MEMORANDUM

TO: Members of the House of Delegates

FROM: Rochelle E. Evans

SUBJECT: Reports with Recommendations - Executive Summaries

DATE: December 19, 2003

Attached is a compilation of all recommendations which have been submitted for consideration by the House of Delegates at the 2004 Midyear Meeting in San Antonio, Texas, as well as an executive summary of each of the reports. These are being sent to you at the request of the Rules and Calendar Committee of the House. Please be aware that some of these recommendations may be revised or removed from the calendar prior to submission to the House in final form. This could result in agenda numbers being changed.

The bound book of reports with recommendations will be mailed to you the week of January 5, 2004. If you wish to review the full report accompanying any of these recommendations before you receive the bound book of reports, copies can be obtained by calling Nicole M. Rivera in the Division for Policy Administration at 312/988-5230. Reports with Recommendations will also be posted on the ABA’s Website the week of December 29. The address for the ABA Leadership Home Page where this information can be found is http://www.abanet.org/leadership/home.html (click on House of Delegates).

cc: Section and Division Chairs and Staff Liaisons
Committee and Commission Chairs and Staff Liaisons
Marina B. Jacks
Alpha M. Brady
Kevin J. Driscoll

1\USERS\LIBPA\HOD2004 MIDYEAR\EXECSUMEMEM.DOC
NEW YORK COUNTY LAWYERS' ASSOCIATION
CRIMINAL JUSTICE SECTION .............................................................. 8A

SECTION OF TAXATION ............................................................................. 100

STANDING COMMITTEE ON PARALEGALS .............................................. 101A-B

STANDING COMMITTEE ON SPECIALIZATION ........................................ 102

SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
STANDING COMMITTEE ON LAW AND NATIONAL SECURITY
SECTION OF INTERNATIONAL LAW AND PRACTICE
CENTER FOR HUMAN RIGHTS
CRIMINAL JUSTICE SECTION
THE BAR ASSOCIATION OF METROPOLITAN ST. LOUIS ....................... 103A

SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
AIDS COORDINATING COMMITTEE ......................................................... 103B

SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES ............... 103C

SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
SECTION OF FAMILY LAW ........................................................................ 103D

ROBERT L. WEINBERG, THE DISTRICT OF COLUMBIA BAR DELEGATE .... 104

SECTION OF LITIGATION
BAR ASSOCIATION OF SAN FRANCISCO
AMERICAN IMMIGRATION LAWYERS ASSOCIATION
COMMISSION ON IMMIGRATION POLICY, PRACTICE AND PRO BONO
CRIMINAL JUSTICE SECTION ................................................................. 105

SECTION OF INTERNATIONAL LAW AND PRACTICE .......................... 106
American Bar Association
New York County Lawyers’ Association
Criminal Justice Section

Report to the House of Delegates

Recommendation

RESOLVED, That the American Bar Association urges all law enforcement agencies to videotape the entirety of custodial interrogations of crime suspects at police precincts, courthouses, detention centers, or other places where suspects are held for questioning, or, where videotaping is impractical, to audiotape the entirety of such custodial interrogations.

FURTHER RESOLVED, That the American Bar Association urges legislatures and/or courts to enact laws or rules of procedure requiring videotaping of the entirety of custodial interrogations of crime suspects at police precincts, courthouses, detention centers, or other places where suspects are held for questioning, or, where videotaping is impractical, to require the audiotaping of such custodial interrogations, and to provide appropriate remedies for non-compliance.
EXECUTIVE SUMMARY

1. Summary of Recommendation

The proposed resolution relates to the interrogation of crime suspects and the circumstances that can result in a false confession of guilt by an innocent person. It recommends that the entirety of all custodial interrogations be videotaped in order to create a comprehensive record of the process by which the confession was obtained. In circumstances where it is not feasible to videotape the interrogation, audiotaping of the entire custodial interrogation should be required. The proposed resolution calls for legislatures and/or courts to enact legislation or rules of criminal procedure requiring videotaping of the entirety of interrogations and appropriate remedies for non-compliance.

2. Summary of the Issue this Recommendation Addresses

Numerous false confessions, many occurring in death penalty cases and other notable felony prosecutions, have been documented. Interrogation techniques designed to elicit a true confession from a suspect who starts out denying culpability can have the effect of inducing false confessions. Such false confessions erode confidence in the criminal justice system. The proposed resolution addresses the need for the criminal justice system to uncover false confessions, by providing for the best available record of the interrogation process that led to a confession.

3. How the Proposed Policy Will Address the Issue

The proposed resolution will ensure the integrity of the criminal justice system by enhancing due process for criminal defendants. It will do so through the adoption of a practice that will provide judges and juries with a more reliable means of assessing disputes between the police and defendants over the methods used to obtain confessions.

4. Summary of Minority Views

No minority view on the revised resolution is known at this time.
RESOLVED, That the American Bar Association recommends that Section 1361(e)(2) of the Internal Revenue Code of 1986, which defines the term "potential current beneficiary", be amended by inserting "(determined without regard to any unexercised, in whole or in part, power of appointment during such period)" after the phrase "of the trust" in the first sentence.
Executive Summary

a) Summary of the recommendation

That Section 1361(e)(2) of the Internal Revenue Code of 1986, which defines the term “potential current beneficiary”, be amended by inserting “(determined without regard to any unexercised, in whole or in part, power of appointment during such period)” after the phrase “of the trust” in the first sentence.

b) Summary of the issue which the recommendation addresses

Originally, only trusts owned by the grantor (typically a revocable trust) could hold S stock. Through a series of statutory amendments, most common types of trusts are now eligible. To permit trusts designed to span multi-generations as well as to include charities as potential beneficiaries, the Small Business Job Protection Act of 1996 (SBJPA) provided that an electing small business trust (ESBT) could hold S stock. When final regulations were issued in May, 2002, it was apparent that a perceived flaw in the statute would frustrate the Congressional intent with respect to future trusts and prevent many existing trusts from qualifying. The problem relates to the application of the power of appointment rule in determining who are the “potential current beneficiaries” of the ESBT. This rule, which is presently contained in section 1361(e)(2), has the effect of preventing many existing trusts from meeting the ESBT requirements and further represents a trap for the unwary drafterspersons of newly organized trusts.

c) Explanation of how the proposed policy position will address the issue

The amendment removes this present impediment to the ESBT rules by testing whether a particular appointee under a power of appointment is eligible to own S stock until actual exercise. It removes an impediment to ownership of S stock compared with ownership of interests in a family limited partnership or limited liability company. This amendment will further simplify the drafting of trusts designed to take advantage of the unified gift and estate tax credit. With recent increases in the unified credit, such trusts are now part of the estate plan in most substantial estates.

The amendment reflects the identical recommendation which was just submitted by the Section of Taxation on July 1, 2003 to the House Subcommittee on Select Revenue Measures of the House Ways and Means Committee on the subject of The Subchapter S Modernization Act of 2003, H.R. 1896.

d) Summary of any minority views or opposition which have been identified

No minority views were expressed.
AMERICAN BAR ASSOCIATION

REPORT TO THE HOUSE OF DELEGATES

STANDING COMMITTEE ON PARALEGALS

RECOMMENDATION

RESOLVED, That the American Bar Association grants approval to
Faulkner University, Legal Studies Program, Montgomery, AL; St. Petersburg
College, Legal Assisting Program, Clearwater, FL; Lake Superior State
University, Legal Assistant Studies Program, Sault Ste. Marie, MI; Monroe
Community College, Paralegal Program, Rochester, NY; Rockland Community
College, Paralegal Studies Program, Suffern, NY; and the University of
Tennessee at Chattanooga, Legal Assistant Studies Program, Chattanooga, TN.

FURTHER RESOLVED, That the American Bar Association reapproves
the following paralegal programs: University of Alaska Anchorage, Paralegal
Studies Program, Anchorage, AK; MTI College, Paralegal Studies Program,
Sacramento, CA; Arapahoe Community College, Paralegal Program, Littleton,
CO; Naugatuck Valley Community College, Legal Assistant Program, Waterbury,
CT; Norwalk Community College, Legal Assistant Program, Norwalk, CT;
Georgetown University, Legal Assistant Program, Washington, DC; Morehead
State University, Paralegal Studies Program, Morehead, KY; and Lee College,
Legal Assistant Program, Baytown, TX.

FURTHER RESOLVED, That the American Bar Association withdraws
the approval of the National Center for Paralegal Training, Paralegal Program,
Atlanta, GA as of the adjournment of the February 2004 Midyear Meeting of the
House of Delegates because this paralegal education program has ceased
educational operations.

FURTHER RESOLVED, That the American Bar Association withdraws
the approval of Cleveland State Community College, Paralegal Program,
Cleveland, TN as of the adjournment of the February 2004 Midyear Meeting of
the House of Delegates at the request of the institution.
FURTHER RESOLVED, That the American Bar Association extends the
terms of approval until the August 2004 Annual Meeting of the House of
Delegates for the following programs:

- St. Mary’s College, Paralegal Program, Moraga, CA; George Washington
- University, Legal Assistant Program, Washington, DC; Florida Community
- College at Jacksonville, Legal Assisting Program, Jacksonville, FL; Community
- College of Baltimore County, Legal Assistant Program, Baltimore, MD; and New
- York University, Institute of Paralegal Studies, New York, NY.
EXECUTIVE SUMMARY

1. Summary of the Recommendation(s)

The Standing Committee on Paralegals is recommending that the House of Delegates grant approval to six paralegal education programs, grant reapproval to eight programs, withdraw the approval of one program because it has ceased educational operations, and withdraw the approval of one program at the request of the institution.

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

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

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

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

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

No other positions on this recommendation have been taken by other Association entities, affiliated organizations or other interested groups.
AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON PARALEGALS

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association adopts the amendments to
2 the ABA Model Guidelines for the Utilization of Paralegal Services dated February
3 2004.
ABA MODEL GUIDELINES
FOR THE UTILIZATION OF PARALEGAL SERVICES
(February 2004)

Guideline 1: A lawyer is responsible for all of the professional actions of a paralegal performing services at the lawyer’s direction and should take reasonable measures to ensure that the paralegal’s conduct is consistent with the lawyer’s obligations under the rules of professional conduct of the jurisdiction in which the lawyer practices.

Guideline 2: Provided the lawyer maintains responsibility for the work product, a lawyer may delegate to a paralegal any task normally performed by the lawyer except those tasks proscribed to a nonlawyer by statute, court rule, administrative rule or regulation, controlling authority, the applicable rule of professional conduct of the jurisdiction in which the lawyer practices, or these Guidelines.

Guideline 3: A lawyer may not delegate to a paralegal:

(a) Responsibility for establishing an attorney-client relationship.
(b) Responsibility for establishing the amount of a fee to be charged for a legal service.
(c) Responsibility for a legal opinion rendered to a client.

Guideline 4: A lawyer is responsible for taking reasonable measures to ensure that clients, courts, and other lawyers are aware that a paralegal, whose services are utilized by the lawyer in performing legal services, is not licensed to practice law.

Guideline 5: A lawyer may identify paralegals by name and title on the lawyer’s letterhead and on business cards identifying the lawyer’s firm.

Guideline 6: A lawyer is responsible for taking reasonable measures to ensure that all client confidences are preserved by a paralegal.

Guideline 7: A lawyer should take reasonable measures to prevent conflicts of interest resulting from a paralegal’s other employment or interests.

Guideline 8: A lawyer may include a charge for the work performed by a paralegal in setting a charge and/or billing for legal services.

Guideline 9: A lawyer may not split legal fees with a paralegal nor pay a paralegal for the referral of legal business. A lawyer may compensate a paralegal based on the quantity and quality of the paralegal’s work and the value of that work to a law practice, but the paralegal’s compensation may not be contingent, by advance agreement, upon the outcome of a particular case or class of cases.

Guideline 10: A lawyer who employs a paralegal should facilitate the paralegal’s participation in appropriate continuing education and pro bono publico activities.
EXECUTIVE SUMMARY

1. **Summary of the Recommendation(s)**

   The Standing Committee on Paralegals is recommending that the House of Delegates adopt revised ABA Model Guidelines for the Utilization of Paralegal Services dated February 2004.

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

   The revisions reflect changes in terminology (from “legal assistant” to “paralegal”), grammatical or stylistic changes, and clarifying language.

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

   The adoption of the revised Model Guidelines will reflect legal and policy developments that have taken place since 1991.

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

   No other positions on this recommendation have been taken by other Association entities, affiliated organizations or other interested groups.
RESOLVED, That the American Bar Association reaccredits the Family Law
Trial Advocacy program of the National Board of Trial Advocacy of Wrentham,
Massachusetts as a designated specialty certification program for lawyers.

FURTHER RESOLVED, That the American Bar Association accredits the
Juvenile Law – Child Welfare program of the National Association of Counsel for
Children of Denver, Colorado as a designated specialty program for lawyers.

FURTHER RESOLVED, That the American Bar Association extends the
accreditation of the Estate Law Planning program of the Estate Law Specialist Board of
Cleveland, Ohio as a designated specialty certification program for lawyers until the
adjournment of the August 2004 meeting of the House of Delegates.
EXECUTIVE SUMMARY

1. Summary of Recommendation

That the American Bar Association grant reaccreditation to the Family Law Trial Advocacy certification program of the National Board of Trial Advocacy, grant initial accreditation to the Juvenile Law – Child Welfare program of the National Association of Counsel for Children, and extend the accreditation period of the Estate Planning program of the Estate Planning Specialists Board to August 2004. These programs have been reviewed under procedures adopted by the Standing Committee on Specialization in accordance with the Standards for the Accreditation of Specialty Certification Programs for Lawyers, adopted by the House of Delegates in February 1993.

2. Summary of Issue

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

3. Explanation of How Proposed Policy Position Will Address Issue

The recommendations address the issue by implementing previous House resolutions calling on the ABA to evaluate certifying organizations that apply for accreditation and reaccreditation.

4. Summary of Minority Views or Opposition

The Standing Committee on Specialization approved the proposed recommendations unanimously. No opposition has been identified.
RESOLVED, That the American Bar Association recognizes the principle of universal criminal
jurisdiction as an important tool in the worldwide effort to strengthen the rule of law by
providing the means for the prosecution of persons who have committed serious international
crimes, regardless of where they are committed or by whom or against whom, and supports the
principle when it is exercised consistent with the limitations set forth herein;

FURTHER RESOLVED, That subject to such other limitations as may be imposed by
international law, universal criminal jurisdiction should be exercised only (a) for serious
international crimes that clearly are recognized by treaty or customary international law
authorizing such jurisdiction, (b) where there are facts supporting a reasonable belief that such a
crime may have been committed by the suspect, and (c) when exercised in accordance with
international norms on the protection of human rights in the context of criminal proceedings;

FURTHER RESOLVED, That in exercising their jurisdiction whether to prosecute in such cases,
nations should not prosecute a citizen or lawful permanent resident of another nation where (a)
the case is being investigated or prosecuted by that nation, unless that nation is unwilling or
unable genuinely to carry out the investigation or prosecution and to do so in accordance with
international human rights norms or (b) the case has been investigated by that nation and that
nation has decided not to prosecute the person concerned, unless the decision resulted from an
unwillingness or inability of that nation genuinely to prosecute and to do so in accordance with
such international human rights norms;

FURTHER RESOLVED, That since the United States has adequate procedures to investigate
and prosecute serious international crimes in both its federal and military courts and to do so in
accordance with international human rights norms, so long as the United States Government uses
those procedures in the fashion set forth herein, no other nation should prosecute U. S. citizens or
lawful permanent residents for crimes on the basis of universal criminal jurisdiction; and
FURTHER RESOLVED, That the American Bar Association urges the United States Government to work with governments of other nations to take all reasonable steps to ensure that the application of universal criminal jurisdiction by all nations is uniform and consistent with the foregoing.
EXECUTIVE SUMMARY

a) Summary of the Recommendation:

The Recommendation proposes policy for the proper exercise of universal criminal jurisdiction by nations and by the courts of those nations and expresses support for the doctrine when properly exercised within the confines of the Recommendation. The Recommendation also proposes a procedure by which a nation or its courts may preempt the exercise of universal criminal jurisdiction by another nation over one or more of its citizens or lawful permanent residents, including members of its military, suspected of committing serious international crimes. Under the Recommendation, the ABA acknowledges the adequacy of procedures in U. S. federal and military courts to preempt the exercise of universal criminal jurisdiction of foreign courts if the United States elects to follow such procedures as set forth in the Recommendation. The Recommendation also proposes that the ABA urge the United States Government to work with governments of other nations to ensure that the application of universal criminal jurisdiction by all nations is uniform and consistent with the policies and procedures proposed in the Recommendation.

b) Summary of the issue that the recommendation addresses:

At issue is the proper exercise of universal criminal jurisdiction by the courts of one nation to prosecute the citizens or lawful permanent residents of another nation, including members of the military of that other nation. The Recommendation also addresses the issue in which the nation whose citizen or lawful permanent resident is subject to universal criminal jurisdiction of another nation and proposes a methodology by which the nationality nation may preempt the otherwise proper exercise of universal criminal jurisdiction by the non-nationality nation.

c) Explanation of how the proposed policy position will address the issue:

The Recommendation proposes three limitations upon the proper exercise of universal criminal jurisdiction: it must be a serious international crime clearly recognized by treaty or customary international law authorizing such jurisdiction; there must be facts supporting a reasonable belief that a serious international crime may have been committed by the suspect; and universal criminal jurisdiction may be exercised only in accordance with international norms for the protection of human rights in the context of criminal proceedings. In addition, the Recommendation proposes that the exercise by any nation of universal criminal jurisdiction may be preempted properly if the nation whose citizens or lawful permanent residents are subject to such jurisdiction genuinely is able and willing to investigate and, where warranted, prosecute in accordance with the provisions set forth in the Recommendation. Further, the Recommendation specifically acknowledges that the procedures in the United States and in its federal and military courts are adequate such that if used as set forth in the proposed Recommendation, the United States properly should be able to preempt any other nation from prosecuting U. S. citizens or lawful permanent residents, including U. S. military personnel, for such serious international crimes.

d) Summary of Minority Views or Opposition

None known at this time.
RECOMMENDATION

RESOLVED, That the American Bar Association urges the Government of the United States to implement legislation, policies, programs, and international agreements that address or are relevant to the HIV/AIDS pandemic in a manner consistent with international human rights law and science-based prevention, care, support, and treatment objectives;

EXECUTIVE SUMMARY

a) Summary of the recommendation:

The resolution 1) urges the federal government to implement HIV/AIDS-related initiatives in a manner consistent with international human rights law and science-based prevention, care, support, and treatment objectives and 2) urges the American Bar Association to endorse the United Nations Declaration of Commitment on HIV/AIDS.

b) Summary of the issue that the recommendation addresses:

The recommendation addresses the impact of the HIV/AIDS pandemic on human rights, the protection and fulfillment of which will be crucial to bringing the pandemic under control, and the vital role of science-based legislative and other legal approaches in achieving that goal.

c) Explanation of how the proposed policy position will address the issue:

The proposed policy will position the Association to address the legal implications of current and future HIV/AIDS-related legal initiatives to help ensure their consistency with recognized elements of an effective response to the pandemic. In particular, the promotion of human rights law for the protection of people living with or affected by HIV/AIDS will directly advance HIV/AIDS prevention, care, support, and treatment efforts.

d) Summary of Minority Views or Opposition

None known at this time.
RECOMMENDATION

RESOLVED, That the American Bar Association supports the efforts of the National Tribal Steering Committee to address the inadequacy of health care for many American Indians and Alaska Natives residing on Indian reservations, in other rural areas, and in urban communities through the reauthorization of the Indian Health Care Improvement Act, 25 United States Code 1601 et seq.

