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RESOLUTION

1 RESOLVED, That the American Bar Association urges lawyer disciplinary authorities not to
take disciplinary action against lawyers who counsel and assist clients about compliance with
state and territorial laws legalizing the possession and use of marijuana.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution urges lawyer disciplinary authorities not to take disciplinary action against lawyers who counsel or assist clients about compliance with state and territorial laws legalizing the possession and use of marijuana.

2. Summary of the Issue that the Resolution Addresses

The legal use of marijuana under state law continues to grow. Eighteen states and the District of Columbia have some form of medical marijuana. Voters in Washington State and Colorado recently approved the legalization of marijuana for recreational purposes under comprehensive schemes to regulate the production, sale, distribution, and taxation of marijuana. In order to comply with these laws, clients need the assistance of legal counsel. This includes assistance of lawyers to help state and local authorities implement schemes for legal marijuana enterprises. Marijuana remains illegal under federal law. Because the Model Rules of Professional Conduct prohibit a lawyer from assisting a client to commit an illegal act, counseling and assisting a client about compliance with state or territorial legal marijuana could be deemed a disciplinary offense because marijuana possession or sale remains illegal under federal law.

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

This Resolution urges appropriate disciplinary authorities not to take disciplinary actions against lawyers who counsel and assist clients about compliance with state and territorial laws legalizing marijuana.

4. Summary of Minority Views

Unknown at the time this Summary was prepared.
RESOLVED, That the American Bar Association urges states and territories to review their judicial disqualification procedures to assure the fair and impartial administration of justice and to conduct such reviews periodically.

FURTHER RESOLVED, That the American Bar Association urges states and territories to establish procedures that include objective minimum standards for judicial disqualification when there is a substantial risk of actual bias or when a judge’s impartiality might reasonably be questioned. Such minimum standards should include consideration of the following factors:

A. The effect of direct or indirect financial expenditures supporting or opposing a judicial candidate’s selection;

B. The time period to be considered when determining whether a potential conflict exists; and,

C. The method and jurisprudence of judicial selection in the jurisdiction.
EXECUTIVE SUMMARY

1. Summary of the Resolution

Recent developments in Supreme Court jurisprudence have increased concerns about judicial disqualification procedures in state courts. As a result, there is urgency to determining whether current procedures appropriately safeguard the public's reliance on the judiciary's fairness, impartiality, and decisional independence. Designing an objective and clear judicial disqualification procedure that does not unnecessarily cause recusal is unquestionably a challenging undertaking. Nonetheless, it is one that must be accomplished with urgency in order to protect the public interest and to provide meaningful guidance to judges who are tasked with interpreting and applying those guidelines. This resolution urges that the existing rules be reexamined both immediately and periodically and, where inadequate, new procedures be adopted that are clear and objective. It further recognizes that reexamination and adoption of new procedures should be a function of the judicial branch's authority over its own self-governance.

2. Summary of the issue which the Resolution addresses

In 2009, the Supreme Court determined that due process required judicial disqualification in certain extreme circumstances. The Standing Committee on Professional Discipline and the Standing Committee on Ethics and Professional Responsibility were tasked with considering whether amendments should be made to the ABA Model Code of Judicial Conduct or to the ABA Model Rules of Professional Conduct in order to provide additional guidance to the states. Those efforts have produced a variety of different approaches, the latest of which may be submitted as a resolution to the House. However, because of problems inherent in each of the different approaches considered by the standing committees, the current resolution is necessary to recognize both the urgency of moving forward on recusal rules in the states and territories, as well as the need for those rules to conform to the particularities of each jurisdiction, as would occur through each state’s or territory’s rulemaking bodies. The new rules must be sufficiently unambiguous as to ensure that they are capable of efficient administration, of unbiased and predictable enforcement, and of providing meaningful guidance to judges tasked with interpreting them on a daily basis. This resolution supplements Resolution 107, without changing it, to urge states to undertake that effort.

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

The resolution asks states and territories to undertake both an immediate review and periodic reviews of their judicial disqualification rules, in order to assure that the rules reflect contemporary experience. It also reiterates the importance that caselaw establishes for clear, objective rules that do not unnecessarily require recusal. As states seek to provide clear guidance to their judges to aid them in the determination of when their impartiality is reasonably questioned, more ambiguous model codes risk becoming
obsolete and, in fact, may provide less guidance to the states and judges than clear, unambiguous codes. The proposed policy will make it clear that the states and territories must proceed with all dispatch.

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

The proposers understand that the standing committees would prefer a more uniform approach. While this resolution does not foreclose any proposed model rule, it seeks greater flexibility than a uniform rule would allow.
PROPOSAL: Amends §1.2 of the Constitution to include the following language as one of the purposes of the Association: “to defend the right to life of all innocent human beings, including all those conceived but not yet born.”

Amends §1.2 of the Constitution to read as follows (Legislative Draft - - Additions underlined; deletions struck-through):

§1.2 Purposes. The purposes of the Association are to uphold and defend the Constitution of the United States and maintain representative government; to defend the right to life of all innocent human beings, including all those conceived but not yet born; to advance the science of jurisprudence; to promote throughout the nation the administration of justice and the uniformity of legislation and of judicial decisions; to uphold the honor of the profession of law; to apply the knowledge and experience of the profession to the promotion of the public good; to encourage cordial intercourse among the members of the American bar; and to correlate and promote the activities of the bar organizations in the nation within these purposes and in the interests of the profession and of the public.
On a Proposal to Amend the ABA Constitution
to
Add this as a fundamental ABA purpose:

*To defend the right to life of all innocent human beings, including all those conceived but not yet born.*

For consideration at the August 12 and 13, 2013 Annual Meeting

The undersigned proposes that the American Bar Association Constitution, Article 1, Section 1.2 - Purposes - be amended by inserting the following language (between the quotation marks) after the first semicolon: “to defend the right to life of all innocent human beings, including all those conceived but not yet born;”.

Article 1 of the ABA Constitution is entitled “Name and Purposes.” Section 1.2 is entitled “Purposes.” Once amended, section 1.2 would read in full as follows:

The purposes of the Association are to uphold and defend the Constitution of the United States and maintain representative government; to defend the right to life of all innocent human beings, including all those conceived but not yet born; to advance the science of jurisprudence; to promote throughout the nation the administration of justice and the uniformity of legislation and of judicial decisions; to uphold the honor of the profession of law; to apply the knowledge and experience of the profession to the promotion of the public good; to encourage cordial intercourse among the members of the American bar; and to correlate and promote the activities of the bar organizations in the nation within these purposes and in the interests of the profession and of the public. [The new language is in bold for the purpose of highlighting.]

Once again, God willing, I will move for the adoption of this proposal at the House of Delegates in San Francisco in August 2013. I made the same motion before the House of Delegates the last twelve years in a row. My hope continues that some day our culture of death will be overcome. We lawyers must not turn a blind eye to our children being poisoned to death and torn apart in our midst. I may be crying in the wilderness, but the cry – and the thirst for justice it represents - will never die.
In none of the twelve earlier meetings of the House of Delegates where this proposal was considered was there an actual vote on the proposal. The first ten times, after the presentation of the proposal, the Standing Committee on Constitution and Bylaws reported to the House that the proposal is inconsistent with another purpose of the ABA - to uphold and defend the Constitution of the United States - and that therefore the proposal was “out of order.” Each time the Committee made that bold assertion without explaining why it is so (despite my explicit written request to the Committee in each of the last several years to explain in writing why this position is taken). And in each of those ten meetings, then a motion was made¹ that the House postpone indefinitely action on my proposal. In 2010, a member of the House who disagrees with this proposal nevertheless tried to get the House to vote on the proposal, but his motion was rejected. I didn’t quite catch his name then, but now I think it may have been Robert L. Weinberg – thank you, Bob.

In 2011, the Committee chairperson reported to the House that the Committee took no position on the merits of the proposal that the ABA defend the right to life of all innocent human beings, including those conceived but not yet born, but stated that the Committee disagreed that this subject should be addressed in the purposes section of the ABA constitution, since the constitution does not adopt policy “beyond the basics”; and as a result, clearly by arrangement with the Committee, another member of the House rose to move that the proposal be postponed indefinitely, and this was overwhelmingly approved by voice vote, with maybe only about five or so “nays” as far as I could tell.

In 2012, the Committee chairperson said that the proposal is inconsistent with other purposes of the Association and should be rejected, but he did not state why he concluded that the proposal is inconsistent with other purposes of the Association and did not specifically mention any of the inconsistent purposes. Then someone else moved, not that the proposal be rejected as suggested by the Chairperson, but rather that the proposal be postponed indefinitely. In the voice vote then taken, I’d say about 10 delegates opposed the motion, some quite vociferously. By overwhelming voice vote, the proposal was postponed indefinitely.

In 2001 the vote on the motion to postpone action indefinitely was 209 to 39, but you will never find the precise vote in the record of proceedings of that meeting, because even though the vote was displayed electronically on a large screen in the front of the room, the precise vote itself was not recorded. In 2002 through 2011 the vote on the motion to postpone indefinitely was taken by voice vote.² In 2002 through 2010, many

¹In 2001 by a non-committee member of the House, and in each time thereafter by the Committee representative himself or herself.

²Although the ABA has an annual budget of over $100 million, the House of Delegates is not willing to commit the relatively minor sum it would take in order to bring transparency and accountability to the actions of the House by having every member’s vote electronically recorded when it deals with the most important matters, such as amendments to the ABA constitution or bylaws, and the adoption, amendment, or rescission of ABA policy positions. I presented to the ABA House of Delegates a proposal to bring that transparency and accountability to the House and to have the results posted for a
uncounted voices intoned “yes,” and perhaps two to four people said “no,” except 2005, when I thought I heard maybe ten courageous “no”s.

I want to see the House pass this proposal, but I realize passage now would take a miracle. This is driven home in each when new members of the House who have never been members before stand up in order to be introduced to the assemblage. Each year there are well fewer than twenty new members. And, of course, the House several years ago defeated a term limits proposal. It would seem, then, that the House of Delegates is a pretty closed club with lots of long-term members. In addition to looking for that miracle, I am also hoping that the consciences of a few of the members will be pricked enough that they will be willing to “submit a salmon slip” and stand up in the House and speak out for the right to life of the innocents in the face of embarrassment and possible ostracism. Even if I have no chance short of a miracle for passage of the proposal, if we can just “get the ball rolling” with a little bit of courage from members who agree, who knows? Maybe before too many more years baby-killing-in-the-womb will go the way of slavery. It could happen. “My section [bar association, committee, etc.] does not want its representative to vote on this kind of social issue” is not a legitimate position to take, is it? The House of Delegates addresses these kinds of issues every annual meeting. The representative of your section, etc., must be ready to address them also if your section, etc. is to be fully represented in the House. Please, stand up and be counted. If you don’t, won’t you regret it in the end, when you look back on your life seeking evidence of courage? I write as I do in this paragraph because I cannot believe that only ten members of the House, or fewer, recognize the obvious truth of my argument. So, once again, on to the meat of the issue:

Feminism - here meaning the conviction that women’s government-enforced rights and privileges have been neglected in the past and now need augmentation - begs the question, how far should women’s “rights” go? If you are a mother with a child in your womb, and if bearing your child to term or keeping your child after birth would be embarrassing, inconvenient, career-killing, poverty-causing, husband-limiting, depressing, or physically more than normally risky, do you have the right to kill your child as a legally-approved exit from motherhood, as long as you do it before your child fully emerges from the protection of your body?

year on the ABA website. It failed miserably, with only about ten of the 500 or so in attendance voting in favor (based upon my guestimate at the time of the voice vote). Actually, I think it is important enough to bring it back to the House, but for now at least I leave that to others. In 2005 the chairperson of the House mentioned in his remarks that he, too, thinks the House should have electronic voting. And it would not take much money to bring accountability to the House of Delegates. At a CLE program in the Virgin Islands recently, hand-held voting devices were given to the attendees to make part of the program interactive, so it cannot be very expensive, even if the individual votes, tied to specific members, are permanently recorded as part of the process. It is amazing in this day and age that the ABA House of Delegates is utterly opaque. The House intentionally refuses to put in place systems to reveal the votes of its members on the many important issues upon which it takes positions. No doubt the members of the House demand transparency of others in other contexts. The opaque nature of the House is indefensible.
Or does your child, by her mere humanity, have a sacrosanct right to live, and continue to develop and grow in liberty and pursue happiness as she comes to know it? The answer: Human life, including that of our littlest ones, is sacred. This realization was one of the greatest advances of Christianity over the paganism that condoned exposing unto death the unwanted child. Abortion in our society is quicker than exposure, and is hidden away in the womb (or at the end of the birth canal) so that we can lie to ourselves about what we are doing. But respect for innocent human life must be fundamental to civilized society, as “Thou Shalt Not Kill” signifies.

We should know that human life is sacred and to be defended against all competing claims of “right.” Our nation’s declaration of birth - the Declaration of Independence of July 4, 1776 - set forth the raison d’etre for the United States of America as a separate nation. The Declaration asserted that it is self-evident that all men are endowed by their Creator with the unalienable right to life; and that governments are instituted among men to secure the rights to life, liberty, and the pursuit of happiness. This insistence upon governmental protection of the right to life of all innocent human beings must be a fundamental function of any legitimate government.

The Creator referenced in the Declaration of Independence chose to have each new child begin life within his or her mother. The child in the womb has her own unique set of DNA. She is a separate human being - not simply part of her mother. On April 23 and 24, 1981 a United States Senate Judiciary subcommittee held hearings on the question: When does life begin? The internationally known group of geneticists and biologists had the same conclusion - life begins at conception.

The stories one hears about mothers on their way to have a child in the womb poisoned to death or ripped apart by an abortionist, suddenly having a change of heart when they see another mother walking by holding and cuddling her baby, or seeing a poster of a baby with the words “Abortion Kills,” are heart-warming, but they also underscore how the general discussion of the abortion problem in the media depersonalizes the separate human being held by God’s design in the vessel of her mother. That’s another, separate human being in there - one who has the right to life, liberty, and the pursuit of happiness, just as we do, no matter how deeply we stick our heads in the sand.

Shouldn’t we recognize the zygote, the embryo, the fetus in the womb of a human mother as another human being - one who has rights? I recommend you check out the website for the journal First Things and type “Condic” in the search box. You’ll find several articles by Maureen L. Condic, an assistant professor of neurobiology and anatomy at the University of Utah. She points out (in her May 2003 article, “Life: Defining the Beginning by the End”) that the common arguments about when human life begins are only of three general types: arguments from form, arguments from ability, and arguments from preference, and that these arguments are all highly subjective, amounting to arguments that the new organism growing in the womb is not a human being worthy of protection in law because it is tiny, or because it is not a “person,” or because it is early in its development.
Dr. Condic rightly rejects the use of these three flawed arguments about when life begins. Instead, she cogently argues that we should determine when the new human organism begins, because that is the true beginning of the human being. She points out that one must distinguish between mere living cells that are not organized into an organism, and living organisms. Dr. Condic points out that “[o]rganisms are living beings composed of parts that have separate but mutually dependent functions. While organisms are made of living cells, living cells themselves do not necessarily constitute an organism. The critical difference between a collection of cells and a living organism is the ability of an organism to act in a coordinated manner for the continued health and maintenance of the body as a whole. ... Unlike other definitions, understanding human life to be an intrinsic property of human organism does not require subjective judgments regarding ‘quality of life’ or relative worth. A definition based on the organismal nature of human beings acknowledges that individuals with differing appearance, ability, and ‘desirability’ are, nonetheless, equally human. ... Once the nature of human beings as organisms has been abandoned as the basis for assigning legal personhood, it is difficult to propose an alternative definition that could not be used to deny humanity to virtually anyone.” The zygotes, the embryos, the fetuses in the wombs of human mothers are all human organisms; that is to say, human beings.

