<table>
<thead>
<tr>
<th>Organization</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Virgin Islands Bar Association</td>
<td>10A</td>
</tr>
<tr>
<td>Section of Litigation</td>
<td>100</td>
</tr>
<tr>
<td>National Conference of Federal Trial Judges</td>
<td></td>
</tr>
<tr>
<td>Judicial Division</td>
<td></td>
</tr>
<tr>
<td>Appellate Judges Conference</td>
<td></td>
</tr>
<tr>
<td>National Conference of Specialized Court Judges</td>
<td></td>
</tr>
<tr>
<td>National Conference of State Trial Judges</td>
<td></td>
</tr>
<tr>
<td>National Conference of the Administrative Law Judiciary</td>
<td></td>
</tr>
<tr>
<td>Section of Business Law</td>
<td>101</td>
</tr>
<tr>
<td>Standing Committee on the American Judicial System</td>
<td></td>
</tr>
<tr>
<td>Government and Public Sector Lawyers Division</td>
<td></td>
</tr>
<tr>
<td>Section of Litigation</td>
<td></td>
</tr>
<tr>
<td>Commission on the American Jury</td>
<td></td>
</tr>
<tr>
<td>Section of Tort Trial and Insurance Practice</td>
<td>102</td>
</tr>
<tr>
<td>Standing Committee on Paralegals</td>
<td>103</td>
</tr>
<tr>
<td>Section of International Law</td>
<td>104</td>
</tr>
<tr>
<td>ABA Representatives and Observers to the United Nations</td>
<td></td>
</tr>
<tr>
<td>Rule of Law Initiative</td>
<td></td>
</tr>
<tr>
<td>New York State Bar Association</td>
<td>105</td>
</tr>
<tr>
<td>Standing Committee on Continuing Legal Education</td>
<td></td>
</tr>
<tr>
<td>Commission on Lawyers Assistance Programs</td>
<td></td>
</tr>
<tr>
<td>Law Practice Division</td>
<td>106</td>
</tr>
<tr>
<td>Standing Committee on Legal Aid and Indigent Defendants</td>
<td></td>
</tr>
<tr>
<td>Criminal Justice Section</td>
<td>107</td>
</tr>
<tr>
<td>Standing Committee on Disaster Response and Preparedness</td>
<td></td>
</tr>
<tr>
<td>Section of State and Local Government Law</td>
<td>108</td>
</tr>
<tr>
<td>Standing Committee on Specialization</td>
<td>109</td>
</tr>
<tr>
<td>Section of Legal Education and Admissions to the Bar</td>
<td>110A-B</td>
</tr>
<tr>
<td>Section of Intellectual Property Law</td>
<td>111</td>
</tr>
<tr>
<td>Criminal Justice Section</td>
<td>112A-D</td>
</tr>
</tbody>
</table>
This resolution with report was received after the November 16 filing deadline. Pursuant to §45.5 of the House Rules of Procedure, this late resolution will be considered by the House of Delegates if the Committee on Rules and Calendar recommends a waiver of the time requirement and the recommendation is approved by a two-thirds vote of the delegates voting.
RESOLVED, That the American Bar Association urges the Supreme Court of the United States to establish a panel of attorneys, with criteria and assignment procedures that are publicly available, from which to appoint *amicus curiae*, special masters, and other counsel in proceedings before it; and

FURTHER RESOLVED, That the American Bar Association urges the Supreme Court of the United States to consider racial, ethnic, disability, sexual orientation, gender identity, and gender diversity in the selection process to the panel and for appointment of *amicus curiae*, special masters, and other counsel.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   
   This resolution urges the U.S. Supreme Court to appoint counsel from a panel of attorneys, and to recognize the importance of diversity in the appointments process.

2. **Summary of the Issue that the Resolution Addresses**
   
   The U.S. Supreme Court currently appoints counsel through an *ad hoc* process that differs from the formalized process utilized by other federal, state, and territorial courts.

3. **Please Explain How the Proposed Policy Position will address the issue**
   
   The proposed policy addresses this issue by urging the U.S. Supreme Court to establish a panel of attorney volunteers from which to appoint counsel, and to further urge the Court to consider diversity in the appointment process.

4. **Summary of Minority Views**
   
   No minority views were expressed when the Virgin Islands Bar Association considered this issue.
RESOLVED, That the American Bar Association urges Congress to enact legislation to repeal the restrictions on federal student aid eligibility contained in the Higher Education Act, 20 U.S.C. § 1091(r), which affects eligibility for federal student aid based on certain drug convictions;

FURTHER RESOLVED, That the American Bar Association urges that, in conjunction with the repeal of 20 U.S.C. § 1091(r), the Department of Education revise the Free Application for Federal Student Aid form, required of all applicants seeking federal student aid, to eliminate questions seeking disclosure of certain drug convictions; and

FURTHER RESOLVED, That the American Bar Association urges that, in conjunction with the repeal of 20 U.S.C. § 1091(r), Congress and the Department of Education require higher education institutions to notify students who were deemed ineligible for federal student aid pursuant to that provision (and whose eligibility has not been restored) that they are now eligible for such aid.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges Congress to repeal 20 U.S.C. § 1091(r), a provision of the Higher Education Act that denies eligibility for federal educational aid to students convicted of drug offenses (referred to as the “Aid Elimination Penalty”). There is currently legislation pending in Congress seeking repeal of the provision, and the Higher Education Act is also due for reauthorization. The Aid Elimination Penalty is an excessive, duplicative punishment that disproportionately affects minorities and students from low- and middle-income families. Additionally, because students eligible to receive (and thus are eligible to lose) federal aid must meet academic performance criteria under the law, the Penalty only harms students who are meeting or exceeding performance standards.

The Resolution also urges that (1) the question about drug convictions on the Free Application for Federal Student Aid (“FAFSA”) be removed, and that (2) once the Aid Elimination Penalty is repealed, colleges and universities be required to inform students who were ruled ineligible under the Penalty (and who have not regained their eligibility) that they are now eligible for federal aid.

2. Summary of the issue which the Resolution Addresses

The resolution addresses current federal policy that denies federal educational aid to students convicted of drug offenses. The current policy disproportionately affects minorities and students from low- and middle-income families and impairs rehabilitation for non-violent offenders convicted of low-level drug crimes.

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

The proposed resolution will allow the ABA to advocate for the repeal of the current policy that denies federal educational aid to student convicted of drug offenses.

4. Summary of Minority Views

No opposing views have been expressed by other ABA entities or organizations as of the preparation of this summary.
RESOLVED, That the American Bar Association urges Congress to amend Title 28 of the United States Code to authorize the appointment of additional bankruptcy judges sufficient to meet the demands within each district; and for other purposes;

FURTHER RESOLVED, That the American Bar Association urges Congress, as recommended by the Judicial Conference of the United States, to convert certain temporary bankruptcy judges to permanent bankruptcy judges in Florida, Maryland, Nevada, North Carolina, Puerto Rico, Tennessee, and Virginia and to authorize the appointment of additional bankruptcy judges in Delaware, Michigan, and the Middle District of Florida; and

FURTHER RESOLVED, That the American Bar Association urges Congress, in the event that Title 28 is not amended in needed time, to consider, as recommended by the Judicial Conference of the United States, a one-year extension of seven judgeships, which includes two positions in Delaware, two in Florida-Southern, one in Virginia, one in Michigan-Eastern and one in Puerto Rico.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges Congress to amend Title 28 of the United States Code to authorize the appointment of additional bankruptcy judges sufficient to meet the demands within each district; and for other purposes. Moreover, in the event that Title 28 is not amended in needed time, this Resolution urges Congress to consider, as recommended by the Judicial Conference of the United States, a one-year extension of seven judgeships, which includes two positions in Delaware, two in Florida-Southern, one in Virginia, one in Michigan-Eastern and one in Puerto Rico.

2. Summary of the Issue that the Resolution Addresses

The purpose of this Resolution is to encourage Congress to pass legislation which would convert certain temporary bankruptcy judgeships to permanent positions, and create additional bankruptcy judgeships where needed, in order to allow the courts to perform their function and to maintain the administration of justice.

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

The proposed policy position addresses the issue by calling on Congress to take action on pending legislation which resolves the issue at stake. The official approval of the ABA is a powerful voice of support for this issue.

4. Summary of Minority Views

There are no minority views known at this time.
RESOLVED, That the American Bar Association urges all state courts to consider the
Recommendations of *Call to Action: Achieving Civil Justice for All* as appropriate guidance in
their endeavors to achieve demonstrable civil justice improvements with respect to the
expenditure of time and costs to resolve civil cases; and

FURTHER RESOLVED, That the American Bar Association urges all state courts to develop
and implement a civil justice improvements plan to improve the delivery of civil justice guided
by the Recommendations of *Call to Action: Achieving Civil Justice for All* as endorsed by the
Conference of Chief Justices in 2016; and

FURTHER RESOLVED, That the American Bar Association urges bar associations to promote
the Recommendations of *Call to Action: Achieving Civil Justice for All* and to collaborate with
judges and lawyers to improve the delivery of civil justice.
APPENDIX

CALL TO ACTION: ACHIEVING CIVIL JUSTICE FOR ALL
Recommendations to the Conference of Chief Justices
by the Civil Justice Improvements Committee, 2016

RECOMMENDATION 1
Courts must take responsibility for managing civil cases from time of filing to disposition.

1.1 Throughout the life of each case, courts must effectively communicate to litigants all requirements for reaching just and prompt case resolution. These requirements, whether mandated by rule or administrative order, should at a minimum include a firm date for commencing trial and mandatory disclosures of essential information.

1.2 Courts must enforce rules and administrative orders that are designed to promote the just, prompt, and inexpensive resolution of civil cases.

1.3 To effectively achieve case management responsibility, courts should undertake a thorough statewide civil docket inventory.

COMMENTARY
Our civil justice system has historically expected litigants to drive the pace of civil litigation by requesting court involvement as issues arise. This often results in delay as litigants wait in line for attention from a passive court—be it for rulings on motions, a requested hearing, or even setting a trial date. The wait-for-a-problem paradigm effectively shields courts from responsibility for the pace of litigation. It also presents a special challenge for self-represented litigants who are trying to understand and navigate the system. The party-take-the-lead culture can encourage delay strategies by attorneys, whose own interests and the interests of their clients may favor delay rather than efficiency. In short, adversarial strategizing can undermine the achievement of fair, economical, and timely outcomes.

It is time to shift this paradigm. The Landscape of Civil Litigation makes clear that relying on parties to self-manage litigation is often inadequate. At the core of the Committee’s Recommendations is the premise that the courts ultimately must be responsible for ensuring access to civil justice. Once a case is filed in court, it becomes the court’s responsibility to manage the case toward a just and timely resolution. When we say “courts” must take responsibility, we mean judges, court managers, and indeed the whole judicial branch, because the factors producing unnecessary costs and delays have become deeply imbedded in our legal system. Primary case responsibility means active and continuing court oversight that is proportionate to case needs. This right-sized case management involves having the most appropriate court official perform the task at hand and supporting that person with the necessary technology and training to manage the case toward resolution. At every point in the life of a case, the right person in the court should have responsibility for the case.

RE: 1.1
The court, including its personnel and IT systems, must work in conjunction with individual judges to manage each case toward resolution. Progress in resolving each case is generally tied both to court events and to judicial decisions. Effective caseflow management involves establishing presumptive deadlines for key case stages, including a firm trial date. In overseeing civil cases, relevant court personnel should be accessible, responsive to case needs, and engaged with the parties—emphasizing efficiency and timely resolution.

RE: 1.2
During numerous meetings, Committee members voiced strong concern (and every participating trial lawyer expressed frustration) that, despite the existence of well-conceived rules of civil procedure in every jurisdiction, judges too often do not enforce the rules. These perceptions are supported by empirical studies showing that attorneys want judges to hold practitioners accountable to the expectations of the rules. For example, the chart below summarizes results of a 2009 survey of the Arizona trial bar about court enforcement of mandatory disclosure rules.

Surely, whenever it is customary to ignore compliance with rules “designed to secure the just, speedy, and inexpensive determination of every action and proceeding,”7 cost and delay in civil litigation will continue.

RE: 1.3
Courts cannot meaningfully address an issue without first knowing its contours. Analyzing the existing civil caseload provides these contours and gives court leaders a basis for informed decisions about what needs to be done to ensure civil docket progression.

RECOMMENDATION 2
Beginning at the time each civil case is filed, courts must match resources with the needs of the case.

COMMENTARY
Virtually all states have followed the federal model and adopted a single set of rules, usually similar and often identical to the federal rules, to govern procedure in civil cases. Unfortunately, this pervasive one-size-fits-all approach too often fails to recognize and respond effectively to individual case needs.

The one-size-fits-all mentality exhibits itself at multiple levels. Even where innovative rules are implemented with the best of intentions, judges often continue to apply the same set of rules and mindset to the cases before them. When the same approach is used in every case, judicial and staff resources are misdirected toward cases that do not need that kind of attention. Conversely, cases requiring more assistance may not get the attention they require because they are lumped in with the rest of the cases and receive the same level of treatment. Hence, the civil justice system repeatedly imposes unnecessary, time-consuming steps, making it inaccessible for many litigants.

Courts need to move beyond monolithic methods and recognize the importance of adapting court process to case needs. The Committee calls for a “right sizing” of court resources. Right sizing aligns rules, procedures, and court personnel with the needs and characteristics of similarly
situated cases. As a result, cases get the amount of process needed—no more, no less. With right sizing, judges tailor their oversight to the specific needs of cases. Administrators align court resources to case requirements—coordinating the roles of judges, staff, and infrastructure.

With the advent of e-filing, civil cover sheets, and electronic case management systems, courts can use technology to begin to right size case management at the time of filing. Technology can also help identify later changes in a case’s characteristics that may justify management adjustments.

This recommendation, together with Recommendation 1, add up to an imperative: Every case must have an appropriate plan beginning at the time of filing, and the entire court system must execute the plan until the case is resolved.

RECOMMENDATION 3
Courts should use a mandatory pathway-assignment system to achieve right-sized case management.

3.1 To best align court management practices and resources, courts should utilize a three-pathway approach: Streamlined, Complex, and General.

3.2 To ensure that court practices and resources are aligned for all cases throughout the life of the case, courts must triage cases at the time of filing based on case characteristics and issues.

3.3 Courts should make the pathway assignments mandatory upon filing.

3.4 Courts must include flexibility in the pathway approach so that a case can be transferred to a more appropriate pathway if significant needs arise or circumstances change.

3.5 Alternative dispute resolution mechanisms can be useful on any of the pathways provided that they facilitate the just, prompt, and inexpensive disposition of civil cases.

COMMENTARY
The premise behind the pathway approach is that different types of cases need different levels of case management and different rules-driven processes. Data and experience tell us that cases can be grouped by their characteristics and needs. Tailoring the involvement of judges and professional staff to those characteristics and needs will lead to efficiencies in time, scale, and structure. To achieve these efficiencies, it is critical that the pathway approach be implemented at the individual case level and consistently managed on a systemwide basis from the time of filing.

Implementing this right-size approach is similar to, but distinct from, differentiated case management. DCM is a longstanding case management technique that applies different rules and procedures to different cases based on established criteria. In some jurisdictions the track determination is made by the judge at the initial case management conference. Where assignment to a track is more automatic or administratively determined at the time of filing, it is usually based merely on case type or amount-in-controversy. There has been a general assumption that a
majority of cases will fall in a middle track, and it is the exceptional case that needs more or less process.

While the tracks and their definitions may be in the rules, it commonly falls upon the judges to assign cases to an appropriate track. Case automation or staff systems are rarely in place to ensure assignment and right-sized management, or to evaluate use of the tracking system. Thus, while DCM is an important concept upon which these Recommendations build, in practice it has fallen short of its potential. The right-sized case management approach recommended here embodies a more modern approach than DCM by (1) using case characteristics beyond case type and amount-in-controversy, (2) requiring case triaging at time of filing, (3) recognizing that the great majority of civil filings present uncomplicated facts and legal issues, and (4) requiring utilization of court resources at all levels, including non-judicial staff and technology, to manage cases from the time of filing until disposition.

RE: 3.2
Right-sized case management emphasizes transparent application of case triaging early and throughout the process with a focus on case characteristics all along the way. Pathway assignment at filing provides the opportunity for improved efficiencies because assignment does not turn on designation by the judge at a case management conference, which may not occur or be needed in every case. Entry point triage can be accomplished by non-judicial personnel, based upon the identified case characteristics and through the use of more advanced technology and training. Triage is done more effectively early in the process, with a focus on case issues and not only on case type or monetary value.

RE: 3.3
There has been much experimentation around the country with different processes for case designation upon filing, particularly for cases with simpler issues. Courts and parties invariably underutilize (and sometimes ignore) innovations that are voluntary. Hence, the Committee recommends mandatory application of a triage-to-pathway system. When all civil cases are subject to this right-sized treatment, courts can achieve maximum cost-saving and timesaving benefits.

RE: 3.4
While mandatory assignment is critical, the Committee recognizes that right sizing is dynamic. It contemplates that a case may take an off ramp to another pathway as a case unfolds and issues change. This flexibility comes from active participation of the court and litigants in assessing case needs and ensuring those needs are met.

