures to adopt rules or enact legislation establishing a new evidentiary privilege for confidential communications between a client and a lawyer referral service for the purpose of retaining a lawyer or obtaining legal advice from a lawyer. It would enable lawyer referral services to reassure their clients and thereby maintain the kind of open communications required to make a good referral. It would also eliminate, or at least minimize, the risk that an opposing lawyer might subpoena documents or seek testimony from a lawyer referral service concerning its confidential communications with the other party.

3. **Summary of Minority Views**

   None as of this writing.
RESOLVED, That the American Bar Association urges Congress to enact legislation to make permanent the tax deduction for donation of wholesome food inventory as previously codified in Internal Revenue Code section 170(e)(3)(C).
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges Congress to enact legislation to make permanent the tax deduction for donation of wholesome food inventory as previously codified in Internal Revenue Code section 170(e)(3)(C).

2. Summary of the Issue that the Resolution Addresses

Small businesses and sole proprietorships throw away unsold inventories of wholesome food that could be donated to the nation’s food pantries if the costs of storage, packaging, and delivery were not prohibitive. Making permanent the federal income tax deduction for donation of food inventories would offset these costs and eliminate the uncertainty of the previous annual sunset provision in the law.

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

This Resolution would allow the ABA Governmental Affairs Office to lobby Congress for legislation, such as that passed by the U.S. House of Representatives earlier this year, making permanent the tax deduction for charitable donation of food inventories.

4. Summary of Minority Views

No minority views or opposition have been identified at this time.
AMERICAN BAR ASSOCIATION

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association approves the Revised Uniform Athlete Agents 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 suggested therein.
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association approves the Revised Uniform Athlete Agents Act promulgated by the National Conference of Commissioners on Uniform State Laws in July 2015 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the Issue that the Resolution Addresses

The Revised Uniform Athlete Agents Act (2015) is an update of the Uniform Athlete Agents Act of 2000, which has been enacted in 42 states. The 2000 Act governs relations among student athletes, athlete agents, and educational institutions, protecting the interests of student athletes and academic institutions by regulating the activities of athlete agents. The Revised Act makes numerous changes to the original act, including expanding the definition of “athlete agent” and “student athlete;” providing for reciprocal registration between states; adding new requirements to the signing of an agency contract; and expanding notification requirements.

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

Approval of the Revised Uniform Athlete Agents 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.

4. Summary of Minority Views

None known.
RESOLUTION

RESOLVED, That the American Bar Association approves the Revised Uniform Residential Landlord and Tenant 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 suggested therein.
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association approves the Revised Uniform Residential Landlord and Tenant Act promulgated by the National Conference of Commissioners on Uniform State Laws in July 2015 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the Issue that the Resolution Addresses

The previous version of the Uniform Residential Landlord and Tenant Act was approved in 1972 and last amended in 1974 and had become outdated.

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

The revised act is a comprehensive update including new sections on lease obligations in cases of domestic violence or stalking, handling of security deposits and unearned rent, and disposition of a tenant’s personal property after death or abandonment.

4. Summary of Minority Views

The ABA-RPTE Section approved the three new subjects included in the uniform act but did not take a position on the other revisions.
RESOLUTION

1 RESOLVED, That the American Bar Association approves the Uniform Commercial
2 Real Estate Receivership Act, promulgated by the National Conference of
3 Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to
4 adopt the specific substantive law suggested therein.
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association approves the Uniform Commercial Real Estate Receivership Act promulgated by the National Conference of Commissioners on Uniform State Laws in July 2015 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the Issue that the Resolution Addresses

The remedy of receivership is used to varying degrees in all states. Most commercial real estate loan contracts grant the lender the right to have a receiver appointed in case of default. However, the standard for appointment and the powers granted to receivers vary widely from state to state.

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

The act provides uniform standards for the appointment of receivers and gives courts needed guidance for granting powers to a receiver, while leaving enough flexibility for the court to design a remedy appropriate under the circumstances.

4. Summary of Minority Views

Some commercial lenders have expressed the view that lenders should have more power to control the court’s actions. There is no known opposition within the ABA.
RESOLVED, That the American Bar Association approves the Uniform Home Foreclosure Procedures 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 suggested therein.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

That the American Bar Association approves the Uniform Home Foreclosure Procedures Act promulgated by the National Conference of Commissioners on Uniform State Laws in July 2015 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

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

The recent housing downturn in the United States revealed flaws in the current foreclosure system. Widespread securitization of mortgage loans confused the issue of which party was entitled to enforce the mortgage. Courts were overwhelmed with cases resulting in lengthy delays, during which time some properties were abandoned and fell into disrepair, further eroding neighborhood property values.

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

The Uniform Home Foreclosure Procedures Act provides a sound set of rules for the foreclosure process. It protects creditors and homeowners from unethical abuse and encourages pre-foreclosure resolution when feasible. It also provides an expedited foreclosure process for abandoned property. The act is appropriate for both judicial and non-judicial foreclosure states.