But can any of us, with what we know about the child’s unique set of DNA beginning at conception, even pretend now that this is not true? The possibility of twinning does not diminish the recognition that upon conception there is brand new, separate, unique human life in the mother’s body – a new person or persons. The mother is responsible for taking care of that child, but she does not own the child – God does. Slavery made the mistake of thinking that one human being can own another. We now know that no man should be permitted under man’s law to own another. But how can one justify killing another innocent human being if one does not own him? The inconvenience and burden of the other’s life on one’s own is not enough. The burden of the dependent relation does not end at the birth canal. How far should the right to kill those dependent upon us go? Should the standard evolve from the complete dependence of the womb to the excessive dependence of severe mental retardation and severe physical handicaps?

Just because the child is held and nourished within her mother does not give her mother the right to kill her. To the contrary, the mother with a child in the womb has a special responsibility to protect and care for her child. The generally recognized principle that parents must take care of their children once they are born applies as well to the children while they are growing and developing in the womb. I am not judging here the status of the soul of those who have had abortions or who commit abortions. I leave that (and the judging of my own soul) to God. But what we must judge as a people is what actions are so intrinsically evil, and do such harm to others who are innocent of wrongdoing (such as killing them), that the State, any decent State, must prohibit those actions from being inflicted on their victims. Obviously, the baby in the womb is the victim of abortion.
I do not want to offend the women who have been bamboozled by our abortion culture, but is not abortion the ultimate hate crime - the turning of legendary motherly love to the hatred of, and the killing of, one's own child? Perhaps it is indifference to the child rather than hatred of the child, but this may be worse in its own way, as they say the opposite of love is not hate, but apathy.

Motherly love was known through the centuries until recently as the gold standard of love – unselfish and without limit – the willingness to give one’s very life for one’s child. This love is the foundation for a culture of life. Abortion is the foundation for our culture of death. Speaking of being bamboozled, recall the serpent in the Garden of Eden, enticing Eve to eat the forbidden fruit on the promise that she would become like God. Now mothers are enticed into abortion with the lie that they can become like men, and needn’t be burdened with child in the womb or that child after birth. Eat the fruit of abandonment of your child and freedom is yours. A Faustian bargain if ever there were one.

The United States of America fails in its fundamental mission if it refuses to secure for the weakest and most vulnerable innocent people amongst us the rights to life, liberty, and the pursuit of happiness. The ABA fails in its mission if it fails to stand up for the rights of the powerless. If we deny the right to life for children in the womb because they are developmentally immature (and therefore, in the eyes of some, not “persons”), then we not only tragically deny these children their rights - we open the door to infanticide and the killing of other weak and infirm people. There is a crisis in the United States over the loss of our moral roots. The ABA, which claims to be the voice of the legal profession, and to be an advocate of the protection of fundamental rights, should become a strong voice for all the weak and vulnerable innocents who so desperately need champions now.

We would do well also to realize that the Constitution of the United States - and the Supreme Court’s interpretation of it - is not the fundamental source of human rights within the United States. Our rights to life, liberty, and the pursuit of happiness do not arise out of our own “social contract” - the Constitution. To the contrary, as the Declaration asserts, these rights are endowed upon us by our Creator. The rights of the child are a burden to the mother, but fundamental rights of others are a burden we must bear.

At the 2001 Annual Meeting, the Chair of the Standing Committee on Constitution and Bylaws reported that the Committee “voted to recommend to the House that the proposal be considered out of order, in that it is inconsistent with the first purpose clause of Association’s Constitution, which is ... ‘To uphold and defend the Constitution of the United States and maintain representative government.’” The same
claim was made in subsequent years, until 2011, when the Committee took no position “on the merits of the proposal,” but asserted the proposed language does not merit inclusion in the purposes section of the ABA constitution. Then in 2012 the Committee said the proposal should be rejected due to unexplained inconsistencies with other Association purposes.

Although the Committee changed its position in 2011, I believe it is important to explain again why defending the right to life of all innocent human beings, including all those conceived but not yet born, is consistent with supporting and defending the Constitution of the United States, and that analysis follows. This analysis is included again because for ten years straight the House of Delegates used the inconsistency argument as a reason to postpone the proposal indefinitely, and raised it again, but without specificity, in 2012. Later in this report I explain why the language I propose does belong in the purposes section of the ABA constitution. That explanation addresses the 2011 position of the Standing Committee on Constitution and Bylaws.

So, the inconsistency contention has no merit. First the obvious: Nowhere does the actual language of the United States Constitution specify that the States may not defend the right to life of each and every innocent human being within their respective jurisdictions (including all those conceived but not yet born). So the claim that the defense of such life is inconsistent with defending and upholding the Constitution is on its face highly suspect. If the inconsistency argument does not rest on the actual language of the Constitution, let us go beyond the actual language of the Constitution and try to articulate the argument. The inconsistency argument could be so stated:

1. **Roe v. Wade** and **Planned Parenthood v. Casey** prohibit each State from defending the right to life of each and all innocent human beings conceived but not yet born, within the State’s jurisdiction.

2. The Supreme Court has determined that the Constitution’s penumbra of privacy rights attendant to the pregnant mothers is what prohibits the States from defending the right to life of each and all those conceived but not yet born.

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3 It is good that the Committee’s position in the first ten years implicitly admitted that the children being killed in their mother’s wombs are in fact innocent human beings, not just blobs of tissue that are part of the mother’s body. That realization is step number one.

4 Like St. Thomas Aquinas, I construct the argument against my position. I repeatedly asked the Standing Committee on Constitution and Bylaws to articulate the reason for its – to me, bizarre – position that taking a stance defending the right to life of all innocent human beings including all those conceived but not yet born is somehow inconsistent with upholding and defending the Constitution of the United States, but the Committee refuses to articulate the reasons for its position – either orally or in writing.
3. Therefore, it is the Constitution itself that prohibits the defense by the States of the right to life of all those conceived but not yet born.

4. Therefore, advocating the defense of the right to life of all those conceived but not yet born is inconsistent with upholding and defending the Constitution since the Constitution prohibits that defense.

But it cannot be reasonably be said (1) that the holdings of Roe v. Wade as modified by Planned Parenthood v. Casey are the Constitution itself - and (2) that if one opposes Roe and Planned Parenthood, one is opposing the Constitution itself - and failing to uphold and defend it. The lack of identity of particular Supreme Court interpretations of the Constitution with the Constitution itself should be rather self-evident. No doubt you (the members of the House) are aware that legal conclusions underlying many Supreme Court decisions - including those interpreting the Constitution - have been rejected by later Supreme Court decisions although the relevant language of the Constitution has not changed in the interim. Thus, generally, contending that opposition to a particular Supreme Court interpretation of the Constitution constitutes opposition to the Constitution itself is stretching language and logic to the breaking point.

Now, maybe a persuasive argument could be made that although some Supreme Court interpretations of the Constitution are subject to later change, some are so indisputably correct that in some real sense the interpretation could be said to be the Constitution itself. If the Supreme Court rationale for Roe v. Wade and Planned Parenthood v. Casey were so rock-solid and accepted by American society in general as the proper articulation of a virtually undisputed fundamental individual right grounded in the Constitution, one could argue that in effect these Supreme Court decisions are equivalent to the Constitution; but that is certainly not the case with Roe v. Wade and Planned Parenthood v. Casey. (And note that Planned Parenthood itself modified fundamental holdings of Roe.)

The truth is quite to the contrary of the position of the Standing Committee on Constitution and Bylaws. The reality is that the rationale underlying these two Supreme Court decisions deserves no support from an organization pledged to uphold and defend the Constitution of United States. This is because the underlying rationale for the decisions is bogus, even if one accepts the concept of the privacy rights penumbra. The Supreme Court’s opinion in Roe v. Wade takes the position that neither Texas nor any other State may legislatively determine that human life begins at conception, since (the Court asserted) there is uncertainty over the legitimacy of that claim - that human life does begin at conception. But this claimed uncertainty is a figment of the Supreme Court’s imagination. There is no real uncertainty over the point at which each human
life begins - we all have our own unique set of 46 chromosomes. This set is forged at the moment of conception. The new child (or, perhaps, eventually, the new twins) is new human life - residing within the child’s mother, but not simply a part of her.

Based on the faulty contention that the child in the womb cannot properly be legislatively determined to be a human being, the Supreme Court denigrated the child to the status “potential life,” stripping the child of her rightful status under the law as a human being. The Court then set up a false dichotomy of competing rights: the mother’s “right to privacy” right to kill the non-human blob in her womb verses the State’s interest in protecting the “potential life” in the womb and the health of the mother. (Referring to a living being with its own DNA as “potential life” is doublespeak at its best.) The hand dealt the child in the womb by the Supreme Court was dealt from a stacked deck - based upon the lie that the child in the womb is not really a child. As a “potential life” rather than a real, live human being, the child’s real rights get pushed aside by the Supreme Court. The rationale of Roe v. Wade is not indisputable (and thus, one might argue, the Constitution itself); rather, the rationale of Roe v. Wade is fatuous.

Finally, the proposal (and all already articulated purposes in ABA Constitution Section 1.2) presupposes the ABA defense of the right to life of the innocents will be undertaken by lawful means. Suppose the ABA as an organization were to advocate a change through lawful means in the United States Constitution (or in a Supreme Court interpretation of the Constitution). Would this mean the ABA had abandoned its purpose to uphold and defend the Constitution? Of course not. We have an obligation to address constitutional issues that need addressing. We honor the Constitution by doing so. So, even if I were advocating change in the language of the Constitution by lawful means, my proposal would not conflict with the ABA purpose to uphold and defend the Constitution.

In 2011, the Committee on Constitution and Bylaws suggested that what I advocate is a policy position for the ABA, not a purpose of the ABA, and therefore my proposal should be rejected on the ground that it does not belong in Section 1.2 of the ABA Constitution. I disagree with this contention also. After all, what is a purpose? A purpose is simply a fundamental policy. The innocent human beings in the wombs of their mothers (many of whom have become mortal enemies of their own children) cry out for our country to renew its commitment to the basic principles of the Declaration of Independence - that every innocent human being has the right to life, liberty, and the pursuit of happiness. And it is not just the innocents in the womb who cry out for champions. We are sliding down the slippery slope of disregard for the sanctity of human life for many outside the womb as well - the old, the infirm, and the disabled. If we do not wake up and start standing up for what is right, soon many of these innocents will have to be justifying why their lives should be spared - why we should be spending
money and effort on their inconvenient and bothersome lives. The intentional killing of perhaps 1.2 million innocent human beings by abortion in the United States each year in recent years (and even more before) is such an affront to justice that the ABA should make defending the rights of those (and other) innocent beings one of its fundamental policies – one of its very purposes.

Remember the argument over the propriety of amending the U.S. Constitution with the Bill of Rights shortly after the approval of the Constitution itself? There were those who argued that it is unnecessary and inappropriate to articulate in the Constitution these rights of the people and of the States against intrusion by the federal government, since the federal government was permitted to exercise only those powers granted to it in the Constitution anyway. But those rights articulated in those first ten amendments were considered so fundamental that they should be explicitly set forth in the Constitution itself.

Well, our country has abandoned its fundamental argument for its own formation when it denies to some innocents the inalienable God-given right to life itself, allowing others with the sanction of law to kill off innocents. This is a fundamental perversion of what the United States should be. The ABA should make the correction of this deviation one of its bedrock, fundamental policies – that is, one of its very purposes of being. The ABA goes on and on nowadays about its support of “the rule of law,” but where is that support when it comes to children in the womb? Where are their lawyers defending their rights? Where is the defense and pursuit of justice here?

The Committee claimed that the subject of the proposal is not fundamental enough - or is not of the right character - to be included in the purposes section of the ABA constitution. But compare a stance against stripping the right to life from millions of innocents to the purposes that are in the ABA constitution. Defending the right to life of innocents when it is being denied by our “law” is much more fundamental than even the upholding and defending of our hallowed U.S. Constitution and representative government. The ABA purpose I propose goes to the very heart of what an association of American lawyers should be all about. We are supposed to be the upholders of the law. We are supposed to champion those whose rights are being disrespected. Incredibly, a fundamental disrespect for a category of persons’ rights has been incorporated as a fundamental tenant of our American “law.” A stand against this cries out for inclusion in the purposes section of the ABA constitution.

Matters of much lower import and importance to our law and our role as lawyers are already included in the articulation of ABA purposes. My proposal is more fundamental than the ABA constitution existing purposes to “advance the science of jurisprudence”, “promote the uniformity of legislation and of judicial decisions”, “uphold the honor of the profession of law”, and to “encourage cordial intercourse
among members of the American bar.” The Committee is wrong when it says that my proposal does not belong in the purposes section of the ABA constitution.

At the House of Delegates in August 2001, the speaker who advocated postponing the proposal indefinitely said that the proposal “changes fundamentally the purpose of the American Bar Association and the Constitution and Bylaws, and has ramifications over a wide array of policy that the Association has adopted and implemented.” I have reviewed the ABA Policy and Procedures Handbook and note here policy positions taken by the ABA that are, or may be regarded as inconsistent with the proposal being made hereby.

The ABA Policy and Procedures Handbook lists hundreds of standing policies adopted by the ABA over the years, although apparently some sort of action was taken at the 2001 meeting to “archive” some policies over ten years old. I have not investigated what policies have been archived, if any. Way back in 1978, the ABA adopted a policy, still in the Handbook, supporting federal and state legislation to “finance abortion services for indigent women.” In 1991, the ABA adopted a policy supporting legislation to promote “full counseling and referrals on all medical options “in federally funded family planning clinics. In 1992, the ABA adopted a policy opposing federal legislation restricting abortions prior to viability and thereafter if the abortion is “necessary to protect the life or health of the woman ... .” And in 1994, the ABA adopted a policy recommending that the United States, at the Fourth World Conference on Women in Beijing, China, in 1995, “actively support the inclusion in the Platform for Action of [e]ffective measures to accelerate the removal of the remaining obstacles to the realization of women’s basic rights.” At the annual meeting in 2001 the ABA adopted a policy provision opposing the Mexico City Policy, which prohibits overseas funding by the United States of nongovernmental organizations that provide abortion-related health or medical services. The ABA House of Delegates has also fairly recently adopted a policy implicitly approving government-funded killing of innocent human beings in their embryonic stage for stem cell and other research work.

If the proposal is adopted, inconsistent policies would be revoked by implication. Legal protection for all innocent human life is essential to a properly ordered society. Advocacy of such protection should be fundamental ABA policy.

In John F. Kennedy’s 1961 inaugural address he rightly said, “The rights of man come not from the generosity of the state, but from the hand of God.” Professor Robert P. George of Princeton University gave an address at Georgetown University the day after President Obama’s inauguration. In urging his listeners to pray for an end to legal abortion in the United States, he said, “We must ask God’s forgiveness for our great national sin of abandoning the unborn to the crime of abortion and implore His
guidance and assistance in recalling the nation to its founding ideals of liberty and justice for all.”
SPONSORS: Joan Rose Marie Bullock (Principal Sponsor), Michael P. Downey, Robert A. Young, Tom Bolt, Thomas L. Mighell, Thomas C. Grella, Mark A. Robertson, Walter Karnstein, Kenneth E. Young, Roberta Cooper Ramo, Charles E. English, William Ferreira, Paula J. Frederick; Linda A. Klein, Judy Perry Martinez, Barbara Mendel Mayden, Llewelyn G. Pritchard, William T. Robinson, Palmer Gene Vance II, and David B. Wolfe

PROPOSAL: Amends §6.2(a)(5), 6.7(h), 10.1(a), and 30.5 of the ABA Constitution and Bylaws to reflect the name change of the Law Practice Management Section to the Law Practice Division.

Amend §6.2(a)(5) of the Constitution to read as follows (additions underlined; deletions struck-through):

§6.2(a) Composition. (a) The House of Delegates, which is designed to be representative of the legal profession of the United States, is composed of the following members of the Association:

(5) The delegates representing the respective sections of the Association, at least two for each section. For divisions, five for the Young Lawyers Division (including the Young Lawyers Division representative on the Nominating Committee), two for the Government and Public Sector Lawyers Division, two for the Law Practice Division, two for the Senior Lawyers Division, three for the Law Student Division and three for the Solo, Small Firm and General Practice Division.