FURTHER RESOLVED, That the American Bar Association urges Congress and the Executive Branch to address the various areas where health care for American Indians and Alaska Natives is deficient, including: increasing the supply of health care professionals in the Indian health system; addressing the shortage of safe water and sewage facilities and hospitals, clinics, and other health facilities on reservations and other rural areas occupied by Indians and Alaska Natives; expediting third party reimbursement for health services to Indians and Alaska Natives, including Medicare and Medicaid; improving the services provided to urban Indians; and improving services available for behavioral health treatment and prevention, women’s health, and health conditions resulting from adverse environmental circumstances.

FURTHER RESOLVED, That the American Bar Association supports the federal policy that encourages the administration of health care to Indian and Alaska Natives on reservations and other rural areas by Indian tribes and tribal organizations and urges Congress to exercise oversight to assure that the Indian Health Service continues to carry out its responsibilities based upon the federal policies of tribal self-determination and self-governance.
EXECUTIVE SUMMARY

a) Summary of the Recommendation:

The Recommendation supports the efforts of the National Tribal Steering Committee to address the inadequacy of health care for American Indians and Alaska Natives through recommendations for the reauthorization of the Indian Health Care Improvement Act (IHCIA), urges Congress and the Executive Branch to address the various areas where health care for American Indians and Alaska Natives is deficient, and supports the administration of health care services to American Indians and Alaska Natives consistent with the federal policies of tribal self-determination and self-governance.

b) Summary of the Issue the Recommendation Addresses:

In 2000, the IHCIA’s authorizing provisions for federal funding and specific Indian Health Service programs expired. Congress extended the Act’s funding authority through 2001, using the Snyder Act, which was enacted in 1921 to authorize federal appropriations for the conservation of Indian health. Although the Snyder Act may provide broad authority for funding Indian health care generally, it does not contain provisions for the more critical and specific program authorities and directives contained in the IHCIA, which are aimed at specifically bringing Indian health care into parity with the health services provided to the majority of other Americans.

c) Explanation of How the Recommendation Addresses the Issue:

By supporting the reauthorization of the IHCIA, this Recommendation addresses the need for continued federal authority for specific Indian health care programs, policy directives, and funding directed at eliminating the disparities between health care services provided to American Indians and Alaska Natives and the general American population.

The Recommendation also reaffirms the ABA’s support for access to quality health care for every American and urges the federal government to follow a policy of strict adherence to Indian treaty obligations.

d) Summary of Minority Views or Opposition

None known at this time.
AMERICAN BAR ASSOCIATION

SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
SECTION OF FAMILY LAW

RECOMMENDATION

1 RESOLVED, That the American Bar Association opposes any federal enactment that would
2 restrict the ability of a state to prescribe the qualifications for civil marriage between two persons
3 within its jurisdiction; and
4
5 FURTHER RESOLVED, That the American Bar Association opposes any federal enactment that
6 would restrict the ability of a state to give effect to a civil marriage validly contracted between
7 two persons under the laws of another jurisdiction.
EXECUTIVE SUMMARY

a) Summary of the Recommendation:

The Recommendation opposes any federal enactment that would restrict the ability of a state to prescribe the qualifications for civil marriage between two persons within its jurisdiction. It also opposes any federal enactment that would restrict the ability of a state to give effect to a civil marriage validly contracted between two persons under the laws of another jurisdiction.

b) Summary of the issue that the Recommendation addresses:

As states across the country consider the question of what rights and protections should be accorded to same-sex couples, efforts are underway to enact a federal constitutional amendment that would prevent states from establishing, by court decision or legislation, a definition of marriage that would include marriages between two persons of the same sex. This Recommendation does not seek to place the ABA on record as either favoring or opposing laws that would allow same-sex couples to enter into civil marriage. Rather, its purpose is to preserve the authority conferred upon the states under our federal system to decide for themselves the terms under which two people may assume the rights and responsibilities of civil marriage.

c) Explanation of how the proposed policy position will address the issue:

The proposed policy opposes any federal enactment that would restrict the ability of a state either to prescribe the qualifications for civil marriage between two persons within its jurisdiction or to give effect to a civil marriage validly contracted between two persons under the laws of another jurisdiction.

d) Summary of Minority Views or Opposition

There is no known opposition to this proposal.
AMERICAN BAR ASSOCIATION

ROBERT L. WEINBERG, THE DISTRICT OF COLUMBIA BAR DELEGATE

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1. RESOLVED, That the American Bar Association urges the courts of the United States to exercise jurisdiction over petitions for habeas corpus filed by foreign nationals challenging the legality of their detention at the U.S. Naval Base leased from Cuba at Guantanamo Bay.

2. Provided, however, that this policy shall not apply to foreign nationals held as prisoners of war.

3. FURTHER RESOLVED, That the American Bar Association takes no position on the merits of any such challenge to detention.
EXECUTIVE SUMMARY

1. **Summary of the Recommendation**

   The proposed resolution urges that the U.S. courts exercise jurisdiction over habeas corpus petitions filed to challenge the legality of foreign nationals' detention at Guantanamo Bay, Cuba. The resolution takes no position for the ABA on merits of any such challenges, but asserts that the judicial branch of our government should entertain such challenges to the legality of continued detention, rather than leaving their determination solely to the Executive branch.

2. **Summary of the Issue this Recommendation Addresses**

   The basic issue is whether the rule of law shall be extended to determining the status of the detainees at Guantanamo Bay, Cuba. Under the U.S. legal system, an application for a writ of habeas corpus is the traditional means for securing a judicial determination of the validity of a detention of the person by governmental authority. However, it has been the position of the Department of Justice, accepted by lower courts, that U.S. courts lack jurisdiction to entertain habeas corpus petitions on behalf of detainees held outside the sovereign territory of the U.S., including detainees held at the leased U.S. Naval Base at Guantanamo Bay, Cuba. The United States Supreme Court has recently granted certiorari to address this jurisdictional question.

3. **How the Proposed Policy Will Address the Issue**

   The proposed resolution will put the ABA on record as supporting the exercise of habeas corpus jurisdiction to determine judicially the validity of challenges to continued detentions of foreign nationals held at Guantanamo Bay, Cuba. The resolution will not, however take any ABA position on the merits of any such challenge; it will leave the government free to rebut each and every such challenge in court.

4. **Summary of Minority Views**

   It is anticipated that the above-noted views of the Department of Justice will be presented by its delegate to the House and other supporters at the ABA Midyear Meeting. Whether these are “Minority Views” or “Majority Views” of the House remains to be seen at San Antonio.
RESOLVED, That the American Bar Association,

1. Urges that the Federal Government retain exclusive jurisdiction over civil immigration matters,

2. Opposes delegation of legal authority to state and local police to enforce federal civil immigration laws, and

3. Opposes legislation creating a crime based merely on an alien’s undocumented presence (e.g., entering the country without documents or inspection or overstaying a lawful visa).
EXECUTIVE SUMMARY

1. **Summary.** This Report and Recommendation requests that the ABA take a position in opposition to three aspects of H.R. 2671, the CLEAR Act, which violate existing ABA policy, violate separation of powers and international law.

2. **Summary of Issue.** The issues addressed in this recommendation are the CLEAR Act’s delegation of jurisdiction over civil immigration matters to state and local law enforcement authorities, its requirement that such state and local authorities enforce civil immigration laws, and its criminalization of the mere undocumented presence of an alien.

3. **Explanation.** This proposal addresses these issues by clearly stating that the federal government should retain exclusive jurisdiction over civil immigration matters, that enforcement of federal civil immigration matters should not be delegated to state and local law enforcement officials and that the undocumented presence of an alien should not be criminalized.

4. **Minority Views.** No minority views or opposition have been identified at this time.
AMERICAN BAR ASSOCIATION
SECTION OF INTERNATIONAL LAW AND PRACTICE

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association supports the creation of a United Nations Democracy Caucus within the United Nations (UN) framework to work towards the strengthening of democracy, human rights and the rule of law throughout the UN system.
EXECUTIVE SUMMARY

(a)  **Summary of the Recommendation.**

The recommendation supports the creation of a United Nations Democracy Caucus (UNDC) within the United Nations (UN) framework to work towards the strengthening of democracy, human rights and the rule of law throughout the UN system.

(b)  **Summary of the issue(s) which the recommendation addresses.**

The recommendation supports formation of a democracy caucus within the United Nations comprised of a group of states that adhere to and support democratic principles.

(c)  **How the proposed policy position will address the issue.**

A democracy caucus would facilitate cooperation amongst democratic states in international fora on issues of common concern and provide a forum for the overall advancement of democratic interests worldwide.

(d)  **Summary of any minority views of opposition which have been identified:**

None.
RESOLVED, That the American Bar Association adopts the Code of Ethics for Arbitrators in Commercial Disputes – 2004 Revision.
The Code of Ethics for Arbitrators in Commercial Disputes — 2004 Revision

The Code of Ethics for Arbitrators in Commercial Disputes was originally prepared in 1977 by a joint committee consisting of a special committee of the American Arbitration Association and a special committee of the American Bar Association. The Code was revised in 2004 by an ABA Task Force and special committee of the AAA. Both the original 1977 Code and the 2004 Revision have been approved and recommended by both organizations.

Preamble

The use of arbitration to resolve a wide variety of disputes has grown extensively and forms a significant part of the system of justice on which our society relies for a fair determination of legal rights. Persons who act as arbitrators therefore undertake serious responsibilities to the public, as well as to the parties. Those responsibilities include important ethical obligations.

Few cases of unethical behavior by commercial arbitrators have arisen. Nevertheless, this Code sets forth generally accepted standards of ethical conduct for the guidance of arbitrators and parties in commercial disputes, in the hope of contributing to the maintenance of high standards and continued confidence in the process of arbitration.

This Code provides ethical guidelines for many types of arbitration but does not apply to labor arbitration, which is generally conducted under the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes.

There are many different types of commercial arbitration. Some proceedings are conducted under arbitration rules established by various organizations and trade associations, while others are conducted without such rules. Although most proceedings are arbitrated pursuant to voluntary agreement of the parties, certain types of disputes are submitted to arbitration by reason of particular laws. This Code is intended to apply to all such proceedings in which disputes or claims are submitted for decision to one or more arbitrators appointed in a manner provided by an agreement of the parties, by applicable arbitration rules, or by law. In all such cases, the persons who have the power to decide should observe fundamental standards of ethical conduct. In this Code, all such persons are called “arbitrators,” although in some types of proceeding they might be called “umpires,” “referees,” “neutrals,” or have some other title.

Arbitrators, like judges, have the power to decide cases. However, unlike full-time judges, arbitrators are usually engaged in other occupations before, during, and after the time that they serve as arbitrators. Often, arbitrators are purposely chosen from the same trade or industry as the parties in order to bring special knowledge to the task of deciding. This Code recognizes these fundamental differences between arbitrators and judges.

In those instances where this Code has been approved and recommended by organizations that provide, coordinate, or administer services of arbitrators, it provides
ethical standards for the members of their respective panels of arbitrators. However, this Code does not form a part of the arbitration rules of any such organization unless its rules so provide.

Note on Neutrality

In some types of commercial arbitration, the parties or the administering institution provide for three or more arbitrators. In some such proceedings, it is the practice for each party, acting alone, to appoint one arbitrator (a “party-appointed arbitrator”) and for one additional arbitrator to be designated by the party-appointed arbitrators, or by the parties, or by an independent institution or individual. The sponsors of this Code believe that it is preferable for all arbitrators – including any party-appointed arbitrators – to be neutral, that is, independent and impartial, and to comply with the same ethical standards. This expectation generally is essential in arbitrations where the parties, the nature of the dispute, or the enforcement of any resulting award may have international aspects. However, parties in certain domestic arbitrations in the United States may prefer that party-appointed arbitrators be non-neutral and governed by special ethical considerations. These special ethical considerations appear in Canon X of this Code.

This Code establishes a presumption of neutrality for all arbitrators, including party-appointed arbitrators, which applies unless the parties' agreement, the arbitration rules agreed to by the parties or applicable laws provide otherwise. This Code requires all party-appointed arbitrators, whether neutral or not, to make pre-appointment disclosures of any facts which might affect their neutrality, independence, or impartiality. This Code also requires all party-appointed arbitrators to ascertain and disclose as soon as practicable whether the parties intended for them to serve as neutral or not. If any doubt or uncertainty exists, the party-appointed arbitrators should serve as neutrals unless and until such doubt or uncertainty is resolved in accordance with Canon IX. This Code expects all arbitrators, including those serving under Canon X, to preserve the integrity and fairness of the process.

Note on Construction

Various aspects of the conduct of arbitrators, including some matters covered by this Code, may also be governed by agreements of the parties, arbitration rules to which the parties have agreed, applicable law, or other applicable ethics rules, all of which should be consulted by the arbitrators. This Code does not take the place of or supersede such laws, agreements, or arbitration rules to which the parties have agreed and should be read in conjunction with other rules of ethics. It does not establish new or additional grounds for judicial review of arbitration awards.

All provisions of this Code should therefore be read as subject to contrary provisions of applicable law and arbitration rules. They should also be read as subject to contrary agreements of the parties. Nevertheless, this Code imposes no obligation on any arbitrator to act in a manner inconsistent with the arbitrator’s fundamental duty to preserve the integrity and fairness of the arbitral process.
Canons I through VIII of this Code apply to all arbitrators. Canon IX applies to all party-appointed arbitrators, except that certain party-appointed arbitrators are exempted by Canon X from compliance with certain provisions of Canons I-IX related to impartiality and independence, as specified in Canon X.

CANON I. AN ARBITRATOR SHOULD UPHOLD THE INTEGRITY AND FAIRNESS OF THE ARBITRATION PROCESS.

A. An arbitrator has a responsibility not only to the parties but also to the process of arbitration itself, and must observe high standards of conduct so that the integrity and fairness of the process will be preserved. Accordingly, an arbitrator should recognize a responsibility to the public, to the parties whose rights will be decided, and to all other participants in the proceeding. This responsibility may include pro bono service as an arbitrator where appropriate.

B. One should accept appointment as an arbitrator only if fully satisfied:

(1) that he or she can serve impartially;
(2) that he or she can serve independently from the parties, potential witnesses, and the other arbitrators;
(3) that he or she is competent to serve; and
(4) that he or she can be available to commence the arbitration in accordance with the requirements of the proceeding and thereafter to devote the time and attention to its completion that the parties are reasonably entitled to expect.

C. After accepting appointment and while serving as an arbitrator, a person should avoid entering into any business, professional, or personal relationship, or acquiring any financial or personal interest, which is likely to affect impartiality or which might reasonably create the appearance of partiality. For a reasonable period of time after the decision of a case, persons who have served as arbitrators should avoid entering into any such relationship, or acquiring any such interest, in circumstances which might reasonably create the appearance that they had been influenced in the arbitration by the anticipation or expectation of the relationship or interest. Existence of any of the matters or circumstances described in this paragraph C does not render it unethical for one to serve as an arbitrator where the parties have consented to the arbitrator's appointment or continued services following full disclosure of the relevant facts in accordance with Canon II.

D. Arbitrators should conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, public clamor, and fear of criticism or self-interest. They should avoid conduct and statements that give the appearance of partiality toward or against any party.

E. An arbitrator's authority is derived from the agreement of the parties. An arbitrator should neither exceed that authority nor do less than is required to
exercise that authority completely. Where the agreement of the parties sets forth procedures to be followed in conducting the arbitration or refers to rules to be followed, it is the obligation of the arbitrator to comply with such procedures or rules. An arbitrator has no ethical obligation to comply with any agreement, procedures or rules that are unlawful or that, in the arbitrator's judgment, would be inconsistent with this Code.

F. An arbitrator should conduct the arbitration process so as to advance the fair and efficient resolution of the matters submitted for decision. An arbitrator should make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse or disruption of the arbitration process.

G. The ethical obligations of an arbitrator begin upon acceptance of the appointment and continue throughout all stages of the proceeding. In addition, as set forth in this Code, certain ethical obligations begin as soon as a person is requested to serve as an arbitrator and certain ethical obligations continue after the decision in the proceeding has been given to the parties.

H. Once an arbitrator has accepted an appointment, the arbitrator should not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to continue. When an arbitrator is to be compensated for his or her services, the arbitrator may withdraw if the parties fail or refuse to provide for payment of the compensation as agreed.

I. An arbitrator who withdraws prior to the completion of the arbitration, whether upon the arbitrator's initiative or upon the request of one or more of the parties, should take reasonable steps to protect the interests of the parties in the arbitration, including return of evidentiary materials and protection of confidentiality.

Comment to Canon I

A prospective arbitrator is not necessarily partial or prejudiced by having acquired knowledge of the parties, the applicable law or the customs and practices of the business involved. Arbitrators may also have special experience or expertise in the areas of business, commerce, or technology which are involved in the arbitration. Arbitrators do not contravene this Canon if, by virtue of such experience or expertise, they have views on certain general issues likely to arise in the arbitration, but an arbitrator may not have prejudged any of the specific factual or legal determinations to be addressed during the arbitration.