4. **Summary of Minority Views**

The Uniform Home Foreclosure Procedure Act is based on sound public policy and aims to treat both lenders and homeowners with utmost fairness. As a result, some advocates from both groups would have preferred different policy choices and were dissatisfied with the final result. There is no known opposition within the American Bar Association.
RESOLVED, That the American Bar Association approves the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders 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 suggested therein.
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association approves the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act promulgated by the National Conference of Commissioners on Uniform State Laws in July 2015 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the Issue that the Resolution Addresses

The Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act provides for the enforcement of domestic violence protection orders issued by Canadian courts. Reflecting the friendship between the United States and Canada, citizens move freely between the two countries, freedom that in certain limited circumstances can work against victims of domestic violence. Canada has granted recognition to protection orders of the United States and other countries in the Uniform Enforcement of Canadian Judgments and Decrees Act. By this act, enacting states accord similar recognition to protection orders from Canada.

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

Approval of the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders 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.

4. Summary of Minority Views

None known.
RESOLVED, That the American Bar Association approves the Uniform Trust Decanting 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 suggested therein.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

That the American Bar Association approves the Uniform Trust Decanting Act promulgated by the National Conference of Commissioners on Uniform State Laws in July 2015 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

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

Trust decanting occurs in every state, but only nineteen states have statutory law on decanting and those statutes vary widely. Trustees asked to take over a decanted trust face uncertain liability for a predecessor’s decanting action. Decanting can cause uncertain tax consequences in the absence of clear rules. An unethical trustee can decant under current law to defeat the settlor’s objective for the trust.

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

The act provides two sets of uniform rules on decanting trust assets – a stricter set for trustees with limited discretion and a broader set for trustees with expanded discretion. The act also provides legal certainty to successor trustees and prevents unintended adverse tax consequences. Finally, the act protects charitable interests to a greater degree than any existing state law.

4. **Summary of Minority Views**

None known.
RESOLVED, That the American Bar Association urges public companies in the United States to diversify their boards to more closely reflect the diversity of society and the workforce in the United States.

FURTHER RESOLVED, That the American Bar Association urges public companies in the United States to adopt plans, policies and practices to diversify their boards and to include board composition in public disclosure materials.

FURTHER RESOLVED, That the American Bar Association urges governments, investors and other market players to call on public companies in the United States to voluntarily adopt plans, policies and practices for achieving diverse boards and to publicly disclose such plans, policies and practices.
EXECUTIVE SUMMARY

1. Summary of the Resolution

   Diversity of Public Company Boards

   Requests that the ABA support a Resolution that urges public companies in the United States to diversify their Boards to more closely reflect the diversity of the population and workforce of the United States; encourages public companies to adopt plans, policies and practices to diversify their Boards and to include Board composition in public disclosure materials; and encourages governments, investors and other market players to express their support for public companies in the United States voluntarily adopting such plans, policies and practices and to publicly disclose those plans, policies and practices. Contact: Melissa Wood, Phone: 312/988-5676, E-mail: melissa.wood@americanbar.org.

2. Summary of the Issue that the Resolution Addresses

   There is a worldwide movement to enhance diversity on corporate boards, but not necessarily a consensus on how best to achieve that goal. Some countries have enacted legislation which imposes quotas, others have enacted regulations. Other countries seek voluntary compliance, encouraging companies to develop their own policies and procedures for the best way to diversify their individual company board.

   The United States follows the voluntary compliance model. Securities and Exchange Commission (“SEC”) rules require public companies to disclose on proxy statements: (1) whether diversity is a factor in considering candidates for nomination to the board; (2) how diversity is considered in that process; and (3) how the company assesses the effectiveness of its policy for considering diversity. But there is no definition of “diversity” in the rule or guidelines for the type of information to be provided. This has resulted in disparate reporting results. This Resolution does not seek to change that voluntary compliance and only seeks to add the support of the American Bar Association and its already public commitment to diversity and inclusion to the current voices encouraging companies to take a more rigorous approach to establishing and outlining their diversity efforts.

   Despite the fact that there is no consensus on how to achieve board diversity, it is clear that board diversity is top of mind with thought leaders. There is a plethora of consultants, academics and non-profits providing research and commentary on this issue. News outlets are reporting on diversity efforts nationally and across the globe on a weekly and sometimes daily basis. Former and current officers and directors of public companies are speaking out to aid the effort of creating board diversity in the United States.
3. Please Explain How the Proposed Policy Position will address the issue

The Resolution encourages diversity on public company boards. If the ABA resolution passes, ABA will publically be able to support diversity on corporate boards.