Amend §6.7 of the Constitution to read as follows (additions underlined; deletions struck-through) and re-letter the subsequent subsections:

§6.7 Division or Conference Delegates. (h) The Law Practice Division shall have two delegates to the House who are elected in the manner prescribed by its bylaws with staggered terms ending in Association years 2014 and 2015. At the end of those respective terms and in each succeeding third year, each delegate position shall be elected for a term of three Association years.

Amend §10.1(a) of the Constitution to read as follows (additions underlined; deletions struck-through):

§10.1 Sections and Divisions. (a) There are within the Association the following sections and divisions for carrying on its work:
Law Practice Management Section Law Practice Division

Amend §30.5 of the Constitution to read as follows (additions underlined; deletions struck-through):

§30.5 Officers and Council. A section shall have a chair. It may also have a chair-elect and such other officers as its bylaws may provide. It shall also have a council consisting of the officers and such other members as its bylaws may provide. Notwithstanding any provision of this section, non-members may serve on the Council of the Section of Legal Education and Admissions to the Bar as its bylaws may provide, non-U.S. lawyer associate members may serve on the Council and in the leadership of the Section of International Law and the Section of Business Law as their respective bylaws may provide, and non-U.S. lawyer associate members may serve on the Council of the Section of Law Practice Management Division as its bylaws may provide.
REPORT

The ABA Law Practice Management Section (“LPM”) hereby provides notice of its intent to change its name to the ABA Law Practice Division, to be considered by the House of Delegates at the 2013 ABA Annual Meeting in accordance with the ABA Constitution and Bylaws §30.2.

LPM History

A brief history of the Section is helpful in understanding the rationale for the proposed name change. The American Bar Association Law Practice Management Section (LPM) traces its history to the ABA Special Committee on Economics of Law Practice established by resolution of the ABA Board of Governors on July 30, 1957. In August 1957, when Charles S. Rhyne became President of the ABA, he made one of his major objectives the institution of a “comprehensive program to aid members of the ABA in the field of economics of law practice”.

By action of the Board of Governors at the ABA Annual Meeting in August 1961, the Special Committee was made a standing committee of the Association and Lewis F. Powell of Richmond, Virginia, was appointed as the first Chair of the ABA Standing Committee on Economics of Law Practice.

As activities expanded and lawyer interest in law office management increased, it became apparent that the committee structure could not meet the demonstrated demand and need of American lawyers for assistance in law practice issues and limited the participation and contribution of interested and informed lawyers in the vital economics and efficiency programs of the American Bar Association. Proponents for a new Section originally proposed that the Board of Governors recommend to the House the creation of a Section of Law Office Practice and Efficiency, but after deliberation it was determined that the new Section should be designated by the Standing Committee name.

At the ABA Midyear Meeting in Houston, Texas in February 1974, the House of Delegates approved establishing the Section of Economics of Law Practice. This action culminated a two year effort to expand the Committee’s work to a much wider lawyer population.

At the Annual Meeting in 1988, the Section’s name was amended again, to its current designation as the ABA Law Practice Management Section. The Report accompanying that name change stated:

“IT has been determined that the name Law Practice Management better describes the Section's many activities, which include: law office planning, marketing, delivery skills, personnel, practice management, use of technology and systems, and lawyer image/competency. The existing name seems to imply that the Section's activities are limited to the economics or financial aspects of the practice, which deters potential ABA and Section members from realizing the benefits of our products and services.”
Purpose of Name Change

The rationale for the name change presently before the House of Delegates, in addition to what is otherwise provide herein, is that the word “Management” in the Section’s name not only fails to encompass the many non-management areas in which the Section is involved in the year 2013, but it infers that if a lawyer is NOT involved in law firm management, then the Section may not be applicable to their needs. Nothing could be further from the truth. “Management” is now only one of LPM’s major core program areas, the others being technology, finance and marketing.

By dropping the name “management” there would be more appeal to those attorneys that were not actively involved in the management of their firm and that by becoming a Division within the American Bar Association, LPM could work more cooperatively with ABA Sections, Divisions and Forum Committees in serving attorneys without being viewed as the competition.

The name change could also greatly expand ABA membership by seeking crossover partnerships with the various substantive law Sections and Forum Committees. This action will send a clear message to attorneys, both within and outside the ABA, that the American Bar Association appeals to all practitioners and has established a Division to assist in meeting their needs.

Many other names were considered by the Section, but the conclusion was that “Law Practice” not only mirrored the name of our major publication, but avoided more potential confusion and possibly conflict. For example, because LPM is so prominent in the technology arena, including its annual sponsorship of the ABA TECHSHOW and its hosting of the ABA Legal Technology Resource Center (LTRC), one of the other names considered was “Law Practice and Technology Division”. However, the Section did not wish to be perceived as competing with the ABA Section of Science & Technology.

Regarding becoming a Division, Article II, Section (A) of the ABA Policy and Procedures Handbook clearly states, in part at page 15, that:

“Most Sections represent a substantive area of the law.”

LPM not only does not represent a substantive area of the law, but its many programs and publications can be utilized by all lawyers, regardless of their substantive practice area. And by becoming a Division, as did the Solo, Small Firm and General Practice Division, we hope to partner more with the Sections, Divisions, and Forum Committees of the ABA and not be viewed as a competitor.

The programming and resources LPM offers are designed to assist all ABA members practice more effectively for example iPad for Lawyers, Building a Virtual Law Practice, Practicing Safely in the Cloud, Ethics of Social Networking for Attorneys and other programs geared towards making each attorney more effective in their practice. The Section’s premier publication that goes to all members of the Section six times per year is Law Practice. The Section’s e-zine that is also transmitted to Section members six times per year is Law Practice Today and the Section’s internal members newsletter on Section activities and programs is Law Practice News.
The proposed name change would bring consistency to the Section’s publications names and the name of the entity.

LPM does not seek a change in jurisdiction and will continue with its current financial level of general revenue funding. Other than the change in the name of the Division, the internal structure and bylaws of LPM would remain the same.

In summary, in addition to better describing what we really do in the year 2013, we hope to increase our membership from both existing ABA members and from non-ABA members.

**Approval Process**

The motion to change the Section name and amend the Section bylaws to reflect the new name were approved by the LPM Section Council at its Spring Meeting on May 4, 2012 and by the LPM Section membership at the Annual Business Meeting of the Section on Friday, August 3, 2012.

**Post-Approval Process**

Upon approval by the ABA House of Delegates, the Law Practice Division would engage in a marketing and brand awareness campaign designed to reach both internal (ABA membership) and external (non ABA member lawyers) audiences. For present LP members, we would seek to let our constituents know that they will not be impacted by this name change in regard to expectations of deliverables (programs, publications, meetings, etc.). For present ABA members (not presently members of LP), we would seek to demonstrate how the name change reflects an important level of service and ABA member benefit that may not have been visible before.

LP provides important tools that every lawyer needs—regardless of section or practice—and this change reflects the ABA’s effort to provide this resource. We believe it will enhance ABA’s efforts towards both retention and new membership. Efforts in marketing toward non-ABA members are designed to bring lawyers into the Association, by showing that our LP capabilities exceed those provided by local and state bars, and specialty bar associations. This rebranding and messaging will “get the word out”, while enhancing ABA-wide efforts to increase membership. We also have taken steps to ensure that current marketing efforts—especially as they relate to online visibility—are protected in regard to search engine optimization and redirects of current information available using the prior LPM name.

Respectfully submitted,

Joan Rose Marie Bullock
Section Chair

Michael P. Downey
Section Chair-Elect
SPONSORS: William R. Bay (Principal Sponsor) and Pamela A. Bresnahan

PROPOSAL: Amends §30.5 of the Bylaws to allow non-U.S. lawyer associates to serve on Council and in the leadership of the Section of Litigation in accordance with their respective bylaws.

Amends §30.5 of the Bylaws to read as follows:

§30.5 Officers and Council. A section shall have a chair. It may also have a chair-elect and such other officers as its bylaws may provide. It shall also have a council consisting of the officers and such other members as its bylaws may provide. Notwithstanding any provisions of this section, non-members may serve on the Council of the Section of Legal Education and Admissions to the Bar as its bylaws may provide, non-U.S. lawyer associate members may serve on the Council and in the leadership of the Section of International Law, the Section of Business Law and the Section of Litigation as their respective bylaws may provide, and non-U.S. lawyer associate members may serve on the Council of the Section of Law Practice Management as its bylaws may provide.

(Legislative Draft – Deletions Struck Through; Additions Underlined)

§30.5 Officers and Council. A section shall have a chair. It may also have a chair-elect and such other officers as its bylaws may provide. It shall also have a council consisting of the officers and such other members as its bylaws may provide. Notwithstanding any provisions of this section, non-members may serve on the Council of the Section of Legal Education and Admissions to the Bar as its bylaws may provide, non-U.S. lawyer associate members may serve on the Council and in the leadership of the Section of International Law, the Section of Business Law, and the Section of Litigation as their respective bylaws may provide, and non-U.S. lawyer associate members may serve on the Council of the Section of Law Practice Management as its bylaws may provide.
The Section of Litigation would like to request an amendment to Section 30.5 of the Association’s Bylaws allowing non-U.S. lawyer associates to serve on the Section of Litigation Council.

With the increased globalization of litigation in both arbitration and in the courts, the Section Council has endorsed this enabling bylaw amendment. It is the same enabling language previously proposed by the Section of Business Law and the Section of International Law and previously passed by the House of Delegates.

The Section of Litigation will then be able to debate and decide what amendments to make to their Section bylaws. This amendment will allow that process to occur. Any Section of Litigation bylaw changes will thereafter have to be approved by the ABA Board of Governors.

Further, the reason for the amendment is to allow the potential for non-U.S. lawyer leadership in the Section of Litigation for non-U.S. lawyers who have participated in the Section of Litigation activities and meetings. An ancillary reason is to increase membership of both member and non-U.S. lawyers who are involved in cross-border issues and in litigation involving non-U.S. nationals and companies or U.S. Companies involved in litigation outside the U.S.

On behalf of the Section of Litigation, we look forward to acceptance of this amendment and the continued involvement of non-U.S. lawyers in Section activities and in its leadership. Please let me know if you have any questions. Bill Bay can be reached at (314) 552-6008 (office) or (314) 602-6008 (cell). Pam Bresnahan can be reached at (202) 467-8861 (office) or (410) 353-1556 (cell). Thank you for your consideration.

Respectfully submitted,

William R. Bay
Chair, Section of Litigation

Pamela A. Bresnahan
ABA Delegate-at-Large
SPONSORS: David G. Ehrhart (Principal Sponsor), Dwain Alexander II, Malinda E. Dunn, Kenneth D. Gray, Lyndsey Olson, Pamela Stevenson, and Cynthia Jewell Valentin

PROPOSAL: Amends §31.7 of the Bylaws to revise the jurisdictional statement of the Standing Committee on Legal Assistance for Military Personnel

Amends §31.7 of the Bylaws to read as follows (additions underlined; deletions struck-through):

Legal Assistance for Military Personnel. The Standing Committee on Legal Assistance for Military Personnel has jurisdiction over matters relating to legal assistance for military personnel and their dependents. It shall foster the continued growth of the military legal assistance programs. It shall and promote the delivery of legal services to military personnel and their dependents and to persons accompanying the armed forces outside the United States, on for their personal legal affairs (except those involving proceedings under the Uniform Code of Military Justice). It shall advocate for policies improving access to legal services and civil legal protections for military personnel and their dependents. It shall maintain close liaison with the Department of Defense, the Department of Transportation, Homeland Security with respect to the U.S. Coast Guard, the military services, bar associations, and appropriate committees of the Association to enhance the scope, quality and delivery of free or affordable legal services to eligible legal assistance clients.
REPORT

We, the undersigned members of the Standing Committee on Legal Assistance for Military Personnel (LAMP), propose amendment of the Standing Committee’s jurisdictional statement contained within the ABA Bylaws under Article 31, § 31.7.

During the Standing Committee’s regular business meeting in July 2012, we conducted a periodic review of our jurisdictional statement and determined that it required at least one revision for accuracy: Pursuant to Pub. L. No. 107-296, 116 Stat. 2249 (2002), the U.S. Coast Guard has been moved from the Department of Transportation to the Department of Homeland Security. The current bylaw should be updated to reflect this change.

We further determined that, while opening the jurisdictional statement for this revision, a few minor grammatical and punctuation changes should also be made, as well as the addition of a sentence in the statement that reflects LAMP’s ongoing work in the area of policy advocacy. In close coordination with the ABA Governmental Affairs Office, the military services, governmental agencies, military-affiliated associations and others, the LAMP Committee has historically played an active role in shaping ABA policy and federal legislation in the area of civil legal rights and protections for servicemembers and their families. We therefore also seek amendment of the Standing Committee’s jurisdictional statement in the bylaws to explicitly reflect this activity.

Respectfully submitted,

Dwain Alexander II
David G. Ehrhart
Malinda E. Dunn
Kenneth D. Gray
Lyndsey Olson
Pamela Stevenson
Cynthia Jewell Valentin
SPONSORS: Sharon Stern Gerstman, John L. McDonnell, Jr., J. Anthony Patterson, Jr., Estelle Rogers, and Richard A. Soden, Members of the Committee on Scope and Correlation of Work; Governors James Dimos and Cheryl I Niro, ex officios to Scope; and Ginger Busby, Chair, Section Officers Conference.

PROPOSAL: Amends the Bylaws to dissolve the Standing Committee on Federal Judicial Improvements.

Amend §31.7 to delete the paragraph headed Federal Judicial Improvements.

**Federal Judicial Improvements.** The Standing Committee on Federal Judicial Improvements, which consists of not more than eleven members, shall:

(a) coordinate activities within the Association relating to improvements in the federal judicial system;
(b) maintain effective liaison with other institutions working on judicial reform and with the federal judiciary and other appropriate government officials; and
(c) study and make recommendations for improving the federal judicial system.

**REPORT**

The Committee on Scope and Correlation of Work (Scope) is a committee elected by the House of Delegates, as set forth in the Bylaws of the ABA. Scope’s jurisdiction is as follows: “Scope shall study the structure, functions and work of the Sections, Committees, and other agencies of the Association. It shall make such recommendations to the House or the Board of Governors as it considers appropriate to correlating the work of the Association as a whole and providing better use of the Association’s resources. The Committee is responsible to the House and it has no powers or duties other than those prescribed by this paragraph.”

Therefore, Scope’s responsibility is to recommend how the Association’s limited resources can be used wisely and as productively as possible. To fulfill this mandate, Scope proactively serves as the House watchdog over Association entities in all matters relating to the correlation of Association activities.

The Standing Committee on Federal Judicial Improvements (“Standing Committee”) was on Scope’s 2012 fall agenda as a regular and routine review. At this meeting Scope performed a comprehensive review of the Justice Center and its three (3) entities, and the Coordinating Council.
During this meeting, Scope concluded that although, the Standing Committee oversees worthy programs and projects, the majority of their projects and programs are co-sponsored with conferences of the Judicial Division or the Standing Committee on Judicial Independence ("SCJI"). Therefore, Scope agreed most of the Standing Committee's work could be subsumed by other ABA entities; and falls within the jurisdiction of other entities such as the SCJI and the Division for Public Education.

Scope determined to make the following recommendations with respect to the Standing Committee:

1. The Standing Committee sunset at the conclusion of the 2013 Annual Meeting; and the work of the Standing Committee be subsumed into the SCJI;

2. The SCJI serve as an oversight committee that houses a subcommittee on federal judicial funding and improvement, a subcommittee (the Task Force) on adequate funding for state courts, as well as the current subcommittees;

3. Increase the membership size of the SCJI to 16 members, plus a chair (plus the members of the Task Force); to allow the SCJI to handle all of the issues pertaining to state or federal issues that the Judicial Division cannot handle.