During an arbitration, the arbitrator may engage in discourse with the parties or their counsel, draw out arguments or contentions, comment on the law or evidence, make interim rulings, and otherwise control or direct the arbitration. These activities are integral parts of an arbitration. Paragraph D of Canon I is not intended to preclude or
limit either full discussion of the issues during the course of the arbitration or the arbitrator's management of the proceeding.

CANON II. AN ARBITRATOR SHOULD DISCLOSE ANY INTEREST OR RELATIONSHIP LIKELY TO AFFECT IMPARTIALITY OR WHICH MIGHT CREATE AN APPEARANCE OF PARTIALITY.

A. Persons who are requested to serve as arbitrators should, before accepting, disclose:

(1) Any known direct or indirect financial or personal interest in the outcome of the arbitration;

(2) Any known existing or past financial, business, professional or personal relationships which might reasonably affect impartiality or lack of independence in the eyes of any of the parties. For example, prospective arbitrators should disclose any such relationships which they personally have with any party or its lawyer, with any co-arbitrator, or with any individual whom they have been told will be a witness. They should also disclose any such relationships involving their families or household members or their current employers, partners, or professional or business associates that can be ascertained by reasonable efforts;

(3) The nature and extent of any prior knowledge they may have of the dispute; and

(4) Any other matters, relationships, or interests which they are obligated to disclose by the agreement of the parties, the rules or practices of an institution, or applicable law regulating arbitrator disclosure.

B. Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in paragraph A.

C. The obligation to disclose interests or relationships described in paragraph A is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, as soon as practicable, at any stage of the arbitration, any such interests or relationships which may arise, or which are recalled or discovered.

D. Any doubt as to whether or not disclosure is to be made should be resolved in favor of disclosure.

E. Disclosure should be made to all parties unless other procedures for disclosure are provided in the agreement of the parties, applicable rules or practices of an institution, or by law. Where more than one arbitrator has been appointed, each should inform the others of all matters disclosed.
F. When parties, with knowledge of a person's interests and relationships, nevertheless desire that person to serve as an arbitrator, that person may properly serve.

G. If an arbitrator is requested by all parties to withdraw, the arbitrator must do so. If an arbitrator is requested to withdraw by less than all of the parties because of alleged partiality, the arbitrator should withdraw unless either of the following circumstances exists:

(1) An agreement of the parties, or arbitration rules agreed to by the parties, or applicable law establishes procedures for determining challenges to arbitrators, in which case those procedures should be followed; or
(2) In the absence of applicable procedures, if the arbitrator, after carefully considering the matter, determines that the reason for the challenge is not substantial, and that he or she can nevertheless act and decide the case impartially and fairly.

H. If compliance by a prospective arbitrator with any provision of this Code would require disclosure of confidential or privileged information, the prospective arbitrator should either:

(1) Secure the consent to the disclosure from the person who furnished the information or the holder of the privilege; or
(2) Withdraw.

CANON III. AN ARBITRATOR SHOULD AVOID IMPROPERITY OR THE APPEARANCE OF IMPROPERITY IN COMMUNICATING WITH PARTIES.

A. If an agreement of the parties or applicable arbitration rules establishes the manner or content of communications between the arbitrator and the parties, the arbitrator should follow those procedures notwithstanding any contrary provision of paragraphs B and C.

B. An arbitrator or prospective arbitrator should not discuss a proceeding with any party in the absence of any other party, except in any of the following circumstances:

(1) When the appointment of a prospective arbitrator is being considered, the prospective arbitrator:
   (a) may ask about the identities of the parties, counsel, or witnesses and the general nature of the case; and
   (b) may respond to inquiries from a party or its counsel designed to determine his or her suitability and availability for the appointment. In any such dialogue, the prospective arbitrator may receive information from a party
or its counsel disclosing the general nature of the dispute but should not permit them to discuss the merits of the case.

(2) In an arbitration in which the two party-appointed arbitrators are expected to appoint the third arbitrator, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning the choice of the third arbitrator;

(3) In an arbitration involving party-appointed arbitrators, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning arrangements for any compensation to be paid to the party-appointed arbitrator. Submission of routine written requests for payment of compensation and expenses in accordance with such arrangements and written communications pertaining solely to such requests need not be sent to the other party;

(4) In an arbitration involving party-appointed arbitrators, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning the status of the arbitrator (i.e., neutral or non-neutral), as contemplated by paragraph C of Canon IX;

(5) Discussions may be had with a party concerning such logistical matters as setting the time and place of hearings or making other arrangements for the conduct of the proceedings. However, the arbitrator should promptly inform each other party of the discussion and should not make any final determination concerning the matter discussed before giving each absent party an opportunity to express the party's views; or

(6) If a party fails to be present at a hearing after having been given due notice, or if all parties expressly consent, the arbitrator may discuss the case with any party who is present.

C. Unless otherwise provided in this Canon, in applicable arbitration rules or in an agreement of the parties, whenever an arbitrator communicates in writing with one party, the arbitrator should at the same time send a copy of the communication to every other party, and whenever the arbitrator receives any written communication concerning the case from one party which has not already been sent to every other party, the arbitrator should send or cause it to be sent to the other parties.

CANON IV. AN ARBITRATOR SHOULD CONDUCT THE PROCEEDINGS FAIRLY AND DILIGENTLY.

A. An arbitrator should conduct the proceedings in an even-handed manner. The arbitrator should be patient and courteous to the parties, their representatives, and the witnesses and should encourage similar conduct by all participants.

B. The arbitrator should afford to all parties the right to be heard and due notice of the time and place of any hearing. The arbitrator should allow each party a fair opportunity to present its evidence and arguments.
C. The arbitrator should not deny any party the opportunity to be represented by counsel or by any other person chosen by the party.

D. If a party fails to appear after due notice, the arbitrator should proceed with the arbitration when authorized to do so, but only after receiving assurance that appropriate notice has been given to the absent party.

E. When the arbitrator determines that more information than has been presented by the parties is required to decide the case, it is not improper for the arbitrator to ask questions, call witnesses, and request documents or other evidence, including expert testimony.

F. Although it is not improper for an arbitrator to suggest to the parties that they discuss the possibility of settlement or the use of mediation, or other dispute resolution processes, an arbitrator should not exert pressure on any party to settle or to utilize other dispute resolution processes. An arbitrator should not be present or otherwise participate in settlement discussions or act as a mediator unless requested to do so by all parties.

G. Co-arbitrators should afford each other full opportunity to participate in all aspects of the proceedings.

Comment to paragraph G

Paragraph G of Canon IV is not intended to preclude one arbitrator from acting in limited circumstances (e.g., ruling on discovery issues) where authorized by the agreement of the parties, applicable rules or law, nor does it preclude a majority of the arbitrators from proceeding with any aspect of the arbitration if an arbitrator is unable or unwilling to participate and such action is authorized by the agreement of the parties or applicable rules or law.

CANON V. AN ARBITRATOR SHOULD MAKE DECISIONS IN A JUST, INDEPENDENT AND DELIBERATE MANNER.

A. The arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.

B. An arbitrator should decide all matters justly, exercising independent judgment, and should not permit outside pressure to affect the decision.

C. An arbitrator should not delegate the duty to decide to any other person.

D. In the event that all parties agree upon a settlement of issues in dispute and request the arbitrator to embody that agreement in an award, the arbitrator may do so, but is not required to do so unless satisfied with the propriety of the terms of settlement. Whenever an arbitrator embodies a settlement by the parties in an
award, the arbitrator should state in the award that it is based on an agreement of the parties.

CANON VI. AN ARBITRATOR SHOULD BE FAITHFUL TO THE RELATIONSHIP OF TRUST AND CONFIDENTIALITY INHERENT IN THAT OFFICE.

A. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the arbitration proceeding to gain personal advantage or advantage for others, or to affect adversely the interest of another.

B. The arbitrator should keep confidential all matters relating to the arbitration proceedings and decision. An arbitrator may obtain help from an associate, a research assistant or other persons in connection with reaching his or her decision if the arbitrator informs the parties of the use of such assistance and such persons agree to be bound by the provisions of this Canon.

C. It is not proper at any time for an arbitrator to inform anyone of any decision in advance of the time it is given to all parties. In a proceeding in which there is more than one arbitrator, it is not proper at any time for an arbitrator to inform anyone about the substance of the deliberations of the arbitrators. After an arbitration award has been made, it is not proper for an arbitrator to assist in proceedings to enforce or challenge the award.

D. Unless the parties so request, an arbitrator should not appoint himself or herself to a separate office related to the subject matter of the dispute, such as receiver or trustee, nor should a panel of arbitrators appoint one of their number to such an office.

CANON VII. AN ARBITRATOR SHOULD ADHERE TO STANDARDS OF INTEGRITY AND FAIRNESS WHEN MAKING ARRANGEMENTS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES.

A. Arbitrators who are to be compensated for their services or reimbursed for their expenses shall adhere to standards of integrity and fairness in making arrangements for such payments.

B. Certain practices relating to payments are generally recognized as tending to preserve the integrity and fairness of the arbitration process. These practices include:

(1) Before the arbitrator finally accepts appointment, the basis of payment, including any cancellation fee, compensation in the event of withdrawal and compensation for study and preparation time, and all other charges, should be
established. Except for arrangements for the compensation of party-appointed arbitrators, all parties should be informed in writing of the terms established.

(2) In proceedings conducted under the rules or administration of an institution that is available to assist in making arrangements for payments, communication related to compensation should be made through the institution. In proceedings where no institution has been engaged by the parties to administer the arbitration, any communication with arbitrators (other than party appointed arbitrators) concerning payments should be in the presence of all parties; and

(3) Arbitrators should not, absent extraordinary circumstances, request increases in the basis of their compensation during the course of a proceeding.

CANON VIII. AN ARBITRATOR MAY ENGAGE IN ADVERTISING OR PROMOTION OF ARBITRAL SERVICES WHICH IS TRUTHFUL AND ACCURATE.

A. Advertising or promotion of an individual's willingness or availability to serve as an arbitrator must be accurate and unlikely to mislead. Any statements about the quality of the arbitrator's work or the success of the arbitrator's practice must be truthful.

B. Advertising and promotion must not imply any willingness to accept an appointment otherwise than in accordance with this Code.

Comment to Canon VIII

This Canon does not preclude an arbitrator from printing, publishing, or disseminating advertisements conforming to these standards in any electronic or print medium, from making personal presentations to prospective users of arbitral services conforming to such standards or from responding to inquiries concerning the arbitrator's availability, qualifications, experience, or fee arrangements.

CANON IX. ARBITRATORS APPOINTED BY ONE PARTY HAVE A DUTY TO DETERMINE AND DISCLOSE THEIR STATUS AND TO COMPLY WITH THIS CODE, EXCEPT AS EXEMPTED BY CANON X.

A. In some types of arbitration in which there are three arbitrators, it is customary for each party, acting alone, to appoint one arbitrator. The third arbitrator is then appointed by agreement either of the parties or of the two arbitrators, or failing such agreement, by an independent institution or individual. In tripartite arbitrations to which this Code applies, all three arbitrators are presumed to be neutral and are expected to observe the same standards as the third arbitrator.

B. Notwithstanding this presumption, there are certain types of tripartite arbitration in which it is expected by all parties that the two arbitrators appointed by the parties may be predisposed toward the party appointing them. Those arbitrators,
referred to in this Code as "Canon X arbitrators," are not to be held to the
standards of neutrality and independence applicable to other arbitrators. Canon X
describes the special ethical obligations of party-appointed arbitrators who are not
expected to meet the standard of neutrality.

C. A party-appointed arbitrator has an obligation to ascertain, as early as possible but
not later than the first meeting of the arbitrators and parties, whether the parties
have agreed that the party-appointed arbitrators will serve as neutrals or whether
they shall be subject to Canon X, and to provide a timely report of their
conclusions to the parties and other arbitrators:

(1) Party-appointed arbitrators should review the agreement of the parties, the
applicable rules and any applicable law bearing upon arbitrator neutrality. In
reviewing the agreement of the parties, party-appointed arbitrators should
consult any relevant express terms of the written or oral arbitration
agreement. It may also be appropriate for them to inquire into agreements
that have not been expressly set forth, but which may be implied from an
established course of dealings of the parties or well-recognized custom and
usage in their trade or profession;

(2) Where party-appointed arbitrators conclude that the parties intended for the
party-appointed arbitrators not to serve as neutrals, they should so inform
the parties and the other arbitrators. The arbitrators may then act as provided
in Canon X unless or until a different determination of their status is made
by the parties, any administering institution or the arbitral panel; and

(3) Until party-appointed arbitrators conclude that the party-appointed
arbitrators were not intended by the parties to serve as neutrals, or if the
party-appointed arbitrators are unable to form a reasonable belief of their
status from the foregoing sources and no decision in this regard has yet been
made by the parties, any administering institution, or the arbitral panel, they
should observe all of the obligations of neutral arbitrators set forth in this
Code.

D. Party-appointed arbitrators not governed by Canon X shall observe all of the
obligations of Canons I through VIII unless otherwise required by agreement of
the parties, any applicable rules, or applicable law.

CANON X. EXEMPTIONS FOR ARBITRATORS APPOINTED BY ONE PARTY
WHO ARE NOT SUBJECT TO RULES OF NEUTRALITY.

Canon X arbitrators are expected to observe all of the ethical obligations prescribed by
this Code except those from which they are specifically excused by Canon X.

A. Obligations under Canon I
Canon X arbitrators should observe all of the obligations of Canon I subject only
to the following provisions:
(1) Canon X arbitrators may be predisposed toward the party who appointed them but in all other respects are obligated to act in good faith and with integrity and fairness. For example, Canon X arbitrators should not engage in delaying tactics or harassment of any party or witness and should not knowingly make untrue or misleading statements to the other arbitrators; and

(2) The provisions of subparagraphs B(1), B(2), and paragraphs C and D of Canon I, insofar as they relate to partiality, relationships, and interests are not applicable to Canon X arbitrators.

B. **Obligations under Canon II**

(1) Canon X arbitrators should disclose to all parties, and to the other arbitrators, all interests and relationships which Canon II requires be disclosed. Disclosure as required by Canon II is for the benefit not only of the party who appointed the arbitrator, but also for the benefit of the other parties and arbitrators so that they may know of any partiality which may exist or appear to exist; and

(2) Canon X arbitrators are not obliged to withdraw under paragraph G of Canon II if requested to do so only by the party who did not appoint them.

C. **Obligations under Canon III**

Canon X arbitrators should observe all of the obligations of Canon III subject only to the following provisions:

(1) Like neutral party-appointed arbitrators, Canon X arbitrators may consult with the party who appointed them to the extent permitted in paragraph B of Canon III;

(2) Canon X arbitrators shall, at the earliest practicable time, disclose to the other arbitrators and to the parties whether or not they intend to communicate with their appointing parties. If they have disclosed the intention to engage in such communications, they may thereafter communicate with their appointing parties concerning any other aspect of the case, except as provided in paragraph (3).

(3) If such communication occurred prior to the time they were appointed as arbitrators, or prior to the first hearing or other meeting of the parties with the arbitrators, the Canon X arbitrator should, at or before the first hearing or meeting of the arbitrators with the parties, disclose the fact that such communication has taken place. In complying with the provisions of this subparagraph, it is sufficient that there be disclosure of the fact that such communication has occurred without disclosing the content of the communication. A single timely disclosure of the Canon X arbitrator's intention to participate in such communications in the future is sufficient;

(4) Canon X arbitrators may not at any time during the arbitration:
   (a) disclose any deliberations by the arbitrators on any matter or issue submitted to them for decision;
   (b) communicate with the parties that appointed them concerning any matter or issue taken under consideration by
the panel after the record is closed or such matter or issue has been submitted for decision; or (c) disclose any final decision or interim decision in advance of the time that it is disclosed to all parties.

(5) Unless otherwise agreed by the arbitrators and the parties, a Canon X arbitrator may not communicate orally with the neutral arbitrator concerning any matter or issue arising or expected to arise in the arbitration in the absence of the other Canon X arbitrator. If a Canon X arbitrator communicates in writing with the neutral arbitrator, he or she shall simultaneously provide a copy of the written communication to the other Canon X arbitrator;

(6) When Canon X arbitrators communicate orally with the parties that appointed them concerning any matter on which communication is permitted under this Code, they are not obligated to disclose the contents of such oral communications to any other party or arbitrator; and

(7) When Canon X arbitrators communicate in writing with the party who appointed them concerning any matter on which communication is permitted under this Code, they are not required to send copies of any such written communication to any other party or arbitrator.

D.  *Obligations under Canon IV*
    Canon X arbitrators should observe all of the obligations of Canon IV.

E.  *Obligations under Canon V*
    Canon X arbitrators should observe all of the obligations of Canon V, except that they may be predisposed toward deciding in favor of the party who appointed them.

F.  *Obligations under Canon VI*
    Canon X arbitrators should observe all of the obligations of Canon VI.

G.  *Obligations Under Canon VII*
    Canon X arbitrators should observe all of the obligations of Canon VII.

H.  *Obligations Under Canon VIII*
    Canon X arbitrators should observe all of the obligations of Canon VIII.

I.  *Obligations Under Canon IX*
    The provisions of paragraph D of Canon IX are inapplicable to Canon X arbitrators, except insofar as the obligations are also set forth in this Canon.
EXECUTIVE SUMMARY

(a) Summary of the Recommendation:

The undersigned Sections of the American Bar Association and the Senior Lawyers Division recommend that the House of Delegates adopt The Code of Ethics for Arbitrators in Commercial Disputes – 2004 Revision. The 2004 Revision will replace the 1977 Code as the definitive statement of ethical standards for attorneys and others serving as commercial arbitrators.

The 1977 Code was developed by committees of the American Bar Association and American Arbitration Association and was approved by both organizations. It was widely disseminated by its sponsors. It has provided invaluable ethical guidance for arbitrators and others involved in the dispute resolution process for over 25 years, and has been cited with approval by many federal and state courts.

(b) Summary of the issue which the recommendation addresses:

Since 1977, there have been numerous changes in the law governing arbitration, commercial transactions have become increasingly globalized, and the public perception of arbitration has changed. These factors necessitated a revision of the 1977 Code.