RE: 3.5
In some jurisdictions, the availability of alternative dispute resolution (ADR) mechanisms is viewed as an invaluable tool for litigants to resolve civil cases quickly and less expensively than traditional court procedures. In others, it is viewed as an expensive barrier that impedes access to a fair resolution of the case. To the extent that ADR provides litigants with additional options for resolving cases, it can be employed on any of the pathways, but it is imperative that it not be an opportunity for additional cost and delay.
**RECOMMENDATION 4**
Courts should implement a Streamlined Pathway for cases that present uncomplicated facts and legal issues and require minimal judicial intervention but close court supervision.

4.1 A well-established Streamlined Pathway conserves resources by automatically calendaring core case processes. This approach should include the flexibility to allow court involvement and/or management as necessary.

4.2 At an early point in each case, the court should establish deadlines to complete key case stages including a firm trial date. The recommended time to disposition for the Streamlined Pathway is 6 to 8 months.

4.3 To keep the discovery process proportional to the needs of the case, courts should require mandatory disclosures as an early opportunity to clarify issues, with enumerated and limited discovery thereafter.

4.4 Judges must manage trials in an efficient and time-sensitive manner so that trials are an affordable option for litigants who desire a decision on the merits.

**COMMENTARY**
Streamlined civil cases are those with a limited number of parties, routine issues related to liability and damages, few anticipated pretrial motions, limited need for discovery, few witnesses, minimal documentary evidence and anticipated trial length of one to two days. Streamlined pathway cases would likely include these case types: automobile tort, intentional tort, premises liability, tort-other, insurance coverage claims arising out of claims listed above, landlord/tenant, buyer plaintiff, seller plaintiff, consumer debt, other contract, and appeals from small claims decisions. For these simpler cases, it is critical that the process not add costs for the parties, particularly when a large percentage of cases end early in the pretrial process. Significantly, the *Landscape of Civil Litigation* informs us that 85 percent of all civil case filings fit within this category.

RE: 4.1
The Streamlined Pathway approach recognizes resource limits. Resource intensive processes like case management conferences are rarely necessary in simple cases. Instead, the court should establish by rule presumptive deadlines for the completion of key case stages and monitor compliance through a management system powered by technology. At the same time, the process should be flexible and allow court involvement, including judges, as necessary. For example, a case manager or judge can schedule a management conference to address critical issues that might crop up in an initially simple case.

RE: 4.2
Too many simple cases languish on state court dockets, without forward momentum or resolution. At or soon after filing, the court should send the parties notice of the presumptive deadlines for key case stages, including a firm trial date. The parties may always come to the court to fashion a different schedule if there is good cause. This pathway contemplates conventional fact finding by either the court or a jury, with a judgment on the record and the
ability to appeal. Because this process is intended for the vast majority of cases in the state courts, it is important that the process ensure a final judgment and right to appeal to safeguard the rights of litigants and to gain buy-in from attorneys.

RE: 4.3
Mandatory disclosures provide an important opportunity in streamlined cases to focus the parties and discovery early in the case. With robust, meaningful initial disclosures, the parties can then decide what additional discovery, if any, is necessary. The attributes of streamlined cases put them in this pathway for the very reason that the nature of the dispute is not factually complex. Thus, streamlined rules should include presumptive discovery limits, because such limits build in proportionality. Where additional information is needed to make decisions about trial or settlement, the parties can obtain additional discovery with a showing of good cause. Presumptive discovery maximums have worked well in various states, including Utah and Texas, where there are enumerated limits on deposition hours, interrogatories, requests for production, and requests for admission.

RE: 4.4
While the vast majority of cases are resolved without trial, if parties in a Streamlined Pathway case want to go to trial, the court should ensure that option is accessible. Because trial is a costly event in litigation, it is critical that trials be managed in a time-sensitive manner. Once a trial begins in a case, the trial judge should give top priority to trial matters, making presentation of evidence and juror time fit into full and consecutive days of business. A thorough pretrial conference can address outstanding motions and evidentiary issues so that time is not wasted and a verdict can be reached in one or two days.

RECOMMENDATION 5
Courts should implement a Complex Pathway for cases that present multiple legal and factual issues, involve many parties, or otherwise are likely to require close court supervision.

5.1 Courts should assign a single judge to complex cases for the life of the case, so they can be actively managed from filing through resolution.

5.2 The judge should hold an early case management conference, followed by continuing periodic conferences or other informal monitoring.

5.3 At an early point in each case, the judge should establish deadlines for the completion of key case stages, including a firm trial date.

5.4 At the case management conference, the judge should also require the parties to develop a detailed discovery plan that responds to the needs of the case, including mandatory disclosures, staged discovery, plans for the preservation and production of electronically stored information, identification of custodians, and search parameters.

5.5 Courts should establish informal communications with the parties regarding dispositive motions and possible settlement, so as to encourage early identification and narrowing of the issues for more effective briefing, timely court rulings, and party agreement.
5.6 Judges must manage trials in an efficient and time-sensitive manner so that trials are an affordable option for litigants who desire a decision on the merits.

COMMENTARY
The Complex Pathway provides right-sized process for those cases that are complicated in a variety of ways. Such cases may be legally complex or logistically complex, or they may involve complex evidence, numerous witnesses, and/or high interpersonal conflict. Cases in this pathway may include multi-party medical malpractice, class actions, antitrust, multi-party commercial cases, securities, environmental torts, construction defect, product liability, and mass torts. While these cases comprise a very small percentage (generally no more than 3%) of most civil dockets, they tend to utilize the highest percentage of court resources.

Some jurisdictions have developed a variety of specialized courts, such as business courts, commercial courts, and complex litigation courts. They often employ case management techniques recommended for the Complex Pathway in response to longstanding recognition of the problems complex cases can pose for effective civil case processing. While implementation of a mandatory pathway assignment system may not necessarily replace a specialized court with the Complex Pathway, courts should align their case assignment criteria for the specialized court to those for the Complex Pathway. As many business and commercial court judges have discovered, not all cases featuring business-to-business litigants or issues related to commercial transactions require intensive case management. Conversely, some cases that do not meet the assignment criteria for a business or commercial court do involve one or more indicators of complexity and should receive close individual attention.

RE: 5.1
To ensure proportionality for complex cases, a single judge should be assigned for the life of these cases. Judges can do much to prevent undue cost and delay. A one-judge-from-filing-through-resolution policy preserves judicial resources by avoiding the need for a fresh learning curve whenever a complex case returns to court for a judicial ruling. The parties are also better served if a single judge is engaged on a regular basis. During the course of the case, attorneys can build upon prior communications rather than repeat them.

RE: 5.2
Research and experience confirms the importance of having a mandatory case management conference early in the life of complex cases. Case conferences provide an ideal opportunity to narrow the issues, discuss and focus dispositive motions prior to filing, and identify and address discovery issues before they grow into disputes. Periodic communications with the court create the opportunity for settlement momentum and reassessment of pathway designation if complexities are eliminated. For the Colorado Civil Access Pilot Project, the focus on early, active, and ongoing judicial management of complex cases was essential and received more positive feedback than any other part of the project.

RE: 5.3
Cases in which the parties are held accountable for completing necessary pretrial tasks tend to resolve more quickly. The longer a case goes on, the more it costs. Effective oversight and
enforcement of deadlines by a vigilant civil case management team can significantly reduce cost and delay.

RE: 5.4
Once a discovery plan is determined, the court must continue to monitor progress over the course of discovery. Everyone involved in the litigation, and particularly the court, has a continuing responsibility to move the case forward according to established plans and proportionality principles. Litigation expense in complex lawsuits, especially discovery costs, easily can spin out of control absent a shepherding hand and guiding principles. Thus, proportionality must be a guiding standard in discovery and the entire pretrial process to ensure that the case does not result in undue cost and delay.

While proportionality is a theme that runs across all of the pathways, in the complex pathway this concept is more surgical. Given the complexities inherent in these cases, proportionality standards should be applied to rein in time and expense while still recognizing that some legal and evidentiary issues require time to sort out.

Mandatory disclosures can also play a critical role in identifying the issues in the litigation early, so that additional discovery can be tailored and proportional, although it is possible that the disclosures, like some discovery, will need to occur in phases.

RE: 5.5
Courts should utilize informal processes, such as conference calls with counsel, to encourage narrowing of the issues and concise briefing that in turn can promote more efficient and effective rulings by the court.

RE: 5.6
Judges must lead the effort to avoid unnecessary time consumption during trials. A robust pretrial conference should address outstanding motions and evidentiary issues so that the trial itself is conducted as efficiently as possible. The court and the parties should consider agreeing to time limits for trial segments. Once a trial begins, the trial judge should give top priority to trial matters, making presentation of evidence and juror time fit into full and consecutive days of business.

RECOMMENDATION 6
Courts should implement a General Pathway for cases whose characteristics do not justify assignment to either the Streamlined or Complex Pathway.

6.1 At an early point in each case, the court should establish deadlines for the completion of key case stages including a firm trial date. The recommended time to disposition for the General Pathway is 12 to 18 months.

6.2 The judge should hold an early case management conference upon request of the parties. The court and the parties must work together to move these cases forward, with the court having the ultimate responsibility to guard against cost and delay.
6.3 Courts should require mandatory disclosures and tailored additional discovery.

6.4 Courts should utilize expedited approaches to resolving discovery disputes to ensure cases in this pathway do not become more complex than they need to be.

6.5 Courts should establish informal communications with the parties regarding dispositive motions and possible settlement, so as to encourage early identification and narrowing of the issues for more effective briefing, timely court rulings, and party agreement.

6.6 Judges must manage trials in an efficient and time-sensitive manner so that trials are an affordable option for litigants who desire a decision on the merits.

COMMENTARY
Like the other pathways, the goal of the General Pathway is to determine and provide “right-sized” resources for timely disposition. The General Pathway provides the right amount of process for the cases that are not simple, but also are not complex. Thus, General Pathway cases are those cases that are principally identified by what they are not, as they do not fit into either the Streamlined Pathway or the Complex Pathway. Nevertheless, the General Pathway is not another route to “litigation as we know it.” Like the streamlined cases, discovery and motions for these cases can become disproportionate, with efforts to discover more than what is needed to support claims and defenses. The goal for this pathway is to provide right-sized process with increased judicial involvement as needed to ensure that cases progress toward efficient resolution.

As with the other case pathways, at an early point in each case courts should set a firm trial date. Proportional discovery, initial disclosures, and tailored additional discovery are also essential for keeping General Pathway cases on track.

RE: 6.1 to 6.3
The cases in the General Pathway may need more active management than streamlined cases. A judge may need to be involved from the beginning to understand unusual issues in the case, discuss the anticipated pretrial path, set initial parameters for discovery, and be available to resolve disputes as they arise. The court and the parties can then work together to move these cases forward, with the court having the ultimate responsibility to guard against cost and delay.

A court’s consistent and clear application of proportionality principles early in cases can have a leavening effect on discovery decisions made in law offices. Parties and attorneys typically make their decisions about what discovery to do next without court involvement. A steady court policy with respect to proportionality provides deliberating parties and attorneys with guidance.

RE: 6.4 to 6.5
As in the Complex Pathway, courts should utilize informal processes, such as conference calls with counsel, to encourage narrowing of the issues and concise briefing that in turn can promote more efficient and effective rulings by the court. In addition, an in-person case management conference can play a critical role in reducing cost and delay by affording the judge and parties the opportunity to have an in-depth discussion regarding the issues and case needs.
Without doubt, alternative dispute resolution (ADR) is an important development in modern civil practice. However, to avoid it becoming an unnecessary hurdle or cost escalator, its appropriateness should be considered on a case-by-case basis. That said, settlement discussions are a critical aspect of case management, and the court should ensure that there is a discussion of settlement at an appropriate time, tailored to the needs of the case.

**RE: 6.6**

As with the other pathways, trial judges play a crucial role in containing litigation costs and conserving juror time by making time management a high priority once a trial begins.

**RECOMMENDATION 7**

Courts should develop civil case management teams consisting of a responsible judge supported by appropriately trained staff.

7.1 Courts should conduct a thorough examination of their civil case business practices to determine the degree of discretion required for each management task. These tasks should be performed by persons whose experience and skills correspond with the task requirements.

7.2 Courts should delegate administrative authority to specially trained staff to make routine case management decisions.

**COMMENTARY**

Recommendation 1 sets forth the fundamental premise that courts are primarily responsible for the fair and prompt resolution of each case. This is not the responsibility of the judge alone. Active case management at its best is a team effort aided by technology and appropriately trained and supervised staff. The Committee rejects the proposition that a judge must manage every aspect of a case after its filing. Instead, the Committee endorses the proposition that court personnel, from court staff to judge, be utilized to act at the “top of their skill set.”

Team case management works. Utah’s implementation of team case management resulted in a 54 percent reduction in the average age of pending civil cases from 335 days to 192 days (and a 54 percent reduction for all case types over that same period) despite considerably higher caseloads. In Miami, team case management resulted in a 25 percent increase in resolved foreclosure cases compared consistently at six months, twelve months, and eighteen months during the foreclosure crisis, and the successful resolution of a 50,000 case backlog. Specialized business courts across the country use team case management with similar success. In Atlanta, business court efforts resulted in a 65 percent faster disposition time for complex contract cases and a 56 percent faster time for complex business tort cases.

**RE: 7.1**

Using court management teams effectively requires that the court conduct a thorough examination of civil case business practices to determine the degree of discretion required for each. Based upon that examination, courts can develop policies and practices to identify case management responsibilities appropriately assignable to professional court staff or automated processes. Matching management tasks to the skill level of the personnel allows administrators to
execute protocols and deadlines and judges to focus on matters that require judicial discretion. Evaluating what is needed and who should do it brings organization to the system and minimizes complexities and redundancies in court structure and personnel.

**RE: 7.2**
Delegation and automation of routine case management responsibilities will generate time for judges to make decisions that require their unique authority, expertise, and discretion.

**RECOMMENDATION 8**
For right-size case management to become the norm, not the exception, courts must provide judges and court staff with training that specifically supports and empowers right-sized case management. Courts should partner with bar leaders to create programs that educate lawyers about the requirements of newly instituted case management practices.

**COMMENTARY**
Judicial training is not a regular practice in every jurisdiction. To improve, and in some instances reengineer, civil case management, jurisdictions should establish a comprehensive judicial training program. The Committee advocates a civil case management-training program that includes web-based training modules, regular training of new judges and sitting judges, and a system for identifying judges who could benefit from additional training.

Accumulated learning from the private sector suggests that the skill sets required for staff will change rapidly and radically over the next several years. Staff training must keep up with the impact of technology improvements and consumer expectations. For example, court staff should be trained to provide appropriate help to self-represented litigants. Related to that, litigants should be given an opportunity to perform many court transactions online. Even with well-designed websites and interfaces, users can become confused or lost while trying to complete these transactions. Staff training should include instruction on answering user questions and solving user process problems.

The understanding and cooperation of lawyers can significantly influence the effectiveness of any pilot projects, rule changes, or case management processes that court leaders launch. Judges and court administrators must partner with the bar to create CLE programs and bench/bar conferences that help practitioners understand why changes are being undertaken and what will be expected of lawyers. Bar organizations, like the judicial branch, must design and offer education programs to inform their members about important aspects of the new practices being implemented in the courts.

**RECOMMENDATION 9**
Courts should establish judicial assignment criteria that are objective, transparent, and mindful of a judge’s experience in effective case management.

**COMMENTARY**
The Committee recognizes the variety of legal cultures and customs that exist across the breadth of our country. Given the case management imperatives described in these Recommendations, the Committee trusts that all court leaders will make judicial competence a high priority. Court
leaders should consider a judge’s particular skill sets when assigning judges to preside over civil cases. For many years, in most jurisdictions, the sole criterion for judicial assignment was seniority and a judge’s request for an assignment. The judge’s experience or training were not top priorities.

To build public trust in the courts and improve case management effectiveness, it is incumbent upon court leaders to avoid politicization of the assignment process. In assigning judges to various civil case dockets, court leaders should consider a composite of factors including (1) demonstrated case management skills, (2) litigation experience, (3) previous training, (4) specialized knowledge, (5) interest, (6) reputation with respect to neutrality, and (6) professional standing within the trial bar.

RECOMMENDATION 10
Courts must take full advantage of technology to implement right-sized case management and achieve useful litigant-court interaction.

10.1 Courts must use technology to support a court-wide, teamwork approach to case management.

10.2 Courts must use technology to establish business processes that ensure forward momentum of civil cases.

10.3 To measure progress in reducing unnecessary cost and delay, courts must regularly collect and use standardized, real-time information about civil case management.

10.4 Courts should use information technology to inventory and analyze their existing civil dockets.

10.5 Courts should publish measurement data as a way to increase transparency and accountability, thereby encouraging trust and confidence in the courts.

COMMENTARY
This recommendation is fundamental to achieving effective case management. To implement right-sized case management, courts must have refined capacities to organize case data, notify interested persons of requirements and events, monitor rules compliance, expand litigant understanding, and prompt judges to take necessary actions. To meet these urgent needs, courts must fully employ information technologies to manage data and business processes. It is time for courts to catch up with the private sector. The expanding use of online case filing and electronic case management is an important beginning, but just a beginning. Enterprises as diverse as commercial air carriers, online retailers, and motor vehicle registrars have demonstrated ways to manage hundreds of thousands of transactions and communications. What stands in the way of courts following suit? If it involves lack of leadership, the Committee trusts that this Report and these Recommendations will embolden chief justices and state court administrators to fill that void.