4. Funding for SCJI should be increased to include a portion of the current funding for the Standing Committee.

Respectfully submitted,

Sharon Stern Gerstman, Chair
Committee on Scope and Correlation of Work
SPONSORS: Sharon Stern Gerstman, John L. McDonnell, Jr., J. Anthony Patterson, Jr., Estelle Rogers, and Richard A. Soden, Members of the Committee on Scope and Correlation of Work; Governors James Dimos and Cheryl I Niro, ex officios to Scope; and Ginger Busby, Chair, Section Officers Conference.

PROPOSAL: Amends the Bylaws to dissolve the Standing Committee on Strategic Communications.

Amends §31.7 of the Bylaws to delete the paragraph headed Strategic Communications.

Strategic Communications. The Standing Committee on Strategic Communications consists of nine members, five of whom shall be members-at-large, one of whom shall represent the Section Officers Conference and three of whom shall be communication professionals, who need not be lawyers. The Committee’s responsibilities shall be:

(a) To develop and recommend Association communication priorities and goals;
(b) To develop and evaluate integrated communication messages, plans and strategies; and
(c) To coordinate and assist the Association and its entities with respect to their communication plans and activities.

REPORT

The Committee on Scope and Correlation of Work (Scope) is a committee elected by the House of Delegates, as set forth in the Bylaws of the ABA. Scope’s jurisdiction is as follows: “Scope shall study the structure, functions and work of the Sections, Committees, and other agencies of the Association. It shall make such recommendations to the House or the Board of Governors as it considers appropriate to correlating the work of the Association as a whole and providing better use of the Association’s resources. The Committee is responsible to the House and it has no powers or duties other than those prescribed by this paragraph.”

Therefore, Scope’s responsibility is to recommend how the Association’s limited resources can be used wisely and as productively as possible. To fulfill this mandate, Scope proactively serves as the House watchdog over Association entities in all matters relating to the correlation of Association activities.

The Standing Committee on Strategic Communications (“Standing Committee”) was on Scope’s 2012, spring agenda as a regular and routine review.
After much deliberation, Scope concluded that the Standing Committee’s purpose does not appear to be a judicious use of Association’s resources, and therefore, the Standing Committee should sunset. Scope recommendations are as follows: 1) the Standing Committee be defunded during the FY13 budget process; 2) sunset at the conclusion of the 2013 Annual meeting; and 3) the oversight of strategic communications should be under the Board of Governor’s Operations and Communications Committee.

In order to reassess the recommendation to sunset the Standing Committee, Scope reviewed the Standing Committee again at its 2013 Midyear meeting.

As a result of this review, Scope concluded again that the Standing Committee’s purpose does not appear to be a proper use of Association’s resources, and therefore, the Standing Committee should sunset.

Scope affirmed its current recommendations that the 1) the Standing Committee be defunded during the FY14 budget process; 2) sunset at the conclusion of the 2013 Annual meeting; and 3) the oversight of strategic communications should be under the Board of Governor’s Operations and Communications Committee.

The ABA President-Elect James R. Silkenat and Steven A. Weiss, Chair, Standing on Strategic Communications understand and agree with Scope’s recommendation for sunset.

Respectfully submitted,

Sharon Stern Gerstman, Chair
Committee on Scope and Correlation of Work

PROPOSAL: Amends §6.8(a) of the Constitution to provide for representation of the National Legal Aid and Defender Association as an affiliated organization in the House of Delegates.

Amends §6.8(a) of the Constitution to read as follows: (Legislative draft – Additions underlined; deletions struck-through):

§6.8 Delegates from Affiliated Organizations. (a) The following organizations are entitled to be represented in the House of Delegates as affiliated organizations: The American Immigration Lawyers Association, The American Judicature Society, the American Law Institute, the Association of American Law Schools, the Association of Life Insurance Counsel, the Conference of Chief Justices, the Energy Bar Association, the Federal Bar Association, the Federal Circuit Bar Association, the Federal Communications Bar Association, the Hispanic National Bar Association, the Judge Advocates Association, the Maritime Law Association of the United States, the National Asian Pacific American Bar Association, the National Association of Attorneys General, the National Association of Bar Executives, the National Association of Criminal Defense Lawyers, the National Association of Women Judges, the National Association of Women Lawyers, the National Bar Association, the National Conference of Bar Examiners, the National Conference of Commissioners on Uniform State Laws, the National Conference of Women’s Bar Associations, the National District Attorneys Association, the National Legal Aid and Defender Association, the National LGBT Bar Association, the National Organization of Bar Counsel and the National Native American Bar Association.
REPORT

The purpose of this amendment is to reinstate the National Legal Aid and Defender Association (NLADA) as an affiliate organization with representation in the House of Delegates. NLADA has been an affiliate member of the House and an active participant and contributor to the House and to the ABA’s policy development since 1956.

Due to unforeseen circumstances arising close in time to House of Delegate meetings, NLADA’s representative to the House was unable to attend three consecutive meetings. NLADA has now put procedures in place to ensure that it will be represented in all House of Delegates meetings going forward. Those procedures include: (1.) advance written notification and justification for any absence from the representative submitted to the NLADA President; (2) a presumption of replacement of the representative if two consecutive meetings are missed; and (3.) designating an alternate for each House of Delegates meeting who shall remain available (“on call”) in the event the representative is unable to attend a meeting. NLADA will notify appropriate ABA leadership and staff should a substitution become necessary.

NLADA, founded in 1911, is America’s oldest and largest nonprofit association of legal programs and professionals devoted to ensuring the delivery of legal services to those who cannot afford counsel. NLADA’s members are comprised of civil legal aid and public defense attorneys, leaders, advocates, organizations and individuals who support and work for equal justice in America. Over 100 years ago NLADA was charged with two overarching goals: to work to improve and expand access to counsel for low income people, and to do so in partnership with the private bar. Those mandates have been achieved to a significant degree through NLADA’s long and distinguished relationship with the ABA.

In the 1940’s NLADA was a part of the ABA and in 1945 the ABA appropriated funds to promote the organization (then known as The National Association of Legal Aid Organizations) through state and local bar associations. NLADA’s mission, members and work are directly linked to the ABA goal of “assuring meaningful access to justice for all persons” and to four ABA legislative priorities: access to legal services; criminal justice system improvements; eliminating discrimination; and immigration. Its members and leadership have sat and presently sit on the ABA’s Standing Committee on Legal Aid and Indigent Defendants, the Standing Committee on Pro Bono and Public Service, the Criminal Justice Section’s Council and the Indigent Defense Advisory Group. At the same time, many of the ABA’s current and past leaders, including former ABA presidents, have also served in leadership positions at NLADA. The ABA and NLADA worked together to create the Legal Services Corporation and expand public defense in America, and have collaborated to produce the Standards for the Provision of Civil Legal Aid, the Ten Principles of a Public Defense Delivery System, the Standards for
the Delivery of Public Defense Services, the Standards for Representation in Death Penalty Cases and other critical policy resolutions adopted by the ABA House. The ABA and NLADA continue to work closely on securing adequate funding for legal aid and public defense.

In 1999, the ABA and NLADA partnered to produce the first Equal Justice Conference, which convenes pro bono and legal aid advocates nationwide, and that partnership continues to produce the profession’s largest legal aid and pro bono gathering. Our collaboration on the State Planning Assistance Network has spawned Access to Justice Commissions around the country. When NLADA celebrated its Centennial in 2011, the organization highlighted the two Associations’ long-term relationship by asking the ABA President to be Honorary Chairman of the NLADA Board when his term as ABA President had ended. In sum, the close alliance between our organizations has been and will be beneficial not only for the ABA, NLADA and our respective members, but also in securing access to justice in America.

NLADA’s role in the House of Delegates not only brings the experience and knowledge of the legal aid and public defender community to the deliberations of the House, it also advances the ABA’s commitment to a more diverse society and legal profession. Like the ABA, NLADA has a strong commitment to diversity and inclusion. The clients served by our member institutions are often women, people of color, the disabled, and the elderly. Our institutional members include some of the most diverse legal staffs in our profession.

For more than a century, NLADA and the ABA have worked together to insure fairness, access, and justice for the most disadvantaged in our nation. It is essential that that engagement continue, particularly in the House of Delegates.
RESOLVED, That the American Bar Association urges courts with jurisdiction over 
adult guardianship and governmental agencies that administer representative payment 
programs for benefits to collaborate with respect to information sharing, training and 
education in order to protect vulnerable individuals with fiduciaries who make financial 
decisions on their behalf.
EXECUTIVE SUMMARY

1. **Summary of the Resolution.** The proposed policy urges state and territorial courts with jurisdiction over adult guardianship and executive agencies that administer representative payment programs for government benefits to coordinate information sharing, training and education.

2. **Summary of the Issue that the Resolution Addresses.** State and territorial courts appoint guardians to make decisions for individuals determined to be incapacitated. The Social Security representative payment program provides financial management for Social Security and SSI payments of beneficiaries who are not able to manage their benefits. The Veterans Fiduciary Program was established to protect Veterans and other beneficiaries who, due to injury, disease, or due to age, are unable to manage their financial affairs.

The need for strong fiduciary systems and collaboration among these systems is accentuated by ongoing demographic trends, including increases in the population of older people, as well as adults with dementia, intellectual disabilities, mental illness, substance abuse, and traumatic brain injuries.

Federal third party representative payees and court-appointed guardians fill a role that society calls “fiduciaries” – those entrusted to manage property for someone else, often a vulnerable individual easily at risk for abuse. Yet instances of misuse and exploitation of funds by guardians, representative payees and VA fiduciaries have been identified by the U.S. Governmental Accountability Office and other significant studies. There is a compelling need to protect funds managed by fiduciaries in all three arenas.

Representative payment programs are not coordinated with guardianship systems and other payee systems serving the same population, putting vulnerable adults at risk of financial exploitation. The GAO has urged such coordination for over nine years. The GAO has stated that “the absence of a systematic means of compiling and exchanging pertinent information may leave many incapacitated people at risk and result in the misuse of benefits and increased federal expense.” In addition to systematic information sharing about specific cases, coordination among SSA field offices, VA regional offices, and state courts would make it easier to identify trends, develop training, recruit volunteers, and educate the public.

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

While the ABA has extensive policy on adult guardianship, it does not address needed collaboration among state courts, the SSA representative payee program and
the VA fiduciary program. The ABA should have a voice in supporting any proposed legislation in Congress and in state legislatures consistent with the policy, promoting collaboration through state networks, and working with the Social Security Administration, the VA Fiduciary Office, and the HHS Administration on Community Living.

4. **Summary of Minority Views**

None identified.
RESOLVED, That the American Bar Association urges Congress to enact the Supplemental Security Income (SSI) Restoration Act of 2013 (H.R.1601) or similar legislation that strengthens SSI by updating the resource limit to account for inflation, increasing the general and earned income disregards, eliminating a reduction in benefits for in-kind support and maintenance, and repealing the transfer penalty.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution supports the SSI Restoration Act (H.R. 1601), introduced in April 2013, or other similar legislation that amends the Supplemental Security Income Program (Title 16 of the Social Security Act) to:
   A. Update the general income disregard from its current level of $20 to $110 per month.
   B. Update the earned income disregard from its current amount of $65 to $357 per month.
   C. Update the resource limit from its current level of $2000 for an individual ($3000 for an eligible couple) to $10,000 ($15,000 for an eligible couple).
   D. Repeal the in-kind support and maintenance provision which currently reduces the federal payment rate by one-third.
   E. Repeal the SSI transfer penalty that currently penalizes an applicant for the transfer of a resource for less than fair market value within 36 months of application.

2. Summary of the Issue that the Resolution Addresses

The central issues addressed are several means testing parameters of the SSI program, many of which have been unchanged since 1972, the year SSI was signed into law by President Nixon. The financial constraints are so restrictive that a growing number of SSI recipients who are age 65 or over, blind, or have a disability have become increasingly financially vulnerable as each these program parameters have stayed frozen.

*The general and earned income disregards.* The general income disregard was established to reward work, by providing a $20 boost to those who worked long enough to qualify for Social Security or any other retirement benefit. The Section has not been changed since 1972. Similarly, the earned income exclusion has not changed during that same period. The income disregard was intended to encourage those who could to return to the work force. The cost of living today is more than five and a half times what it was in 1972, and the general income disregard and earned income exclusion are no longer proportional to the economic realities faced by SSI recipients.

*The resources limit.* The resources limit has increased only once since 1972 (it was originally $1500) and today it is woefully insufficient to deal with perfectly predictable needs. For the older person living in their own home, $2,000 is not enough to make necessary home repairs or buy a reliable used car or to cope with other emergencies that will inevitably arise.

*The one-third reduction.* This arbitrary one-third reduction of benefits resulting from living in the household of another severely penalizes truly needy elderly persons or persons with disabilities who, for a variety of legitimate reasons, live with friends or relatives. Many SSA claims representatives spend considerable time verifying living arrangements and computing benefit amounts, applying lengthy and complicated program instructions.
The transfer of resources penalty. This 1999 provision is based on the assumption that people will give away valuable property for the opportunity to live on a subsistence income.

The current transfer penalty applies to any transfer of resources for less than fair market value within three years of application. The penalty causes considerable hardship for recipients without accomplishing any worthwhile objective. It also creates a substantial additional burden on the Social Security Administration to investigate financial records covering three years retrospectively.

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

The resolution addresses the problem by calling on Congress to enact H.R. 1601 or similar bill that will update several of the program’s means testing parameters to account for more than 30 years of inflation and changing economic realities faced by low income elders and persons with disabilities. Specifically, calls on Congress to:

A. Update the general income disregard from its current level of $20 to $110 per month.
B. Update the earned income disregard from its current amount of $65 to $357 per month.
C. Update the resource limit from its current level of $2000 for an individual ($3000 for an eligible couple) to $10,000 ($15,000 for an eligible couple).
D. Repeal the in-kind support and maintenance provision which currently reduces the federal payment rate by one-third.
E. Repeal the SSI transfer penalty that currently penalizes an applicant for the transfer of a resource for less than fair market value within 36 months of application.

4. Summary of Minority View

Currently none.
RESOLVED, That the American Bar Association supports the rights of all Americans, and particularly our nation’s veterans, to access adequate mental health and substance use disorder treatment services and coverage as required to be made available under federal and state law.

FURTHER RESOLVED, That the American Bar Association urges the States, in implementing the essential health benefits provisions of the Patient Protection and Affordable Care Act, to fully and adequately provide for mental health and substance use disorder coverage.

FURTHER RESOLVED, That the American Bar Association urges Congress, the federal Departments of Labor, Health and Human Services and the Treasury, and state and territorial legislative, regulatory and administrative bodies, to ensure that, in the implementation of the health insurance parity requirements of the Mental Health Parity and Addiction Equity Act of 2008 and in the essential health benefits provisions of the Patient Protection and Affordable Care Act, a uniform and plain language disclosure of the terms of coverage and criteria used in making coverage decisions is required across all insurance plans and public benefit plans to ensure that all individuals are able to make informed, appropriate choices in accessing coverage of mental health and substance use disorder treatment services at parity with other health benefits coverage.
EXECUTIVE SUMMARY

1. Summary of Resolution

The Resolution seeks to expand upon the American Bar Association’s policy in support of the rights of all Americans, and particularly, our nation’s veterans, to access adequate mental health and substance use disorder treatment services and coverage as required to be made available under federal and state law, and specifically to:

- urge the States, in implementing the essential health benefits provisions of the Patient Protection and Affordable Care Act, to fully and adequately provide for mental health and substance use disorder coverage; and
- urge Congress, the federal Departments of Labor, Health and Human Services and the Treasury, and state and territorial legislative, regulatory and administrative bodies to ensure that, in the implementation of the health insurance parity requirements of the Mental Health Parity and Addiction Equity Act of 2008 and in the essential health benefits provisions of the Patient Protection and Affordable Care Act, a uniform and plain language disclosure of the terms of coverage and criteria used in making coverage decisions is required across all insurance plans and public benefit plans to ensure that all individuals are able to make appropriate choices in accessing coverage of mental health and substance use disorder treatment services at parity with other health benefits coverage.