In 1997, the Arbitration Committee of the Section of Dispute Resolution convened an Ad Hoc Committee comprising representatives of the Arbitration and Ethics Committees of the Section and of American Arbitration Association and CPR Institute for Dispute Resolution. The Ad Hoc Committee’s work was carried forward by a Task Force comprising representatives of the various concerned Sections of the Association and, most recently, by a Working Group comprising representatives of the ABA Task Force, American Arbitration Association, and CPR Institute. The 2004 Revision is the final product of nearly seven years of work by these groups.

(c) How the proposed policy position will address the issue:

The 2004 Revision addresses the changes in the law governing arbitration, the increasing globalization of commercial transactions, and changes in the public perception of arbitration. The most significant change effected by the 2004 Revision is its treatment of the status and obligations of party-appointed arbitrators. Under the 1977 Code party-appointed arbitrators were presumed non-neutral. Under the 2004 Revision they, like all other arbitrators, are deemed and presumed to be neutral and are required to conduct themselves as such unless it is shown that the parties expected them to be disposed toward the parties who appointed them. Clear standards are established for determining the status of party-appointed arbitrators and for their guidance.

The 2004 Revision otherwise continues the structure, the fundamental concepts and much of the language of the 1977 Code. It will provide more specific guidance in numerous important respects, including particularly:
• Arbitrators should accept appointment only when satisfied (i) that they can serve impartially, (ii) that they can serve independently from the parties, potential witnesses and other arbitrators, (iii) that they are competent to serve, and (iv) that they are available to commence the arbitration in accordance with its requirements and devote appropriate time and attention to it to its completion.

• Existence of interests or relationships which must be disclosed, as described in the Code, does not render it unethical for one to serve as an arbitrator where the parties have consented to the arbitrator’s appointment or continued service following full disclosure of relevant facts.

• Once an arbitrator has accepted an appointment, he or she should not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to continue; however, when an arbitrator is to be compensated for services, the arbitrator may withdraw if the parties fail or refuse to provide for payment of compensation as agreed.

• An arbitrator is not necessarily partial or prejudiced by having knowledge of the parties, applicable law or customs and practices of the business involved or special experience or expertise in the areas of business, commerce or technology involved in the arbitration.

• During an arbitration, arbitrators may engage in discourse with the parties, comment on the law or evidence, make interim rulings and otherwise control or direct the arbitration; these are not deemed evidence of partiality.

• The standard for ascertaining relationships which should be disclosed is whether such relationships “might reasonably affect partiality or lack of independence in the eyes of any of the parties.” In case of any doubt, disclosure should be made.

• The prohibition against solicitation of appointment is deleted; a provision is added permitting truthful advertising and promotion.

(d) **Summary of any minority views of opposition which have been identified:**

No minority views of opposition have been identified.
RESOLVED, That the American Bar Association supports the enactment of federal legislation to protect an individual’s right of publicity to the extent the individual’s identity is used for a commercial purpose in "commerce", as that term is defined in Section 45 of the Lanham Act, 15 U.S.C. § 1127, and to prospectively preempt inconsistent state and territorial laws.
EXECUTIVE SUMMARY

Submitting Entity: Section of Intellectual Property Law

Submitted by: Robert W. Sacoff
Chair

1. Summary of Recommendation

The recommendation urges the Association to adopt a policy regarding the enactment of legislation to establish a federal right of publicity to solidify the rights of individuals against unauthorized commercial identity appropriation, curb the excessive scope of current state-based rights that squelch creative expression, and to lessen the risks to businesses who use individuals' identities in advertising.

2. Summary of Issue That the Recommendation Addresses

The enactment of legislation to establish a federal right of publicity to solidify the rights of individuals against unauthorized commercial identity appropriation, curb the excessive scope of current state-based rights that squelch creative expression, and to lessen the risks to businesses who use individuals' identities in advertising.

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

The report proposes the enactment of a federal right of publicity law to accomplish this legislatively. The report does not propose endorsing specific statutory language because that invariably changes during the legislative process.

4. Summary of Any Minority Views that Have Been Identified

The Section of Intellectual Property Law is not aware of any minority views that are relevant to this recommendation.
AMERICAN BAR ASSOCIATION
YOUNG LAWYERS DIVISION
SECTION OF DISPUTE RESOLUTION
SECTION OF FAMILY LAW
SECTION OF GENERAL PRACTICE, SOLO AND SMALL FIRM
STANDING COMMITTEE ON PUBLIC EDUCATION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association urges federal, state, territorial and local
governments to adopt legislation that promotes school violence prevention education, instruction,
awareness training and programs for children, parents, teachers and school administrators;

FURTHER RESOLVED, That the American Bar Association urges all lawyers to support
school violence prevention education in school and community settings by volunteering time or
contributing resources to promote programs that help prevent violent acts by children through
encouraging timely, appropriate resolution of conflict.
EXECUTIVE SUMMARY

Summary of Recommendation

This recommendation resolves that the American Bar Association urges federal, state, territorial and local governments to adopt legislation to promote school violence prevention education for children, parents, teachers and school administrators. Additionally, it resolves that the American Bar Association urges all lawyers to support this education in schools by volunteering time and/or contributing resources.

Summary of Issue which the Recommendation addresses

A school crime occurs every six seconds in the United States. More than three million crimes occur each year in American schools, and only one-third of school crime is reported. Every hour, more than two thousand students are physically attacked, nine hundred teachers are threatened, and forty teachers are physically attacked on school grounds. Youth violence extracts an enormous toll on the nation’s resources. Prevention can make a difference in the lives of children, who must feel safe and be safe in school in order to develop into competent, resilient adults.

Explanation of how the proposed Policy Position will address the issue

The proposed policy position addresses the issue of school violence prevention by calling for the expansion of school based conflict resolution and violence prevention programs, as well as other instructional programs.

Summary of any minority views that have been identified

No minority views have been identified to date.
AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON CONTINUING LEGAL EDUCATION
COMMISSION ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION
NATIONAL NATIVE AMERICAN BAR ASSOCIATION
NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION
NATIONAL BAR ASSOCIATION
ALI-ABA COMMITTEE ON CONTINUING PROFESSIONAL EDUCATION
SECTION OF FAMILY LAW
SECTION OF LABOR AND EMPLOYMENT LAW
CRIMINAL JUSTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the Commentary to Section 2 of the Model Rule for Minimum
Continuing Legal Education be amended to include the following language:

Regulatory systems should require that lawyers, either through a
separate credit or through existing ethics and professionalism
credits, complete as part of their mandatory continuing legal
education those programs related to racial and ethnic diversity and
the elimination of bias in the profession. Lawyers who practice in
states and territories that do not require mandatory continuing legal
education are encouraged to complete these programs as part of
their continuing legal education.
EXECUTIVE SUMMARY

A) SUMMARY OF THE RECOMMENDATION

As our nation's population becomes increasingly diverse, Mandatory Continuing Legal Education (MCLE) assumes an increasingly important role in addressing issues involving discrimination and bias. CLE programs that address the effect of discrimination and bias in the delivery of legal services should be an integral part of CLE curricula.

The Standing Committee on Continuing Legal Education and the Commission on Racial and Ethnic Diversity in the Profession recommend that regulatory systems should require that lawyers, either through a separate credit or through existing ethics and professionalism credits, complete as part of their mandatory continuing legal education those programs related to racial and ethnic diversity and the elimination of bias in the profession. Lawyers who practice in states and territories that do not require mandatory continuing legal education are encouraged to complete these programs as part of their continuing legal education.

B) SUMMARY OF THE ISSUE WHICH THE RECOMMENDATION ADDRESSES

We are living in a time where public trust and confidence in lawyers and the courts is seriously eroded. It is therefore critical that lawyers monitor their attitudes and behaviors to make sure that fairness and equal justice are never compromised by the appearance of bias.

Moreover, one of the many dramatic changes that swept the legal profession over the past 30 years is the growing number of women, minorities and others with diverse backgrounds entering the practice of law. Workplaces that deal directly with the issues of bias engender loyalty and higher productivity, while enhancing a firm’s ability to serve a broader client base.

CLE courses in the elimination of bias in the profession can create an important forum for discussion and analysis of these issues and their impact on the delivery of justice, and identify weaknesses in the system that require attention and resolution.

C) AN EXPLANATION OF HOW THE PROPOSED POLICY POSITION WILL ADDRESS THE ISSUE

The proposed Recommendation will encourage the development of MCLE programs related to all discrimination and bias and raise professional awareness of the impact of bias in the courts and the legal profession, at the same time increasing public confidence in the fairness of the legal profession and the equal application of the law for all citizens.

D) SUMMARY OF ANY MINORITY VIEWS OR OPPOSITION WHICH MAY HAVE BEEN IDENTIFIED

The trend favors accreditation of elimination of bias MCLE, yet some states have not yet amended their own rules to reflect this trend.
AMERICAN BAR ASSOCIATION

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association approves the Revised Uniform Commercial Code, Article 7, Documents of Title, promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws in 2003 as an appropriate Act for those States desiring to adopt the specific substantive law suggested therein.
EXECUTIVE SUMMARY


That the ABA approve the Revised Uniform Commercial Code, Article 7, Documents of Title, as an appropriate “Act for those States desiring to adopt the substantive law suggested therein.”

2. Summary of the issue which the recommendation addresses.

Article 7 governs the transfer of bills of lading and warehouse receipts as documents of title. Generally, transfer of a document of title from one person to another transfers the rights in the goods represented by the document of title. Article 7 provides for negotiable documents of title, which transfer interests in goods represented in such documents free of any claims or defenses of the issuer or other transferor of the document. The revisions establish the rules for electronic documents of title. It authorizes them, incorporates electronic records and signatures for statute of fraud purposes, provides an analogous system for transfer of electronic documents to the system of negotiable paper documents of title, provides for conversion of electronic documents of title into tangible documents of title and vice versa, and prepares for the expected reliance upon electronic documents of title into the future. A key concept to transfer of electronic documents of title is that of “control.” Control occurs when it is possible to identify every transfer of an authoritative copy of an electronic document with absolute certainty and when transfer can only occur when the party in control authorizes transfer.

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

The revision will bring about the needed modernization of the law of documents of title and better coordination with federal law, necessary to the future functioning of that law.

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

The NCCUSL is not aware of any minority views or opposition to the Uniform Act.
AMERICAN BAR ASSOCIATION

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association approves the 2003 Amendments to Uniform Commercial Code, Article 2A, Leases, promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws in 2003 as appropriate Amendments for those States desiring to adopt the specific substantive law suggested therein.
EXECUTIVE SUMMARY

1. **Summary of the Recommendation.**

   That the ABA approve the 2003 Amendments to Uniform Commercial Code, Article 2A, Leases, as appropriate “Amendments for those States desiring to adopt the substantive law suggested therein.”

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

   Article 2A governs leases of goods in a parallel fashion to the governance of sales of goods in Article 2. Article 2A was added to the Uniform Commercial Code in 1987, and was the first new article in the Uniform Commercial Code since its original promulgation in 1951. Article 2A was amended in 1990. The primary purpose of the 2003 amendments is to incorporate electronic transactions so that lease contracts can be formed and enforced through in electronic media. There are other clarifications based on the experience with Article 2A since 1987.

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

   The Amendments bring about the needed modernization of the law of personal property leases, necessary to the future functioning of that law.

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

   The NCCUSL is not aware of any minority views or opposition to the Uniform Act.
RESOLVED, That the American Bar Association approves the 2003 Amendments to Uniform Commercial Code, Article 2, Sales, promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws in 2003 as appropriate Amendments for those States desiring to adopt the specific substantive law suggested therein.
EXECUTIVE SUMMARY


That the ABA approve the 2003 Amendments to Uniform Commercial Code, Article 2, Sales, as appropriate “Amendments for those States desiring to adopt the substantive law suggested therein.

2. Summary of the issue which the recommendation addresses.

Article 2 of the Uniform Commercial Code governs sales of goods. It was promulgated as part of the Uniform Commercial Code in 1951. It has ancestry in the Uniform Sales Act, originally promulgated in 1906. The amendments incorporate electronic transactions so that sale contracts can be formed and enforced though in electronic media. Other areas of Article 2 are clarified in light of the experience with this Article since 1951, the year it replaced the Uniform Sales Act and the year the Uniform Commercial Code was launched.

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

The Amendments bring about the needed modernization of the law of sales, necessary to the future functioning of that law.

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

The NCCUSL is not aware of any minority views or opposition to the Uniform Act.
RESOLVED, That the American Bar Association approves the Uniform Apportionment of
Tort Responsibility Act, promulgated by the National Conference of Commissioners on Uniform
State Laws in 2002 and amended in 2003 as an appropriate Act for those States desiring to adopt the
specific substantive law suggested therein.
EXECUTIVE SUMMARY

1. **Summary of the Recommendation.**
   
   That the ABA approve the Uniform Apportionment of Tort Responsibility Act as an appropriate “Act for those States desiring to adopt the substantive law suggested therein.”

2. **Summary of the issue which the recommendation addresses.**
   
   This Act provides for a modified form of comparative fault which compares the fault of an injured party with that of all contributing tortfeasors in an action for damages until the injured person’s contribution reaches or exceeds 50% of his or her own injury. Then contributory fault is an absolute bar to recovery. Joint and several liability of multiple tortfeasors is limited to certain instances, primarily the one in which multiple tortfeasors act in concert. Otherwise, joint and several liability is abolished. There is a reallocation procedure when there are multiple tortfeasors and it appears reasonably certain that a tortfeasor will not pay compensation to an entitled injured party.

3. **Please explain how the proposed policy position will address the issue.**
   
   The Act has appropriate rules to provide modified comparative fault along with reallocation procedures in the event a tortfeasor is unable to provide an allocated share of contribution.

4. **Summary of any minority views or opposition which have been identified.**
   
   Questions were raised in ABA sections in 2002. The proposed 2003 amendments address those concerns.
RESOLVED, That the American Bar Association approves the 2003 revision of the Uniform Estate Tax Apportionment Act and new Article 3, part 9A of the Uniform Probate Code, promulgated by the National Conference of Commissioners on Uniform State Laws in 2003 as appropriate Acts for those States desiring to adopt the specific substantive law suggested therein.
EXECUTIVE SUMMARY


That the ABA approve the 2003 revision of the Uniform Estate Tax Apportionment Act and Article 3, Part 9A of the Uniform Probate Code, as appropriate “Acts for those States desiring to adopt the substantive law suggested therein.”

2. Summary of the issue which the recommendation addresses.

This is a revision of earlier acts, and part of the Uniform Probate Code, that provides for apportioning the burden of federal or state estate taxes between the respective interests of heirs or legatees of an estate, or beneficiaries of a revocable trust, when the fiduciary for an estate or trust is required to pay such taxes. Generally, the tax burden is allocated to the interests of estate or trust beneficiaries in proportion to their interests in the whole of the taxable estate. There are special rules for specific sorts of interests such as qualified terminable interest property trusts (a kind of marital trust) and when certain kinds of property are insulated from inclusion in the apportionable estate, though they are taxable property. This update takes into account all changes in tax rules arising since the last time this act was amended.

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

The Act updates rules pertaining to apportionment of either federal or state estate taxes that have been American law for many years.

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

The NCCUSL is not aware of any minority views or opposition to these Uniform Acts.
RESOLVED, That the American Bar Association approves the Uniform Environmental Covenants Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2003 as an appropriate Act for those States desiring to adopt the specific substantive law suggested therein.
EXECUTIVE SUMMARY


That the ABA approve the Uniform Environmental Covenants Act, as an appropriate “Act for those States desiring to adopt the substantive law suggested therein.”

2. Summary of the issue which the recommendation addresses.

This new uniform act in 2003 creates an interest in real estate called an “environmental covenant” that assures a plan of rehabilitation for contaminated real property (brownfields) and control of use that may be separately conveyed to and enforced by a relevant third person called a holder. An underlying plan between state or federal government and landowner for “remediation” of the property must be in place for an environmental covenant to be created and conveyed. The ultimate objective of this act is to allow contaminated property to be returned to those uses consistent with prescribed clean-up, essentially making them marketable. The Act provides for the creation of such a covenant, its termination when appropriate, priority over other real estate interests and enforcement over the time the covenant is in place. An environmental covenant is perpetual unless a specific term is prescribed in the instrument creating it. The interest will be recorded in the real estate records.

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

An environmental covenant allows appropriate controls to be established for environmentally contaminated real estate so that plans for cleanup, remediation and restricted use can be maintained perpetually, if necessary, though the property is conveyed from one owner to another. The Act encourages remediation and the return to market of otherwise unmarketable real estate.

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

The NCCUSL is not aware of any minority views or opposition to the Uniform Act.
DARRELL J. STUTES-ABA MEMBER

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1. RESOLVED, That the American Bar Association supports the enactment
2. and implementation of just laws by government to secure to each and every
3. child growing in the womb of the mother, the unalienable life and liberty
4. right to live until natural death by protecting the child in the womb’s life
5. from being terminated by the intentional act of any human being, assenting
6. to the fact that the child growing in the womb is a human being with the
7. intrinsic right to continue to live.
EXECUTIVE SUMMARY

Submitting Entity: Individual Member
Submitted by: Darrell J. Stutes, Sr.

a) Summary of Recommendation

The Recommendation says the fundamental rule of law in the United States that government has the duty to secure equal protection from intentional acts to terminate life to each and every human being, also applies to human beings growing in the womb.

b) Summary of issue which the Recommendation addresses

The Recommendation addresses the issue of abortion. It changes the ABA August of 1992 policy on abortion, asserting the existing policy is vague, meaningless, arbitrary and contrary to the fundamental premise for the Constitution, governance and laws on which the United States was founded.

c) Explanation of how the proposed policy will address the issue

The proposed policy makes it clear that the child in the womb is a human being entitled to life and liberty rights and equal protection of law. In particular, the policy makes it clear that no human being has the right to commit an intentional act to terminate the life of the child growing in the womb. It is up to the legislative branch of government, in the collective wisdom of the several members of the legislative body, to adopt just laws to effectively secure this right of the child in the womb to live until natural death and to be protected from intentional acts to terminate life. The proposed policy does not propose such laws and merely asserts just laws should be implemented to protect the individual human right.

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

The primary enunciated opposition view is based on the implied liberty right of a woman to choose to terminate a pregnancy. There are an infinite number of tragic and difficult circumstances facing many mothers and some believe abortion may resolve or mitigate the difficulty. Many others supporting the right to abortion appear to be wealthy foundations and special interests groups that appear to be primarily concerned with over population and secondarily with women’s rights.