4. Summary of Minority Views

The minority view supports allowing companies the opportunity to place directors on boards without outside influence. However, the Resolution does not set any required rules for board placements, it solely encourages creation of diverse boards. That encouragement already exists in many forms in the U.S. and throughout the world.
RESOLVED, That the American Bar Association urges state, territorial, and tribal bar admission authorities to consider the impact on minority applicants in deciding whether to adopt the Uniform Bar Examination (“UBE”) in their jurisdiction, and to measure or otherwise track the performance of minority applicants on the UBE subsequent to its adoption;

FURTHER RESOLVED, That the American Bar Association urges state, territorial, and tribal bar admission authorities to consider including subjects not included on the UBE, particularly Indian Law in each state and territory with sizable American Indian populations or trust land, when adopting the UBE in their jurisdiction.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

This resolution call for state, territorial, and tribal bar administrators, when considering the adoption of the Uniform Bar Exam (UBE), to consider the impact on underserved populations. The legal profession is unfortunately one of the least racially diverse professions in the country. Barriers exist all along the pipeline into the profession, including the bar exam, in which minorities disproportionately struggle. When considering whether to adopt the UBE, bar administrators should consider effects on the pipeline into the legal profession, and should track the performance of examinees if the UBE is adopted.

Secondly, this resolution call for bar administrators, when considering the adoption of the UBE, to nevertheless consider including supplemental topics of local importance on their bar exams. Specifically, jurisdictions with significant American Indian/Alaska Native populations should consider including Federal Indian law as a testable subject. As Federal Indian law becomes more and more of a prominent field, as it is institutionally complex, and because of its complexity attorneys should at least be able to identify when an Indian law issue has arisen, jurisdictions with significant Native populations should be expected to be familiar with its key elements.

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

The legal profession is unfortunately one of the least racially diverse professions in the country. Barriers exist all along the pipeline into the profession, from kindergarten to the bar exam. Minority candidates perform disproportionately poorly on the bar exam, including on the Multistate Bar Exam (MBE), a multiple choice portion of the exam adopted by most states. The Uniform Bar Exam (UBE) include the MBE, but gives it a considerably increased weight of 50%.

Secondly, the appeal of the UBE is its uniformity. The collateral effect of the exam is that subjects of local concern (but not necessarily national), are removed from the exam. Bar admission administrators should consider still including these subjects in addition to the UBE. This is especially critical when it pertains to Federal Indian Law. Lawyers within jurisdictions with significant American Indian/Alaska Native populations are more likely to encounter an Indian law issue and should at least be able to recognize it as such. However, states have been tending to remove Indian law from the bar exam rather than add it, and with its exclusion from the bar exam, so too is the subject excluded from law school curriculum.

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

This policy position will allow the ABA to speak on the ever-burgeoning topic of the UBE, as well as on the pipeline issues particular to the UBE.
4. **Summary of Minority Views**

Supporters of the UBE argue for the increased mobility and convenience that one uniform bar exam would offer new applicants, particular young lawyers. With one exam, attorneys would be more free to move about the country, and unburdened by the costs financially and temporally of multiple bar exams.

This resolution is not necessarily in conflict with supporters of the UBE, but merely calls for considerations of the effect of the UBE on minority candidates and local-subjects.
RESOLVED, That the American Bar Association urges Congress to enact legislation to encompass services provided by advanced practice providers within the locum tenens exception to the prohibition on reassignment of Medicare billing privileges.

FURTHER RESOLVED, That the American Bar Association urges the Center for Medicare and Medicaid Services (“CMS”) to promulgate regulations and draft guidance to enable advanced practice providers to bill under the locum tenens or reciprocal billing reassignment exceptions using the Q6 or similar modifier.

FURTHER RESOLVED, That the American Bar Association urges the regional Medicare Administrative Contractors (“MAC”) to draft guidance enabling advanced practice providers to bill under the locum tenens or reciprocal billing reassignment exceptions using the Q6 modifier.
EXECUTIVE SUMMARY

1. Summary of the Resolution.

The Resolution urges Congress to enact legislation and the Centers for Medicare and Medicaid Services to implement regulations and guidance permitting the *locum tenens* services delivered by advanced practice providers to be billed in a manner commensurate with the *locum tenens* services furnished by physicians. The Resolution would seek to eliminate the administrative hurdles, including those unique requirements for Medicare enrollment, that currently prohibit rapid reassignment of Medicare billing privileges for advanced practice providers performing in a capacity similar to a *locum tenens* physician.

2. Summary of the Issue that the Resolution Addresses.

The Resolution would permit the use of the Q6 modifier in billing for the services of advanced practice providers in the same manner as currently permitted by individuals or organizations billing for the services of *locum tenens* physician. This would permit the services of an advanced practice provider to be billed under the Medicare billing number for the physician or advanced practice provider whom the *locum tenens* advanced practice provider is replacing. The Resolution would also eliminate the requirement that the advanced practice provider submit, and the Medicare administrative contractor approve, Medicare enrollment applications currently required before any organization may bill on behalf of an advanced practice provider.

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

The Resolution would apply existing statutory provisions and Centers for Medicare and Medicaid Services regulations and guidance to the performance of *locum tenens* services by an advance practice provider in the same manner currently applied to physician services performed on a *locum tenens* basis.


No minority views or opposition have been identified.