RE: 10.1
Modern data management systems and court-oriented innovations, such as e-filing, e-scheduling, e-service, and e-courtesy, provide opportunities for personnel coordination not only within courthouses but also across entire jurisdictions.

**RE: 10.2**
To move cases efficiently towards resolution, case management automation should, at a minimum, (1) generate deadlines for case action based on court rules, (2) alert judges and court staff to missed deadlines, (3) provide digital data and searchable options for scheduled events, and (4) trigger appropriate compliance orders. Courts should seek to upgrade their current software to achieve that functionality and include those requirements when they acquire new software.

**RE: 10.3**
Experience and research tell us that one cannot manage what is unknown. Smart data collection is central to the effective administration of justice and can significantly improve decision making.

Although court administrators appreciate the importance of recordkeeping and performance measurement, few judges routinely collect or use data measurements or analytical reports. As made clear in previous Recommendations, the entire court system acting as a team must collect and use data to improve civil caseflow management and reduce unnecessary costs and delay. This can be accomplished by enlisting court system actors at different levels and positions in developing the measurement program, by communicating the purpose and importance of the information to all court staff, and by appointing a responsible oversight officer to ensure accuracy and consistency.

Courts must systematically collect data on two types of measures. The first is descriptive information about the court’s cases, processes, and people. The second is court performance information, dictated by defined goals and desired outcomes.

To promote comparability and analytical capacity, courts must use standardized performance measures, such as CourTools, as the presumptive measures, departing from them only where there is good reason to do so. Consistency—in terms of what data are collected, how they are collected, and when they are collected—is essential for obtaining valid measures upon which the court and its stakeholders can rely.

**RE: 10.4**
As mentioned above, one cannot manage what is unknown. This is true at both the macro and the micro levels. A “30,000 foot” view allows court personnel to consider the reality of their caseload when making management decisions. As the *Landscape of Civil Litigation* provided the CJI Committee a representative picture of civil caseloads nationally, each court system should gain a firm understanding of its current civil case landscape. Using technology for this purpose will increase the ability of courts to take an active, even a proactive, approach to managing for efficiency and effectiveness.
An inventory should not be a one-time effort. Courts can regularly use inventories to gauge the effectiveness of previous management efforts and “get ahead” of upcoming caseload trends.

**RE: 10.5**
The NCSC and the Justice at Stake consortium commissioned a national opinion survey to identify what citizens around the country think about courts and court funding. The ultimate purpose of the project, entitled *Funding Justice: Strategies and Messages for Restoring Court Funding*, was to create a messaging guide to help court leaders craft more effective communications to state policymakers and the general public about the functions and resource needs of courts. Citizen focus groups indicated that certain narratives tend to generate more positive public attitudes to courts. These include (1) courts are effective stewards of resources, (2) the courts’ core mission is delivery of fair and timely justice, and (3) courts are transparent about how their funding is spent. In light of these findings, the Committee believes that smart civil case management, demonstrated by published caseflow data, can lead to increased public trust in the courts.

**RECOMMENDATION 11**
Courts must devote special attention to high-volume civil dockets that are typically composed of cases involving consumer debt, landlord-tenant, and other contract claims.

**11.1** Courts must implement systems to ensure that the entry of final judgments complies with basic procedural requirements for notice, standing, timeliness, and sufficiency of documentation supporting the relief sought.

**11.2** Courts must ensure that litigants have access to accurate and understandable information about court processes and appropriate tools such as standardized court forms and checklists for pleadings and discovery requests.

**11.3** Courts should ensure that the courtroom environment for proceedings on high-volume dockets minimizes the risk that litigants will be confused or distracted by over-crowding, excessive noise, or inadequate case calls.

**11.4** Courts should, to the extent feasible, prevent opportunities for self-represented persons to become confused about the roles of the court and opposing counsel.

**COMMENTARY**
State court caseloads are dominated by lower-value contract and small claims cases rather than high-value commercial or tort cases. Many courts assign these cases to specialized court calendars such as landlord/tenant, consumer debt collection, mortgage foreclosure, and small claims dockets. Many of these cases exhibit similar characteristics. For example, few cases are adjudicated on the merits, and almost all of those are bench trials. Although plaintiffs are generally represented by attorneys, defendants in these cases are overwhelmingly self-represented, creating an asymmetry in legal expertise that, without effective court oversight, can easily result in unjust case outcomes. Although most cases would be assigned to the Streamlined Pathway under these Recommendations, courts should attend to signs that suggest a case might
benefit from additional court involvement. Indicators can include the raising of novel claims or defenses that merit closer scrutiny.

RE: 11.1
Recent federal investigations and agency studies have found widespread instances of judgments entered in cases in which the defendant did not receive notice of the complaint or the plaintiff failed to demonstrate standing to bring suit or adequate documentation of compliance with statutory requirements for timeliness or the basis for the relief sought. Courts have an obligation to implement practices that prevent such abuse.

RE: 11.2
This recommendation complements Recommendation 13 with respect to making court services more accessible to litigants. Self-represented litigants need access to accurate information about court processes, including trained court staff that can help them navigate the civil justice system. This information should be available electronically or in person at the courthouse, and at other sites where litigants can receive free assistance. Standardized forms should use plain English and include check-off lists for basic claim elements, potential common defenses, and the ability to assert counter-claims.

RE: 11.3
Courts often employ block calendaring on high-volume dockets in which large numbers of cases are scheduled for the same period of time. The result is often overcrowded, noisy, and potentially chaotic environments in which litigants may not hear their case when it is called or may become distracted by competing activities in the courtroom. Frequently, courts sequence cases after the initial call to benefit attorneys, resulting in long wait times for self-represented litigants. The use of electronic sign-in systems can help ensure that litigants are not mistakenly overlooked and that their cases are heard in a timely manner.

RE: 11.4
Self-represented litigants often lack understanding about the respective roles of the court and opposing counsel. They may acquiesce to opposing counsel demands because they mistakenly assume that the opposing counsel is connected to the court. As a result, judges may not obtain complete information from both sides to ensure a legally correct judgment on the facts and the law. Self-represented litigants also may not appreciate the far-reaching implications of agreeing to settle a case (e.g., dismissal, entry of judgment). To curb misunderstandings, courts should provide clear physical separation of counsel from court personnel and services, and standardized guidelines to all litigants and counsel concerning how settlement negotiations are conducted and the consequences of settlement. Before accepting settlements, judges should ascertain that both parties understand the agreement and its implications.

RECOMMENDATION 12
Courts must manage uncontested cases to assure steady, timely progress toward resolution.

12.1 To prevent uncontested cases from languishing on the docket, courts should monitor case activity and identify uncontested cases in a timely manner. Once uncontested status is confirmed, courts should prompt plaintiffs to move for dismissal or final judgment.
12.2 Final judgments must meet the same standards for due process and proof as contested cases.

COMMENTARY
Uncontested cases comprise a substantial proportion of civil caseloads. In the Landscape of Civil Litigation in State Courts, the NCSC was able to confirm that default judgments comprised 20 percent of dispositions, and an additional 35 percent of cases were dismissed without prejudice. Many of these cases were abandoned by the plaintiff, or the parties reached a settlement but failed to notify the court. Other studies of civil caseloads also suggest that uncontested cases comprise a substantial portion of civil cases (e.g., 45 percent of civil cases subject to the New Hampshire Proportional Discovery/ Automatic Disclosure (PAD) Rules, 84 percent of civil cases subject to Utah Rule 26). Without effective oversight, these cases can languish on court dockets indefinitely. For example, more than one-quarter of the Landscape cases that were dismissed without prejudice were pending at least 18 months before they were dismissed.

RE 12.1
To resolve uncontested matters promptly yet fairly requires focused court action. Case management systems should be configured to identify uncontested cases shortly after the deadline for filing an answer or appearance has elapsed. If the plaintiff fails to file a timely motion for default or summary judgment, the court should order the plaintiff to file such a motion within a specified period of time. If such a motion is not filed, the court should dismiss the case for lack of prosecution. The court should monitor compliance with the order and carry out enforcement as needed.

RE 12.2
Recent studies of consumer debt collection, mortgage foreclosure, and other cases that are frequently managed on high-volume dockets found that judgments entered in uncontested cases were often invalid. In many instances, the plaintiff failed to provide sufficient notice of the suit to the defendant. Other investigations found that plaintiffs could not prove ownership of the debt or provide accurate information about the amount owed. To prevent abuses, courts should implement rules to require or incentivize process servers to use smart technology to document service location and time. Courts should also require plaintiffs to provide an affidavit and supporting documentation of the legitimacy of the claim with the motion for default or summary judgment. Before issuing a final judgment, the court should review those materials to ensure that the plaintiff is entitled to the relief sought.

RECOMMENDATION 13
Courts must take all necessary steps to increase convenience to litigants by simplifying the court-litigant interface and creating on-demand court assistance services.

13.1 Courts must simplify court-litigant interfaces and screen out unnecessary technical complexities to the greatest extent possible.

13.2 Courts should establish Internet portals and stand-alone kiosks to facilitate litigant access to court services.
13.3 Courts should provide real-time assistance for navigating the litigation process.

13.4 Judges should promote the use of remote audio and video services for case hearings and case management meetings.

COMMENTARY
The importance of “access to substantive justice” is inherent in the mission of the CJI Committee and underpins all of these Recommendations. Recommendation 13 addresses “access” in terms of making the civil justice system less expensive and more convenient to the public.

To mitigate access problems, we must know what they are. We also need to know how the public wants us to fix them. A national poll by NCSC in 2014 found that a high percentage of responders thought courts were not doing enough to help self-represented litigants, were out of touch, and were not using technology effectively. Responders frequently cited the time required to interact with the courts, lack of available ADR, and apprehensiveness in dealing with court processes. The poll found strong support for a wide array of online services, including a capacity for citizens to ask questions online about court processes.

RE: 13.1
Courts should simplify court forms and develop online “intelligent forms” that enable litigants to create pleadings and other documents in a manner that resembles a Turbo Tax interactive dialogue. Forms should be available in languages commonly spoken in the jurisdiction. Processes associated with the forms (attaching documents, making payments, etc.) should be simplified as much as possible.

RE: 13.2
To improve citizen understanding of court services, courts should install information stations inside and outside of courthouses as well as online. To expand the availability of important court information, courts might partner with private enterprises and public service providers, such as libraries and senior centers, to install interactive, web-based, court business portals at the host locations.

RE: 13.3
Courts should create online, real-time court assistance services, such as online chat services, and 800-number help lines. Litigant assistance should also include clear signage at court facilities to guide litigants to any on-site navigator personnel. Online resolution programs also offer opportunities for remote and real-time case resolution.

RE: 13.4
Vast numbers of self-represented litigants navigate the civil justice system every year. However, travel costs and work absences associated with attending a court hearing can deter self-represented litigants from effectively pursuing or defending their legal rights. The use of remote hearings has the potential to increase access to justice for low-income individuals who have to miss work to be at the courthouse on every court date. Audio or videoconferencing can mitigate these obstacles, offering significant cost savings for litigants and generally resulting in increased access to justice through courts that “extend beyond courthouse walls.”
The growing prevalence of smart phones enables participants to join audio or videoconferences from any location. To the extent possible and appropriate, courts should expand the use of telephone communication for civil case conferences, appearances, and other straightforward case events.

If a hearing or case event presents a variety of complexities, remote communication capacities should expand to accommodate those circumstances. In such instances video conferencing may be more fitting than telephone conferencing. The visual component may facilitate reference to documents and items under discussion, foster more natural conversation among the participants, and enable the court to “read” unspoken messages. For example the video may reveal that a litigant is confused or that a party would like an opportunity to talk but is having trouble getting into the conversation.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges all state courts to consider the Recommendations of Call to Action: Achieving Civil Justice for All as appropriate guidance in their endeavors to achieve demonstrable civil justice improvements with respect to the expenditure of time and costs to resolve civil cases. It further urges all state courts to develop and implement a civil justice improvements plan to improve the delivery of civil justice. The Resolution also urges bar associations to promote the Recommendations of Call to Action: Achieving Civil Justice for All and to collaborate with judges and lawyers to improve the delivery of civil justice.

The development of the Recommendations and commentary were guided by fundamental principles, existing research and new research undertaken by the National Center for State Courts regarding the landscape of civil litigation, recent reform efforts, and lessons learned from the Civil Justice Improvements (“CJI”) Committee members’ own experience as lawyers, judges, and administrators. The Conference of Chief Justices and the Conference of State Court Administrators endorsed the Recommendations, and this Resolution seeks to support their implementation efforts.

2. Summary of the Issue that the Resolution Addresses

State courts and the lawyers that practice in them are well aware of the cost, delay, and unpredictability of civil litigation. The dramatic rise in self-represented litigants and strained court budgets from two severe recessions have further hampered the ability of courts to promptly and efficiently resolve cases. In response, many litigants have begun to seek solutions outside of the courts and, in some instances, to forgo legal remedies entirely. As a result, public trust and confidence in the courts have decreased. While these concerns have been raised for more than a century and continue to worsen in many respects, court leaders in some states have begun to take concrete steps toward change. The reforms are encouraging, but limited in scope.

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

Call to Action: Achieving Civil Justice for All advocates that courts take responsibility for managing civil cases from filing to disposition and provides recommendations to guide courts in their efforts. However, reforms must be a collaborative effort by judges and lawyers. Bar associations can play an important role in promoting the Recommendations and educating judges and lawyers about civil justice needs and their responsibility in making the Recommendations a reality. This Resolution addresses the underlying issue of costs, delays, and complexities undermining the civil justice system, and also promotes the Recommendations as appropriate guidance so the work of the CJI Committee is more likely to result in meaningful reforms.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None known at the time this Summary was prepared.
RESOLVED, That the American Bar Association approves the following programs: Enterprise State Community College, Legal Assisting/Paralegal Program, Enterprise, AL; Eastern Florida State College, Paralegal Studies Program, Melbourne, FL; Daemen College, Paralegal Studies Program, Amherst, NY; Nashville State Community College, Paralegal Studies Program, Nashville, TN; and Collin College, Paralegal Studies Program, Frisco, TX.

FURTHER RESOLVED, That the American Bar Association reapproves the following paralegal education programs: University of Arkansas Fort Smith, Paralegal Studies Program, Fort Smith, AR; Cerritos College, Paralegal Studies Program, Norwalk, CA; Mt. San Antonio College, Paralegal/Legal Specialty Program, Walnut, CA; National University, Paralegal Studies Program, Los Angeles, CA; University of LaVerne, Department of Legal Studies, LaVerne, CA; Broward College, Legal Assisting Program, Pembroke Pines, FL; Seminole State College of Florida, Legal Assistant/Paralegal Program, Sanford, FL; Northwestern College, Paralegal Program, Chicago, IL; Tulane University, Paralegal Studies Program, Hanrahan, LA; Central Piedmont Community College, Paralegal Technology Program, Charlotte, NC; University of Oklahoma Law Center, Legal Assistant Education Program, Norman, OK; Greenville Technical College, Paralegal Studies Program, Greenville, SC; Lee College, Legal Assistant Program, Baytown, TX; Chippewa Valley Technical College, Paralegal Studies Program, Eau Claire, WI; and Madison College, Paralegal Program, Madison, WI.