However, it is submitted that intentionally terminating the life of the child in the womb is not the answer to the difficulty, nor permissible by fundamental law. In addition, it is submitted that casting the right as a “woman’s right to choose”
sets forth a vague and meaningless standard when addressing laws protecting the most basic right of human beings. This vagueness on the unalienable right to life tends to make women victims of a faulty justice system and encourages participation by the woman in a barbaric act that scars her for life. The man, and not only the woman, make the choice to engage in the procreative act and casting the justification as the “woman’s right to choose” places a terrible burden and temptation on the woman to engage in an inherently unjust act, resulting in the termination of the life of her child. Participation in such an inherently unjust act only serves to exacerbate the difficulties of the mother. The individual life and liberty rights of the woman can not be made to depend on the right to participate in an inherently unjust act. This proposition defies logic and the fundamental premise on which the Constitution, governance and laws of the United States are based.
RECOMMENDATION

RESOLVED, That the American Bar Association adopts the black letter of the Standard 1.65 Court Use of Electronic Filing Processes as an amendment to the Standards Relating to Court Organization, dated February 2004.
AMERICAN BAR ASSOCIATION
Judicial Division

STANDARDS RELATING TO COURT ORGANIZATION
(February 2004)

Proposed Standard 1.65
Court Use of Electronic Filing Processes
Standard 1.65 Court Use of Electronic Filing Processes. Because of the benefits accruing to the courts, the bar and the public from the use of electronic records, courts should implement electronic filing processes. In doing so, they should follow certain general principles, adopt rules and implement electronic filing processes as follows:

(a) General principles

(i) Official Court Record. The electronic document should be the official court record. Paper records, if maintained, should be considered a copy of the official court record.

(ii) Electronic Viewing. Electronic filing processes should presume that all users will view documents on their computer screens. Paper copies should be available on demand, but their production should be exceptional, not routine.


(iv) Document Format. Courts should require electronic documents to be submitted in a format that can be rendered with high fidelity to originals, and, when possible, is searchable and tagged. Courts should only require formats for which software to read and write documents is available free for viewing and is available free or at a reasonable cost for writing and printing.

(v) Self-Contained Documents. Each filed document should be self-contained, with links only to other documents submitted simultaneously or already in the court record.

(vi) Data Accompanying Submitted Documents. Courts should require filers to transmit data identifying a submitted document, the filing party, and sufficient other information for the entry in the court’s docket or register of actions. In the case of a document initiating a new case, sufficient other information should be included to create a new case in the court’s case management information system. This data should be specified with particularity by the court.

(vii) Identity of the Sender. Courts should use some means to identify persons interacting with its electronic filing system.

¹ "Web service" is used in its most generic sense — software components that employ one or more of the following to perform distributed computing: UDDI, WSDL, SOAP or ebXML. The term is not used in this document to describe a specific architecture.
(viii) Integrity of Transmitted and Filed Documents and Data. Courts should maintain the integrity of transmitted documents and data, and documents and data contained in official court files, by complying with current Federal Information Processing Standard 180.2 or its successor.

(ix) Electronic Acceptance of Payments. Courts should establish a means to accept payments of fees, fines, surcharges and other financial obligations electronically, including the processing of applications to waive fees.

(x) Surcharges for Electronic Filing. Courts should avoid surcharges for filing of or access to electronic documents if they are able to obtain public funding of their electronic filing processes. Courts may impose such surcharges or use a private vendor that imposes surcharges when public funding is not available. Such surcharges should be limited to recouping the marginal costs of supporting electronic filing processes if collected by the court or to a reasonable level if imposed by a private vendor.

(xi) Court Control over Court Documents. Whenever a court’s electronic documents reside on hardware owned or controlled by an entity other than the court, the court should ensure by contract or other agreement that ownership of the documents remains with the court or clerk of court. All inquiries for court documents and information should be made against the current, complete, accurate court record.

(xii) Addressing the Special Needs of Users. In developing and implementing electronic filing, courts should consider the needs of indigent, self-represented, non-English speaking, or illiterate persons and the challenges facing persons lacking access to or skills in the use of computers.

(b) Court Rules

(i) Service of Filings on Opposing Parties. Court rules may provide that electronic transmission of a document through the electronic filing process to opposing counsel or parties who participate in the electronic filing process will satisfy the service requirements of court procedural rules. Such electronic filing processes should automatically create and docket a certificate of service for documents served electronically through the electronic filing process. Court rules need not provide additional time for responding to documents served in this fashion.
(ii) Use of Unique Identifier. Court rules should provide that a lawyer or other person provided with a unique identifier for purposes of filing documents electronically will be deemed to have filed any document submitted using that identifier.

(iii) Determining when a Document is Filed. Court rules should articulate the criteria by which an electronic document is deemed “received,” “filed,” “served,” and “entered on the docket or register of actions.” Courts should record the date and time of filing and inform the filer of them or of rejection of the document and the reasons for rejection.

(iv) Availability of Electronic Filing Process. Courts should accept electronic documents 24 hours per day, 7 days per week, except when the system is down for maintenance. The date on which documents be deemed filed should be in accordance with the court’s definition of “filed” pursuant to subsection (b)(iii), whether or not the clerk’s office was open for business at the time the document was submitted electronically.

(v) Remedy for Failure of Electronic Processes. Court rules should create procedures and standards for resolving controversies arising from the electronic filing process.

(c) Implementing Electronic Filing Systems

(i) Universal Electronic Filing Processes. Courts should ultimately include all documents in all case types in electronic filing processes although they may implement electronic filing incrementally.

(ii) Mandatory Electronic Filing Processes. Court rules may mandate use of an electronic filing process if the court provides a free electronic filing process or a mechanism for waiving electronic filing fees in appropriate circumstances, the court allows for the exceptions needed to ensure access to justice for indigent, disabled or self-represented litigants, the court provides adequate advanced notice of the mandatory participation requirement, and the court (or its representative) provides training for filers in the use of the process.

(iii) Judicial Discretion to Require Electronic Filing in Specific Cases. Judges should have the authority to require participation in the electronic filing system in appropriate cases until such participation becomes mandatory for all cases.
(iv) Maintaining Supplementary Scanning Capability. Courts should ensure that all documents in electronic cases are maintained in electronic form. Consequently, in voluntary electronic filing processes, courts should scan paper documents and file them electronically.

(v) Quality Control Procedures. Courts should institute a combination of automated and human quality control procedures sufficient to ensure the accuracy and reliability of their electronic records system.

(vi) Eliminating Unnecessary Paper Processes. Courts should eliminate paper processes that are obsolete or redundant in an electronic environment.

(vii) Integration with Case Management and Document Management Systems. Electronic documents should be accessed through a court’s case management information system. Courts should mandate that case management information systems provide an application programming interface capable of accommodating any electronic filing application that complies with these standards. Courts using electronic filing processes should require automated workflow support.

(viii) Archiving Electronic Documents. Courts should maintain forward migration processes to guarantee future access to electronic court documents.

Commentary

The Conference of State Court Administrators (COSCA) and National Association for Court Management (NACM) adopted Standards for Electronic Filing Processes (Technical and Business Approaches) in April 2003. These standards track the COSCA/NACM standards verbatim. As the COSCA/NACM standards evolve to reflect changes in the underlying

---

2 The COSCA/NACM standards include additional items not within these standards: a conceptual model of a common technological approach needed to achieve the goal of a nationally interoperable electronic records process, and functional standards for courts and vendors to follow in designing and building automated applications to support electronic filing.

Neither the COSCA/NACM standards nor these standards address the issues associated with making court records available on the Internet for viewing by the general public. The balance of public access to court records and the privacy rights of individual court users are explored in Public Access to Court Records: Guidelines for Policy Development by State Courts, developed by a Conference of Chief Justices/Conference of State Court Administrators committee supported by the
technology supporting electronic filing or in the national consensus concerning the best policies and practices for its use by courts, practitioners, other governmental entities, and commercial service providers, these standards will also require updating. The COSCA/NACM standards are available at the Technology Standards link from “Popular Links” on the website of the National Center for State Courts (www.ncsconline.org).

Electronic filing constitutes a critically important development for the legal system; consequently, the Standards Relating to Court Organization are incomplete without coverage of this area of court administration and its impact on legal practice.

The promulgation of these standards marks the transition of electronic filing from an experimental process to an operational reality for America’s state and federal courts. The standards are based on the experience of hundreds of state and federal courts – and their local and state bars -- that have been using electronic records since the first project began in Delaware in 1991.

The standards contain guidance for court policies and rules, a conceptual model of a common technological approach, and functional standards for courts and vendors to follow in designing and building automated applications to support electronic filing. They are intended to provide a common model for state and federal trial and appellate court electronic filing processes in order to achieve six purposes:

- to endorse a “full service” model of electronic filing including not only the transmission of electronic documents into the courts, but also the routine use of electronic documents and the electronic record for case processing, for service on other parties, and for access and use by everyone involved in, or interested in, the case;

- to endorse an electronic filing process containing maximum incentives for use and acceptance by courts and lawyers, so as to increase the success rate of electronic filing projects;

Justice Management Institute and the National Center for State Courts. Those guidelines can be located at www.courtaccess.org/modelpolicy.
to provide a “road map” for vendors to use when developing their electronic filing, case management, and document management products;

to provide guidance to court systems that wish to move into electronic filing but have hesitated to do so because they lack experience or expertise;

to encourage all state and federal trial and appellate courts and administrative law tribunals to make the most complete transition possible from paper records storage to electronic records storage through the implementation of electronic filing; and

to establish the standards needed to ensure that electronic filing applications developed by the federal courts, state court systems and individual courts are interoperable.

Experience has shown the following benefits for courts, court users, and the public arising from the use of electronic court files:

- Speedier processes by eliminating the time required for mailing or personal delivery of pleadings and other documents

- Greater efficiency from the instantaneous, simultaneous access to filed court documents for participants in the case, for judges and court staff, and members of the public (to publicly available court documents) wherever participants may be located throughout the world

- Fewer delays caused by lost or misplaced paper files

- Increased efficiency and reduced cost from the ultimate reduction or elimination of handling and storing paper case files in courts, lawyers’ offices, and official archives

- Increased security of court records arising from more reliable electronic backup copies of records, increased ability to detect any alteration to an electronic document, and easier enforcement of limitations on access to documents

- Improved legal processes, as judges and lawyers learn to take advantage of the universal availability and ease of sharing of electronic documents

- Enhanced public safety arising from electronic service of and instantaneous access to court orders (e.g., domestic violence orders of protection) and warrants
The standards address most aspects of the use of electronic documents in the courts.

(a)(i) In an electronic filing environment, the electronic document is the official court record; a printed version of the document is considered a copy of the original. With an official electronic record, courts will not, and lawyers need not, routinely maintain paper case files; that would eliminate the principal economies of electronic records systems. Some courts will choose to make a small number of exceptions to this rule; they may designate some paper documents, such as original wills, documents containing classified or other sensitive information (which for security purposes are not entered into an electronic records system), and documents whose authenticity is raised as an issue prior to or during a trial, as the official record of those specific documents. These exceptions should be noted in court rules or in court orders in specific cases.

(a)(ii) Judges, lawyers and other users of electronic records will always have the capability to produce and use paper copies of the official electronic record. However, electronic filing systems should be designed with the expectation that most documents will be viewed and used in their electronic form.

(a)(iii) Fully interoperable electronic filing systems – in which the same basic process is usable in every court and in every law office – require the use of standard technologies. Use of the Internet, eXtensible Markup Language, and web services are the accepted technologies as of the adoption of these standards.

(a)(iv) It is impossible for a court to support all versions of all word processing programs. The court must choose a single format in which all documents are to be submitted, maintained and viewed. Although “portable document format” is the de facto standard for shared electronic documents as of the date of adoption of these standards, the standard does not specify a particular format because technology will inevitably change.

(a)(v) If a court were to accept as a filing an electronic link to a document residing on a website somewhere else, or to allow such references within a document, the court would have no ability to monitor or prevent modifications in the referenced document or website. This is an unacceptable risk, one that would compromise the integrity of court records. It might also

---

3 When systems are interoperable, they are able to share data with no changes within the application code that resides at each end of the sharing “pipe.” Each may use different computer platforms and different databases, but they are able to transmit their data and receive data in standard data formats, classifications, and types. Validation and transformation of data occurs prior to acceptance into the application or database and prior to sending the data to an outside entity. With interoperable systems, each law office and court can follow its own procedures and processes, as long as it transmits data to others in a standard manner. This eliminates the need for building separate “interfaces” to each system with which a law office wishes to communicate.
subject the court to fees charged by the website hosting the document (such as a computer assisted legal research vendor). Courts should allow links to other documents already or contemporaneously filed with the court and may choose to allow electronic links to websites of other courts, for instance, allowing citations to opinions of a state’s highest court through links to that court’s website opinion repository.

(a)(vi) One of the benefits of electronic filing is the elimination of much redundant data entry. A filer will provide an electronic “cover sheet” that will create the entry in the court’s docket or register of actions.

(a)(vii) In the paper filing world, the court makes no effort to identify who actually brings a document to the court. In the electronic world, it is possible for courts to identify who files the document and it is desirable from the standpoint of system security and integrity to do so. Most courts require a filer to register with the court and agree formally with the rules governing participation in the electronic filing system before being issued an electronic identifier that will authorize him or her to access the system. The standard does not require this process; it merely requires that a court employ some means to identify persons filing or viewing electronic documents.

(a)(viii) An electronic filing system must contain security features that can guarantee for judges and lawyers the integrity of a court’s electronic records. The FIPS 180.2 process creates an electronic “fingerprint” for a document. Should the document be altered in any manner, the electronic “fingerprint” will be different. Courts may adopt even more secure technologies, such as digital signatures.

(a)(ix) An electronic filing process should include a fully integrated electronic payment process, so that filers can pay filing fees as a part of the same transaction that submits the electronic document for filing.

(a)(x) Many current electronic filing systems have been built for courts by private sector vendors who provide the capital necessary to develop a system in return for the right to charge system users a fee for every filing or viewing of a document. In accordance with previously adopted ABA policy, the standards favor free electronic filing processes built and maintained by the courts themselves. If public resources are not available to develop and support free systems, the standards authorize courts to enter into fee-supported contracts with vendors or to charge fees to support systems that the courts develop and operate.

(a)(xi) A court’s electronic documents may reside on a computer owned by a private sector service provider or an executive branch agency. In those instances, the court must ensure that it owns its own official records. Some private sector service providers retain copies of documents they transmit to the court. Any single private service provider may have only a subset of the full documents for a case because multiple service providers may provide filing services to other parties in the case. Therefore, if a private service provider is providing access to case documents to third parties from their own databases, this section of the standard requires that they augment
their data base to ensure that they transmit the complete and current electronic record of the court.

(a)(xii) Courts must ensure that their electronic records processes are as easy to access as possible and that non-electronic filing and access remains available for those who do not own, have access to, or know how to use computers.

(b)(i) Electronic filing systems provide the court with the capability automatically to serve all parties participating electronically in the case with all documents filed in the case. There is, therefore, no reason to continue to require the parties or their counsel to serve those pleadings by mail, or even by email. Elimination of the need for traditional service of papers, at least for those parties who participate in the electronic process, is a major efficiency for the entire legal process.

(b)(ii) A lawyer or party issued a unique identifier for accessing the electronic system will be responsible for restricting access to that identifier and will be deemed to have filed any document submitted using it.

(b)(iii) The bar’s confidence in an electronic filing system is dependent on the predictability of the process. A court must ensure that lawyers understand the court’s standards for deeming a document “received,” “filed,” “served,” and “entered on the docket or register of actions.”

(b)(iv) Electronic filing gives courts the option to allow 24 hour a day, 365 days per year filing. Courts should give lawyers and other filers the maximum flexibility that the system will afford. Most courts have some process for accepting the filing of paper documents after the clerk’s office closes; there is no reason to restrict electronic filing to the hours during which the clerk’s office is open for business.

(b)(v) Lawyers are concerned about the possibility of failure of an electronic filing process – their own computers might fail, their private sector service provider’s equipment might fail, the Internet service provider might fail, or the court’s equipment might fail. Courts should ensure that there is a procedure available by which a lawyer or party can seek relief from the consequences of such failures.

(c)(i) Courts typically implement electronic filing processes gradually, choosing a limited subset of cases for their pilot efforts. However, the goal should be to include all documents in all cases. This requirement may create special problems for jurisdictions using a private sector service provider charging fees for filings and/or access to electronic records when they begin to accept criminal and juvenile cases electronically because of the burden on public sector agencies arising from transmission fees to use the system.

(c)(ii) Electronic filing systems will become most efficient and effective when they are universally used by lawyers and other court users. This section sets forth the conditions under which a court may mandate that all documents be submitted in electronic form.
(c)(iii) In courts with voluntary electronic filing processes, a judge should have the authority to designate a particular case as an electronic case and require all parties in the case to file all documents in electronic form.

(c)(iv) These standards advocate that courts not maintain “split” files, containing some electronic and some paper documents. Such a process squanders the efficiencies of electronic filing systems and creates the likelihood that paper or electronic documents will be overlooked in some cases. Instead, in cases in which not all parties are proceeding electronically, the court should scan all paper filings in the case to convert them to electronic form so that every document in the case is part of the electronic file.

(c)(v) A court must include within its process sufficient automated and human safeguards to guarantee the completeness and accuracy of electronic records.

(c)(vi) Courts need to guard against the tendency to retain vestiges of the paper world in an electronic environment, such as limiting the filing day to the hours that the clerk’s office is open to accept paper filings or requiring that filed documents contain a replica of the court’s inked “FILED” stamp (when much easier and more reliable processes exist for linking a filing with an electronic record of the time it was received by the court).

(c)(vii) Electronic filing is most efficient when it is integrated with the court’s case management system, so that staff can access documents through the same system through which they access information about the case. To ensure this feature, courts should require that their automated case management information systems have the capability to interface in this fashion with electronic filing and document management applications. Finally, courts need to realize that the conversion to electronic documents will mean that they will need to have their computer system route electronic documents to the persons with responsibility for taking action on them in the same fashion that the court previously routed the paper document from one desk or office to another; these systems are called “workflow” applications.