2. Summary of the Issue that the Resolution Addresses

It is vital to support the rights of all Americans to access adequate mental health and substance use disorder treatment services and coverage as required to be made available under federal and state law. As a prime example, over two million veterans have returned and continue to return from the Iraq and Afghanistan wars, a large percentage of which manifest or will manifest post traumatic stress disorder (PTSD), brain trauma and other mental health and substance use disorders. Thus, there has never been a more critical need for supporting the full and adequate provision of mental health and substance use disorder coverage under the Mental Health Parity and Addiction Equity Act of 2008 (federal parity law) and in implementing the “essential health benefits” provisions of the Affordable Care Act (ACA). In so doing, it is vital that the disclosure of information necessary for our nation’s veterans and all Americans to make appropriate choices with respect to health care coverage is made, to ensure that all Americans, and markedly, our nation’s veterans, are able to make appropriate health care choices and obtain adequate coverage for mental health and substance use disorders.

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

The proposed Resolution urges the States, Congress, federal regulatory agencies, and state and territorial legislative, regulatory and administrative bodies to ensure full implementation of the federal parity law and essential health benefits provisions of the ACA, and disclosure of terms of coverage and criteria used in making coverage decisions
across all public and private plans, to enable veterans and all Americans to make informed, appropriate health care choices.

4. Summary of Minority Views

None have yet been expressed, though the Health Law Section continues to reach out to interested constituent groups to solicit input and feedback on the proposed Resolution.
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association approves the Uniform Prevention of and Remedies for Human Trafficking Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested herein.
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association approves the Uniform Prevention of and Remedies for Human Trafficking promulgated by the National Conference of Commissioners on Uniform State Laws in July 2013 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the Issue that the Resolution Addresses

The Uniform Prevention of and Remedies for Human Trafficking Act establishes a uniform, consistent, and comprehensive law against human trafficking that encompasses the range of human trafficking criminal activity and provides needed services for human trafficking victims.

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

Approval of the Uniform Prevention of and Remedies for Human Trafficking Act by the American Bar Association House of Delegates would demonstrate to states that the Act is an appropriate approach for addressing the issues described above.

4. Summary of Minority Views

None known.
RESOLVED, That the American Bar Association urges all federal, state, tribal, territorial, and local legislative, judicial and other governmental bodies to support the following principles that:

(a) the attorney-client privilege applies to protect from disclosure confidential communications between law firm personnel and their firms’ designated in-house counsel made for the purpose of facilitating the rendition of professional legal services to the law firm (including any legal advice provided by such counsel) in the same way as such confidential communications between law firm personnel and the firm’s outside counsel would be protected;

(b) any conflict of interest arising out of a law firm’s consultation with its in-house counsel regarding the firm’s representation of a then-current client and a potentially viable claim the client may have against the firm does not create an exception to the attorney-client privilege, at least so long as the client is appropriately and timely informed of the potentially viable claim;

and

(c) any “fiduciary exception” to the attorney-client privilege (for a fiduciary’s communications seeking legal advice regarding ordinary affairs of the fiduciary office), if recognized in the jurisdiction, should not be applied to otherwise privileged communications between law firm personnel and the firm’s in-house or outside counsel regarding the law firm’s own duties, obligations, and possible liabilities, even if those communications implicate the ongoing representation of a current client.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution sets forth principles that should be applied in determining the availability of attorney-client privilege for law firm consultations with in-house counsel. In general, and in accordance with ABA policy for other in-house counsel, these should be the same principles applied to consultations with outside counsel. Any conflict of interest arising out of a law firm’s consultation with its in-house counsel regarding the firm’s representation of a then-current client and a potentially viable claim the client may have against the firm does not create an exception to the attorney-client privilege, at least so long as the client is appropriately and timely informed of the potentially viable claim. While some jurisdictions recognize an exception to the attorney-client privilege for a fiduciary’s communications seeking legal advice regarding ordinary affairs of the fiduciary office, that “fiduciary exception” should not be applied to otherwise privileged communications between law firm personnel and the firm’s in-house or outside counsel regarding the law firm’s own duties, obligations, and possible liabilities, even if those communications implicate the ongoing representation of a current client.

2. Summary of the Issue the Resolution

A number of federal district and bankruptcy courts have made an exception for consultations regarding ongoing representations of clients who later sue the firm for malpractice. One federal district court has disagreed. Only last year was this issue first decided by an appellate court, and both the Illinois Appellate Court and the Georgia Court of Appeals have now upheld the in-firm privilege, though the Georgia Supreme Court is now reviewing the issue, as are the Massachusetts and Oregon Supreme Courts.

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

The Resolution will continue ABA leadership in protecting and advancing the attorney-client privilege and will provide the necessary support for strong ABA briefs in future cases raising this issue.

4. Summary of Minority Views

We are aware of no ABA entity opposed to this Resolution. We assume that the plaintiffs’ legal malpractice bar would be opposed.
RESOLVED, That the American Bar Association urges states’ highest courts and lawyer regulatory authorities to coordinate with their foreign regulatory counterparts and to enter into voluntary arrangements to facilitate the exchange of relevant information, consistent with the jurisdictions’ rules regarding the admission, licensure and disciplinary status of lawyers licensed in their respective jurisdictions.

FURTHER RESOLVED, That the American Bar Association adopts the Guidelines for an International Regulatory Information Exchange, dated August 2013.
A. Information Exchange

1. **Status**: Given the global mobility of lawyers, Regulatory Authorities in one jurisdiction may need to determine whether a lawyer is authorized to practice or is licensed/admitted and in good standing in another jurisdiction, and that lawyer’s disciplinary history. Regulatory Authorities should identify individuals responsible for sending, receiving and responding to requests for this type of information, and should provide each other with the relevant contact information.

2. **Imposition of Discipline**: Upon the imposition of discipline against a lawyer by any jurisdiction, the Regulatory Authority of the jurisdiction imposing the discipline should, consistent with its rules, provide the following information to its foreign regulatory counterpart(s) in any jurisdiction(s) in which it knows the disciplined lawyer is licensed/admitted or authorized to practice:

   a. The lawyer’s residence and business addresses, telephone number(s), and e-mail address(es);

   b. Dates of licensure/admission, if applicable, in the sending jurisdiction, and a statement as to whether that lawyer is in good standing;

   c. The details regarding the disciplinary proceedings leading to the imposition of discipline against the lawyer, such as the substance of the allegations of misconduct; the date the proceedings were initiated; the date upon which the proceedings were concluded; the caption of the proceedings; any findings made; and the discipline imposed or actions taken in connection with those proceedings; and

   d. A description of the sending jurisdiction’s disciplinary process or the location where such information can be found, as well as any further information that the sending jurisdiction deems appropriate.

As used in this paragraph, “discipline” refers to a sanction imposed by a jurisdiction’s designated Regulatory Authority against a lawyer upon a finding that the lawyer has violated the applicable rules or standards of lawyer ethics or professional conduct. Discipline may include, but is not limited to, disbarment (revocation of license or ability to practice or striking from the roll), resignation with charges pending or in lieu of discipline, suspension (prohibition or restrictions of the right to practice for a period of time), censure, reprimand, admonition, probation, restitution, limitations on practice and assessment of costs.

3. **Other Notification**: Consistent with the jurisdiction’s rules, after the receipt of sufficient information demonstrating that a lawyer has violated the applicable rules or standards of lawyer ethics or professional conduct or is physically or mentally disabled, and poses a
substantial threat of serious harm to the public or to the administration of justice, the
Regulatory Authority in possession of such information may provide the following to its
foreign counterpart(s) in any jurisdictions in which it knows the lawyer is licensed/admitted
or authorized to practice:

a. The lawyer’s residence and business addresses, telephone number(s), and e-mail
   address(es);

b. Dates of licensure/admission, if applicable, in the sending jurisdiction, and a
   statement as to whether that lawyer is in good standing; and

c. Documentation of such information in the Regulatory Authority’s possession, the
details of any disciplinary proceedings pending against the lawyer, including, but not
limited to, the substance of the allegations of misconduct; the date the proceedings
were initiated and whether they are still pending; and, for those proceedings that are
not still pending and are concluded without the imposition of discipline, the date upon
which such proceedings were concluded and information explaining the basis of the
decision to conclude the proceedings; and

d. A description of the sending jurisdiction’s disciplinary process or the location where
   such information can be found, as well as any further information that the sending
   jurisdiction deems appropriate.

B. Confidentiality

1. Information exchanged between lawyer Regulatory Authorities should be for the purpose of
   enhancing the protection of clients and the public.

2. Disclosure and use of such information is subject to applicable rules and other law.

C. Notice to Lawyer

The Regulatory Authority that sends information about a lawyer to another Regulatory Authority
should, if it has the lawyer’s contact information, notify the lawyer of its actions. The Receiving
Regulatory Authority, if it has the lawyer’s contact information, should notify the lawyer that it
is in receipt of information described in Paragraphs A(2) or (3).

D. Subsequent Action by Receiving Regulatory Authority

1. The receiving Regulatory Authority should acknowledge to the sending Regulatory Authority
   its receipt of the information described in Paragraph A(2) or (3) above, and may provide any
   information it considers relevant.

2. The receiving Regulatory Authority should notify the sending Regulatory Authority of any
   responsive action that it takes.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   In recognition of increasing global mobility of lawyers, this Resolution urges state supreme courts and lawyer regulatory authorities (e.g., bar admissions and disciplinary authorities) to coordinate with their foreign counterparts and to enter into voluntary arrangements to facilitate the exchange of relevant disciplinary and admissions information. To facilitate this collaboration, the Resolution also seeks House of Delegates’ adoption of the attached “Guidelines for an International Regulatory Information Exchange.” The proposed Guidelines identify for regulators the primary issues and topics usefully addressed in a voluntary information exchange arrangement.

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

   Globalization has had a significant impact on the legal profession. Today, more lawyers than ever are crossing national borders, virtually and physically, to serve client needs. The U.S. is the largest legal services exporter in the world and large numbers of U.S.-licensed lawyers are working in offices of U.S. and foreign law firms abroad. Likewise, albeit to a lesser extent, foreign lawyers also travel to the U.S. and increasingly have a physical and virtual presence in this country. The ABA has adopted numerous Model Rules providing foreign lawyers the ability to engage in limited and regulated legal practice in the U.S., and also adopted a policy urging the U.S. government to ensure that our lawyers have similar opportunities to operate overseas. Whether one sees the presence of foreign lawyers as a positive or a negative, it is a reality, and wherever global commerce is most robust, the number of visiting foreign lawyers will increase. As cross-border legal practice continues to grow, lawyer accountability and cooperation in lawyer discipline must be addressed.

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

   A first step toward achieving accountability in a legal practice environment with global mobility is to encourage and facilitate better communication and cooperation among lawyer regulators. This Resolution provides a template for state supreme courts and lawyer regulatory authorities (e.g., bar admissions authorities as well as disciplinary authorities) to coordinate with their foreign regulatory counterparts and to enter into voluntary arrangements to facilitate the exchange of relevant information, consistent with the jurisdictions’ rules regarding the admission, licensure and disciplinary status of lawyers licensed in their respective jurisdictions.

4. **Summary of Minority Views**

   While a variety of views were expressed throughout the drafting process, there is no known formal opposition at this time.
RESOLVED, That the American Bar Association reaffirms its 1991 and 2003 commitments to sustainable development, and defines sustainable development as “the promotion of an economically, socially and environmentally sustainable future for our planet and for present and future generations.”

FURTHER RESOLVED, That the American Bar Association urges all governments, lawyers, and ABA entities to act in ways that accelerate progress toward sustainability.

FURTHER RESOLVED, That the American Bar Association encourages law schools, legal education providers, and others concerned with professional development to foster sustainability in their facilities and operations and to help promote a better understanding of the principles of sustainable development in relevant fields of law.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution reaffirm the ABA’s 2003 commitment to sustainable development, and adopts the internationally accepted concept of sustainable development, as recognized at the 2012 United Nations Conference on Sustainable Development: “to ensure the promotion of an economically, socially and environmentally sustainable future for our planet and for present and future generations.” The ABA encourages governments, businesses and other entities to adopt and implement legal and policy incentives to support and encourage sustainable development; urges the U.S. government to take a leadership position in ongoing and future negotiations on sustainable development, including climate change, and urges lawyers, law firms, and other law organizations bar associations to foster sustainability.

2. Summary of the Issue that the Resolution Addresses

This resolution reaffirms and expands on ABA policy adopted at the 2003 Annual Meeting. It provides for greater and broader activity by the ABA in response to the 2012 UN Conference on Sustainable Development as recommended by the ABA delegation’s July 2012 report.

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

This resolution continues the underlying emphasis on sustainable development principles, especially those that have evolved since 2003 and describes the steps necessary for future action by the ABA. While much ABA work in the arena has occurred since 2003, the new challenges presented by the UN’s 2012 report “The Future We Want” require that additional actions be urged, supported and taken.

4. Summary of Minority Views

None are known.
RESOLVED, That the American Bar Association reapprove the following paralegal education programs: De Anza College, Paralegal Studies Program, Cupertino, CA; Miami-Dade College (Wolfson location), Paralegal Studies Program, Miami, FL; Des Moines Area Community College, Legal Assistant Program, Des Moines, IA; South Suburban College, Paralegal Program, South Holland, IL; Louisiana State University, Paralegal Studies Program, Baton Rouge, LA; Ferris State University, Legal Studies Program, Big Rapids, MI; Lansing Community College, Paralegal Program, Lansing, MI; Meredith College, Paralegal Program, Raleigh, NC; Bergen Community College, Paralegal Studies and Legal Nurse Consultant Programs, Paramus, NJ; Gloucester County College, Paralegal Education Program, Sewell, NJ; Westchester Community College, Paralegal Studies Program, Valhalla, NY; Peirce College, Paralegal Studies Program, Philadelphia, PA; Florence-Darlington Technical College, Paralegal Studies Program, Florence, SC; San Jacinto College North, Paralegal Program, Houston, TX; and Milwaukee Area Technical College, Paralegal Program, Milwaukee, WI.

FURTHER RESOLVED, That the American Bar Association withdraw the approval of Lamson College, Paralegal Program, Tempe, AZ; Central Georgia Technical College, Paralegal Studies Program, Macon, GA; Berkeley College, Paralegal Studies Program, West Paterson, NJ; and New York University, Paralegal Studies Program, New York, NY, at the request of the institutions, as of the adjournment of the 2013 Annual Meeting of the House of Delegates, and the Center for Advanced Legal Studies, Paralegal Program, Houston, TX, at the request of the institution, effective March 25, 2013.