FURTHER RESOLVED, That the American Bar Association withdraws the approval of the following paralegal education programs: Kirkwood Community College, Paralegal Studies Program, Cedar Rapids, IA; Saint Mary-of-the-Woods College, Paralegal Studies Program, Saint Mary-of-the-Woods, IN; and Fortis College, Paralegal Program, Centerville, OH, at the requests of the institutions.
FURTHER RESOLVED, That the American Bar Association extends the terms of approval until the August 2017 Annual Meeting of the House of Delegates for the following programs: University of Alaska Anchorage, Paralegal Certificate Program, Anchorage, AK; Pima Community College, Paralegal Program, Tucson, AZ; John F. Kennedy University, Legal Studies Program, Pleasant Hill, CA; Miramar College, Legal Assistant Program, San Diego, CA; MTI College, Paralegal Studies Program, Sacramento, CA; San Francisco State University, Paralegal Studies Program, San Francisco, CA; West Valley College, Paralegal Program, Saratoga, CA; Arapahoe Community College, Paralegal Program, Littleton, CO; Norwalk Community College, Legal Assistant Program, Norwalk, CT; Georgetown University, Paralegal Studies Program, Washington, DC; Wilmington University, Legal Studies Program, New Castle, DE; Florida South Western State College, Paralegal Studies Program, Fort Myers, FL; Florida State College Jacksonville, Paralegal Studies Program, Jacksonville, 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; Loyola University Chicago, Institute for Paralegal Studies, Chicago, IL; Southern Illinois University Carbondale, Paralegal Studies Program, Carbondale, IL; Bowling Green Community College of Western Kentucky University, Paralegal Studies Program, Bowling Green, KY; Morehead State University, Paralegal Studies Program, Morehead, KY; Sullivan University, Institute for Paralegal Studies, Lexington, KY; Herzing University, Legal Assisting/Paralegal Studies Program, Kenner, LA; Elms College, Legal Studies Program, Chicopee, MA; Oakland Community College, Paralegal Program, Farmington Hills, MI; Oakland University, Paralegal Program, Rochester, MI; Mississippi University for Women, Legal Studies Program, Columbus, MS; Fayetteville Technical Community College, Paralegal Technology Program, Fayetteville, NC; Montclair State University, Paralegal Studies Program, Montclair, NJ; Columbus State Community College, Paralegal Studies Program, Columbus, OH; Mt. St. Joseph University, fka College of Mt. St Joseph, Paralegal Studies Program, Cincinnati, OH; University of Cincinnati--Clermont, Paralegal Technology Program, Batavia, OH; Rose State College, Paralegal Studies Program, Midwest City, OK; Bucks County Community College, Paralegal Studies Program, Newtown, PA; Community College of Philadelphia, Paralegal Studies Program, Philadelphia, PA; South University, Legal Studies/Paralegal Studies Program, Columbia, SC; Brightwood College, fka Kaplan Career College, Paralegal Studies Program, Nashville, TN; Pellissippi State Community College, Paralegal Studies Program, Knoxville, TN; South College, Legal Studies and Paralegal Studies Programs, Knoxville, TN; Texas State University, Legal Studies Program, San Marcos, TX; Salt Lake Community College, Paralegal Studies Program, Salt Lake City, UT; Edmonds Community College, Paralegal Program, Lynnwood, WA; Western Technical College, Paralegal Program, La Crosse, WI; and Laramie County Community College, Paralegal Studies Program, Cheyenne, WY.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Standing Committee on Paralegals resolve (s) that the House of Delegates grants approval to five programs, grants reapproval to fifteen programs, withdraws the approval of three programs, and extends the term of approval of forty-three 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. The programs recommended for withdrawal of approval in the enclosed report have requested that approval be withdrawn.

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

The programs recommended for approval, reapproval, and withdrawal of approval 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 group.
RESOLVED, That the American Bar Association urges the United States to ratify and implement the 2013 Arms Trade Treaty.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
The Resolution calls for the ABA to urge ratification and implementation for the 2013 Arms Trade Treaty.

The Arms Trade Treaty (“ATT”) is an opportunity for the United States (“U.S.”) to help curb illicit international weapons transfers to war-torn countries, terrorist organizations, and murderous regimes, a benefit not only to international peace and security but also to U.S. interests. If ratified by the U.S., the ATT will be a critical foreign policy tool. It creates concrete, enforceable obligations and builds cooperation and oversight mechanisms.

The ATT does not constrain U.S. foreign policy, does not impinge upon the Second Amendment of the U.S. Constitution, or require changes to U.S. weapons import/export regulations. On the other hand, failure to ratify the ATT could compromise U.S. leadership in the international operation of the Treaty and jeopardize universalization and enforcement of the Treaty.

Based on these factors, the ABA should encourage ratification by issuing the R&R, adopting a professional, impartial and well-supported stance and countering untruthful and uninformed opinions about this important treaty.

2. **Summary of the Issue that the Resolution Addresses**
Arms that fuel human rights violations, genocide, war crimes and crimes against humanity are sold and shipped. Unlike the United States, many countries do not have the regulatory system or mechanisms in place to prevent weapons from being diverted into areas and conflicts where these abuses are taking place. In addition to prohibiting the sale or transfer of weapons that will be used to commit humanity’s most heinous crimes or otherwise violate international law, this treaty mandates that countries build arms control regimes like those that exist in the United States. By encouraging and facilitating cooperation and creating rules that prevent sales that will exacerbate genocide and other serious crimes, this Treaty will help to curb these sales and create a more comprehensive system of laws in other countries to prevent diversion of weapons.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**
The Arms Trade Treaty provides an opportunity for the United States to lead on the issue of arms control and to become part of a global system that prevents arms sales that will be used to commit genocide, war crimes, crimes against humanity or significant human rights violations. With the ABA’s support of this policy, the Association will be in a position to counter misinformation and misconceptions on the treaty and the associated laws.
4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

The R&R addresses objections to the treaty, so those views are represented and addressed in the R&R’s supporting text. Recorded objections focus on political issues surrounding the tactics that the Obama Administration used to negotiate the treaty, that the treaty can be changed to bind the United States without its consent, that the treaty will infringe upon the Second Amendment and other Constitutional rights, that the treaty is ambiguous, that it might compromise U.S. sovereignty, or that it might hinder the U.S. ability to aid its allies. These objections are dealt with in the Report.
RESOLVED, That the American Bar Association urges the United Nations, the United States and other governments and relevant international actors to develop and implement methodologies to measure and track the prevalence of sexual and gender-based violence.

FURTHER RESOLVED, That the ABA endorses international efforts to improve donor coordination, transparency, and accountability with respect to assistance to victims of sexual and gender-based violence including in situations of armed conflict, and specifically recommends that donors require quantitative public reporting from funding recipients globally, including disclosure of independent audits or evaluations showing funds expended on services to victims of sexual violence and the services provided using such funds.

FURTHER RESOLVED, That the ABA recommends that international Non-Governmental Organizations, donors, and multilateral agencies work with and support governments to develop and adopt appropriate methodologies to create publicly accessible national databases of information on assistance to victims of sexual violence, enabling stakeholders to coordinate, track, and evaluate this assistance.
EXECUTIVE SUMMARY

1. Summary of the Resolution

To urge the United Nations, the United States and other governments and relevant international actors to develop and implement methodologies to measure and track the prevalence of sexual and gender-based violence. To endorse international commitments to improve donor coordination, transparency, and accountability with respect to assistance to victims of sexual and gender-based violence including in situations of armed conflict, and specifically recommends that donors require quantitative public reporting from funding recipients globally, including disclosure of independent audits or evaluations showing funds expended on services to victims of sexual violence and services provided.

To recommend that international Non-Governmental Organizations, donors, and multilateral agencies work with and support governments to develop and adopt appropriate methodologies to create, publicly accessible national databases of information on assistance to victims of sexual violence, enabling stakeholders to coordinate, track, and evaluate this assistance.

2. Summary of the Issue that the Resolution Addresses

Lack of methodologies and data to ascertain and therefore address the prevalence of sexual and gender-based violence and the publication of resulting data in order to improve donor coordination and transparency.

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

It will make the ABA, as the leading and biggest organization of lawyers worldwide and at the UN to speak out domestically and internationally on the issue of accountability issues encountered with respect to international sexual violence and gender-based violence and the need for data gathering and in furtherance of the UN Sustainable Development Goals 5.2 and 16.1.

4. Summary of Minority Views

N/A. The Report was adopted unanimously by the Committee and expresses a view consistent with UN Sustainable Development Goals 5.2 and 16.1.
RESOLVED, That the American Bar Association adopts the Model Rule for Minimum Continuing Legal Education (MCLE) and Comments dated February 2017, to replace the Model Rule for MCLE and Comments adopted by the American Bar Association in 1988 and subsequently amended.
American Bar Association
Model Rule for Minimum Continuing Legal Education
February 2017

Purpose

To maintain public confidence in the legal profession and the rule of law, and to promote the fair administration of justice, it is essential that lawyers be competent regarding the law, legal and practice-oriented skills, the standards and ethical obligations of the legal profession, and the management of their practices. In furtherance of this purpose, the ABA recommends this Model Rule for Minimum Continuing Legal Education (MCLE) and Comments, which replaces the prior Model Rule for MCLE and Comments adopted by the American Bar Association in 1988 and subsequently amended.

Contents

Section 1. Definitions.
Section 2. MCLE Commission.
Section 3. MCLE Requirements and Exemptions.
Section 4. MCLE-Qualifying Program Standards.
Section 5. Accreditation.
Section 6. Other MCLE-Qualifying Activities.

Section 1. Definitions.

(A) “Continuing Legal Education Program” or “CLE Program” or “CLE Programming” means a legal education program taught by one or more faculty members that has significant intellectual or practical content designed to increase or maintain the lawyer’s professional competence and skills as a lawyer.

(B) “Credit” or “Credit Hour” means the unit of measurement used for meeting MCLE requirements. For Credits earned through attendance at a CLE Program, a Credit Hour requires sixty minutes of programming. Jurisdictions may also choose to award a fraction of a credit for shorter programs.

(C) “Diversity and Inclusion Programming” means CLE Programming that addresses diversity and inclusion in the legal system of all persons regardless of race, ethnicity, religion, national origin, gender, sexual orientation, gender identity, or disabilities, and programs regarding the elimination of bias.
(D) “Ethics and Professionalism Programming” means CLE programming that addresses standards set by the Jurisdiction’s Rules of Professional Conduct with which a lawyer must comply to remain authorized to practice law, as well as the tenets of the legal profession by which a lawyer demonstrates civility, honesty, integrity, character, fairness, competence, ethical conduct, public service, and respect for the rules of law, the courts, clients, other lawyers, witnesses, and unrepresented parties.

(E) “In-House CLE Programming” means programming provided to a select private audience by a private law firm, a corporation, or financial institution, or by a federal, state, or local governmental agency, for lawyers who are members, clients, or employees of any of those organizations.

(F) “Interdisciplinary Programming” means programming that crosses academic lines that supports competence in the practice of law.

(G) “Jurisdiction” means United States jurisdictions including the fifty states, the District of Columbia, territories, and Indian tribes.

(H) “Law Practice Programming” means programming specifically designed for lawyers on topics that deal with means and methods for enhancing the quality and efficiency of a lawyer’s service to the lawyer’s clients.

(I) “MCLE” or “Minimum Continuing Legal Education” means the ongoing training and education that a Jurisdiction requires in order for lawyers to maintain their license to practice.

(J) “Mental Health and Substance Use Disorders Programming” means CLE Programming that addresses the prevention, detection, and/or treatment of mental health disorders and/or substance use disorders, which can affect a lawyer’s ability to perform competent legal services.

(K) “Moderated Programming” means programming delivered via a format that provides attendees an opportunity to interact in real time with program faculty members or a qualified commentator who are available to offer comments and answer oral or written questions before, during, or after the program. Current delivery methods considered Moderated Programming include, but are not limited to:

1. “In-Person” – a live CLE Program presented in a classroom setting devoted to the program, with attendees in the same room as the faculty members.
2. “Satellite/Groupcast” – a live CLE Program broadcast via technology to remote locations (i.e., a classroom setting or a central viewing or listening location). Attendees participate in the program in a group setting.
3. “Teleseminar” – a live CLE program broadcast via telephone to remote locations (i.e., a classroom setting or a central listening location) or to individual attendee telephone lines. Attendees may participate in the program in a group setting or individually.
(4) “Video Replay” – a recorded CLE Program presented in a classroom setting devoted to the program, with attendees in the same room as a qualified commentator. Attendees participate in the program in a group setting.

(5) “Webcast/Webinar” – a live CLE Program broadcast via the internet to remote locations (i.e., a classroom setting or a central viewing or listening location) or to individual attendees. Attendees may participate in the program in a group setting or individually.

(6) Webcast/Webinar Replay” - a recorded CLE program broadcast via the internet to remote locations (i.e., a classroom setting or a central viewing or listening location) or to individual attendees. A qualified commentator is available to offer comments or answer questions. Attendees may participate in the program in a group setting or individually.

(L) “New Lawyer Programming” means programming designed for newly licensed lawyers that focuses on basic skills and substantive law that is particularly relevant to lawyers as they transition from law school to the practice of law.

(M) “Non-Moderated Programming with Interactivity as a Key Component” means programming delivered via a recorded format that provides attendees a significant level of interaction with the program, faculty, or other attendees. Types of qualifying interactivity for non-moderated formats include, but are not limited to, the ability of participants to: submit questions to faculty members or a qualified commentator; participate in discussion groups or bulletin boards related to the program; or use quizzes, tests, or other learning assessment tools. Current delivery methods considered Non-Moderated Programming with Interactivity as Key Component include, but are not limited to:

(1) “Recorded On Demand Online” – a recorded CLE Program delivered through the internet to an individual attendee’s computer or other electronic device with interactivity built into the program recording or delivery method.

(2) “Video or Audio File” – a recorded CLE Program delivered through a downloaded electronic file in mp3, mp4, wav, avi, or other formats with interactivity built into the program recording or delivery method.

(3) “Video or Audio Tape” – a recorded CLE Program delivered via a hard copy on tape, DVD, DVR, or other formats with interactivity built into the program recording or delivery method.

(N) “Self-Study” includes activities that are helpful to a lawyer’s continuing education, but do not meet the definition of CLE Programming that qualifies for MCLE Credit. Self-Study includes, but is not limited to:
(1) “Informal Learning” - acquiring knowledge through interaction with other lawyers, such as discussing the law and legal developments

(2) “Non-Moderated Programming Without Interactivity” - viewing recorded CLE Programs that do not have interactivity built into the program recording or delivery method

(3) “Text” - reading or studying content (periodicals, newsletters, blogs, journals, casebooks, textbooks, statutes, etc.)

(O) “Sponsor” means the producer of the CLE Program responsible for adherence to the standards of program content determined by the MCLE rules and regulations of the Jurisdiction. A Sponsor may be an organization, bar association, CLE provider, law firm, corporate or government legal department, or presenter.

(P) “Technology Programming” means programming designed for lawyers that provides education on safe and effective ways to use technology in one’s law practice, such as to communicate, conduct research, ensure cybersecurity, and manage a law office and legal matters. Such programming assists lawyers in satisfying Rule 1.1 of the ABA Model Rules of Professional Conduct in terms of its technology component, as noted in Comment 8 to the Rule (“To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology[.]”).

Section 2. MCLE Commission.

The Jurisdiction’s Supreme Court shall establish an MCLE Commission to develop MCLE regulations and oversee the administration of MCLE.

Comments:

1. Section 2 assumes that the Jurisdiction’s highest court is its Supreme Court and that the Supreme Court is the entity empowered to create an MCLE Commission. The titles of the applicable entities may vary by Jurisdiction.

2. Supreme Courts are encouraged to consider the following when establishing an MCLE Commission: composition of the Commission; terms of service; where and how often the Commission must meet; election of officers; expenses; confidentiality; and staffing.

3. It is anticipated that MCLE Commissions will develop Jurisdiction-specific regulations (or rules) to effectuate the provisions outlined in this Model Rule, such as regulations concerning when and how lawyers must file MCLE reports, penalties for failing to comply, and appeals. Further, it is anticipated that MCLE Commissions will develop regulations concerning the accreditation process for MCLE that is provided by local, state, and national Sponsors. This Model Rule also addresses recommended accreditation standards in Sections 4 and 5.
Section 3. MCLE Requirements and Exemptions.

(A) Requirements.

(1) All lawyers with an active license to practice law in this Jurisdiction shall be required to earn an average of fifteen MCLE credit hours per year during the reporting period established in this Jurisdiction.

(2) As part of the required Credit Hours referenced in Section 3(A)(1), lawyers must earn Credit Hours in each of the following areas:

   (a) Ethics and Professionalism Programming (an average of at least one Credit Hour per year);
   (b) Mental Health and Substance Use Disorders Programming (at least one Credit Hour every three years); and
   (c) Diversity and Inclusion Programming (at least one Credit Hour every three years).

(3) A jurisdiction may establish regulations allowing the MCLE requirements to be satisfied, in whole or in part, by the carryover of Credit Hours from the immediate prior reporting period.

(B) Exemptions. The following lawyers may seek an exemption from this MCLE Requirement:

(1) Lawyers with an inactive license to practice law in this Jurisdiction, including those on retired status.

(2) Nonresident lawyers from other Jurisdictions who are temporarily admitted to practice law in this Jurisdiction under pro hac vice rules.

(3) A lawyer with an active license to practice law in this Jurisdiction who maintains a principal office for the practice of law in another Jurisdiction which requires MCLE and who can demonstrate compliance with the MCLE requirements of that Jurisdiction.

(4) Lawyers who qualify for full or partial exemptions allowed by regulation, such as exemptions for those on active military duty, those who are full-time academics who do not engage in the practice of law, those experiencing medical issues, and those serving as judges (whose continuing education is addressed by other rules).
Comments:

1. While many Jurisdictions have chosen to require twelve Credit Hours per year, and a minority of Jurisdictions require fewer than twelve Credit Hours per year, Section 3(A)(1) recommends an average of fifteen Credit Hours of CLE annually, meaning lawyers must earn fifteen Credit Hours per reporting period in Jurisdictions that require annual reporting, thirty Credit Hours per reporting period in Jurisdictions that require reporting every two years, and forty-five Credit Hours per reporting period in Jurisdictions that require reporting every three years. In addition, this Model Rule recommends sixty minutes of CLE Programming per Credit Hour, which is the standard in the majority of Jurisdictions, although a minority of Jurisdictions have chosen to require only fifty minutes of CLE Programming per Credit Hour.

2. Section 3(A)(1) does not take a position on whether lawyers should report annually, every two years, or every three years, all of which are options various Jurisdictions have chosen to implement, in part based on their own Jurisdiction’s administrative needs. Allowing a lawyer to take credits over a two-year or three-year period provides increased flexibility for the lawyer in choosing when and which credits to earn, but it may also lead to procrastination and may provide less incentive for a lawyer to regularly take CLE that updates his or her professional competence.