(c)(viii) The challenge for archiving electronic documents is the predictable changes over time to the equipment and software needed to display the documents. This problem is resolved by requiring that all documents in a court’s archives be converted to new formats whenever a court’s database or computer system is upgraded. This process guarantees that the records remain readable on the equipment and software in use at any time by the court.
EXECUTIVE SUMMARY

A. Summary of the recommendation.

The Recommendation urges the American Bar Association to amend the Standards Relating to Court Organization by adopting the proposed Standard 1.65 – Electronic Filing Process Standards.

B. Summary of the issues which the recommendation addresses.

A growing number of courts have adopted electronic filing. Electronic filing is the fastest growing innovation for managing documents in the American Judicial System. There are basic considerations which courts need to know to establish electronic filing process that are effective and fair to all court users.

C. An explanation of how the proposed standard will address the issue.

The Standard will be an invaluable resource to Courts and the Bar around the nation as they consider the development of electronic filing in their jurisdictions.

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

A committee of the Section of Science and Technology has suggested that a particular technology – the use of digital signatures – be employed to ensure the security of electronic filing transactions. The Judicial Division has declined to adopt that recommendation. Sections a(vii) and a(viii) of these standards call for ascertaining the identity of filers and ensuring the integrity of a court’s electronic records. In our view it would be premature to go further to require the use of a particular technical solution to these issues – a solution not currently used by most courts employing electronic filing; further, imposing that solution would put the ABA at odds with the Conference of State Court Administrators and the National Association for Court Management, from whose standards this proposal has been derived.
RESOLVED, That the American Bar Association encourages Congress to establish a retirement plan for federal administrative law judges that is appropriate to their judicial status and functions and that is separate from retirement plans of other career civil servants.
Executive Summary

1. **Summary of the Recommendation**

The recommendation provides for an enhanced retirement plan for members of the federal administrative judiciary.

2. **Summary of the issue that the recommendation addresses**

The unique characteristics of the federal administrative judiciary and the need to encourage highly-qualified and independent-minded candidates to apply for positions as administrative law judges (ALJs) to prevent stagnation, and to encourage diversity in age, race, gender, and legal background require an enhanced retirement plan separate from that of other federal civil servants.

Most (ALJs) are appointed later in life than other federal employees and therefore must work until age 75, 80 or older in order to attain a decent pension under the current federal program based on 30 years of service that was designed for career employees entering federal service in their 20's or 30's with a reasonable expectation of retiring at age 55-65. As a result, more ALJs die in office, proportionally, than any other federal civilian occupation.

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

By providing for a separate retirement schedule that recognizes the unique circumstances of the federal administrative judiciary, the pool of ALJs will be regenerated as older members retire, to be replaced by experienced, independent, and highly-qualified men and women of diverse backgrounds, who will be more likely to apply for ALJ positions.

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

No opposition to this recommendation has been identified.
AMERICAN BAR ASSOCIATION

COMMISSION ON LAWYER ASSISTANCE PROGRAMS
COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW
STANDING COMMITTEE ON SUBSTANCE ABUSE

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association adopts the revised black letter Model Lawyer Assistance Program, dated February 2004.
AMERICAN BAR ASSOCIATION
MODEL LAWYER ASSISTANCE PROGRAM
FEBRUARY 2004

RULE 1. ESTABLISHMENT OF LAWYER ASSISTANCE PROGRAM

A. *Establishment.* The [state’s highest court] [bar association] hereby establishes a state-wide lawyer assistance program (LAP) that will provide immediate and continuing help to lawyers, judges and law students, or the legal community as defined by the LAP, who are affected by any physical or mental health conditions that affect their competent practice of their profession, quality of life, or study of law.

B. *Purpose.* The LAP has four primary purposes:

1. to assist lawyers, judges, and law students, or the legal community as defined by the LAP, in pursuing their recovery from chemical dependency or abuse, mental health, or physical issues;
2. to protect the interests of clients from harm that might result from lawyers impaired by substance abuse or dependency, physical, or mental health conditions;
3. to educate the bench, bar, and law school community about the issues and concerns that negatively affect the legal profession; and
4. to develop programs that emphasize prevention of conditions that might negatively affect legal professionals or law students.

C. *Funding.* The [state’s highest court] [bar association] should insure stable and continual funding, either from dues or assessments of the bar generally. Appropriate accounting of all funds is essential.¹

RULE 2. GOVERNING BODY

A. *Members.* The [state’s highest court] [bar association] should appoint the members of a governing body to administer or provide advice regarding the management of the lawyer assistance program. A chair of the governing body should be selected by the creating agency or the members of the governing body, as the case may be.

B. *Composition.* The members of the governing body should be chosen on the basis of geographic convenience and size of the state bar. They should have diverse experience, knowledge, and demonstrated competence in the areas of substance abuse and mental health issues, as well as those other issues that may negatively affect the quality of life and practice of legal professionals. A percentage of the members of the governing body may be non-lawyers who are experienced in the fields of addictionology and/or mental health disorders.
C. **Terms.** Members of the governing body should be appointed on a staggered basis so that the number of terms expiring will be approximately the same each year.

D. **Duties.** The members of the governing body should have the following powers and duties:

1. Establishing the LAP’s policy and procedures and providing ongoing advice regarding the same.
2. General administrative and management responsibility to operate the program to achieve its purpose and goals.
3. Responsibility to hire and fire the LAP director and review the budget prepared by the LAP staff. In the event the LAP director is an employee of the state bar or other entity, the members of the governing body shall consult with such entity with respect to the individual to be employed, as well as in regard to budgetary matters.
4. The duties listed under Rule 3C would be assumed by the members of the governing body in the absence of a director of the program.

E. **Meetings.** The governing body should meet on a periodic basis or upon call of the chair with adequate notice to all members. The actions of the governing body should be in compliance with these regulations, the by-laws of the governing body or the creating entity, applicable state or federal law, and the rules of discipline of the state bar.

F. **Quorum.** A majority of the members of the governing body must be present to constitute a quorum at any meeting. The governing body acts on a majority vote of members in attendance at any meeting where a quorum is present.

**RULE 3. DIRECTOR OF THE PROGRAM**

A. **Appointment/Hire.** The governing body shall have the responsibility of hiring a director. In the event the director is an employee of the state bar or other entity, the governing body shall participate in the selection and hiring of the director.

B. **Qualifications.** The director should be either a person with experience in attorney impairment, quality of life issues, and recovery, or a qualified health care professional with addiction and mental health treatment experience. In either case, the director should have sufficient experience and training to enable him/her to identify and assist lawyers, judges, and law students affected by the conditions described in Paragraph 1A above, as well as sufficient administrative expertise to competently manage a human services organization.

C. **Duties and Responsibility.** The director’s job will require that he/she:

1. Provide initial response to most help line calls.
2. Help lawyers, judges, law firms, law schools, and courts to identify and intervene with impaired lawyers, judges, and law students.
3. Furnish members of the legal community and their families with information regarding resources available to provide counseling and treatment for chemical dependency, mental health disorders, and other disabilities, including those available without charge as well as paid services.

4. Establish and maintain cooperative relationships with the state’s disciplinary agency, bar examiners, courts, law schools, and other bar agencies and committees that serve either as sources of referral or resources in providing help.

5. Establish and oversee monitoring services pursuant to the policies and procedures of the ABA Model Monitoring Program.

6. Develop and present educational programs for the legal community (including law schools) with respect to the sources of potential lawyer impairment, including quality of life issues, as well as treatment and preventative measures.

7. Develop and implement marketing materials and strategies to inform the bar, the courts, law schools, and the families of legal professionals about the types of mental health, substance abuse, and other problems confronting the legal profession, as well as the availability of LAP services.

8. Recruit, select, and train lawyer, health care, and other volunteers.

9. Develop job descriptions for LAP staff personnel, and hire, train, and assess such individuals, including clinicians, assistants, and office personnel, as budgetary considerations allow.

10. In appropriate situations, i.e. where no issue of confidentiality exists, appear at bar disciplinary, court, or bar admission proceedings to provide testimony regarding a legal professional’s progress or lack of progress in recovery.

RULE 4. VOLUNTEERS

A. The governing body shall enlist and utilize volunteer peer counselors whose work may include:

1. assisting in interventions planned by the LAP;
2. acting as a local contact for legal professionals seeking help from the LAP;
3. acting as recovery mentors;
4. acting as monitors for attorneys under LAP rehabilitation contracts;
5. providing testimony related to recovery for the impaired lawyer at the request of the lawyer; and
6. appearing at seminars and presentations on behalf of the LAP at law schools, courts and bar organizations.
RULE 5. SERVICES PROVIDED BY THE LAWYER ASSISTANCE PROGRAM

A. The Lawyer Assistance Program may provide the following services through its director, staff, and volunteers:

1. Provide immediate and continuing help to lawyers, law students, and judges who are affected by any physical or mental health conditions that impact upon their quality of life, competent practice of their profession, or study of law. The LAP should endeavor to provide these services at minimal or no cost. Such services may include, without limitation:
   a. Mental health and/or substance abuse counseling by appropriately trained and credentialed members of the LAP staff;
   b. Sponsoring and maintaining substance abuse and facilitated mental health legal support meetings;
   c. Assessing and listing qualified programs for substance abuse or mental health treatment of affected legal professionals;
   d. Performing assessment and referral services for affected legal professionals, and;
   e. Seek to assure the quality and accountability of services rendered by those professional clinicians to whom the LAP refers legal professionals.

2. Plan and present educational programs to:
   a. increase the awareness and understanding of members of the bench, bar, law schools, and general public about problems of substance abuse and dependence, mental health disorders, and quality of life issues affecting the legal profession;
   b. enable members of the profession to identify these issues in their own lives and those of their colleagues;
   c. reduce the stigma associated with substance abuse and mental health disorders;
   d. teach appropriate methodology to interact with and assist affected individuals, and;
   e. increase awareness in and outside the legal profession of resources available to treat these conditions.

3. In appropriate circumstances, to provide evaluation, intervention, treatment referral, and monitoring of bar applicants, law students, judges, lawyers, including lawyers or bar applicants who have been ordered by a court, the state bar, or bar admissions to participate in the LAP.

RULE 6. REFERRALS

A. Self-referral. Any lawyer, judge, or law student may voluntarily call the LAP seeking assistance for him or herself.

B. Referrals from Third Parties. Policies and procedures should be developed to accept information and referrals from third parties including, without limitation,
other lawyers, judges, law school professors and administrators, family members, and friends.

C. **Referrals from External Agencies.** Policies and procedures should be developed by the LAP, bar disciplinary agencies, the courts, and the bar admissions entity that will facilitate referrals to the LAP from these agencies.⁶

**RULE 7. AFTERCARE AND MONITORING**

A. The LAP may provide aftercare and monitoring services to assist in a LAP participant’s recovery and to protect and preserve the integrity of the LAP. Services will include:

1. Assisting the treatment provider in structuring aftercare and discharge planning for legal professionals receiving substance abuse, mental health, or other treatment.
2. Facilitating the legal professional’s entry into appropriate aftercare and peer support meetings.
3. Assisting the legal professional in obtaining a primary care physician, therapist, counselor, or psychiatrist.
4. Establishing a random urine screening program.
5. Tracking the legal professional’s aftercare, peer support, and twelve step meeting attendance.
6. Helping the legal professional locate LAP volunteers in their geographic area.
7. Providing documentation of compliance by the legal professional to those persons and/or agencies as required.
8. Providing testimony regarding the legal professional’s compliance or non-compliance with the requirements of the program.⁷

**RULE 8. RECORDS**

A. The LAP should maintain such records as to the names of the participants and the nature of their participation as may be appropriate given the level of confidentiality protection provided by bar rule and/or state statute, except when the lawyer is part of a court or disciplinary referred monitoring program, in which case such records are mandatory.

B. Actual records, whether hard copy or electronic, should be maintained in a manner to insure access only by individuals authorized to maintain and review such records.⁸

**RULE 9. CONFIDENTIALITY AND IMMUNITY**

A. **Confidentiality.** The state’s highest court and the state legislature should provide that any person seeking voluntary assistance from the LAP will be guaranteed confidentiality as to all communications directed to LAP staff, volunteers [counselors], and persons providing information or other assistance, pursuant to
Guiding Principle 2, which states, “Appropriate protection should be furnished for the confidentiality of those who seek and provide help through authorized programs.”

B. Immunity. The state’s highest court and the state legislature should arrange for an appropriate form of immunity from civil liability for all persons participating in the LAP, including its volunteers and those making good faith reports of lawyer impairment.9

RULE 10. FACILITY

A. The LAP office should be located outside the state bar association building and maintain a toll-free confidential hotline number to which only the LAP staff has access.10

RULE 11. PERIODIC PROGRAM REVIEW

A. The lawyer assistance program should be reviewed periodically by the governing body, state bar, or the ABA Commission on Lawyer Assistance Programs.11
Appendix: Commentaries to the Model LAP

1. Paragraph A is a restatement of Principle 1, *Guiding Principles for a Lawyer Assistance Program*, approved by the ABA House of Delegates in February 1991. (“Guiding Principles”) Paragraph B(3) is derived from Guiding Principle 8, which provides that an educational element should be developed to inform the public, the judiciary, the bar, law students and the disciplinary agencies of the assistance that is available for those in need.

A legal professional’s or law student’s performance and quality of life may be negatively affected by physical, mental, or other illnesses, including substance abuse and dependence, pathological gambling and other compulsive disorders, depression, bi-polar disorder, and personality disorders, as well as problems related to family, finances, or other areas.

Lawyers, judges, and law students, at least as often as members of other professions, fail to seek professional help for these problems. Denial plays a role in these problems, especially in the areas of substance abuse and dependence. Identification of and intervention on legal professionals in the early stages of these disorders may be missed due to the lawyer’s, judge’s, or student’s ability perform in a seemingly normal fashion, although at decreasing effectiveness. In many cases, the remedy can be as simple as peer support; others, however, require professional medical or other health care.

Lawyer assistance programs are designed to address these problems in a remedial fashion, as well as to promote educational and preventive programs to minimize their severity in order to improve the quality of lawyers’ lives and to minimize the harm to clients. LAP’s are designed to provide confidential services, including prevention, intervention, evaluation and counseling (both peer and professional), as well as referral to professional help and on-going monitoring.

2. Different states have different legal structures for their programs. Some LAP’s are programs within the framework of their mandatory or voluntary bar associations, while others are independent corporations, either with or without tax exempt status, or are under the umbrella of their court system. The LAP structure will influence the structure of the governing body. The above rule has been drawn broadly in order to assure that the governing body have authority to provide oversight, establish goals and policies, raise funds, advocate for the needs of the program and its clients, and be accountable for fiscal matters.

While it is suggested that members of the governing body be individuals with knowledge and experience in the fields of substance abuse and mental health disorders, it is not imperative that *all* members of the governing body have such qualifications. It is, however, important for the members to believe in and support the mission of the LAP, or to have experience, knowledge and demonstrated competence serving on governing bodies of non-profit corporations or human service agencies, or with raising funds.
3. The position of director is of the highest importance and a qualified person should be carefully selected. Experience has shown that lawyers who have been in active recovery from chemical dependency or a mental health disorder for at least five years may be well suited to serve in such a position, but the Commission in no way suggests limiting the selection to this group, as a number of existing state programs have highly effective non-lawyer directors who are credentialled as employee assistance, mental health, or chemical dependency professionals, to name a few. The primary consideration when hiring a LAP director should be that individual’s understanding of and concern for legal professionals who may be dealing with the conditions described in Paragraph 1A above. That individual should have a demonstrated ability to manage and administer a program of the LAP’s size, budget, and structure. Consideration must be given by the governing body to the director’s salary and benefits in order to assure that qualified individuals will be attracted to the position.

The LAP director should maintain current and varied information concerning qualified and available resources for its clients. Such resources should include local and national community based (sliding scale) and private treatment resources, including, without limitation, self-help support groups, individual therapists and counselors, physicians, hospitals, and free-standing treatment programs.

The Commission believes that one of the most important functions undertaken by the LAP director is to enlist and utilize as many volunteers as possible to assist in a variety of functions for the LAP. Volunteers may be drawn from the recovering and non-recovering legal community, as well as health care professionals knowledgeable in substance abuse and mental health areas.

The LAP director is often the individual primarily responsible for providing testimony before a bar or legal tribunal regarding a client’s progress or lack of progress in the program. Such testimony should only be provided where an issue regarding confidentiality does not exist, either by a waiver by the client or an order of the appropriate court. In order for such testimony, and the LAP itself, to be credible, the director must be prepared to discuss a client’s failure as readily as a client’s success.

While in some jurisdictions, the governing body will select and hire the LAP director and staff members, in many states, the director will have this responsibility. In either case, it is important that job descriptions be drawn with sufficient clarity to insure the hiring and retention of qualified individuals, and that the director be provided with sufficient financial resources to attract such personnel.

4. Volunteer counselors are lawyers, judges, law students, and health care providers who usually are in recovery from chemical dependency, mental health disorders, or other medical problems or have training in the art of counseling and are willing to volunteer their time and assistance to suffering fellow lawyers. These functions are all performed under written guidelines established and drafted by the LAP director. Volunteer activities may include serving as recovery mentors or monitors, assisting with or taking
over the practice of impaired or newly recovering attorneys, or appearing before bar, legislative, and lay entities as examples of successful rehabilitation. Development and maintenance of a strong volunteer network is one of the most important functions of the LAP. To insure quality service and outreach, the LAP should provide periodic training and education to all volunteers regarding LAP guidelines, policies and procedures, monitoring services, applicable state and federal statutes, and bar rules.

5. The services provided by a LAP will vary from state to state, therefore the above described services are suggestive only. In order to perform these functions, the LAP must work cooperatively with state and local bar organizations, courts, disciplinary agencies, bar admission committees, existing lawyer assistance committees, and law schools and other bar and court related organizations. This Model LAP envisions cases in which evaluation, treatment, or monitoring may be required by court order, as a condition of probation or employment, or as a condition of admission to the bar, but providing such services, as well as the decision whether to charge an additional fee for the same, will be dependent upon the structure, character, and philosophy of each individual LAP.

6. Optimally, participation in the LAP will be voluntary, and affected lawyers will be identified and contacted prior to coming to the attention of a disciplinary or judicial entity. There are instances where legal professionals will call the LAP directly to ask for assistance, while at other times the contact will be made by a colleague, judge, family member, or friend. In these instances, the confidential nature of communications with the LAP should be stressed, and the peer assistance nature of the LAP should be emphasized. Voluntary cases may require evaluation, referral to treatment, attendance at attorney support meeting, self-help meetings, or contact by a local volunteer.