FURTHER RESOLVED, That the American Bar Association extend the terms of approval until the February 2014 Midyear Meeting of the House of Delegates for the following programs: Community College of the Air Force, Paralegal Program, Maxwell AFB, AL; Gadsden State Community College, Paralegal Program, Gadsden, AL; Everest College Phoenix, Paralegal Program, Phoenix, AZ; Phoenix College, Paralegal Studies Program, Phoenix, AZ; California State University East Bay, Paralegal Studies Program, Hayward, CA; Fullerton College, Paralegal Studies Program, Fullerton, CA; University of California Riverside, Paralegal Certificate Program, Riverside, CA; University of California Santa Barbara, Paralegal Professional Certificate Program, Santa Barbara, CA; Manchester Community College, Legal Assistant Program, Manchester, CT; University of Hartford, Paralegal Studies Department, West Hartford, CT; Wesley College, Legal Studies Program, Dover, DE; Nova Southeastern University, Paralegal Studies Program, Fort Lauderdale, FL; Valencia College, Legal Assisting
Program, Orlando, FL; University of North Georgia fka Gainesville State College, Paralegal Studies Program, Gainesville, GA; Elgin Community College, Paralegal Program, Elgin, IL; Illinois Central College North Campus, Paralegal Program, East Peoria, IL; Bay Path College, Legal Studies Program, Longmeadow, MA; North Shore Community College, Paralegal Program, Danvers, MA; Suffolk University, Paralegal Studies Program, Boston, MA; Harford Community College, Paralegal Studies Program, Bel Air, MD; Davenport University, Paralegal Studies Program, Grand Rapids, MI; Henry Ford Community College, Paralegal Studies Program, Dearborn, MI; Kellogg Community College, Paralegal Program, Battle Creek, MI; Madonna University, Paralegal Studies Program, Livonia, MI; Hamline University, Legal Studies Program, St. Paul, MN; Inver Hills Community College, Paralegal Program, Inver Grove Heights, MN; North Hennepin Community College, Paralegal Program, Brooklyn Park, MN; Webster University, Legal Studies Program, St. Louis, MO; University of Great Falls, Paralegal Studies Program, Great Falls, MT; Mercer County Community College, Paralegal Program, Trenton, NJ; Truckee Meadows Community College, Paralegal Program, Reno, NV; Bronx Community College, Paralegal Studies Program, Bronx, NY; Marist College, Paralegal Program, Poughkeepsie, NY; Kent State University, Paralegal Studies Program, Kent, OH; Rhodes State College, Paralegal/Legal Studies Program, Lima, OH; University of Tulsa, Paralegal Studies Program, Tulsa, OK; Clarion University of Pennsylvania, Paralegal Studies Program, Oil City, PA; Delaware County Community College, Paralegal Studies Program, Media, PA; Duquesne University, Paralegal Institute, Pittsburgh, PA; Gannon University, Legal Assistant Program, Erie, PA; Manor College, Department of Legal Studies, Jenkintown, PA; Pennsylvania College of Technology, Legal Assistant Program, Williamsport, PA; Villanova University, Paralegal Program, Villanova, PA; Roger Williams University, Paralegal Studies Program, Providence, RI; National American University, Paralegal Studies Program, Rapid City, SD; Roane State Community College, Paralegal Studies Program, Harriman, TN; Volunteer State Community College, Paralegal Studies Program, Gallatin, TN; Amarillo College, Paralegal Studies Program, Amarillo, TX; Lone Star College North Harris fka North Harris College, Paralegal Program, Houston, TX; Utah Valley University, Department of Legal Studies, Orem, UT; Marymount University, Paralegal Studies Program, Arlington, VA; Northern Virginia Community College, Paralegal Studies Program, Alexandria, VA; Mountwest Community and Technical College fka Marshall Community and Technical College, Legal Assistant Program, Huntington, WV; Highline Community College, Paralegal Program, Des Moines, WA; and Tacoma Community College, Paralegal Program, Tacoma, WA.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   The Standing Committee on Paralegals resolve (s) that the House of Delegates grant reapproval to fifteen programs, withdraw the approval of five programs, and extend the term of approval of fifty-five programs.

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

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

3. **An explanation of how the proposed policy position Will Address the Issue**

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

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

   No other positions on this resolution have been taken by other Association entities, affiliated organizations or other interested groups.
RESOLVED, That the American Bar Association urges all countries, consistent with international law, not to apply statutes of limitation with respect to (1) genocide, (2) crimes against humanity, and (3) serious war crimes.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution asks the American Bar Association to urge all countries, consistent with international law, not to apply any statute of limitations with respect to (1) genocide, (2) crimes against humanity, and (3) serious war crimes.

2. Summary of the Issue that the Resolution Addresses

When Jean Claude Duvalier returned to Haiti in January 2011, Haitian authorities arrested him and reopened a case against him for human rights abuses and financial misconduct. In January 2012, a Haitian judge held that the Haitian courts could not prosecute Jean Claude Duvalier for crimes against humanity because Haiti’s statute of limitations had expired. This ruling by the Haitian judge directly contradicted well-established international legal principles.

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

ABA’s encouragement of all countries not to apply a statute of limitations to serious crimes, namely genocide, crimes against humanity and serious war crimes, will minimize the likelihood that relevant authorities will misapply or misunderstand this important legal principle. As the largest bar association in the world, ABA is uniquely positioned to make an important contribution with this policy statement. The statement also supports ABA’s work on Rule of Law globally.

4. Summary of Minority Views

Some may argue that the resolution doesn’t go far enough and should also include other crimes like human trafficking. (Counter: we have confined this resolution to the specific crimes that are included in current international jurisprudence.)
RESOLVED, That the American Bar Association encourages the establishment of a network of U.S. federal and state judges to facilitate education and permissible communication among judges regarding the interpretation and application of the 1980 Hague Convention on the Civil Aspects of International Child Abduction.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution encourages the establishment of a U.S. judicial network to aid in permissible judicial communication and judicial education related to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

2. Summary of the Issue that the Resolution Addresses

A consequence of globalization has been an increase in the number of international family law cases. These cases frequently arise outside of urban centers and require judicial coordination with courts of other countries. This resolution proposes encouragement of a network to provide judges a resource for addressing those cases that involve the United States. The United States has currently recognized four (4) volunteer network judges to the Hague Conference. Foreign judges contact these four judges with questions about how matters related to the 1980 Hague Convention are handled in U.S. courts. These judges are also available to assist U.S. judges with questions concerning such matters in the United States and abroad. The four U.S. network judges also work diligently to educate other U.S. judges in this complex and unique area of international family law. These judges, however, only comprise four of numerous jurisdictions where these cases may arise in the United States.

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

Establishing a wide-reaching domestic judicial network within the United States would improve permissible communication and education in the judiciary and improve response time, proper interpretation of the 1980 Convention, and quick return of children abducted to or from the various U.S. jurisdictions. Other countries are exploring or have established similar intra-country networks.

4. Summary of Minority Views

None expressed that were not addressed in the drafting of the resolution and its report.
RESOLUTION

RESOLVED, That the American Bar Association affirms that the U.S. common law doctrine of *forum non conveniens* is not an appropriate basis for refusing to confirm or enforce arbitral awards that are subject to the provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the Inter-American Convention on International Commercial Arbitration and that refusal on that basis is not consistent with U.S. treaty obligations under these Conventions and U.S. implementing legislation.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

The American Bar Association should support the enforcement of international arbitration awards pursuant to multilateral conventions, and oppose the application of the U.S. common law doctrine of *forum non conveniens* as a means of inhibiting such enforcement. Multilateral treaties are designed to secure uniform and global portability for the recognition and enforcement of arbitral awards made in the territories of member states. Multilateral treaties identify the exclusive grounds for barring enforcement of an arbitration award. *Forum non conveniens* is not one of those grounds. The doctrine of *forum non conveniens* is a discretionary, local, judge made rule. It concerns the convenience of holding a trial on the underlying merits, rather than the “convenience” of locating and executing upon assets post-judgment. Accordingly, the doctrine should not stand as a bar to enforcement.

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

International arbitration is a preferred dispute resolution mechanism in international business transactions. The choice of international arbitration as a means of resolving disputes between international parties is due at least in part to the ability to recognize and enforce awards made in the territories of the parties to multilateral conventions. It is possible that such a State has little, if any, connection to the dispute apart from the location of assets of the award debtor. The lack of *other* connections between the State and the dispute should have no bearing on the recognition and enforcement of that award. Parties to a multilateral treaty expect uniform enforcement of treaty awards subject to an exclusive list of defenses.

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

The proposed Resolution would enable the American Bar Association to urge U.S. courts to resist application or adoption of the *forum non conveniens* defense in international arbitration enforcement cases. It would also provide litigants seeking enforcement of international arbitral awards with persuasive supporting authority for the position that a potential lack of ties between the U.S. and the underlying dispute should not serve as a defense to enforcement of such awards.

4. **Summary of Minority Views**

No minority views have been identified in opposition.
RESOLVED, That the American Bar Association amends the Terminology Section, and 
the Black Letter and Comment of Rule 2.11 of the ABA Model Code of Judicial Conduct as 
follows:

(insertions underlined, deletions struck through, *refers to defined terms)

TERMINOLOGY

“Aggregate,” in relation to contributions for a candidate, means not only contributions in 
cash or in kind made directly to a candidate’s campaign committee, but also all contributions 
made indirectly with the understanding that they will be used to support the election of a 
candidate or all contributions made to support or oppose the election of the candidate’s 
opponent; all contributions made to one or more other organizations that supported or opposed 
the judge’s election or retention; and all independent expenditures made directly to support or 
oppose the judge’s election or retention. “Aggregate” in relation to contributions by the law firm 
of a party’s lawyer includes all contributions and independent expenditures made by the lawyers 
who are partners, shareholders or employees of the law firm, and by the law firm itself as an 
entity, to support or oppose the judge’s election or retention. See Rules 2.11 and 4.4.

“Independent Expenditures” made in relation to a judicial election or retention election 
campaign refers to all financial and in kind expenditures in support of or in opposition to the 
judge’s election or retention, other than those made in concert or cooperation with, or as a 
contribution to, any judicial candidate’s campaign committee. See Rule 2.11.

RULE 2.11 Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the 
judge’s impartiality* might reasonably be questioned, including but not limited to 
the following circumstances:
(1) The judge has a personal bias or prejudice concerning a party or a
party’s lawyer, or personal knowledge* of facts that are in dispute in
the proceeding.

(2) The judge knows* that the judge, the judge’s spouse or domestic
partner,* or a person within the third degree of relationship* to either
of them, or the spouse or domestic partner of such a person is:
   (a) a party to the proceeding, or an officer, director, general
       partner, managing member, or trustee of a party;
   (b) acting as a lawyer in the proceeding;
   (c) a person who has more than a de minimis* interest that could
       be substantially affected by the proceeding; or
   (d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary,* or the
judge’s spouse, domestic partner, parent, or child, or any other member of
the judge’s family residing in the judge’s household,* has an economic
interest* in the subject matter in controversy or is a party to the proceeding.

(4) The judge knows or learns by means of a timely motion that a party, a
party’s lawyer, or the law firm of a party’s lawyer has within the previous
[insert number] year[s] made:
   (a) aggregate* contributions* in support of to the judge’s election
       or retention election campaign;
   (b) aggregate contributions in opposition to the judge’s election or
       retention election campaign; or
   (c) aggregate independent expenditures* in support of or in
       opposition to the judge’s election or retention election campaign
       in an amount that [is greater than $[insert amount] for an individual or
       $[insert amount] for an entity] [is reasonable and appropriate for an
       individual or an entity].

(5) The judge, while a judge or a judicial candidate,* has made a public
statement, other than in a court proceeding, judicial decision, or opinion,
that commits or appears to commit the judge to reach a particular result or
rule in a particular way in the proceeding or controversy.

(6) The judge:
   (a) served as a lawyer in the matter in controversy, or was
       associated with a lawyer who participated substantially as a lawyer in
       the matter during such association;
   (b) served in governmental employment, and in such capacity
       participated personally and substantially as a lawyer or public official
       concerning the proceeding, or has publicly expressed in such capacity
       an opinion concerning the merits of the particular matter in
       controversy;
   (c) was a material witness concerning the matter; or
(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge’s personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge’s spouse or domestic partner and minor children residing in the judge’s household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge’s disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge’s impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. In many jurisdictions, the term “recusal” is used interchangeably with the term “disqualification.”

[2] A judge’s obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge’s impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge’s disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] “Economic interest,” as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;
(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;
(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
(4) an interest in the issuer of government securities held by the judge.

[7] “Knows,” “aggregate,” “contributions” and “independent expenditures” in paragraph (A)(4) are defined in the Terminology Section. However, no inference about a judge’s actual knowledge should be drawn solely from the fact that reports of campaign contributions or independent expenditures have been filed by individuals or organizations as required by law and may be available as public records or in the public domain. For purposes of paragraph (A)(4), contributions or independent expenditures made by an officer of an entity or organization that is a party should be deemed to be contributions or independent expenditures made by that party.

[8] In determining whether contributions or independent expenditures are “greater than is reasonable and appropriate” for the individual or an entity to make, the judge should consider all relevant factors that may result in the judge’s impartiality reasonably being questioned. Relevant considerations may include:
   (a) the amount, value, source and timing of the contributions and independent expenditures made by the individual or entity, and the importance of these contributions and independent expenditures to the judge's election or retention election campaign or opponent’s campaign; and
   (b) the relative size of the contributions and independent expenditures in comparison to the total amount of money contributed to or expended in connection with the judge's election or retention election campaign or opponent’s campaign.

[9] The fact that a party, a party’s lawyer, or the law firm of a party’s lawyer has made a contribution to a judge’s election or retention election campaign in an amount up to the limit allowed by law should not, of itself, be a basis for the judge’s disqualification.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Standing Committee on Ethics and Professional Responsibility and the Standing Committee on Professional Discipline propose amendments to Rule 2.11, its Comments and the Terminology Section of the ABA Model Code of Judicial Conduct (Model Code) to provide enhanced guidance regarding when disqualification of an elected judge is required as a result of aggregate contributions or independent expenditures made in support of, or opposition to, the judge’s election or retention election campaign.

There are three components to the proposed amendments to the Model Code:

a. Two amendments to the Terminology Section.

- The definition of “Aggregate” is expanded to include all contributions and independent expenditures made by a lawyer, a party or the law firm of the party’s lawyer to support or oppose a judge’s election or retention election.

- A new term “Independent Expenditures” refers to any “financial and in kind expenditures in support of or in opposition to the judge’s election or retention, other than those made in concert or cooperation with, or as a contribution to, any judicial candidate’s campaign committee.”

b. Changes to the black letter of Rule 2.11(A)(4).

- The proposed amendments delineate three categories of aggregate contributions or independent expenditures made to support a judge’s election or retention election campaign, including those to support a judge’s opponent, that may result in a judge’s impartiality being reasonably questioned for purposes of disqualification.

c. Three new Comments to Model Rule 2.11 explain the proposed amendments to the black letter Rule.

- New Comment [7] explains what is meant by “the judge knows” of contributions or independent expenditures, as referred to in the black letter.

- New Comment [8] clarifies the phrase “greater than is reasonable and appropriate” by identifying relevant factors that may be considered in determining whether disqualification is appropriate.

- New Comment [9] makes clear that a contribution permitted under the law should not be, standing alone, a basis for disqualification.
2. **Summary of the Issue that the Resolution Addresses**

This Resolution was developed in response to the directive of the House when it adopted Resolution 107 in August 2011. What was stated in the introduction to the Report accompanying Resolution 107 holds true today:

> In recent years, judicial disqualification has emerged as an important policy issue in several states and an important focus of discussion and debate on ways to improve both the reality – and the public perception – of the fairness and impartiality of our court system. That focus has been sharpened because of intense public scrutiny and criticism in several highly publicized cases of refusals by judges to recuse themselves in circumstances where “the judge’s impartiality might reasonably be questioned.”

This Resolution addresses the complex ethical issues associated with the disqualification of judges in the context of the continued and exponential increases in campaign contributions and independent expenditures in judicial election and retention election campaigns.

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

The proposed policy position set forth in this Resolution will address the issue by providing necessary enhanced guidance to judges, lawyers and the public in the form of the proposed amendments to the Terminology Section and the black letter and Comments to Model Rule 2.11 of the Model Code of Judicial Conduct as described in response to Question 1 above. For example, the concept of independent expenditures is one not currently addressed in the Model Code. Yet those types of expenditures are increasingly common in judicial elections and retention elections. The proposed amendments to the black letter address this issue and provide, in the Terminology Section, a new definition of “Independent Expenditures.” Another example of how the Resolution addresses the new reality of judicial election financing issues is by including in the proposed changes to the black letter of Model Rule 2.11(A)(4) guidance regarding contributions or independent expenditures made in opposition to a judge in an election.