3. Section 3(A)(2) recognizes that Jurisdictions may choose to identify specific MCLE credits that each lawyer must earn, such as those addressing particular subject areas. This Model Rule recommends that every lawyer be required to take the specific credits outlined in Section 3(A)(2)(a), (b), and (c). While requiring specific credits may increase administrative burdens on accrediting agencies, CLE Sponsors, and individual lawyers, and also requires proactive efforts to ensure the availability of programs, it is believed that those burdens are outweighed by the benefit of having all lawyers regularly receive education in those specific areas.

4. Many Jurisdictions currently allow CLE Programs on topics outlined in Section 3(A)(2)(b) and (c) (relating to Mental Health and Substance Use Disorders Programming, and Diversity and Inclusion Programming) to count toward the general CLE requirement or the Ethics and Professionalism Programming requirement, rather than specifically requiring attendance at those specialty programs. This Model Rule recommends stand-alone requirements for those specialty programs, in order to ensure that all lawyers receive minimal training in those areas. With respect to Mental Health and Substance Use Disorders Programming in particular, research indicates that lawyers may hesitate to attend such programs due to potential stigma; requiring all lawyers to attend such a program may greatly reduce that concern. Nonetheless, this Model Rule recognizes that Jurisdictions may choose not to impose a stand-alone requirement and, instead, accredit those specialty programs towards the Ethics and Professionalism Programming requirement. All Jurisdictions are encouraged to promote the development of those specialty programs in order to reach as many lawyers as possible. Nearly every Jurisdiction has a lawyers assistance program that can offer, or assist in offering, Mental Health and Substance Use Disorders Programming. In addition, numerous bar associations, including the American Bar Association, have diversity committees that can offer, or assist in offering, Diversity and Inclusion Programming.
5. Section 3(A)(3) endorses regulations that allow lawyers to carry over MCLE credits earned in excess of the current reporting period’s requirement from one reporting period to the next, which encourages lawyers to take extra MCLE credits at a time that meets their professional and learning needs without losing credit for the MCLE activity. It is anticipated that each Jurisdiction will draft carryover credit regulations that best meet the Jurisdiction’s needs, taking into account factors such as the length of the reporting period, the availability of CLE Programs in the Jurisdiction, administrative considerations, and other factors.

6. Section 3(B) recognizes that Jurisdictions may choose to exempt certain lawyers from MCLE requirements. It is anticipated that regulations addressing such exemptions will identify those who are automatically exempt, those who may seek an exemption based on their particular circumstances, and the process for claiming an exemption.

7. Section 3(B)(3) provides a mechanism for lawyers licensed in more than one Jurisdiction to be exempt from MCLE requirements if the lawyer satisfies the MCLE requirements of the Jurisdiction where his or her principal office is located. A Jurisdiction may consider limiting this exemption to lawyers with principal offices in certain Jurisdictions if the Jurisdiction is concerned that the MCLE rules of other Jurisdictions vary too greatly from its own rules. A Jurisdiction may also consider limiting this exemption to require that the lawyer attend particular CLE Programs, such as a Jurisdiction-specific professionalism program, or other specific programs not required in the Jurisdiction where the lawyer’s principal office is located.

Section 4. MCLE-Qualifying Program Standards.

To be approved for credit, Continuing Legal Education Programs must meet the following standards:

(A) The program must have significant intellectual or practical content and be designed for a lawyer audience. Its primary objective must be to increase the attendee’s professional competence and skills as a lawyer, and to improve the quality of legal services rendered to the public.

(B) The program must pertain to a recognized legal subject or other subject matter which integrally relates to the practice of law, professionalism, diversity and inclusion issues, mental health and substance use disorders issues, civility, or the ethical obligations of lawyers. CLE Programs that address any of the following will qualify for MCLE credit, provided the program satisfies the other accreditation requirements outlined herein:
(1) Substantive law programming

(2) Legal and practice-oriented skills programming

(3) Specialty programming (see Section 3(A)(2))

(4) New Lawyer Programming (see Section 1(L))

(5) Law Practice Programming (see Section 1(H))

(6) Technology Programming (see Section 1(P))

(7) Interdisciplinary Programming (see Section 1(F))

((8) Attorney Well-Being Programming)

The program must be delivered as Moderated Programming, or Non-Moderated Programming with Interactivity as a Key Component. The Sponsor must have a system which allows certification of attendance to be controlled by the Sponsor and which permits the Sponsor to verify the date and time of attendance.

Thorough, high-quality instructional written materials which appropriately cover the subject matter must be distributed to all attendees in paper or electronic format during or prior to the program.

Each program shall be presented by a faculty member or members qualified by academic or practical experience to teach the topics covered, whether they are lawyers or have other subject matter expertise.

Comments:
1. This Model Rule recommends approval of CLE programs designed for lawyers on the topics outlined in Section 4(B). This Model Rule supports allowing a lawyer to make educated choices about which programs will best meet the lawyer’s educational needs, recognizing that the lawyer’s needs may change over the course of his or her career. Therefore, this Model Rule does not place limits on the number of credits that can be earned through the programs identified in Section 4(B).

2. Section 4(B)(4) supports accrediting CLE Programs specifically designed for new lawyers. Many Jurisdictions require new lawyers to take one or more specific programs that focus on basic skills and substantive law particularly relevant to new lawyers, either prior to or immediately after bar admission. Other Jurisdictions simply accredit such programs as general CLE. The catalyst for some Jurisdictions to begin offering such programs was a 1992 ABA task force report entitled: “Task Force on Law Schools and the Profession: Narrowing the Gap” (commonly known as the
“MacCrate Report”), which offered numerous recommendations for preparing law students and new graduates to practice law. This Model Rule supports the creation of programs designed for new lawyers, but does not specifically require such programs, because many Jurisdiction-specific factors may influence a Jurisdiction’s decision on this issue, such as the number of lawyers in the Jurisdiction, the availability of existing CLE programs, whether there are specific Sponsors available to teach such programs, similar educational programs required before licensure, and other factors.

3. Law Practice Programming, Section 4(B)(5), is programming specifically designed for lawyers on topics that deal with means and methods for enhancing the quality and efficiency of a lawyer’s service to the lawyer’s clients. Providing education on the operation and management of one’s legal practice can help lawyers avoid mistakes that harm clients and cause law practices to fail. In some cases, Law Practice Programming may qualify as Ethics and Professionalism Programming.

4. Technology Programming, Section 4(B)(6), provides education on safe and effective ways to use technology in one’s law practice, such as to communicate, conduct research, ensure cybersecurity, and manage a law office and legal matters, thereby assisting lawyers in satisfying Rule 1.1 of the ABA Model Rules of Professional Conduct in terms of its technology component, as noted in Comment 8 to the Rule (“To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology[.]”). In some cases, Technology Programming may qualify as Ethics and Professionalism Programming.

5. Interdisciplinary Programming, Section 4(B)(7), provides a lawyer the opportunity to gain knowledge about a subject pertinent to his or her law practice, such as the treatment of particular physical injuries, child development, and forensic accounting.

6. In recent years, some Jurisdictions have begun accrediting programming that addresses attorney wellness or well-being topics. Some of those programs qualify for accreditation under this Model Rule’s definitions of Mental Health and Substance Use Disorders Programming and Ethics and Professionalism Programming. In the future, this Model Rule may be amended to include additional programming that falls within a broader definition of Attorney Well-Being Programming. For that reason, Section (4)(B)(8) appears in brackets and Attorney Well-Being Programming is not defined in this Model Rule.

7. If a lawyer seeks MCLE credit for attending a program that has not been specifically designed for lawyers, including but not limited to programs on the topics identified in Section 4(B), Jurisdictions may choose to consider creating regulations that would require the lawyer to
explain how the program is beneficial to the lawyer’s practice. The regulations could also address how to calculate Credit Hours for programs that were not designed for lawyers.

8. In-Person Moderated Programming, see Section 4(C) and Section 1(K)(1), requires lawyers to leave their offices and learn alongside other lawyers, which can enhance the education of all and promote collegiality. Other forms of Moderated Programming and Non-Moderated Programming with Interactivity as a Key Component, such as Section 4(C), Section 1(K) and (M), and Section 4(A)(2), allow lawyers to attend programs from any location and, in some cases, at the time of their choice. This flexibility allows lawyers to select programs most relevant to their practice, including specialized programs and programs with a national scope. Some Jurisdictions have expressed concern with approving programming that does not occur In-Person on grounds that the lawyer is less engaged. Thus, some Jurisdictions have declined to accredit or have limited the number of credits that can be earned through these other forms of programming. This Model Rule supports allowing a lawyer to make educated choices about whether attending Moderated Programming (In-Person or other) or Non-Moderated Programming with Interactivity as a Key Component will best meet the lawyer’s educational needs, recognizing that the lawyer’s needs may change over the course of his or her career. Therefore, this Model Rule does not place limits on the number of credits that can be earned through Moderated Programming or Non-Moderated Programming with Interactivity as a Key Component. If a Jurisdiction believes that Moderated Programming, specifically In-Person Programming, is crucial to a lawyer’s education, then it is recommended that the Jurisdiction establish a minimum number of credits that must be earned through this type of programming, rather than place a cap on the number of credits that can be earned through other types of programming. A key factor in deciding whether to require In-Person Programming is the availability of programs throughout a particular Jurisdiction, which may be affected by geography, the number of CLE Sponsors, and other Jurisdiction-specific factors.

9. Currently, all Jurisdictions calculate credits exclusively based on the number of minutes a presentation lasts. Several Jurisdictions have explored offering MCLE credit for self-guided educational programs, such as those offered using a computer simulation that is completed at the lawyer’s individual pace. Jurisdictions may wish to consider offering MCLE credit for such programs, especially as technology continues to advance.

10. Self-Study does not qualify for MCLE Credit. Jurisdictions have used the term “self-study” in varying ways. As defined in this Model Rule, Self-Study refers to activities that are important for a lawyer’s continuing education and professional development, but which do not qualify as MCLE. Lawyers are encouraged to engage in Self-Study as a complement to earning MCLE Credits.

Section 5. Accreditation.

(A) The Jurisdiction shall establish regulations that outline the requirements and procedures by which CLE Sponsors can seek approval for an individual CLE Program. The regulations should indicate whether the Jurisdiction imposes specific requirements with respect to the following:
(1) Faculty credentials

(2) Written materials

(3) Attendance verification

(4) Interactivity

(5) Applications and supplemental information required (agenda, sample of materials, faculty credentials, etc.)

(6) Accreditation fees

(B) Any Sponsor may apply for approval of individual programs, but if the Jurisdiction determines that a Sponsor regularly provides a significant volume of CLE programs that meet the standards of approval and that the Sponsor will maintain and submit the required records, the Jurisdiction may designate, on its own or upon application from a Sponsor, such a Sponsor as an “approved provider.” The MCLE Commission may revoke approval if a Sponsor fails to comply with its regulations, requirements, or program standards.

(C) Programs offered by law firms, corporate or government legal departments, or other similar entities primarily for the education of their members or clients will be approved for credit provided that the program meets the standards for accreditation outlined in Section 4.

(D) A Jurisdiction may establish regulations allowing an individual lawyer attendee to self-apply for MCLE Credit for attending a CLE program that the Sponsor did not submit for accreditation in the Jurisdiction where the individual lawyer is licensed.
1. The vast majority of Jurisdictions now require MCLE. Over the four decades during which Jurisdictions began implementing MCLE requirements, they have taken a variety of approaches to accreditation requirements and processes. This has allowed Jurisdictions to consider Jurisdiction-specific priorities and needs when drafting CLE requirements. However, this has created challenges for CLE Sponsors seeking program approval in multiple Jurisdictions. Many regional and national CLE Sponsors spend considerable time and resources to file applications in multiple Jurisdictions with differing program requirements. This increased financial and administrative burden can increase costs for CLE attendees, and it can also affect the number of programs being offered nationwide on specialized CLE and federal law topics. While differences in regulatory requirements among Jurisdictions are likely to continue, Jurisdictions are encouraged to consider ways to reduce financial and administrative burdens so that CLE Sponsors can offer programming that meets lawyers’ educational needs at a reasonable price. For instance, Jurisdictions can promulgate regulations that are clear and specific, and they can streamline application processes, both of which would make it easier for Sponsors to complete applications and know with greater certainty whether programs are likely to be approved for MCLE credit. In addition, Jurisdictions may choose to reduce administrative costs to the Jurisdictions, CLE Sponsors, and individual lawyers by recognizing an accreditation decision made for a particular program by another Jurisdiction, thereby eliminating the need for the CLE Sponsor or individual lawyer to submit the program for accreditation in multiple Jurisdictions. Jurisdictions might also consider creating a regional or national accrediting agency to supplement or replace accreditation processes in individual Jurisdictions.

2. Many Jurisdictions outline specific requirements for CLE program faculty members, such as requiring that at least one member of the faculty be a licensed lawyer. Section 5(A)(1) does not suggest specific regulations with respect to faculty, but Section 4(B) recognizes the value of programming in Law Practice, Technology, and Interdisciplinary topics. For CLE Programs on those topics, the most qualified speaker may be a non-lawyer. Therefore, Jurisdictions are encouraged to allow non-lawyers to serve as speakers in appropriate circumstances, and Sponsors are encouraged to include lawyers in the planning and execution of programs to ensure that any subject area is discussed in a legal context.

3. All Jurisdictions currently require that a CLE program include written materials, which enhance the program and serve as a permanent resource for attendees. Section 4(D) continues to require program materials for a program to qualify for credit. Section 5(A)(2) does not suggest specific requirements for written materials, but Jurisdictions are encouraged to provide clear guidance on the format and length of required materials, which will better enable CLE Sponsors and individual lawyers seeking credit for programs to satisfy the Jurisdiction’s requirements with respect to written materials.

4. Section 5(A)(3) recognizes that many Jurisdictions require lawyers to complete attendance sheets at In-Person CLE programs or provide proof they are attending an online program. This
Model Rule does not take a position on how Jurisdictions should verify attendance, but Jurisdictions are encouraged to weigh the benefits of particular methods of verifying attendance against the administrative cost of the various methods of tracking and reporting attendance.

5. Section 5(A)(4) acknowledges that many Jurisdictions require that attendees have an opportunity to ask the speakers questions. While this Model Rule does not offer specific regulations on this topic, this Model Rule does endorse Moderated Programming with Interactivity as a Key Component, which includes allowing lawyers to attend CLE on demand. Those Jurisdictions that wish to provide an opportunity for attendees to ask questions are encouraged to consider alternate ways of allowing speakers and attendees to communicate, such as using Webinar chat rooms or email.

6. Section (5)(A)(6) recognizes that most Jurisdictions impose fees on CLE Sponsors or individual lawyers to offset the cost of accrediting and tracking MCLE credits. The amount and type of fees vary greatly by Jurisdiction. In some cases, CLE Sponsors make decisions about where they will apply for accreditation based on the fees assessed, and may decide not to seek credit in particular Jurisdictions, such as if providing MCLE credit for a handful of attendees costs more than the tuition paid by those attendees. This can affect the availability of CLE programming to individual lawyers, especially on national and specialized topics that may not otherwise be offered in a particular Jurisdiction. Jurisdictions are encouraged to consider various fee models when determining how best to cover administrative costs.

7. For an approved provider system, see Section 5(B), Jurisdictions should create regulations which define the standards, application process for approved provider status, ongoing application process for program approval, reporting obligations, fees, and benefits of the status. Benefits may include reduced paperwork when applying for individual programs, reduced fees for program applications, or presumptive approval of all programs.

8. Many Jurisdictions impose specific requirements on In-House CLE Programming, which is sponsored by a private law firm, a corporation, or financial institution, or by a federal, state or local governmental agency for lawyers who are members, clients, or employees of any of the those organizations. This Model Rule recommends that Jurisdictions treat In-House Sponsors the same as other Sponsors and allow for full accreditation of programs when all other standards of Section 4 have been met.

9. Section 5(D) endorses regulations that allow an individual lawyer to self-apply for MCLE credit for attending a CLE Program that would qualify for MCLE Credit under Section 4, but which was not submitted for accreditation by the Sponsor in the Jurisdiction where the individual lawyer is licensed. This allows greater flexibility for a lawyer to select CLE programming that best meets
his or her educational needs regardless of where the program Sponsor has chosen to apply for MCLE credit. It is anticipated that each Jurisdiction will draft regulations that best meet the Jurisdiction’s needs, taking into account factors such as: the standards, delivery format, and content of the program; the Sponsor’s qualifications; other accreditation of the program by CLE regulators; the availability of CLE Programs in the Jurisdiction; administrative considerations, including fees; and other factors.

Section 6. Other MCLE-Qualifying Activities.

Upon written application of the lawyer engaged in the activity, MCLE credit may be earned through participation in the following:

(A) Teaching – A lawyer may earn MCLE credit for being a speaker at an accredited CLE program. In addition, lawyers who are not employed full-time by a law school may earn MCLE credit for teaching a course at an ABA-accredited law school, or teaching a law course at a university, college or community college. Jurisdictions shall create regulations which define the standards, credit calculations, and limitations of credit received for teaching or presenting activities.