In addition to voluntary contacts and if authorized by the LAP’s governing body, the program may be used by various referring entities as an evaluation and monitoring agency. Disciplinary agencies and law firms frequently receive complaints that may be the result of impairment problems. With proper educational, identification, and referral procedures in place, many lawyers may be assisted before the need for formal disciplinary proceedings are necessary. As stated in Guiding Principle 7, “Impairment programs and disciplinary agencies should establish and maintain a system for the referral of lawyers with impairment problems to the assistance program.”

When a lawyer has asserted a mitigating factor of substance abuse or a mental health disorder in responding to a complaint of misconduct, or it appears to the referring agency that there may be such a problem, the lawyer-respondent may be referred to the LAP or to a LAP certified professional to assess whether such a condition was a contributing factor to the misconduct. In such cases, the referring agency may allow for participation in the LAP in lieu of more severe discipline, as a probationary measure, or as a condition precedent for reinstatement or admission.
The philosophy and mission of LAPs vary from state to state, with some perceiving no conflict in reporting the results of such referrals to the referring agency or providing periodic reports regarding the lawyer’s progress or lack thereof, while other LAP’s may find such monitoring services to be contrary to their primary purpose. In the event monitoring and reporting services are to be provided, each lawyer who is referred to the LAP must be informed that the LAP is authorized to report to the referring agency and the lawyer will be asked to sign the appropriate release of information forms providing for such disclosure. See diversion mechanism in Model Rules for Lawyer Disciplinary Enforcement, Rule 21F.

Upon entry into the LAP, the individual may be asked to sign a contract incorporating such terms as completion of recommended treatment and aftercare programs, random alcohol and drug testing, participation in support groups, regular contact with a monitor, regular therapy with a counselor, therapist, facilitated support group, or psychiatrist, and contact with the LAP staff.

Unless mandated by the court order imposing discipline, the LAP staff will not have contact with any member of the referring agency with regard to the monitoring of a lawyer (including whether the lawyer has contacted the LAP) unless the lawyer has consented to such disclosure in the appropriate manner. If mandated by court order, the Director shall report to the referring agency if a lawyer fails to adhere to the requirements of the LAP contract and/or the court’s disciplinary order.

7. This Rule is derived from Guiding Principle 6, which states, “A program for monitoring attorneys who have been brought to the attention of the disciplinary system as a result of an impairment problem should be maintained with the appropriate disciplinary agency.”

The LAP should maintain a list of specialized monitors and maintain a case management file system on each lawyer, judge, or law student being monitored (subject to Rule 8) that should include: the monitoring agreement; medical assessments; monitor’s reports; urinalysis results; periodic LAP evaluations; notes, correspondence, etc.

The Monitoring Agreement should include such terms as: consents to disclosure; duration; treatment plan, including meetings to be attended, therapy to be obtained, aftercare or outpatient treatment, and frequency of urinalysis testing; verification of compliance; confidentiality; authorizations; financial responsibilities; revisions; liability; release and indemnification notifications; withdrawal; termination; and provisions of agency. The LAP may recommend revisions to individual monitoring agreements that may include: change of monitor; increased recovery meeting attendance; medical or psychiatric evaluation and treatment; aftercare counseling; urinalysis screens; etc.

8. Various jurisdictions provide different levels of protection of LAP records (see Rule 9). Procedures should be developed by the LAP for record keeping, taking into consideration the level of protection provided by that LAP’s jurisdiction. Obviously, the greater the protection, the more comfortable the LAP will be with keeping more detailed records of
its participants. In cases where the lawyer has been sent to the LAP for probation monitoring, records must be kept in compliance with the referring court or agency's requirements.

9. Experience demonstrates that fear of disclosure and discipline keeps many legal professionals and those close to them from seeking help from agencies that may be perceived to be court or bar related. Not only must the LAP guarantee confidentiality, but this aspect of the LAP function also must be widely advertised. The LAP must emphasize that it will not forward any voluntary communications to a disciplinary agency. No voluntary communication between the LAP (or anyone functioning on its behalf) and any bar or court agency will be made unless the LAP client has signed a standard form of release in advance. Sample state confidentiality rules and statutes are available from the ABA Commission on Lawyer Assistance Programs (CoLAP).

Paragraph B is derived from Guiding Principle 3, which states, "Members of the profession who serve in lawyer assistance programs should be immune from civil liability, except for willful or wanton acts." Volunteers who give of their time and efforts to assist legal professionals should not be liable in damages for acts done in good faith. Sample state immunity rules and statutes are available from the ABA Commission on Lawyer Assistance Programs.

10. Experience demonstrates that lawyers, judges and law students may be hesitant about visiting a LAP office located in the state bar building (often where the disciplinary agency is located). If the LAP must be located within the bar facility, it should be in a private area without heavy traffic (and as far from the office of disciplinary counsel as possible), and the director should be prepared to meet some of his or her clients outside the building. Such physical separateness should be maintained in keeping with the program's commitment to confidentiality and anonymity.

11. Guiding Principle 10 states that: "Periodic review of the programs by the bar responsible for its sponsorship is essential to the proper functioning of the program. This review should assure that the programs are effective, are staying current with new developments for handling impaired lawyers and are functioning in accordance with the ABA Guiding Principles and those established locally for the LAP's operation."

The ABA Commission will provide site visits and evaluations of state and local programs, as well as assistance in recommending methods for carrying out the objectives and strategies discussed in this proposal, upon request.
EXECUTIVE SUMMARY

Summary of Recommendation

RESOLVED, that the American Bar Association adopts the revised black letter Model Lawyer Assistance Program dated February 2004, to assist state and local bar associations in the development and maintenance of effective programs to identify and help those lawyers, judges and law students impaired by alcoholism, other forms of chemical dependency or mental health problems.

Summary of the Issue

Over the past decade, the Commission has expanded its focus from strictly substance abuse and dependence to other issues that affect quality of life and professional performance, including mental health problems, gambling, and other compulsive disorders. The Model LAP, which is being submitted for your adoption as an ABA Guide, has been updated to more fully address depression and other issues related to the stress of the legal environment.

How the Policy will Address the Issue

Even though the initial Model LAP encouraged full service programs that would provide mental health assistance, the substantial experience of the last five to eight years and the results of the 2002 Survey of State and Local Lawyer Assistance Programs has demonstrated the need to update the Model LAP to recognize the expanded mission of the LAP movement so that the model more clearly reflects the activities and goals of existing and future lawyers assistance programs and more accurately relates to overall conditions in the legal community and practice of law. Accordingly, the proposed revised Model Lawyer Assistance Program reflects that broadened scope and incorporates minor grammatical changes approved by the ABA Commission on Lawyer Assistance Programs and its Advisory Commission.

Minority Views or Opposition

The Commission on Lawyer Assistance Programs has only received encouragement to strengthen the language in the Model to make it clear that the ABA addresses issues related to depression and other mental health illnesses.

The Commission on Mental & Physical Disability Law has asked to co-sponsor the Recommendation and the Standing Committee on Substance Abuse strongly supports it.
AMERICAN BAR ASSOCIATION

SECTION OF ADMINISTRATIVE LAW AND REGULATORY PRACTICE
SECTION OF BUSINESS LAW
SECTION OF DISPUTE RESOLUTION
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association endorses the revised Standards for the
STANDARDS\(^1\) FOR THE ESTABLISHMENT AND OPERATION OF
OMBUDS OFFICES

REVISED FEBRUARY, 2004

PREAMBLE

Ombuds\(^2\) receive complaints and questions from individuals concerning people within an entity
or the functioning of an entity. They work for the resolution of particular issues and, where
appropriate, make recommendations for the improvement of the general administration of the entities
they serve. Ombuds protect: the legitimate interests and rights of individuals with respect to each
other; individual rights against the excesses of public and private bureaucracies; and those who are
affected by and those who work within these organizations.

Federal, state and local governments, academic institutions, for profit businesses, non-profit
organizations, and sub-units of these entities have established ombuds offices, but with enormous
variation in their duties and structures. Ombuds offices so established may be placed in several
categories: A Legislative Ombuds is a part of the legislative branch of government and addresses
issues raised by the general public or internally, usually concerning the actions or policies of
government entities, individuals or contractors with respect to holding agencies accountable to the
public. An Executive Ombuds may be located in either the public or private sector and receives
complaints concerning actions and failures to act of the entity, its officials, employees and
contractors; an Executive Ombuds may either work to hold the entity or one of its programs
accountable or work with entity officials to improve the performance of a program. An
Organizational Ombuds may be located in either the public or private sector and ordinarily addresses
problems presented by members, employees, or contractors of an entity concerning its actions or
policies. An Advocate Ombuds may be located in either the public or private sector and like the
others evaluates claims objectively but is authorized or required to advocate on behalf of individuals
or groups found to be aggrieved.

As a result of the various types of offices and the proliferation of different processes by which
the offices operate, individuals who come to the ombuds office for assistance may not know what to
expect, and the offices may be established in ways that compromise their effectiveness. These

---

1. The ABA adopted a resolution in August, 2001, that supported “the greater use of ‘ombuds’ to receive,
review, and resolve complaints involving public and private entities” and endorsed Standards for the
Establishment and Operation of Ombuds Offices. These standards modify those Standards in four regards.
First, they clarify the issue of notice in Paragraph F; secondly, they modify the limitations on the ombud’s
authority; third, they provide for a new category of executive ombuds that is described in Paragraph H; and,
fourth, they modify the definition of legislative ombuds and the standards applicable to them to make them
conform to the new category of executive ombuds. The 2001 Standards, in turn, expanded on a 1969 ABA
resolution to address independence, impartiality, and confidentiality as essential characteristics of ombuds
who serve internal constituents, ombuds in the private sector, and ombuds who also serve as advocates for
designated populations.

2. The term ombuds in this report is intended to encompass all other forms of the word, such as ombudsperson,
ombuds officer, and ombudsman, a Swedish word meaning agent or representative. The use of ombuds here
is not intended to discourage others from using other terms.
standards were developed to provide advice and guidance on the structure and operation of ombuds offices so that ombuds may better fulfill their functions and so that individuals who avail themselves of their aid may do so with greater confidence in the integrity of the process. Practical and political considerations may require variations from these Standards, but it is urged that such variations be eliminated over time.

The essential characteristics of an ombuds are:

- independence
- impartiality in conducting inquiries and investigations, and
- confidentiality.

ESTABLISHMENT AND OPERATIONS

A. An entity undertaking to establish an ombuds should do so pursuant to a legislative enactment or a publicly available written policy (the “charter”) which clearly sets forth the role and jurisdiction of the ombuds and which authorizes the ombuds to:

1. receive complaints and questions about alleged acts, omissions, improprieties, and systemic problems within the ombuds’s jurisdiction as defined in the charter establishing the office

2. exercise discretion to accept or decline to act on a complaint or question

3. act on the ombuds’s own initiative to address issues within the ombuds’s prescribed jurisdiction

4. operate by fair and timely procedures to aid in the just resolution of a complaint or problem

5. gather relevant information and require the full cooperation of the program over which the ombuds has jurisdiction

6. resolve issues at the most appropriate level of the entity

7. function by such means as:
   
   (a) conducting an inquiry
   
   (b) investigating and reporting findings
   
   (c) developing, evaluating, and discussing options available to affected individuals
   
   (d) facilitating, negotiating, and mediating
   
   (e) making recommendations for the resolution of an individual complaint or a systemic problem to those persons who have the authority to act upon them
identifying complaint patterns and trends

teaching

issuing periodic reports, and

advocating on behalf of affected individuals or groups when specifically authorized by the charter

(8) initiate litigation to enforce or protect the authority of the office as defined by the charter, as otherwise provided by these standards, or as required by law.

QUALIFICATIONS

B. An ombuds should be a person of recognized knowledge, judgment, objectivity, and integrity. The establishing entity should provide the ombuds with relevant education and the periodic updating of the ombuds's qualifications.

INDEPENDENCE, IMPARTIALITY, AND CONFIDENTIALITY

C. To ensure the effective operation of an ombuds, an entity should authorize the ombuds to operate consistently with the following essential characteristics. Entities that have established ombuds offices that lack appropriate safeguards to maintain these characteristics should take prompt steps to remedy any such deficiency.

(1) **Independence.** The ombuds is and appears to be free from interference in the legitimate performance of duties and independent from control, limitation, or a penalty imposed for retaliatory purposes by an official of the appointing entity or by a person who may be the subject of a complaint or inquiry.

In assessing whether an ombuds is independent in structure, function, and appearance, the following factors are important: whether anyone subject to the ombuds's jurisdiction or anyone directly responsible for a person under the ombuds's jurisdiction (a) can control or limit the ombuds's performance of assigned duties or (b) can, for retaliatory purposes, (1) eliminate the office, (2) remove the ombuds, or (3) reduce the budget or resources of the office.

(2) **Impartiality in Conducting Inquiries and Investigations.** The ombuds conducts inquiries and investigations in an impartial manner, free from initial bias and conflicts of interest. Impartiality does not preclude the ombuds from developing an interest in securing changes that are deemed necessary as a result of the process, nor from otherwise being an advocate on behalf of a designated constituency. The ombuds may become an advocate within the entity for change where the process demonstrates a need for it.

(3) **Confidentiality.** An ombuds does not disclose and is not required to disclose any information provided in confidence, except to address an imminent risk of serious
harm. Records pertaining to a complaint, inquiry, or investigation are confidential and not subject to disclosure outside the ombuds's office. An ombuds does not reveal the identity of a complainant without that person's express consent. An ombuds may, however, at the ombuds's discretion disclose non-confidential information and may disclose confidential information so long as doing so does not reveal its source. An ombuds should discuss any exceptions to the ombuds's maintaining confidentiality with the source of the information.\(^3\)

**LIMITATIONS ON THE OMBUDS'S AUTHORITY**

D. An ombuds should not, nor should an entity expect or authorize an ombuds to:

1. make, change or set aside a law, policy, or administrative decision
2. make binding decisions or determine rights
3. directly compel an entity or any person to implement the ombuds's recommendations
4. conduct an investigation that substitutes for administrative or judicial proceedings
5. accept jurisdiction over an issue that is currently pending in a legal forum unless all parties and the presiding officer in that action explicitly consent
6. address any issue arising under a collective bargaining agreement or which falls within the purview of any federal, state, or local labor or employment law, rule, or regulation, unless there is no collective bargaining representative and the employer specifically authorizes the ombuds to do so,\(^4\) or
7. act in a manner inconsistent with the grant of and limitations on the jurisdiction of the office when discharging the duties of the office of ombuds.

**REMOVAL FROM OFFICE**

E. The charter that establishes the office of the ombuds should also provide for the discipline or removal of the ombuds from office for good cause by means of a fair procedure.

**NOTICE**

F. An ombuds is intended to supplement, not replace, formal procedures. Therefore:

---

3. A legislative ombuds should not be required to discuss confidentiality with government officials and employees when applying this paragraph to the extent that an applicable statute makes clear that such an individual may not withhold information from the ombuds and that such a person has no reasonable expectation of confidentiality with respect to anything that person provides to the ombuds.

4. Under these Standards, the employer may authorize an ombuds to address issues of labor or employment law only if the entity has expressly provided the ombuds with the confidentiality specified in Paragraph C(3).
An ombuds should provide the following information in a general and publicly available manner and inform people who contact the ombuds for help or advice that—

(a) the ombuds will not voluntarily disclose to anyone outside the ombuds office, including the entity in which the ombuds acts, any information the person provides in confidence or the person’s identity unless necessary to address an imminent risk of serious harm or with the person’s express consent

(b) important rights may be affected by when formal action is initiated and by whether notice is given to the entity

(c) communications to the ombuds may not constitute notice to the entity unless the ombuds communicates with representatives of the entity as described in Paragraph 2

(d) working with the ombuds may address the problem or concern effectively, but may not protect the rights of either the person contacting the office or the entity in which the ombuds operates

(e) the ombuds is not, and is not a substitute for, anyone’s lawyer, representative or counselor, and

(f) the person may wish to consult a lawyer or other appropriate resource with respect to those rights.

If the ombuds communicates with representatives of the entity concerning an allegation of a violation, then —

(a) a communication that reveals the facts of

(i) a specific allegation and the identity of the complainant or

(ii) allegations by multiple complainants that may reflect related behavior or conduct that is either inappropriate or wrongful

should be regarded as providing notice to the entity of the alleged violation and the complainants should be advised that the ombuds communicated their allegations to the entity; but otherwise,

(b) whether or not the communication constitutes notice to the entity is a question that should be determined by the facts of the communication.

(3) If an ombuds functions in accordance with Paragraph C, “Independence, Impartiality, and Confidentiality,” of these standards, then —

5. Under these standards, any such communication is subject to Paragraph C(3).
(a) no one, including the entity in which the ombuds operates, should deem the ombuds to be an agent of any person or entity, other than the office of the ombuds, for purposes of receiving notice of alleged violations, and

(b) communications made to the ombuds should not be imputed to anyone else, including the entity in which the ombuds acts unless the ombuds communicates with representatives of the entity in which case Paragraph 2 applies.

**LEGISLATIVE OMBUDS**

G. A legislative ombuds is established by the legislature as part of the legislative branch who receives complaints from the general public or internally and addresses actions and failures to act of a government agency, official, public employee, or contractor. In addition to and in clarification of the standards contained in Paragraphs A-F, a legislative ombuds should:

1. be appointed by the legislative body or by the executive with confirmation by the legislative body

2. be authorized to work to hold agencies within the jurisdiction of the office accountable to the public and to assist in legislative oversight of those agencies

3. be authorized to conduct independent and impartial investigations into matters within the prescribed jurisdiction of the office

4. have the power to issue subpoenas for testimony and evidence with respect to investigating allegations within the jurisdiction of the office

5. be authorized to issue public reports, and

6. be authorized to advocate for change both within the entity and publicly.