Similarly, the proposed new Comments to Model Rule 2.11 provide enhanced guidance to judges to help them determine when disqualification is ethically required pursuant to the black letter Rule. Of particular importance, the Comments provide necessary clarity regarding the knowledge requirement regarding contributions or independent expenditures that would trigger the obligation of a judge to disqualify himself or herself from a matter. The new proposed Comment makes clear that such knowledge should not be inferred solely from the fact that an entity, be it a judicial campaign committee, political organization, or independent group, has filed or published a report required by law identifying contributions or expenditures made to support or oppose a judicial election.

The Model Code of Judicial Conduct is the standard to which jurisdictions throughout the nation look for guidance in preparing their state and local rules. The proposed amendments set forth in the Resolution ensure the Model Code’s continued currency, and thus the currency of judicial ethics Rules in the United States.
4. **Summary of Minority Views**

In developing this Resolution the Ethics and Discipline Committees utilized an open and transparent process that included posting and circulating broadly numerous discussion drafts for comment, conducting public hearings and roundtable discussions, and meeting with interested entities, including the Judicial Division and the Standing Committee on Judicial Independence.

While the Judicial Division has not expressed opposition to or concern regarding the substance of this specific Resolution, the Division has expressed opposition to and concern about earlier discussion drafts of proposed amendments to Rule 2.11 of the Model Code of Judicial Conduct. Throughout the process leading to the filing of this Resolution, the Ethics and Discipline Committees have worked closely, specifically with the Division, as well as other entities, to resolve concerns.
RESOLUTION

RESOLVED, That the American Bar Association adopts the black letter Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means, dated August 2013 to supplant the Standards adopted August 1996.

FURTHER RESOLVED, That the American Bar Association recommends appropriate implementation of these Standards by entities providing civil pro bono legal services to persons of limited means.
STANDARDS FOR PROGRAMS PROVIDING CIVIL PRO BONO LEGAL SERVICES
TO PERSONS OF LIMITED MEANS
(AUGUST 2013)
(WITHOUT COMMENTARY)

SECTION 1: GOVERNANCE

ROLE AND RESPONSIBILITY OF GOVERNING BODY

Standard 1.1 (Role and Responsibility of Governing Body - General Policy Development)
A pro bono program should establish a governing body which adopts broad general policies.

Standard 1.2 (Role and Responsibility of Governing Body - Oversight and Review)
The governing body should ascertain that the pro bono program is in compliance with any contractual obligations and applicable laws governing the program and should regularly review the program's operations.

Standard 1.3 (Role and Responsibility of Governing Body - Fiscal)
The governing body should assume responsibility for the financial integrity of the pro bono program by adopting a budget, monitoring revenues and expenditures in relation to the approved budget, and providing for an annual independent financial examination.

Standard 1.4 (Role and Responsibility of Governing Body - Fundraising, Recruitment, Recognition and Public Relations)
The governing body should support the operation of the pro bono program by assisting in activities such as program advocacy, fundraising, volunteer recruitment, volunteer recognition and public relations.

Standard 1.5 (Role and Responsibility of Governing Body - Non-Interference in Attorney-Client Relationship)
The governing body and its individual members should not interfere directly or indirectly in the representation of a client by a volunteer attorney.

Standard 1.6 (Role and Responsibility of Governing Body - Non-Interference in Specific Acceptance and Referral Decisions)
The governing body and its individual members should not interfere directly or indirectly with the decision of the pro bono program staff to accept or reject a specific case, or to refer a case to a particular volunteer.
Standard 1.7 (Role and Responsibility of Governing Body - Conflicts of Interest)

Governing body members should not attempt to influence any decisions in which they have a conflict with clients served by or through the pro bono program.

MEMBERSHIP OF THE GOVERNING BODY

Standard 1.8 (Membership of the Governing Body - Representation of the Legal Community)

The governing body should include members who represent various segments of the legal community.

Standard 1.9 (Membership of the Governing Body - Representation of the Community-at-Large)

To the extent practicable, the governing body should include members of the community-at-large, with a special emphasis on participation by the client community.

Standard 1.10 (Membership of the Governing Body - Orientation and Training)

A pro bono program should strive to assure that all governing body members receive the orientation and training necessary for full and effective participation on the governing body.

PROGRAMS THAT ARE PART OF A LARGER ENTITY

Standard 1.11 (Programs That Are Part of a Larger Entity)

Larger organizations (including legal services programs, social service programs and state or local bar associations) should ensure that the pro bono program, or pro bono efforts within the program, is given the oversight resources necessary to accomplish their mission. Such organizations should consider creating an advisory governing body or governing body committee on pro bono to provide recommendations to the organization’s governing body regarding the pro bono program.

SECTION 2: PROGRAM INFRASTRUCTURE, EFFECTIVENESS AND DELIVERY DESIGN

INFRASTRUCTURE

Standard 2.1 (Infrastructure - Program Personnel)
A pro bono program should employ personnel who are skilled, diverse, culturally competent, and committed to the provision of high quality legal services. Program staff should be sufficient in number to ensure that the program can achieve its mission and can work effectively and efficiently with clients and volunteers.

**Standard 2.2 (Infrastructure - Attorney Supervision of Non-Attorney Staff)**

A pro bono program should provide for appropriate attorney supervision of its non-attorney staff.

**Standard 2.3 (Infrastructure - Record Keeping)**

A pro bono program should develop and maintain internal systems for identifying conflicts and for managing, retrieving and evaluating data regarding prospective clients, clients, volunteers, partner agencies, services provided, and program operations.

**Standard 2.4 (Infrastructure - Fiscal Management)**

A pro bono program should establish and maintain systems and procedures to account for revenues, expenditures and program services in conformity with appropriate accounting principles for nonprofit organizations.

**PROGRAM EFFECTIVENESS**

**Standard 2.5 (Infrastructure – Disaster Preparedness)**

A pro bono program should have in place an up-to-date continuity of operations plan that addresses program recovery and service delivery in the event of a disaster.

**Standard 2.6 (Program Effectiveness - Relations with Others)**

A pro bono program should strive to cooperate, collaborate and coordinate with other providers of legal services, the organized bar, the judiciary, law schools and community organizations.

**Standard 2.7 (Program Effectiveness - Institutional Stature and Credibility)**

A pro bono program should strive to attain institutional stature and credibility to enhance its ability to achieve client objectives.

**Standard 2.8 (Program Effectiveness - Identification of Clients' Needs)**

A pro bono program should establish a means of identifying the legal needs of persons of limited means who reside within its service area.
Standard 2.9 (Service Delivery Systems- Program Priorities)

A pro bono program should establish priorities for the allocation of its resources based upon identified client community need while taking into account the areas of interest and expertise of volunteers, volunteer need for specialized training and support, the priorities of other providers of legal services in its service area, and the potential for meaningful impact for the clients and/or community.

Standard 2.10 (Service Delivery Systems – Delivery Design)

A pro bono program should establish a design for the delivery of legal services which effectively and efficiently meets identified client need and is tailored to local circumstances, including existing resources and services and volunteers’ ability and willingness to deliver services.

Standard 2.11 (Service Delivery Design- Client Community Access)

A pro bono program should adopt policies and procedures that facilitate access to its service by the client community, including addressing issues of language, disability and cultural differences, and making access to services as easy as possible.

Standard 2.12 (Service Delivery Design - Client Intake System)

A pro bono program should establish or utilize an intake system through which knowledgeable staff or volunteers determine eligibility, discover potential conflicts of interest, obtain essential facts, identify legal issues and maintain client confidentiality and client dignity.

Standard 2.13 (Service Delivery Systems - Eligibility Guidelines)

A pro bono program should establish written guidelines to determine a prospective client’s eligibility for service.

Standard 2.14 (Service Delivery Systems - Conflicts of Interest)

A pro bono program should establish policies and procedures to identify and address conflicts of interest for program and client, client and volunteer, and program and volunteer.

Standard 2.15 (Service Delivery Systems - Acceptance Policy)

A pro bono program should establish a policy regarding the acceptance of cases that focuses resources on the identified priorities of the program, considers the maximum number of cases that volunteers can reasonably address and takes into account the resources available to provide volunteers with any necessary preparation and support.
OUTCOMES AND EVALUATION

Standard 2.16 (Outcomes and Evaluation – Effecting Impact)
A pro bono program should strive to achieve meaningful and lasting results responsive to clients' needs and objectives by utilizing volunteers to resolve or assist in resolving clients' individual legal problems, facilitate client self-sufficiency and empowerment, and improve laws and practices affecting low-income and disadvantaged clients.

Standard 2.17 (Outcomes and Evaluation - Outcome measurement)
Programs should develop and utilize strategies for assessing whether they have achieved the objectives set forth in Standard 2.15.

Standard 2.18 (Outcome and Evaluation - Periodic Program Evaluation)
A pro bono program should periodically evaluate its operational effectiveness and implement appropriate improvements as needed.

SECTION 3: RELATIONS WITH CLIENTS

THE INITIAL CONTACT

Standard 3.1 (The Initial Contact - Establishment of an Effective Relationship)
A pro bono program should strive to establish a relationship with each client and prospective client which fosters trust and preserves client dignity.

Standard 3.2 (The Initial Contact - Communication with Clients)
A pro bono program and its volunteers should communicate effectively with clients and prospective clients, addressing issues of language, education, literacy, disability and safety.

ESTABLISHING THE RELATIONSHIP

Standard 3.3 (Establishing the Relationship - Creation and Scope of Relationships)
A pro bono program should clearly communicate the nature and scope of the relationship it is establishing with each client and volunteer and delineate each party's rights and responsibilities. A program should aid a client and the volunteer who is representing or otherwise assisting that client in communicating clearly their duties and responsibilities to each other.

Standard 3.4 (Establishing the Relationship - Protection of Client Confidences)
Consistent with ethical and legal responsibilities, a pro bono program should preserve information regarding clients and prospective clients from any disclosure not authorized by the client or prospective client.

Standard 3.5 (Establishing the Relationship - Non-Discrimination and Diversity)

A pro bono program should not impermissibly discriminate in the acceptance and placement of cases.

FOLLOW UP

Standard 3.6 (Follow Up - Client Satisfaction)

A pro bono program should obtain information from clients regarding their satisfaction with the program and its volunteers.

Standard 3.7 (Follow up - Grievance Procedure)

A pro bono program should establish a policy and procedure to address complaints regarding the denial, quality and manner of service.

SECTION 4: RELATIONS WITH VOLUNTEERS

THE INITIAL INTERACTION

Standard 4.1 (The Initial Interaction - Recruitment)

A pro bono program should develop effective strategies for recruiting volunteers.

Standard 4.2 (The Initial Interaction - Non-Discrimination and Diversity)

A pro bono program should implement a policy of non-discrimination in the acceptance and placement of cases or in the recruitment of volunteers. Programs should accommodate client and volunteer disabilities as required under the ADA and other applicable statutes in the jurisdiction. To the extent practicable, staff hired and volunteers recruited should be diverse, including reflecting the diversity of the community being served.

Standard 4.3 (The Initial Interaction - Volunteer Qualifications)

A pro bono program should ensure that representation and advice are provided by volunteers who are competent and sensitive to clients.
BUILDING A STRONG RELATIONSHIP WITH VOLUNTEERS

Standard 4.4 (Building a Strong Relationship with Volunteers - Establishment of Relationships)

A pro bono program should clearly communicate the nature of the relationship it is establishing with each client and volunteer and delineate each party's rights and responsibilities. A program should aid a client and the volunteer who is representing or otherwise assisting that client in communicating clearly their duties and responsibilities to each other.

Standard 4.5 (Building a Strong Relationship with Volunteers - Costs and Attorneys Fees Policy)

A pro bono program should establish and communicate to clients and volunteers a policy and procedure regarding the payment of costs in cases in which filing fees, service fees, discovery, use of expert witnesses and other expenses related to representation are appropriate, as well as a policy regarding the receipt of attorneys' fees by program volunteers.

Standard 4.6 (Building a Strong Relationship with Volunteers - Professional Liability Insurance)

A pro bono program should obtain professional liability insurance coverage for itself, its staff and its volunteers.

Standard 4.7 (Building a Strong Relationship with Volunteers - Quality Assurance)

A pro bono program should strive to assure that all clients served through the program receive high quality legal services. Programs should either refer cases to attorneys experienced in the subject matter or provide volunteers the necessary training, mentoring and supervision. If experienced volunteers are not available to take the cases, the program should have in-house expertise in the area, develop expertise before engaging volunteers, or deploy knowledgeable volunteer trainers and mentors.

Standard 4.8 (Building a Strong Relationship with Volunteers - Training and Support)

A pro bono program should offer training, mentoring and supervision to its volunteers.

VOLUNTEER DEPLOYMENT

Standard 4.9 (Volunteer Deployment - Utilization)

A pro bono program should develop effective strategies for utilizing volunteers to meet clients' legal needs.
Standard 4.10 (Volunteer Deployment - Placement System)

A pro bono program which places cases with volunteers for assistance should establish a system for timely and appropriate referral. When placing cases, a program should provide volunteers with information regarding the nature of the problem and all available pertinent facts and documents.

ONGOING RELATIONSHIPS

Standard 4.11 (Ongoing Relationships - Tracking)

A pro bono program should establish a system for obtaining information regarding the progress and disposition of cases placed with volunteers. The program should provide any assistance needed by the volunteer, subject to any limitations imposed by rules of professional conduct.

Standard 4.12 (Ongoing Relationships – Retention and Recognition)

A pro bono program should develop effective methods for retaining and recognizing its volunteers.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution adopts the 2013 revisions to the 1996 Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means.

2. Summary of the Issue that the Resolution Addresses

Between 1996 and 2011, when the Standing Committee on Pro Bono and Public Service initiated the process to revise the Standards, multiple changes occurred in the arena of pro bono legal services, including advances in technology and developments in the practice of law.

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

The revisions address those changes and incorporate current technologies and practices.

4. Summary of Minority Views

None.
RESOLUTION

RESOLVED, That the American Bar Association urges states, localities, and territories to analyze their election systems and recent experiences of election delays if any, in light of available data and scholarship.

FURTHER RESOLVED, That the ABA urges states, localities, and territories to enact appropriate legislation or administrative rules to address the causes and potential remedies for election delays, including but not limited to technological improvements to provide statewide database access in real time to all polling places.

FURTHER RESOLVED, That the ABA urges the federal government to enforce the deadline for creating statewide databases imposed by the Help America Vote Act and take appropriate steps to bring states into compliance.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges states, localities, and territories to review their election systems and recent experiences of election delays if any, in light of available data and scholarship, including the Standing Committee on Election Law's Report on Election Delays in 2012. The resolution also encourages the enactment of appropriate legislation or administrative rules to address the causes and potential remedies for election delays, including but not limited to technological improvements to provide statewide database access in real time to all polling places; as well as urging the enforcement of the deadline for the creation of statewide databases imposed by the Help America Vote Act (“HAVA”) and compliance with the deadline.

2. Summary of the Issue that the Resolution Addresses

The 2012 Election cycle saw delays for many at the polls; some voters waited over two hours to cast a ballot. This resolution encourages states to take a comprehensive review of their electoral processes and to use various studies, including the Standing Committee on Election Law’s Report on Election Delays in 2012, in order to improve their systems and also encouraging improvements to and HAVA mandated creation of statewide voter registration databases in an effort to minimize delay due to voter registration issues.

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

This resolution addresses the issue of election delays by encouraging a comprehensive review of state electoral processes, using the Standing Committee on Election Law’s Report on Election Delays in 2012 as a resource, among others; as well as encouraging improvements to statewide voter registration databases, as well as compliance with HAVA requirements for such databases. The policy will allow the Association to engage more fully in the national debate on this issue within Congress, the States, and to the Commission on Election Reform created by President Obama.

4. Summary of Minority Views

None known.
RESOLVED, That the American Bar Association urges the full implementation of, and compliance with, the Indian Child Welfare Act (25 U.S.C. §§1901-63).