(B) Writing – A lawyer may earn MCLE credit for legal writing which:

(1) is published or accepted for publication, in print or electronically, in the form of an article, chapter, book, revision or update;

(2) is written in whole or in substantial part by the applicant; and

(3) contributed substantially to the continuing legal education of the applicant and other lawyers.

Jurisdictions shall create regulations which define the standards, credit calculations, and limitations of credit received for writing activities.

[(C) Pro Bono]

[(D) Mentoring]

Comments:

1. A minority of Jurisdictions award MCLE credit for providing pro bono legal representation. This Model Rule takes no position on whether such credit should be granted, as many Jurisdiction-specific factors may influence a Jurisdiction’s decision on this issue, such as the extent of free legal services existing in the Jurisdiction and pro bono requirements imposed by the Jurisdiction’s ethical rules. Accordingly, this option appears in brackets in this Model Rule.
2. A minority of Jurisdictions award MCLE credit for participating in mentoring programs for fellow lawyers. This Model Rule takes no position on whether credit should be available for that activity, as many Jurisdiction-specific factors may influence a Jurisdiction’s decision on this issue, such as the perceived need for formal mentoring programs in the Jurisdiction and the availability of organizations to administer formal mentoring programs. Accordingly, this option appears in brackets in this Model Rule.
EXECUTIVE SUMMARY

1. **Summary of Resolution.**

In 2014, SCOCLE began a comprehensive review of the ABA’s existing Model Rule for Minimum Continuing Legal Education (MCLE), which was adopted in 1988 and has been amended several times. This Resolution and Report are the culmination of discussions with working group volunteers from bar associations, regulatory agencies, CLE providers, and others. This Model Rule, which will replace the 1988 Model Rule, contains a number of key recommendations for Jurisdictions that require MCLE, including: (1) allow lawyers to choose CLE offered in a variety of program delivery formats and do not limit the number of credits that can be earned using a particular delivery format; (2) accredit programs that address substantive law, ethics, professionalism, diversity and inclusion, mental health and substance use disorders, law practice, and technology, and do not limit the number of credits that can be earned through any particular type of program; (3) require all lawyers to take CLE that addresses ethics and professionalism; diversity and inclusion; and mental health and substance use disorders; (4) consider the adoption of strategies that reduce administrative and financial burdens on CLE Sponsors so that they can more easily offer programming that best meets lawyers’ educational needs at a reasonable price; (5) treat in-house Sponsors of CLE programs the same as other Sponsors and allow for full accreditation of programs when all other accreditation standards have been met; and (6) adopt a special exemption for lawyers licensed in multiple Jurisdictions, pursuant to which a lawyer is exempt from satisfying MCLE requirements if he or she satisfies the MCLE requirements of the Jurisdiction where the lawyer’s principal office is located.

2. **Summary of the issue which the Resolution addresses.**

The CLE landscape has changed significantly in the three decades since the 1988 Model Rule for MCLE was approved by the House of Delegates. In 2014, the House of Delegates explicitly asked SCOCLE to review the existing Model Rule and make recommendations. See 2014A106 (“[SCOCLE] is encouraged to consider amendments to the ABA Model Rule for Continuing Legal Education to effectuate the purposes of this Resolution, including provisions for distance learning through technology, and such other issues as deemed appropriate by the Committee.”).

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

This Model Rule addresses many changes in CLE and includes provisions for distance learning through technology, diversity and inclusion CLE, and other provisions previously endorsed by the ABA.
4. A summary of any minority views or opposition internal and/or external to the ABA which have been identified.

A number of individuals have expressed concern about the complexity of MCLE regulations and requiring MCLE, especially in light of the costs to lawyers. The Model Rule continues to endorse requiring MCLE, but it also contains several provisions designed to help lawyers access reasonably priced MCLE that is most relevant to their practices, in a delivery format that best meets their educational needs.
RESOLVED, That the American Bar Association urges Congress to enact legislation
deeming it unlawful for any governmental authority or any person acting on behalf of a
governmental authority to engage in a pattern or practice that deprives persons of their
constitutional right to the effective assistance of counsel; and

FURTHER RESOLVED, That the American Bar Association urges Congress to enact
legislation enabling the following parties to initiate and pursue civil actions to obtain
equitable relief for systemic violations of the constitutional right to the effective
assistance of counsel: the United States Department of Justice, private litigants deputized
to file such actions in the name of the United States, and private litigants seeking to file
such actions in an individual capacity or as members of a class.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges Congress to enable the United States Department of Justice to ensure compliance with the Sixth Amendment right to effective assistance of counsel. Specifically, it urges Congress to (1) deem unlawful any “pattern or practice” that denies the Sixth Amendment right to effective assistance of counsel; and (2) enable the DOJ, its deputies, or other private litigants to pursue civil action to obtain equitable relief where violations of that right occur.

2. Summary of the Issue that the Resolution Addresses

Public defense has, for several decades, been in a state of crisis. Throughout the nation, public defense providers are inadequately funded and carry grossly excessive workloads. These attorneys, saddled with hundreds or thousands of cases per year, are frequently unable to meet their Sixth Amendment duties to effective assistance of counsel. The United States Department of Justice has authority to pursue civil actions to obtain equitable relief where violations of this right occur in the juvenile context, but that authority does not presently exist in the adult context. Given the Department’s limited time and resources, deputization and private enforcement through individual and class action lawsuits are also necessary to ensure that such violations do not occur.

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

The United States Department of Justice is better positioned than any other organization or entity in our nation to enforce the right to effective assistance of counsel. Where the federal government cannot or will not intervene, an alternative mechanism is necessary to ensure that private litigants can also seek redress for systemic Sixth Amendment violations. By enacting the legislation recommended in this resolution, Congress will greatly deter widespread violation of the Sixth Amendment.

4. Summary of Minority Views

None.
RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to adopt standards, guidance, best practices, programs, and regulatory systems that make communities more resilient to loss and damage from foreseeable hazards and also recognize property rights, affordable risk mitigation, the interests of taxpayers, and protection of the environment.

FURTHER RESOLVED, That the American Bar Association urges lawyers and law firms, federal, state, local, territorial, tribal and specialty bar associations, businesses, and other professional and nonprofit organizations to advocate for and actively participate in community resilience initiatives.
EXECUTIVE SUMMARY

1. Summary of the Resolution

In recognition of the continuous and growing occurrence of natural and manmade disasters and the financial and human impact on communities, this Resolution urges governments, businesses, nonprofit sector, and the legal community to adopt standards, guidance, programs, and best practices, and consider regulatory systems that will make communities more resilient to loss and damage from foreseeable hazards and enhance the disaster resilience of communities. It further urges lawyers and law firms, as well as federal, state, local and specialty bar associations to be active participants in and advocates for community resilience initiatives.

2. Summary of the Issue that the Resolution Addresses

Community resilience is a growing concept adopted by the public and private sector. It addressed the ability to anticipate risk, limit impact, and bounce back rapidly following a disaster. This resolution addresses an often neglected aspect of community resilience, the key and essential role of lawyers in community resilience planning and execution, and the role of laws and regulations in supporting community resilience while taking into consideration competing legal and financial interests.

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

This proposal addresses a key, often overlooked, aspect of community resilience: the role of laws and regulations that can promote or hinder such resiliency, and of lawyers to engage in community resilience efforts, by advocating for greater bar association participation.

4. Summary of Minority Views

Aware of none.
RESOLVED, That the American Bar Association accredits the Privacy Law program of the International Association of Privacy Professionals of Portsmouth, New Hampshire for a 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 Privacy Law certification program of the International Association of Privacy Professionals.

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 acquires 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.

4. Summary of Minority Views

No opposition has been identified.
RESOLVED, That the American Bar Association House of Delegates concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated February 2017 to the following ABA Standards and Rules of Procedure for Approval of Law Schools:

1. Standard 204: Self Study
2. Standard 303(a)(1): Curriculum
3. Interpretation 303-1
4. Standard 311(d): Academic Program and Academic Calendar
5. Standard 501: Admissions
6. Rules 35, 37, 38, 39, 40, and 41: Appeals Panel
1. Standard 204. SELF STUDY

Before each site evaluation visit the law school shall prepare a self-study comprising:
- a completed site evaluation questionnaire, and
- a law school self assessment that includes:
  1. a statement of the law school’s mission and of its educational objectives in support of that mission,
  2. an assessment of the educational quality of the law school’s program of legal education, including a description of the program’s strengths and weaknesses,
  3. an assessment description of the school’s continuing efforts to improve the educational quality of its program,
  4. an evaluation of the school’s effectiveness in achieving its stated educational objectives, and
  5. a description of the strengths and weaknesses of the law school’s program of legal education.

Interpretation 204-1

The evaluation of the school’s effectiveness and description of its strengths and weaknesses should include a statement of the availability of sufficient resources to achieve the school’s mission and its educational objectives.

2. Standard 303. CURRICULUM

(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:

  1. one course of at least two credit hours in professional responsibility that includes substantial instruction in the history, goals, structure, rules of professional conduct, and the values, and responsibilities of the legal profession and its members;

3. Interpretation 303-1

A law school may not permit a student to use a course to satisfy more than one requirement under this Standard. For example, a course that includes a writing experience used to satisfy the upper-class writing requirement [see 303(a)(2)] cannot be counted as one of the experiential courses required in Standard 303(a)(3). This does not preclude a law school from offering a course that may count either as an upper-class writing requirement [see 303(a)(2)] or as a simulation course [see 303(a)(3) and 304(a)] provided the course meets all of the requirements of both types of courses and the law school permits a student to use the course to satisfy only one requirement under this Standard.

4. Standard 311. ACADEMIC PROGRAM AND ACADEMIC CALENDAR

(d) Credit for a J.D. degree shall only be given for course work taken after the student has matriculated in a law school’s J.D. program of study, except for credit that may be granted...
pursuant to Standard 505. A law school may not grant credit toward the J.D. degree for work taken in a pre-admission program.

5. Standard 501. ADMISSIONS

(a) A law school shall maintain, adopt, publish, and adhere to sound admission policies and practices consistent with the Standards, its mission, and the objectives of its program of legal education.
(b) A law school shall not admit an applicant who does not appear capable of satisfactorily completing its program of legal education and being admitted to the bar.
(c) A law school shall not admit or readmit a student who has been disqualified previously for academic reasons without an affirmative showing that the prior disqualification does not indicate a lack of capacity to complete its program of legal education and be admitted to the bar. For every admission or readmission of a previously disqualified individual, a statement of the considerations that led to the decision shall be placed in the admittee’s file.

Interpretation 501-1

Among the factors to consider in assessing compliance with this Standard are the academic and admission test credentials of the law school’s entering students, the academic attrition rate of the law school’s students, the bar passage rate of its graduates, and the effectiveness of the law school’s academic support program. Compliance with Standard 316 is not alone sufficient to comply with the Standard.

Interpretation 501-2

Sound admissions policies and practices may include consideration of admission test scores, undergraduate course of study and grade point average, extracurricular activities, work experience, performance in other graduate or professional programs, relevant demonstrated skills, and obstacles overcome.

Interpretation 501-3

A law school having a cumulative non-transfer attrition rate above 20 percent for a class creates a rebuttable presumption that the law school is not in compliance with the Standard.


Rule 35: Appeals Panel

(a) The Appeals Panel shall consist of at least three persons appointed by the Chair of the Council. Members shall serve a one-year term beginning at the end of the Annual Meeting of the Section and continuing to the end of the next Annual Meeting of the Section or until replaced. Appeals Panel members and alternates are eligible to serve consecutive terms or non-consecutive multiple terms.
(1) The Chair of the Council shall designate one member of the Appeals Panel to serve as its chair.

(2) The Chair of the Council shall also appoint, at the same time as appointing members of the Appeals Panel and for the same term, an equal number of alternates to the Appeals Panel.

(b) Every member of the Appeals Panel and alternate shall be:

(1) A former member of the Council or Accreditation Committee; or
(2) An experienced site evaluator.

(c) Members of the Appeals Panel and alternates shall be:

(1) Experienced in and knowledgeable about the Standards, Interpretations, and Rules of Procedure;
(2) Trained in the Standards, Interpretations, and Rules of Procedure at a retreat or workshop or by other appropriate methods within the 3 years prior to appointment; and
(3) Subject to the Section’s Conflicts of Interest Policy, as provided in IOP 139.

(d) The Appeals Panel, and the group of alternates, shall each include:

(1) an academic;
(2) an administrator;
(3) a legal educator;
(4) a practitioners or members of the judiciary; and
(5) a representative of the public.

(d)(e) No more than fifty percent of the members may be persons whose primary professional employment is as a law school dean, faculty, or staff member. Public members shall have qualifications and representation consistent with the regulations of the United States Department of Education applicable to the accreditation of professional schools.

Rule 37: Membership of the Appeals Panel for the Proceeding

(a) Within 30 days of receipt of a written appeal within the scope of authority of the Appeals Panel, the Managing Director shall ensure that the Appeals Panel or the Appeals Panel with alternates is authorized and available to decide the appeal, appoint three members of the
Appeals Panel to hear the particular matter and make the decision. The appointed members shall be known as the Proceeding Panel. The Managing Director shall designate one member of the Proceeding Panel as chair.

(b) In the event a member of the Appeals Panel cannot participate in the appeal, the Managing Director shall appoint one of the alternates to the panel hearing the matter and making the decision, and shall ensure that the panel includes one legal educator, one judge or practitioner, and one public member. For law schools for which the Council is the institutional accreditor, the Managing Director shall appoint an academic, an administrator, and a representative of the public to serve on the Proceeding Panel. For law schools for which the Council is the programmatic accreditor, the Managing Director shall appoint a legal educator, a practitioner or member of the judiciary, and a representative of the public to serve on the Proceeding Panel.

(c) In the event an alternate member of the Appeals Panel cannot be appointed to participate in a decision on appeal so as to ensure that the Proceeding Panel includes one legal educator, one judge or practitioner, and one public member meets the requirements of Rules 35 and 37, the Managing Director shall appoint to the Proceeding Panel another person who meets those requirements:

(1) Wholly or substantially meets the criteria of Rule 35(b) and (c); and

(2) Whose appointment to the panel ensures that the panel includes one legal educator, one judge or practitioner, and one public member.

(d) In the event the Chair of the Appeals Panel is unable to participate in the appeal, the Managing Director shall appoint a Chair Pro Tempore, where possible from among the members of the Appeals Panel appointed by the Chair of the Council.

Rule 38: Scheduling of Appeals Panel Hearings

(a) Within 30 days of receipt of a written appeal within the scope of authority of the Appeals Panel, the Managing Director shall refer the appeal to the Proceeding Panel. In referring the appeal, the Managing Director shall provide the members of the Appeals or alternates hearing the appeal with copies of:

(1) The written appeal;

(2) The decision of the Council; and

(3) The record before the Council, including any transcript of hearing.

(b) The Managing Director, in consultation with the Chair or Chair Pro Tempore of the Appeals Proceeding Panel, shall set the date, time, and place of the hearing.
(1) The hearing shall be scheduled within 45 days of the Managing Director’s referral of the appeal to the Appeals Proceeding Panel.

(2) The Managing Director shall inform the law school of the date, time, and place of the hearing at least 30 days in advance of the hearing, unless the law school agrees to the hearing on less than 30 days’ notice.

Rule 39: Burdens and Evidence in Appeals Panel Proceedings

(a) The law school appealing to the Appeals Panel has the burden of demonstrating that the Council’s decision was arbitrary and capricious and not supported by the evidence on record, or inconsistent with the Rules of Procedure and that inconsistency prejudiced its decision.

(b) The appeal shall be decided based on the record before the Committee and the Council, the decision letters of those bodies and any documents cited in those decision letters, and transcripts of hearings before the Committee and the Council. Except as provided in Rule 41(e), no new evidence shall be considered by the Appeals Proceeding Panel.

Rule 40: Procedure in Hearings before the Appeals Proceeding Panel

(a) The hearing will be a closed proceeding and not open to the public.

(b) The law school shall have a right to have representatives, including legal counsel, appear at the hearing.

(c) The Council shall be represented at the hearing through the Chair, other members of the Council as the Chair of the Council deems appropriate, and legal representation for the Council.

(d) The Managing Director or designee shall be present at the hearing. The Managing Director may designate additional staff to be present at the hearing.

(e) The hearing shall be transcribed by a court reporter and a transcript of the hearing shall be provided to the Appeals Proceeding Panel, the Council, and the law school.

Rule 41: Action by the Appeals Proceeding Panel

(a) Within 30 days of the hearing, the Appeals Proceeding Panel shall provide the Council and the law school with a written statement of the Appeals Proceeding Panel’s decision and the basis for that decision.

(b) The Appeals Proceeding Panel, following a hearing, has the authority to:

(1) Affirm the decision of the Council;
(2) Reverse the decision of the Council and enter a new decision;
(3) Amend the decision of the Council; or
(4) Remand the decision of the Council for further consideration.

(c) The decision of the Appeals Proceeding Panel shall be effective upon issuance. If the Appeals Proceeding Panel remands a decision for further consideration or action by the Council, the Appeals Proceeding Panel shall identify specific issues that the Council must address.

(d) Decisions by the Appeals Proceeding Panel under (b)(1), (2) and (3) are final and not appealable.