**EXECUTIVE OMBUDS**

H. An executive ombuds may be located in either the public or private sector and receives complaints from the general public or internally and addresses actions and failures to act of the entity, its officials, employees, and contractors. An executive ombuds may either work to hold the entity or specific programs accountable or work with officials to improve the performance of a program. In addition to and in clarification of the standards contained in Paragraphs A-F, an executive ombuds:

1. should be authorized to conduct investigations and inquiries

---

6. This restates the 1969 ABA Resolution, which remains ABA policy, that a legislative ombuds should be “appoint[ed] by the legislative body or . . . by the executive with confirmation by the designated proportion of the legislative body, preferably more than a majority, such as two thirds.”
(2) should be authorized to issue reports on the results of the investigations and inquiries, and

(3) if located in government, should not have general jurisdiction over more than one agency, but may have jurisdiction over a subject matter that involves multiple agencies.

ORGANIZATIONAL OMBUDS

I. An organizational ombuds facilitates fair and equitable resolutions of concerns that arise within the entity. In addition to and in clarification of the standards contained in Paragraphs A-F, an organizational ombuds should:

(1) be authorized to undertake inquiries and function by informal processes as specified by the charter

(2) be authorized to conduct independent and impartial inquiries into matters within the prescribed jurisdiction of the office

(3) be authorized to issue reports, and

(4) be authorized to advocate for change within the entity.

ADVOCATE OMBUDS

J. An advocate ombuds serves as an advocate on behalf of a population that is designated in the charter. In addition to and in clarification of the standards described in Paragraphs A-F, an advocate ombuds should:

(1) have a basic understanding of the nature and role of advocacy

(2) provide information, advice, and assistance to members of the constituency

(3) evaluate the complainant’s claim objectively and advocate for change or relief when the facts support the claim

(4) be authorized to represent the interests of the designated population with respect to policies implemented or adopted by the establishing entity, government agencies, or other organizations as defined by the charter

(5) be authorized to initiate action in an administrative, judicial, or legislative forum when the facts warrant, and

(6) the notice requirements of Paragraph F do not supersede or change the advocacy responsibilities of an Advocate Ombuds.
EXECUTIVE SUMMARY

1. Summary of the recommendation.
   This resolution endorses Standards for the Establishment and Operation of Ombuds Offices dated February 2004.

2. Summary of the issue which the recommendation addresses.
   Without adherence to these Standards, persons seeking an ombuds's assistance could be subject to retaliation, loss of privacy, and loss of relationships. The resolution and Standards are necessary to protect individual rights.

3. Please explain how the proposed policy position will address the issue.
   The fundamental underlying premise of this resolution is that all ombuds must operate with certain basic authorities and essential characteristics. Without these essential characteristics and limitations on the ombuds's authority to protect them, individuals would be reluctant to seek the ombuds's assistance because of fear of retaliation, loss of privacy, and loss of relationships. This resolution adopts Standards that amend the Standards that were endorsed by the ABA in 2001 in ABA policy in four ways. First, they clarify the issue of notice in Paragraph F. Because an ombuds is intended to supplement, not replace, formal procedures, the Standards address actions that ombuds should take to clarify the relationship between working with an ombuds and seeking legal redress and elaborate on the consequences of that relationship. Secondly, they provide for a new category of Executive ombuds that is described in Paragraph H. Third, they modify the definition of Legislative Ombuds in Paragraph G and the Standards applicable to them to make them conform to the new category of Executive ombuds. Fourth, they modify the limitations on the ombuds authority in Paragraph D.

4. Summary of any minority views or opposition which have been identified.
   None at this time
RESOLVED, That the American Bar Association urges Congress to enact legislation that would address the complex problem presented by the large number of adults with mental illness and juveniles with mental or emotional disorders who come into contact with the criminal and juvenile justice systems; such legislation should provide for:

1) Grant programs to help states, territories and localities develop pre- and post-booking diversion programs;
2) Prevention, in-jail, in-custody, and community-based treatment programs, including re-entry services to adults with mental illness and juveniles with mental or emotional disorders; and
3) Effective training for mental health personnel, law enforcement, judges, court and corrections personnel, probation and parole personnel, prosecutors, and defenders.

FURTHER RESOLVED, That the American Bar Association urges federal, state, local and territorial governments to increase funding for public mental health systems so that adults with mental illness and juveniles with mental or emotional disorders can obtain the support necessary to enable them to live independently in the community, and to avoid contact with the criminal and juvenile justice systems.

FURTHER RESOLVED, That the American Bar Association urges federal, state, local and territorial governments to improve their response to adults with mental illness and juveniles with mental or emotional disorders who come into contact with the criminal justice and juvenile justice systems, by developing and promoting programs, policies and laws that would accomplish the following:

1) Improve collaboration among professionals, administrators, and policymakers in the criminal justice, juvenile justice, mental health, and substance abuse systems;
2) Provide training on mental illness and co-occurring disorders and the mental health and substance abuse systems to judges, court and corrections personnel, law enforcement, probation and parole personnel, prosecutors, and defenders who deal with adults with mental illness and juveniles with mental or emotional disorders;
3) Develop pre- and post-booking programs to divert, where appropriate, adults with mental illness and juveniles with mental or emotional disorders from the criminal and juvenile justice systems;
4) Ensure that law enforcement, courts, and correctional agencies properly accommodate adults with mental illness and juveniles with mental or
40 emotional disorders with whom they come into contact, both as crime
41 victims and as individuals suspected of committing a crime;
42 5) Assist governments at all levels in developing local solutions to the
43 complex problem of dealing with mental illness in the criminal and
44 juvenile justice systems;
45 6) Improve federal, state and local policy and practice with respect to access
46 to health and income benefits for persons with mental illness being
47 released from incarceration so that such benefits are available to them
48 immediately upon release without administrative delays; and
49 7) Collect information and improve research regarding mental illness and
50 individuals with mental illness in the criminal and juvenile justice
51 systems, particularly research on interventions that prevent criminal
52 justice system involvement and reduce recidivism.
EXECUTIVE SUMMARY

A. **Summary of Recommendation.**

   The recommendation urges the adoption of laws and policies to address the complex problem presented by the large number of adults with mental illness and juveniles with mental or emotional disorders who come into contact with the criminal and juvenile justice systems. It also expresses American Bar Association support for increased funding for public mental health systems so that adults with mental illness and juveniles with mental or emotional disorders do not become an undue burden on the criminal justice system.

B. **Issue Recommendation Addresses.**

   This recommendation is intended to address an issue of increasing importance to the criminal justice and juvenile justice systems: the growing number of persons with mental illness and emotional disorders who are convicted or charged with crime or delinquency.

C. **How Proposed Policy Will Address the Issue.**

   The policy recommendation addresses this issue by encouraging jurisdictions to adopt laws and policies to address the complex problem presented by the large number of adults with mental illness and juveniles with mental or emotional disorders who come into contact with the criminal and juvenile justice systems.

D. **Minority Views or Opposition.**

   No opposition to this recommendation is known to exist at this time.
1 Resolved, That the House of Delegates adopt a revised blanket authority procedure,
Representation by Sections
(Blanket Authority)
(February 2004)

At the 1981 Midyear Meeting, the House of Delegates adopted the following "blanket authority" policy, and amended it at the 1991 Annual Meeting. The House of Delegates further amended the policy in February 2004.

Resolved, That the House of Delegates rescinds the "blanket authority" statement presently in effect and adopts instead the following blanket authority resolution:

Be It Resolved, That in order to implement the specific authority required by §25.1 of the Bylaws of the Association, as interpreted by the House of Delegates in this resolution, any section of the Association may present a policy statement on matters within its primary or special expertise and jurisdiction to a federal, state, or municipal legislative body, governmental agency, court (with respect to procedural rules only), interstate governmental body, or international governmental body, subject to the following conditions:

A. Requirements of the Application for Blanket Authority
1. There shall be a clear statement of the policy position to be taken by the section.
2. The section shall submit within the times provided in Part B, below, all communications to be addressed to the federal, state, or municipal legislative body, governmental agency, court, interstate governmental body, or international governmental body, including, without limitation, the following:
   a. Any report or resolution;
   b. Prepared testimony;
   c. Exhibits;
   d. Letter of transmittal;
   e. Executive Summary.
3. The position to be taken by the section must:
   a. Not be in conflict with current Association policy; and
   b. Have been authorized by the section in accordance with its Bylaws.
4. The documents to be submitted on behalf of the section must make clear that they are being presented only on behalf of the section and not on behalf of the Association.
5. The application must disclose any material interest in the subject matter of the policy on the part of any member of a section committee which initiated the proposal and of the section council which approved the submission of the request by reason of specific employment or representation of clients.
6. The application shall state the date of proposed submission to the federal, state, or municipal legislative body, governmental agency,
court, interstate governmental body, or international governmental body.

B. Procedure to Be Followed by Section in Filing Application for Blanket Authority

1. Normal Procedure
   a. At the earliest possible time, but not less than ten (10) working days before the proposed submission date, the section shall send an application meeting the requirements of Part A, above, to (i) the Chair of the House of Delegates; (ii) the Secretary of the Association at the American Bar Center, Chicago, Illinois; (iii) the Governmental Affairs Office, Washington, D.C.; (iv) the chair and staff liaison of each section; and (v) the chair and staff liaison of each committee or affiliated organization which appears to have an interest in the matter.

   b. At the same time, the section shall send to the Chair of the House, the Secretary of the Association and the Governmental Affairs Office (at the places indicated in Part B, section 1a, above) a list of all distributees to whom the application has been sent.

   c. In the case of a policy statement to be presented to a municipal or state agency or legislature, the section shall at the same time also send an application meeting the requirements of Part A, above, to all statewide bar associations in that state and to local bar associations in that state which are represented in the House of Delegates.

   d. In transmitting its application under this procedure, the section shall utilize personal delivery, facsimile transmission, e-mail or other electronic communication, or express mail which is available to the recipients designated herein.

   e. Lengthy submissions, e.g. 10 pages, shall be accompanied by an Executive Summary.

2. Expedited Procedure
   In situations where submission of the application ten (10) working days before the proposed submission date is not possible:

   a. The section shall cause a copy of the application meeting the requirements of Part A, above, to be received by, or delivered to: (i) the Chair of the House of Delegates; (ii) the Secretary of the Association at the American Bar Center, Chicago, Illinois; (iii) the Governmental Affairs Office, Washington, D.C.; (iv) the chair and staff liaison of each section; and (v) the chair and staff liaison of each committee or affiliated organization which appears to have an interest in the matter, not less than two (2) working days prior to the proposed submission date.

   b. In the case of a statement to be presented to a municipal or state agency or legislature, the section shall also cause a copy of said application to be received by all statewide bar associations in that
state and local bar associations in that state which are represented in the House of Delegates not less than at least two (2) working days prior to the proposed submission date.

c. To its application the section also shall append a statement explaining why the 10-day procedure outlined above has not been followed.

d. In transmitting its application under this expedited procedure, the section shall utilize personal delivery, facsimile transmission, e-mail or other electronic communication, or express mail which is available to the recipients designated herein.

e. Lengthy submissions shall be accompanied by an Executive Summary.

C. Procedure to Be Followed in Considering Applications for Blanket Authority

1. The Office of the Secretary will determine whether proper distribution of the application has been made.

2. The Chair of the House of Delegates or the Secretary of the Association may object to the section presentation if:
   a. It is in conflict with current Association policy; or
   b. The proposed statement is not within the primary or special expertise and jurisdiction of the section submitting it; or
   c. The matter is of such significance to the legal profession and the Association as a whole that no presentation should be made without specific authorization from the Board of Governors or the House of Delegates; or
   d. The statement merely reaffirms existing Association policy approved within the preceding six years.

3. If a section or committee desires to object to the presentation of a section policy position under blanket authority, it shall immediately communicate its objection and reasons therefore by telephone, and electronically, to (i) the Chair of the House of Delegates; (ii) the Secretary of the Association; and (iii) the section desiring to submit the position under blanket authority.

4. If no objection to the section presentation is received the section may present its statement to the federal, state or municipal legislative body, governmental agency, court, interstate governmental body, or international governmental body, on or after the proposed submission date.

5. When an objection has been made, the Office of the Secretary will immediately notify the section seeking blanket authority, and if that section so requests, will transmit the application together with any objection thereto to the Board of Governors for its consideration.

6. If an objection is made, the section shall not present its statement of policy unless approval is obtained from the Board of Governors or the House of Delegates.
7. Blanket authority when granted under the normal procedure shall continue for a period of two years; when granted under the expedited procedure, for ninety (90) days. Upon application under the normal procedure it may be renewed for successive two-year periods.

8. Copies of the transmitted letter and comments must be contemporaneously sent to (i) the Secretary of the Association in care of the Policy Administration Division at the American Bar Center, Chicago, Illinois; and (ii) the Governmental Affairs Office, Washington, D.C.

D. Authority of Section to Submit Technical Comments

1. The blanket authority procedure described above in parts A, B and C, is not applicable when a section submits technical comments to a government executive branch agency (hereinafter “governmental agency”) pursuant to this Part D.

2. "Technical comments" are defined as comments that are narrowly-focused within a particular section’s primary or special expertise and jurisdiction, and are being submitted in response to a time limited solicitation for comments by a governmental agency.

3. Technical comments
   a. May not be in conflict with current Association policy; and
   b. May not conflict with other policy approved pursuant to the blanket authority procedure.

4. The Board may grant to a section the authority to submit “technical comments” as defined herein on an ongoing basis to a specified governmental agency on specified subject matters. The grant of such authority will generally be for three years but subject to rescission by the Board at any time. The grant of authority may be renewed for additional three-year terms by this same application procedure.
   a. A section desiring such authority shall submit to the Board an application, which shall state the governmental agency or agencies to which it desires to submit technical comments and the subject matter areas on which it intends to comment.
   b. The applying section should at the time of application circulate its application to the Chair and ABA staff liaison of each section and of each committee or affiliated organization, which appears to have an interest in the agencies and/or subject matter areas indicated in the application. These entities will be invited to notify the applying section and the Board whether it opposes the request or whether it would like to be a “reviewing entity” for any or all technical comments submitted pursuant to a grant of authority to the applying section. An entity with expertise may state a reasoned objection or request to be a reviewing entity within thirty (30) days of notice of the application. The Board may determine whether and with respect to what matters an entity will be a reviewing entity.
   c. The Board may approve, deny, or modify the application. It may
specify that the applying section must submit all or some of its technical comments to a reviewing entity or entities at least two business days in advance of the proposed submission date. A reviewing entity may object to the filing; if it does, the President of the Association will decide whether or not the technical comments may be submitted.

5. Technical comments may be submitted to a governmental agency on behalf of the section or an entity of a section, as the views of the section or the section entity, in accordance with the following procedure:
   a. The comments must be reviewed and approved for submission by section leadership.
   b. The comments must contain a disclaimer that specifically states the comments do not represent the policy of the Association or, when appropriate, the views of the section.
   c. Comments of individual members of sections shall not be submitted to a governmental agency using the letterhead of an ABA entity or referencing an ABA entity’s involvement.
   d. Copies of the transmitted letter and comments must be contemporaneously sent to (i) the Secretary of the Association in care of the Policy Administration Division at the American Bar Center, Chicago, Illinois; and (ii) the Governmental Affairs Office, Washington, D.C. The comments when submitted to these ABA entities must be accompanied by a certification, signed by the section chair, that the comments have been reviewed and approved by the section leadership as technical comments within the section’s primary or special expertise and jurisdiction. The Office of the Secretary and the Governmental Affairs Office will make periodic reports to the Operations Committee regarding the implementation of the grant of authority.

Detailed guidelines for the submission of blanket authority requests are available upon request to the Division for Policy Administration.
EXECUTIVE SUMMARY

1. **Summary of the Recommendation.**

   The American Bar Association Board of Governors recommends the adoption of a revised Blanket Authority Procedure.

2. **Summary of the Issue which the Recommendation Addresses.**

   The recommendation will address the significant concern of the Board that there be proper, balanced oversight of the submission of comments by ABA entities to governmental bodies and will also permit the longstanding, invaluable relationships between certain ABA entities and certain governmental bodies to continue.

3. **Explanation of How the Proposed Policy Position will Address the Issue.**

   The Board is recommending a change to the existing Blanket Authority Procedure to permit ABA Sections to submit “technical comments.” The Board is also proposing several minor amendments to make the Procedure more “user friendly.” The Board is of the opinion that that the proposed revisions will make the Blanket Authority Procedure more open, balanced and easier to monitor and, at the same time, permit the longstanding relationships between certain ABA entities and the governmental agencies to which they submit comments to continue.

4. **A Summary of any Minority Views or Opposition which Have Been Identified.**

   Several ABA sections have expressed concerns with specific language or procedures set forth in drafts of the proposed revisions.
AMERICAN BAR ASSOCIATION
SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR
REPORT TO THE HOUSE OF DELEGATES

Recommendation

Resolved, That the House of Delegates of the American Bar Association concurs with the action of the Council of the Section of Legal Education and Admissions to the Bar in removing Western State University College of Law from the list of schools approved by the American Bar Association.
EXECUTIVE SUMMARY

1. Summary of the recommendation.

That Western State University College of Law be removed from the list of law schools approved by the American Bar Association upon the concurrence of the House at its February 2004 meeting.

2. Summary of the issue which the recommendation addresses.

Under Standard 103(a) of the Standards for Approval of Law Schools, a school may be granted full approval only if it establishes that it fully complies with all of the Standards. Under Standard 102(b), a school may not remain in provisional approval status more than five years unless the school establishes that its situation represents an “extraordinary case” and there is “good cause” to extend its period of provisional approval. After careful consideration, the Council of the Section of Legal Education and Admissions to the Bar, at its June 6-7, 2003 meeting, determined that Western State had failed to establish that it is in full compliance with each of the Standards. The Council further concluded that Western State had not established that its situation constituted an “extraordinary case” and that Western State had not established that there was “good cause” sufficient to justify extending the School’s provisional approval beyond the normal five-year period. The Council ordered Western State to appear before the Accreditation Committee in November 2003 and the Council in December 2003 to show cause why it should not be removed from the list of ABA-approved law schools. As a result of those proceedings, the Council at its December 5-6, 2003 meeting, concluded that Western State still was not in full compliance with the Standards and therefore did not qualify for full approval, and that Western State had not met the criteria for extending a school’s provisional approval beyond the normal five-year maximum period. Therefore, the Council voted to remove Western State University College of Law from the list of law schools approved by the American Bar Association, upon the concurrence of the House of Delegates.

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

Concurrence by the House in the action of the Council of the Section of Legal Education and Admissions to the Bar to remove Western State from the list of law schools approved by the American Bar Association will enforce and implement the requirements of the ABA Standards for Approval of Law Schools.

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

None.