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

(1) A written request for review is filed with the Office of the Managing Director within 30 days after the date of the letter reporting the adverse decision of the Council to the law school;
(2) The financial information was unavailable to the law school until after the adverse decision subject to the appeal was made; and
(3) The financial information is significant and bears materially on the financial deficiencies that were the basis of the adverse decision by the Council.

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

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

1. Summary of the Resolution

Under Rule 45.9(b) of the Rules of Procedure of the House of Delegates, the resolution seeks concurrence in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated February 2017 to the following ABA Standards and Rules of Procedure for Approval of Law Schools:

1. Standard 204: Self Study, regarding the requirements of a law school self assessment prior to a site evaluation visit;
2. Standard 303(a)(1): Curriculum, regarding the content of the required course in professional responsibility;
3. Interpretation 303-1, regarding upper level writing requirements and simulation courses;
4. Standard 311(d): Academic Program and Academic Calendar, regarding credit for prior law study;
5. Standard 501: Admissions, regarding written admission policies and qualifications of admitted students; and

2. Summary of the Issue that the Resolution Addresses

The resolution addresses a number of Standards and Rules in the ABA Standards and Rules of Procedure for Approval of Law Schools. In accordance with Internal Operating Practice 8, the Council engages in an ongoing review of the Standards.

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

The proposals amend the 2016-2017 ABA Standards and Rules of Procedure for Approval of Law Schools.

4. Summary of Minority Views

The Council received one comment stating that Standard 303 should require law schools to teach the history of the profession and its role in the development of gender, race, and ethnic norms in U.S. society and its legal institutions.

The Council received one comment stating that the changes to Standard 501 are based on the flawed premise that the factors involved in law school admissions decisions can be used to predict bar examination success.
RESOLVED, That the American Bar Association House of Delegates concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated February 2017 to Standard 316 (Bar Passage) of the *ABA Standards and Rules of Procedure for Approval of Law Schools*. 
American Bar Association
Section of Legal Education and Admissions to the Bar
Revised Standards for Approval of Law Schools
February 2017

Standard 316. BAR PASSAGE

At least 75 percent of a law school’s graduates in a calendar year who sat for a bar examination must have passed a bar examination administered within two years of their date of graduation.

(a) A law school’s bar passage rate shall be sufficient, for purposes of Standard 301(a), if the school demonstrates that it meets any one of the following tests:

(1) That for students who graduated from the law school within the five most recently completed calendar years:
   (i) 75 percent or more of these graduates who sat for the bar passed a bar examination; or
   (ii) In at least three of these calendar years, 75 percent of the students graduating in those years and sitting for the bar have passed a bar examination.

In demonstrating compliance under sections (1)(i) and (ii), the school must report bar passage results from as many jurisdictions as necessary to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency.

(2) That in three or more of the five most recently completed calendar years, the school’s annual first-time bar passage rate in the jurisdictions reported by the school is no more than 15 points below the average first-time bar passage rates for graduates of ABA-approved law schools taking the bar exam in these same jurisdictions.

In demonstrating compliance under section (2), the school must report first-time bar passage data from as many jurisdictions as necessary to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency. When more than one jurisdiction is reported, the weighted average of the results in each of the reported jurisdictions shall be used to determine compliance.

(b) A school shall be out of compliance with this Standard if it is unable to demonstrate that it meets the requirements of paragraph (a)(1) or (2).

(c) A school found out of compliance under paragraph (b) and that has not been able to come into compliance within the two year period specified in Rule 13(b) of the Rules of Procedure for Approval of Law Schools, may seek to demonstrate good cause for extending the period the law school has to demonstrate compliance by submitting evidence of:
(1) The law school’s trend in bar passage rates for both first-time and subsequent takers: a clear trend of improvement will be considered in the school’s favor, a declining or flat trend against it.

(2) The length of time the law school’s bar passage rates have been below the first-time and ultimate rates established in paragraph A: a shorter time period will be considered in the school’s favor, a longer period against it.

(3) Actions by the law school to address bar passage, particularly the law school’s academic rigor and the demonstrated value and effectiveness of its academic support and bar preparation programs; value-added, effective, sustained and pervasive actions to address bar passage problems will be considered in the law school’s favor; ineffective or only marginally effective programs or limited action by the law school against it.

(4) Efforts by the law school to facilitate bar passage for its graduates who did not pass the bar on prior attempts: effective and sustained efforts by the law school will be considered in the school’s favor; ineffective or limited efforts by the law school against it.

(5) Efforts by the law school to provide broader access to legal education while maintaining academic rigor; sustained meaningful efforts will be viewed in the law school’s favor; intermittent or limited efforts by the law school against it.

(6) The demonstrated likelihood that the law school’s students who transfer to other ABA-approved schools will pass the bar examination: transfers by students with a strong likelihood of passing the bar will be considered in the school’s favor, providing the law school has undertaken counseling and other appropriate efforts to retain its well-performing students.

(7) Temporary circumstances beyond the control of the law school, but which the law school is addressing: for example, a natural disaster that disrupts operations or a significant increase in the standard for passing the relevant bar examination(s).

(8) Other factors, consistent with a law school’s demonstrated and sustained mission, which the school considers relevant in explaining its deficient bar passage results and in explaining the school’s efforts to improve them.
EXECUTIVE SUMMARY

1. Summary of the Resolution

Under Rule 45.9(b) of the Rules of Procedure of the House of Delegates, the resolution seeks concurrence in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated February 2017 to Standard 316 (Bar Passage) of the *ABA Standards and Rules of Procedure for Approval of Law Schools*.

2. Summary of the Issue that the Resolution Addresses

The resolution addresses Standard 316 (Bar Passage) of the *ABA Standards and Rules of Procedure for Approval of Law Schools*. In accordance with Internal Operating Practice 8, the Council engages in an ongoing review of the Standards.

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

The proposals amend the 2016-2017 *ABA Standards and Rules of Procedure for Approval of Law Schools*.

4. Summary of Minority Views

As indicated in the Report, opposition to the change to Standard 316 centered principally on the following concerns: the lack of studies on how the proposed change would affect diversity and law school curricula; the lack of data on how law schools in states with low bar passage rates would be impacted; the lack of data that two years is sufficient for graduates to take a bar exam in that there is anecdotal evidence that graduates do not take the bar in consecutive administrations; and the lack of data on how the Uniform Bar Exam will affect law schools’ bar passage rates.
RESOLUTION

RESOLVED, That the American Bar Association supports the adoption of the nominative fair use doctrine as an affirmative defense to claims of trademark infringement and unfair competition.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution and Report concerns the test federal courts apply to determine whether
reference to a trademark by someone other than the mark owner, in the context of a
commentary, comparison, or criticism of the mark owner’s own goods or services, for
example, is a permissible nominative fair use. Treating nominative fair use as an
affirmative defense is the best approach for preserving an individual’s right to comment
on or express an opinion while referring to the mark owner’s goods or services without
fear of sanctions.

The resolution calls for the Association to adopt policy supporting recognition of the
nominative fair use doctrine as an affirmative defense to allegations of trademark
infringement and unfair competition.

2. Summary of the Issue that the Resolution Addresses

Because key factors for determining the existence of trademark infringement in the form
of likely confusion will often unfairly weigh the determination heavily towards a finding
of liability, to protect freedom of expression, a proper nominative fair use analysis should
treat likelihood of confusion separate from the question of the appropriateness of the use.
Nominative fair use should be an affirmative defense required only after the plaintiff has
proven likely confusion. Nevertheless, several circuits combine the two tests, leaving the
right of others to comment on marks, free from the threat of trademark infringement, in
doubt.

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

The resolution addresses the circuit split, favoring the Third Circuit’s approach of
treating nominative fair use as an affirmative defense. The resolution will provide a basis
for the Association to ask Congress to amend the applicable federal statute or submit a
brief if the Supreme Court grants certiorari in Int’l Info. Systems Sec. Cert. Consortium,
Inc. v. Security Univ., LLC, 823 F.3d 153, 168 (2d Cir. 2016) or in another appropriate
case.

4. Summary of Minority Views

The Section of Intellectual Property Law is unaware of any inconsistent views among
ABA entities.

Different views are reflected in the different treatments in different circuits. While all
circuits addressing the issue agree the nominative use of another’s mark is not an
infringing or diluting use, there is a four-way circuit split as to how the nominative fair
use doctrine should be applied: as an affirmative defense to infringement (the approach
favored by the resolution); as an additional factor in the traditional likelihood-of-confusion test for infringement; in a three-factor test that replaces the traditional likelihood-of-confusion test, which places the burden on the plaintiff to show the defendant’s use was not a nominative fair use; or no specified application of a nominative fair use test.
RESOLVED, That the American Bar Association urges the United States Department of Justice to continue its accuracy and quality assurance efforts in the area of microscopic hair analysis.

FURTHER RESOLVED, That the American Bar Association urges state, local and tribal prosecutors:

(i) to review in a timely manner cases in which they have received notice from the United States Department of Justice, or notice from their own jurisdiction, of the possibility that forensic examiners provided erroneous or potentially misleading statements or testimony concerning microscopic hair analysis;

(ii) to consider establishing a policy, in the interest of justice, of waiving any statute of limitations or procedural defense, in order to permit the resolution of post-conviction claims arising from errors that undercut the reliability of the conviction; and

(iii) to ask state and local forensic laboratories whether their examiners have provided erroneous or potentially misleading statements or testimony concerning microscopic hair analysis and, if such instances are identified, to take appropriate corrective action.

FURTHER RESOLVED, That the American Bar Association urges all defense counsel and criminal defense organizations to take appropriate action upon receiving notice or becoming aware of any such erroneous statements or testimony given in cases in which they represented a defendant at trial or on appeal. Appropriate action, consistent with ABA Criminal Justice Standards for the Defense Function, Standard 4-9.4, would include:
112A

31 (i) to evaluate the information, investigate if necessary, and determine what
32 potential remedies are available;
33
34 (ii) to advise and consult with the client; and
35
36 (iii) to determine what action if any to take, which might include, if prior
37 counsel is unavailable, taking steps to see that new counsel is appointed.
38
39
40 FURTHER RESOLVED, That the American Bar Association urges the United States
41 Department of Justice and appropriate state, local and tribal authorities to continue efforts
42 to identify other erroneous or misleading forensic testimony and, if discovered, to take
43 appropriate remedial steps similar to those recommended in this Resolution.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution recognizes the United States Department of Justice for acknowledging the many cases in which federal and state prosecutors utilized expert testimony of forensic examiners, testifying on microscopic hair comparisons, that exceeded the limits of science and for establishing an array of remedial protocols intended to address the risks of erroneous convictions thereby created.

This resolution also calls upon state prosecutors to commit to a timely review of all cases in which such erroneous expert testimony was used and to strongly consider a policy, in litigating motions for new trial premised upon such errors, of disavowing available defenses based upon procedural default or waiver, in order to facilitate the resolution of motions seeking a new trial that are based upon such errors on the merits.

This resolution also calls upon all defense counsel who have received notice that such erroneous statements or testimony may have been given in cases in which they represented a defendant at trial or on appeal to take action, as prescribed by ABA Defense Standard 4-9.4, to evaluate the information, investigate if necessary and determine what potential remedies are available, to advise and consult with the client, and to determine what action if any to take.

2. Summary of the Issue that the Resolution Addresses

Expert testimony, based on the microscopic comparison of hair samples, that purported to link evidentiary hair to hair taken from particular suspects was formerly widely accepted but is now recognized as highly unreliable. This resolution commends DOJ’s proactive response to this particular circumstance. DOJ’s collaboration with NACDL and the Innocence Project illustrates a commendable response to a problem that can exist when advances in research on forensic scientific evidence suggest that significant errors may have occurred in older cases. This resolution urges action by prosecutors and defense counsel to address, in particular cases, the risk of wrongful conviction that this widespread problem has generated.

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

This resolution urges action by prosecutors and defense counsel to address, in particular cases, the risk of wrongful conviction that now exists in many old cases in which erroneous and misleading expert testimony on microscopic hair comparisons was used to obtain convictions.
4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified.

During presentation to the Criminal Justice Section Council, and later during circulation to other ABA entities, several people asked whether the resolution should be generalized to relate to a broad range of forensic disciplines. We considered, but ultimately did not adopt, that approach for three reasons:

1) Significant differences of opinion exist among experts and major institutions regarding the extent of individual types of forensic pattern analysis; even within the Obama Administration there are at least three distinct positions that have been staked out: DOJ, National Commission on Forensic Science (DOJ-NIST collaboration), Presidential Council of Advisors on Science & Technology.

2) Although the DOJ has undertaken broad efforts to define best practices for forensic analysis and testimony, it has undertaken a methodical, collaborative effort to identify flawed testimony and notify prosecutors and defense counsel only as to hair microscopy.

3) To the extent that similar consensus emerges regarding other disciplines, such as bitemark analysis, we believe it is covered by the final paragraph of the resolution which was added during debate by the CJS Council for that purpose.
RESOLVED, That the American Bar Association urges each federal, state, and territorial prosecutor’s office to adopt and implement the following internal conviction-integrity policy: When the prosecutor’s office supports a defendant’s motion to vacate a conviction based on the office’s doubts about the defendant’s guilt of the crime for which the defendant was convicted, or about the lawfulness of the defendant’s conviction, the office should not condition its support for the motion on an Alford plea, a guilty plea, or a no contest plea by the defendant to the original or any other charge. Nevertheless, the office may independently pursue any charge it believes is supported by admissible evidence sufficient to prove guilt beyond reasonable doubt, and may seek to resolve that matter with an Alford plea, no contest plea, or guilty plea to that charge.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution calls on prosecutors’ offices to adopt and implement internal conviction-integrity policies when an office supports a defendant’s motion to vacate a conviction based on the office’s doubts about the defendant’s guilt of the crime for which the defendant was convicted, or about the lawfulness of the defendant’s conviction. The resolution also makes it clear that, after the conviction has been vacated, prosecutors retain the discretion to bring charges—including the charges for which the person was wrongfully convicted—if they believe that the new charge, lesser included charge, or overturned and re-filed charge can be proved beyond a reasonable doubt by admissible evidence.

2. Summary of the Issue that the Resolution Addresses

This resolution addresses post conviction motions to vacate convictions and a prosecutor’s decision to pursue the same or new charges, and the policies offices should implement in those proceedings.

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

If adopted, this policy will be used in local, state, and federal jurisdictions to promote the creation of conviction integrity policies for prosecutor’s offices and to guide the offices in pursuing criminal charges following the grant of a motion to vacate a conviction.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.
RESOLVED, That the American Bar Association urges federal, state, local, territorial and tribal law enforcement authorities to develop and use, prior to custodial interrogation of suspects, translations of *Miranda* warnings in as many languages and dialects as necessary to accurately and fully inform individuals of their *Miranda* rights.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   This resolution calls for the translation of Miranda warnings into in as many languages and dialects as necessary to accurately and fully inform individuals of their *Miranda* rights.

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

   This resolution addresses the need for Miranda warnings to be translated into the language the person speaks and understands best, in order to ensure that the individual understands the rights and knowingly invokes or waives them.

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

   If adopted, this policy will be used in local, state, and federal jurisdictions to promote translation of *Miranda* warnings.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

   None.
RESOLVED, That the American Bar Association urges the Food and Drug Administration (“FDA”) to update its current policy requiring deferment of blood donations from men who have sex with men for one year after the donor’s most recent sexual encounter with a man to a deferral policy based on an individual risk assessment or other similar policy that does not result in disparate treatment of men who have sex with men;

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to enact and adopt legally sound and medically safe blood donation policies that do not result in disparate treatment of men who have sex with men.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution calls for the repeal and/or modification of the discriminatory prohibitions on blood donations by gay men and for the FDA to develop non-discriminatory but medically safe means of accepting blood donations and testing for infectious diseases.

2. Summary of the Issue that the Resolution Addresses

This resolution addresses the discriminatory impact of the current FDA blood donation regulations, and the disparate and damaging impact these policies have on victims and the victim community.

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

If adopted, this policy will be used in local, state, and federal jurisdictions to promote reformation of FDA policies to ensure that blood donation regulations are both medically safe/sound, but also implemented in a non-discriminatory fashion.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.
RESOLVED, That the American Bar Association urges the United States Department of State to:

1) interpret the Immigration and Nationality Act, 8 U.S.C. § 1401, to recognize those children born to intended parents, even if those legally recognized parents do not have a biological (genetic or gestational) relationship to the child, so long as at least one of the intended parents is a U.S. citizen who is legally recognized as the child’s parent by the country of birth or the intended parent’s state of domicile and the relevant resident or physical presence requirements are met;

2) create guidelines related to the recognition of children born to intended parents that will ensure the validity of the intended parent relationship and that it is demonstrated prior to acquisition of citizenship;

3) recognize children born to parents who are legally bound by marriage, civil unions, or other similar forms of legal partnership as not “born out of wedlock” and analyze them under 8 U.S.C. § 1401 rather than 8 U.S.C. § 1409; and

4) apply these three expanded interpretations retroactively.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution urges the United States Department of State:

1) to interpret the Immigration and Nationality Act, 8 U.S.C. § 1401, to recognize those children born to intended parents, even if those legally recognized parents do not have a biological (genetic or gestational) relationship to the child, so long as at least one of the intended parents is a U.S. citizen who is legally recognized as the child’s parent by the country of birth or the intended parent’s state of domicile and the relevant resident or physical presence requirements are met;

2) to create guidelines related to the recognition of children born to intended parents that will ensure the validity of the intended parent relationship and that it is demonstrated prior to acquisition of citizenship;

3) to recognize children born to parents who are legally bound by marriage, civil unions or other similar forms of legal partnership as not “born out of wedlock” and analyze them under Immigration and Nationality Act, 8 U.S.C. § 301 rather than Immigration and Nationality Act, 8 U.S.C. § 309; and

4) to apply these expanded interpretations retroactively.

2. Summary of the Issue that the Resolution Addresses

Recent advancements in medical technology have enabled the global expansion of third-party assisted reproduction for both infertile couples and single individuals. Children conceived through modern forms of ART often do not have a biological, or gestational, relationship to their legal, intended parents.

In January 2014, State announced that it would expand its policy related to the acquisition of citizenship for children born abroad through ART. The previous policy required a U.S. citizen parent to have a genetic relationship to a child for the purpose of automatically transmitting the parent’s citizenship to a child born abroad. Under the new policy, State now interprets the definition of child to include the child of a gestational mother even where there is no genetic relationship between the child and gestational mother. Importantly, the new policy is retroactive, allowing children born abroad to a gestational (and legal) mother, who were previously denied automatic transmission of citizenship under the prior interpretation, to reapply for citizenship.
The expanded definition of child under the Immigration and Nationality Act ("INA") when addressing the transmission of citizenship at birth to a child born abroad is a welcome change. However, due to rapid advances in ART, the Sponsors and State are concerned that gaps continue to exist in State’s legal interpretation of child for the purposes of transmitting citizenship to children of U.S. citizens conceived through ART and born abroad, leaving some children stateless.

Some children of U.S. citizens conceived through ART and born abroad remain stateless because there are many forms of ART that do not require the use of intended parents’ genetic material. Additionally, surrogacy is increasingly a part of ART, whereby a surrogate gesstes, carries, and delivers a child for intended parents. As a result, children conceived through modern forms of ART often do not have a biological, or gestational, relationship to their legal, intended parents. Currently, the analysis for how these intended U.S. citizen parents, both married and unmarried, pass citizenship to their children conceived using ART is incomplete. Indeed, under some scenarios explained in this memorandum, a child conceived through ART may be “stateless” within the current legal interpretation utilized by State to confer automatic citizenship.

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

Given rapid innovations in ART, the Sponsors encourage State to expand upon its recent advances and provide additional, uniform guidance to U.S. citizen parents whose children are conceived with ART and born abroad. To this end, the Sponsors recommend that State base its definition of child not on genetic and gestational relationship alone, but also on demonstrated “parental intent” to establish the necessary relationship to transmit or acquire U.S. citizenship. This approach is consistent not only with accepted canons of statutory interpretation, but also with interpretations of family law in many American and foreign jurisdictions confronting the parentage of children conceived through ART. Such a policy expansion by State would permit U.S. citizen parents to transmit U.S. citizenship to their children born abroad but conceived through assisted reproductive technologies when their parent-child relationship is legally recognized by the country of the child’s birth.

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.
RESOLVED, That the American Bar Association urges all federal, state, territorial, and tribal governments to enact legislation and implement public policy providing that custody, visitation, and access shall not be denied or restricted, nor shall a child be removed or parental rights be terminated, based on a parent’s disability, absent a showing—supported by clear and convincing evidence—that the disability is causally related to a harm or an imminent risk of harm to the child that cannot be alleviated with appropriate services, supports, and other reasonable modifications.

FURTHER RESOLVED, That the American Bar Association urges all federal, state, territorial, and tribal governments to enact legislation and implement public policy providing that a prospective parent’s disability shall not be a bar to adoption or foster care when the adoption or foster care placement is determined to be in the best interest of the child.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges federal, state, territorial, and tribal governments to enact legislation and implement public policy providing that custody, visitation, and access shall not be denied or restricted, nor shall a child be removed or parental rights terminated, based on a parent’s disability, absent a showing—supported by clear and convincing evidence—that the disability is causally related to a harm or an imminent risk of harm to the child that cannot be alleviated with appropriate services, supports, and other reasonable modifications. This resolution further urges all federal, state, territorial, and tribal governments to enact legislation and implement public policy providing that a prospective parent’s disability shall not be a bar to adoption or foster care when the adoption or foster care placement is determined to be in the best interest of the child.

2. Summary of the Issue that the Resolution Addresses

This resolution responds to the rising number of disability discrimination complaints from parents with disabilities who have had their children taken away, their visitation and access rights restricted, or have been denied reasonable accommodations, as well as from prospective parents with disabilities who have not been given equal opportunities to become foster or adoptive parents.

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

This resolution will address the issue by calling on governments to enact legislation and implement public policy that protects parents and prospective parents with disabilities from discrimination and requires objective, evidence-based determinations in family law and child welfare cases.

4. Summary of Minority Views

At this time, we are unaware of any opposition.
RESOLVED, That the American Bar Association urges governments and relevant organizations to implement the recommendations set forth in the policy brief, *Allies Against Atrocities: The Imperative for Transatlantic Cooperation to Prevent and Stop Mass Killings* (May 2016).
EXECUTIVE SUMMARY

1. Summary of the Resolution

RESOLVED, That the American Bar Association urges governments and relevant organizations to implement the recommendations set forth in the policy brief, *Allies Against Atrocities: The Imperative for Transatlantic Cooperation to Prevent and Stop Mass Killings* (May 2016).

The resolution updates current ABA policy to reflect important developments in this vital field of human rights law and policy.

2. Summary of the Issue that the Resolution Addresses

The resolution builds on current ABA policy addressing prevention of and responses to mass atrocity crimes – genocide, war crimes, crimes against humanity, and ethnic cleansing. The legal dimensions of atrocity prevention and response are key factors in decisions taken whether – and, if so – how to undertake such efforts.

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

The resolution updates existing ABA policy with expert insights gleaned since that policy’s adoption in August 2009. In particular, the policy brief to be endorsed pursuant to the resolution recommends developing an international legal framework adequate to the challenge of atrocity prevention.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

No internal or external minority views or opposition have been identified thus far.
AMERICAN BAR ASSOCIATION
HEALTH LAW SECTION
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association urges Congress to amend Section 1862(a)(1) of the Social Security Act (42 U.S.C. 1395y) to broaden the scope of Medicare coverage by allowing for coverage for items and services that are reasonable and necessary: (a) for the diagnosis, prognosis or treatment of current or future conditions, illnesses, or injuries; or (b) to improve the functioning of a malformed or impaired body member or function; or (c) to mitigate against the future onset or severity of any prognosticated illness, injury or condition.

FURTHER RESOLVED, That the American Bar Association urges Congress to define “prognosis” as the forecasting of the likelihood of or probable course of any current or future illness, injury or condition.
EXECUTIVE SUMMARY

1. Summary of the Resolution
At a time of unprecedented scientific and medical breakthroughs, precision medicine has the capability to accurately diagnose human diseases, predict individual susceptibility to disease based on genetic, environmental, and lifestyle factors, detect the onset of disease at early stages, pre-empt its progression, target treatments, and increase the overall efficiency and effectiveness of the health care system. This progress has brought us major treatment advances that will improve patient outcomes, with the greatest impact being felt by those facing serious and life-threatening conditions and unmet medical needs.

The emergence of precision medicine is eliciting growing excitement and optimism among patients, providers, and policymakers as a new wave of targeted therapies emerges that demonstrate the potential to improve patient outcomes and health care delivery. Current federal regulations restrict reimbursement to only those treatments and procedures that are “medically necessary.” Because the existing definition of “medical necessity” focuses solely on those who are already sick, it excludes treatments (both existing and those in development) that could mitigate medical issues which are genetically indicated, but not yet expressed. In short, precision medicine allows, for the first time, the potential to accurately predict illnesses before they occur. And when cost effective interventions are possible, these treatments should be covered and reimbursable for Medicare payment purposes in order to ensure patient access.

With this Resolution, the American Bar Association will urge Congress to adopt a new definition Medicare coverage to specifically include procedures reasonable and necessary for the prognosis or treatment of future conditions, illnesses, or injuries. The American Bar Association will further urge Congress to define “prognosis” as the forecasting of the likelihood of or probable course of any current or future illness, injury or condition.

2. Summary of the Issue that the Resolution Addresses
Because Medicare’s current definition of what is medically necessary (and thus, reimbursable) excludes interventions that could mitigate medical issues which are genetically indicated, but not yet expressed, this Resolution will urge Congress to adopt a broader statutory definition.

3. Please Explain How the Proposed Policy Position will address the issue
In this Resolution the American Bar Association will support a change in the Social Security Act’s definition of what is medically necessary and thus reimbursable to include aspects of precision medicine - specifically interventions that could mitigate medical issues which are genetically indicated, but not yet expressed.
4. **Summary of Minority Views**
   While we have not performed an exhaustive search of possible minority views, we suspect that such views would focus on the potential increases in costs for covering the discussed precision medicine interventions, etc. For this reason the proposed text also includes the caveat “reasonable and necessary” as to what will be considered medically necessary.
AMERICAN BAR ASSOCIATION

NATIONAL CONFERENCE OF COMMISSIONERS ON
UNIFORM STATE LAWS

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

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

1. Summary of the Resolution

That the American Bar Association approves the Uniform Family Law Arbitration Act promulgated by the National Conference of Commissioners on Uniform State Laws in July 2016 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

States’ laws vary when it comes to arbitrating family law matters such as spousal support, division of property, child custody, and child support. The Uniform Family Law Arbitration Act standardizes the arbitration of family law. It is based in part on the Revised Uniform Arbitration Act, though it departs from the RUAA in areas in which family law arbitration differs from commercial arbitration, such as: standards for arbitration of child custody and child support; arbitrator qualifications and powers; protections for victims of domestic violence. This Act is intended to create a comprehensive family law arbitration system for the states.

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

Approval of the Uniform Family Law Arbitration 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 or Opposition Internal and/or External to the ABA Which Have Been Identified

None known.
RESOLVED, That the American Bar Association approves the Uniform Wage Garnishment 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 Wage Garnishment Act promulgated by the National Conference of Commissioners on Uniform State Laws in July 2016 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

Currently, every state has a different wage garnishment law and process. This means that employers who do business across multiple states must know and abide by a different, and often complex, law for each jurisdiction. If employers make processing errors calculating garnishments, they may face civil penalties. The Uniform Wage Garnishment Act seeks to simplify and clarify wage garnishments for employers, creditors, and consumers by standardizing how the wage garnishment process works and offering plain-language notice and garnishment calculation forms.

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

Approval of the Uniform Wage Garnishment 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 or Opposition Internal and/or External to the ABA Which Have Been Identified

None known.
RESOLUTION

1 RESOLVED, That the American Bar Association approves the Uniform Employee and
2 Student Online Privacy Protection 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 contained in the act.
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association approves the Uniform Employee and Student Online Privacy Protection Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law contained in the act.

2. Summary of the Issue that the Resolution Addresses

The growing use of social media has implications in both employment and educational contexts. Indeed, employers and educational institutions now sometimes ask current and/or prospective employees and students to grant the employer or school access to social media or other name and password protected accounts. The Uniform Employee and Student Online Privacy Protection Act addresses both employers’ access to employees or prospective employees’ social media and other online accounts accessed via username and password or other credentials of authentication as well as post-secondary educational institutions’ access to students’ or prospective students’ similar online accounts.

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

Approval of the Uniform Employee and Student Online Privacy Protection 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 or Opposition Internal and/or External to the ABA Which Have Been Identified

The Uniform Employee and Student Online Privacy Protection Act is based on sound public policy that in many instances will provide stronger privacy protections than what is currently provided in existing state laws. However, some privacy advocates would have preferred different policy choices and may be dissatisfied with the final result. There is no known opposition within the American Bar Association.
RESOLUTION

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

1. Summary of the Resolution

That the American Bar Association approves the Revised Uniform Unclaimed Property Act promulgated by the National Conference of Commissioners on Uniform State Laws in July 2016 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 National Conference of Commissioners on Uniform State Laws first drafted uniform state legislation on unclaimed property in 1954. Since then, revisions have been promulgated in 1981 and again in 1995. Many technological developments in recent years as well as new types of potential unclaimed property, such as gift cards, are not addressed in the most current uniform act. The Revised Uniform Unclaimed Property Act updates provisions on numerous issues, including escheat of gift cards and other stored-value cards, life insurance benefits, securities, dormancy periods, and use of contract auditors.

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

Approval of the Revised Uniform Unclaimed Property 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 or Opposition Internal and/or External to the ABA Which Have Been Identified

A variety of views were expressed during the drafting process, and compromises were reached. Express opposition to the Revised Uniform Unclaimed Property Act is unknown at this time.
RESOLVED, That the American Bar Association approves the Uniform Unsworn Domestic Declarations 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 Unsworn Domestic Declarations Act promulgated by the National Conference of Commissioners on Uniform State Laws in July 2016 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 purpose of the Uniform Unsworn Domestic Declarations Act is to permit the use of unsworn declarations made under penalty of perjury in state courts. Under the Act, unsworn declarations may be used in lieu of affidavits, verifications, or other sworn court filings if they were made under penalty of perjury and use substantially similar language to the model form provided. The Act builds upon the Uniform Unsworn Foreign Declarations Act (UUFDA), which covers unsworn declarations made outside the United States. States that have the UUFDA should enact the Uniform Unsworn Domestic Declarations Act; states that have not enacted UUFDA should enact the Uniform Unsworn Declarations Act.

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

Approval of the Uniform Unsworn Domestic Declarations 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 or Opposition Internal and/or External to the ABA Which Have Been Identified

None known.
RESOLVED, That the American Bar Association approves the Uniform Unsworn Declarations 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 Unsworn Declarations Act promulgated by the National Conference of Commissioners on Uniform State Laws in July 2016 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 purpose of the Uniform Unsworn Declarations Act is to permit the use of unsworn declarations made under penalty of perjury in state courts. Under the Act, unsworn declarations may be used in lieu of affidavits, verifications, or other sworn court filings if they were made under penalty of perjury and use substantially similar language to the model form provided. The Act builds upon the Uniform Unsworn Foreign Declarations Act (UUFDA), which covers unsworn declarations made outside the United States. States that have the UUFDA should enact the Uniform Unsworn Domestic Declarations Act; states that have not enacted UUFDA should enact the Uniform Unsworn Declarations Act.

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

Approval of the Uniform Unsworn Declarations 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 or Opposition Internal and/or External to the ABA Which Have Been Identified

None known.
RESOLUTION

RESOLVED, That the American Bar Association urges lawmakers at federal, state, and local levels to work with the legal profession to collaborate in the identification and removal of legal barriers to veterans’ access to due and necessary assistance, including housing, education, employment, treatment, benefits, and services, particularly those provided by the Department of Veterans Affairs; and

FURTHER RESOLVED, That efforts to increase access to justice for veterans contemplate and include, where appropriate, veterans’ caregivers, especially on those matters for which the caregiver acts on behalf of the veteran.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   Urging the legal profession and lawmakers at each level to identify long-standing, entrenched legal barriers for veterans in accessing their housing, education, employment, treatment, other services, or benefits. The resolution also urges, where appropriate, that legal services programs supporting veterans include veterans’ caregivers as eligible clients, particularly when they are acting on behalf of the veteran.

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

   Effective protection of the rights and access to benefits for Veterans and their caregivers through support from the legal community to address chronic barriers that Veterans regularly confront and that can be eliminated with the assistance of a lawyer.

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

   The proposed policy position raises awareness of the importance of addressing the issues described in the Report, and the Report describes the supportive resources and programs implemented by the ABA and other bar associations and providers that can assist jurisdictions in carrying out the proposed policy position. The policy resolution also identifies the key areas where lawyers make a unique, substantial difference, in serving Veterans.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

   No minority views or opposition have been identified.
RESOLVED, That the American Bar Association urges state, territorial, and tribal legislatures to review their laws and engage stakeholders to ensure that legal prohibitions on the luring or enticing of a minor for sexual acts explicitly address the use of the internet and other electronic means of communication.
EXECUTIVE SUMMARY

1. Summary of the Resolution.

   The resolution urges legislatures across the country to review their child protection laws to ensure that legal prohibitions on the luring or enticing of a minor for sexual acts include the use of the internet and other electronic means of communication.

2. Summary of the Issue that the Resolution Addresses.

   The Resolution urges legislatures to review their child protection laws to ensure that they effectively protect children and teenagers against new threats posed by the internet and other electronic communications. While prosecutors can and do already use existing laws to prosecute internet and other electronic-communication-based crimes against children, they face potential statutory obstacles to pursuit of 21st-century criminal conduct. Accordingly, prudence counsels a review of existing laws with the input of law enforcement, prosecutors, and other stakeholders to ensure those laws’ adequacy to protect children.

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

   The Resolution would address the issue by urging legislatures to ensure that legal prohibitions on the luring or enticing of a minor for sexual acts address the use of the internet and other electronic means of communication. If legislatures do so, it may provide prosecutors with a new tool to prosecute child sexual predators before any sexual exploitation actually takes place.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified.

   No minority views or opposition have been identified.