FURTHER RESOLVED, That the ABA encourages federal, state and tribal governments to provide the training and resources necessary to fully implement and enforce compliance with the Indian Child Welfare Act.

FURTHER RESOLVED, That the American Bar Association urges:
(a) state court collaborations with tribal courts, tribal court improvement programs, tribal governing bodies, and other tribal authorities to protect American Indian and Alaska Native children and to ensure appropriate treatment of, and resources for, American Indian and Alaska Native families and children at all levels of government;
(b) increased use of federal Title IV-E cooperative agreements and memoranda of understanding between states and Tribes to enable Tribes to operate their own child protection programs;
(c) assistance to Tribes and tribal courts in enhancing legal services, case management, and child welfare services functions;
(d) efforts to reduce the disproportionate number of American Indian and Alaska Native children removed from their homes; and
(e) significant increases in the financial support provided Tribes and tribal courts by the U.S. Departments of Interior, Justice, and Health and Human Services that enhance services to American Indian and Alaska Native children and their families, and to the legal and judicial systems that serve them.

FURTHER RESOLVED, That the American Bar Association encourages and supports efforts of state and local bar associations, legal services organizations, law schools, child welfare and adoption agency legal counsel, and other legal assistance providers to develop training and materials that educate the legal profession on requirements of the Indian Child Welfare Act and improvement of its implementation.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution calls for training and resources necessary to fully implement and enforce compliance with the Indian Child Welfare Act (ICWA).

2. Summary of the Issue that the Resolution Addresses

The ICWA was passed in 1978 to address the disparate treatment and removal of American Indian/Alaska Native children (AI/AN). These children were most often placed in non-Indian homes thereby threatening the ongoing survival and cultural identities of many Tribes. Since ICWA’s implementation, enforcement and compliance has been difficult to measure. Additionally, many of the misconceptions surrounding AI/AN practices and culture have resulted in ongoing non-compliance, legal confusion, and lack of financial and technical support for effective application of the law.

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

This policy proposes systemic training, federal funding, increased oversight and monitoring, as well as encouraging State and Tribal collaborations that have proven successful in implementing the act. Further enhancement of training materials and guidelines to encourage early and thorough assessment of children removed from their homes and timely communication with tribes will prevent the inappropriate removal, late identification, and placement disruptions that currently plague effective implementation.

4. Summary of Minority Views

We are unaware of any minority views or opposition to this Resolution.
RESOLVED, That the American Bar Association urges implementation of the December 2012 report of the U.S. Attorney General’s National Task Force on Children’s Exposure to Violence, entitled *Defending Childhood*, and urges federal, state, territorial, and tribal governments and courts to promptly implement the Report’s recommendations.

FURTHER RESOLVED, That the American Bar Association encourages, supports, and is committed to working with the U.S. Department of Justice, state and local prosecutors, state and local bar associations, legal services organizations, law schools, child welfare and juvenile justice agencies, public defender offices and court-appointed legal counsel, and other legal assistance providers and entities that promote improvements in juvenile justice to develop training that educates the legal profession on the issues and recommendations contained in the *Defending Childhood* report, and to help promote the practices proposed in the report.
EXECUTIVE SUMMARY

1. Summary of the Resolution

Prompt implementation of the recommendations of the CEV report will ensure that judges, lawyers, and the highest levels of the executive, legislative and judicial branches of federal, state, tribal and territorial governments: a) institute a trauma-informed approach to vulnerable and court-involved youth that: b) responds appropriately to children and youth exposed to violence; c) prevents re-traumatization; d) ensures culturally competent (including sexual orientation and gender identity) intervention; and e) reduces reliance on incarceration and detention.

2. Summary of the Issue that the Resolution Addresses

Children’s exposure to violence is often linked to long-term harm and those who have been exposed to violence have a unique set of needs. Those children are easily re-traumatized in legal, education, and health systems that do not respond in an appropriate and culturally sensitive manner that avoids incarceration, uses inappropriate school push-out, and lacks appropriate screening and assessment of their needs.

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

This policy calls for the coordination and implementation at the highest levels of government of the best practices and policies for reducing the long-term effects of exposure to violence in children and youth, preventing re-traumatization, improving assessment and response practices, avoiding minor incarceration in adult prisons, increasing school safety without reliance on suspension and expulsion, and providing legal representation to children and youth known to have been exposed to violence.

4. Summary of Minority Views

We are unaware of any minority views or opposition to this Resolution.
RESOLVED, That the American Bar Association amends Principle 13(C) of the *American Bar Association Principles for Juries and Jury Trials* as follows (additions underlined; deletions struck through):

C. In civil cases and criminal cases, jurors should, ordinarily, be permitted to submit written questions for witnesses. In deciding whether to permit jurors to submit written questions in criminal cases, the court should take into consideration the historic reasons why courts in a number of jurisdictions have discouraged juror questions and the experience in those jurisdictions that have allowed it.

FURTHER RESOLVED, That the American Bar Association urges the appropriate governing bodies of states and territories to enact a uniform standard procedure for juror questions during civil and criminal trials modeled upon the *American Bar Association’s Principles for Juries and Jury Trial*. 
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   The Resolution seeks to have the American Bar Association first revise Principle 13(c) of the ABA’s Principles for Juries and Jury Trials to encourage the questioning by juries in both civil and criminal trials and then encourage the various governing bodies of states and territories to implement a uniform standard procedure, based upon the ABA’s Principles for Juries and Jury Trials, to guide the use and implementation of juror questions in civil and criminal trials.

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

   Even though the use of juror questioning has been approved and encouraged by many statutes, rules and court decisions, juror questions serve as an underutilized yet innovative tool that yields many positive results. Since judges have generally been given the discretion to allow juror participation by questioning, as gatekeepers for the type or number of questions or even whether to allow questions in many instances, the key to growing the juror questioning process is to both appeal to and aid judges. Any concerns of disorder, confusion, or slowed legal proceedings, by judges or practitioners, could be combated by providing uniform standard guidelines not only to encourage the use of juror questions but to assist in the implementation of such juror participation. Additionally, uniform guidelines would help streamline and create safeguards for this process.

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

   By the states and territorial governing bodies’ implementing a standard procedure for juror questioning, the Resolution would achieve the goal to not only encourage greater use, especially by judges, of juror questioning but also to streamline the process and create safeguards.

4. **Summary of Minority Views**

   None are known at this time.
RESOLVED, That the American Bar Association urges federal, state, local and territorial governments to take legislative action to curtail the availability and effectiveness of the “gay panic” and “trans panic” defenses, which seek to partially or completely excuse crimes such as murder and assault on the grounds that the victim’s sexual orientation or gender identity is to blame for the defendant’s violent reaction. Such legislative action should include:

(a) Requiring courts in any criminal trial or proceeding, upon the request of a party, to instruct the jury not to let bias, sympathy, prejudice, or public opinion influence its decision about the victims, witnesses, or defendants based upon sexual orientation or gender identity; and

(b) Specifying that neither a non-violent sexual advance, nor the discovery of a person’s sex or gender identity, constitutes legally adequate provocation to mitigate the severity of any non-capital crime.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   This resolution urges legislative action to curtail the availability and effectiveness of the “gay panic” and “trans panic” defenses – including requiring courts instruct the jury not to let the sexual orientation or gender identity of the victims, witnesses, or defendants, bias the jury’s decision, specifying that neither a non-violent sexual advance, nor the discovery of a person’s sex or gender identity, constitutes legally adequate provocation to mitigate the severity of a non-capital case.

2. **Summary of the Issue that the Resolution Addresses**
   The use of a gay or trans panic defense deprives victims, their family, and their friends of dignity and justice. More broadly, it is designed to stir up and reinforce the anti-gay or anti-transgender emotions and stereotypes that led to the assault in the first place. It also suggests that violence against LGBT individuals is excusable. Finally, gay and trans panic defenses are irreconcilable with state and federal laws that treat bias crimes against LGBT people as aggravated offenses.

3. **Please Explain How the Proposed Policy Position will address the issue**
   This resolution will help to ensure that juries are aware of the possibility that subconscious or overt bias or prejudice may cloud their judgment; limit the use of gay or trans panic arguments as a basis for provocation in non-capital murder cases.

4. **Summary of Minority Views**
   None are known.
RESOLVED, That the American Bar Association urges federal, tribal, state, territorial, local and municipal governments to enact legislation relating to youth in the juvenile justice system with co-occurring mental health and substance abuse disorders that increases:

(a) Grants for services for youth with such disorders that evaluate the effectiveness of prevention and treatment programs;

(b) Funding for local access to health care for such youth and their families; and

(c) Collaboration among agencies involved in juvenile justice, mental health and substance abuse treatment in providing effective forms of locally-accessed and institutional treatment models.

FURTHER RESOLVED, That the American Bar Association urges federal, tribal, state, territorial, local and municipal governments to review privacy regulations with a view toward facilitating more effective treatment, and avoiding further involvement with the juvenile justice system. Such review should strive for fairness in considering youth privacy and informed cooperation between agencies, youth and families in integrated prevention and diversion out of the juvenile justice system and into treatment whenever possible, and strive for responsible and fair sharing of information among treating agencies for youth with co-occurring disorders.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   This resolution urges the development and implementation of legislation that provides for an increase in grants for services for youth with co-occurring mental health and substance abuse disorders who are involved with the juvenile justice system, increased funding to enhance local access to health care for these youth and their families, and increased collaboration among agencies involved in juvenile justice, mental health and substance abuse treatment. This resolution also urges governments to review privacy regulations with a view toward facilitating more effective treatment.

2. **Summary of the Issue that the Resolution Addresses**
   Allowing youth to pass through the juvenile justice system without properly addressing major issues that contribute to their problems benefits no one. The system’s failure to treat youth with co-occurring mental health and substance abuse disorders, leads to the youth’s further institutional contact and chronic conditions such as homelessness and health problems, in addition to the potential for continuing to suffer from these co-occurring disorders. The cost to the agencies and governments is also considerable, in that the efforts expended on the affected juveniles will not make much progress in avoiding future delinquency and criminal conduct or in creating a happier more productive member of our society.

3. **Please Explain How the Proposed Policy Position will address the issue**
   This resolution would help ensure that youth who do not need to be in the juvenile justice system are diverted through a successful treatment model.

4. **Summary of Minority Views**
   None are known.
RESOLVED, That the American Bar Association urges federal, state, local, tribal and territorial
governments to review their child abuse and neglect laws to improve government responsiveness
while respecting the rights of children and families, and to determine what changes, if any, are
appropriate including review of:

a) Mandatory reporting requirements for child abuse and neglect;

b) Sanctions for failure to report child abuse and neglect, and for the making of a
maliciously false report;

c) Adjustment of the penalties for endangering a child’s life through physical abuse, sexual
abuse and severe neglect; and

d) Whether and how to extend civil immunity to those who in good faith participate or
assist in child protective investigation and other child protective actions.

FURTHER RESOLVED, That the American Bar Association urges each jurisdiction, with the
involvement of the state and local bar, to educate professionals and members of the public on
their obligations under child abuse and neglect laws and on its definition and recognition.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   This resolution urges jurisdictions to review their child abuse and neglect laws to improve government responsiveness while respecting the rights of children and families, and to determine what change, if any, are appropriate including review of 1) mandatory reporting requirements for child abuse and neglect; 2) sanctions for failure to report child abuse and neglect, and for the making of a maliciously false report; 3) adjustment of the penalties for endangering a child’s life through physical abuse, sexual abuse and severe neglect; and 4) whether and how to extend civil immunity to those who in good faith participate or assist in child protective investigation and other child protective actions.

2. **Summary of the Issue that the Resolution Addresses**
   Recent high-profile cases demonstrate the need for jurisdictions to review their laws concerning child abuse and neglect. Specifically, states should look at laws addressing mandatory reporting, sanctions, penalties and civil immunity and make changes as necessary.

3. **Please Explain How the Proposed Policy Position will address the issue**
   This resolution would provide structure to concerned parties to make certain that abuse and neglect does not go unreported. The education provision of the resolution increases awareness about the issue in the jurisdiction.

4. **Summary of Minority Views**
   None are known.
RESOLVED, That the American Bar Association urges federal state, local and territorial governments to re-examine strict liability offenses to determine whether the absence of a *mens rea* element results in imposition of unwarranted punishment on defendants who lacked any culpable state of mind in performing acts that were not *malum in se*, to prescribe specific *mens rea* elements for all crimes other than strict liability offenses, and to assure that no strict liability crimes permit a convicted individual to be incarcerated.
EXECUTIVE SUMMARY

1. Summary of the Resolution
This resolution urges governments to re-examine strict liability offenses to determine whether the absence of a *mens rea* element results in imposition of unwarranted punishment on defendants who lacked any culpable state of mind in performing acts that were not *malum in se*, to prescribe specific *mens rea* elements for all crimes other than strict liability offenses, and to assure that no strict liability crimes permit a convicted individual to be incarcerated.

2. Summary of the Issue that the Resolution Addresses
Individuals should not be subjected to criminal prosecution and conviction unless they intentionally engage in inherently wrongful conduct or conduct that they know to be unlawful. This resolution addresses the erosion of *mens rea*, which carries with it the dangerous potential of punish people that are otherwise morally innocent.

3. Please Explain How the Proposed Policy Position will address the issue
This resolution addresses the issue that individuals should not be subjected to criminal prosecution and conviction unless they intentionally engage in inherently wrongful conduct, by urging governments to prescribe specific *mens rea* elements for all crimes other than strict liability offenses, and to assure that no strict liability crimes permit a convicted individual to be incarcerated.

4. Summary of Minority Views
None are known.
RESOLUTION

RESOLVED, That the American Bar Association opposes plea or sentencing agreements that waive a criminal defendant’s post-conviction claims addressing ineffective assistance of counsel, prosecutorial misconduct, or destruction of evidence unless based upon past conduct that is specifically identified in the plea or sentencing agreement or transcript of the proceedings; and

RESOLVED, That the American Bar Association urges judges in all jurisdictions to reject plea and sentencing agreements that include waivers of a criminal defendant’s post-conviction claims addressing ineffective assistance of counsel, prosecutorial misconduct, or destruction of evidence unless based upon past conduct that is specifically identified in the plea or sentencing agreement or transcript of the proceedings; and not known to the defense at the time of the plea.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   This resolution shows American Bar Association opposition to provisions in plea agreements where a criminal defendant waives the right to raise a claim of ineffective assistance of counsel or of prosecutorial misconduct not known to the defense at the time of the plea. It urges judges in all jurisdictions to reject plea and sentencing agreements that include waivers of a criminal defendant’s post-conviction claims addressing ineffective assistance of counsel, prosecutorial misconduct, or destruction of evidence unless based upon past conduct that is specifically identified in the plea or sentencing agreement or transcript of the proceedings; and not known to the defense at the time of the plea.

2. **Summary of the Issue that the Resolution Addresses**
   This resolution addresses the following issues: guilty “pleas account for nearly 95% of all criminal convictions.” “The reality is that plea bargains have become so central to the administration of the criminal justice system that plea bargains are not an “adjunct to the criminal justice system; it is the criminal justice system. It is in this context that this resolution addresses, as a matter of policy, the inclusion in plea agreements of provisions that require the defendant to waive, on direct appeal or post conviction review, the right to raise claims of ineffective assistance of counsel and/or prosecutorial misconduct not known to the defendant at the time of the plea. A number of prosecutors, in federal courts and in some state courts, require criminal defendants to execute waivers containing these provisions as a condition of each and every plea agreement. The ABA has long recognized that finality in judgments of conviction is an important goal in the criminal justice system. Finality, however, must be tempered by the recognition that an effective and fair criminal justice system requires that attorneys act competently and diligently and that prosecutors operate as ministers of justice to promote the fair administration of justice. The waivers at issue undermine these goals.

3. **Please Explain How the Proposed Policy Position will address the issue**
   This resolution would help ensure proper plea bargains by: 1) opposing provisions in plea agreements where a criminal defendant waives the right to raise a claim of ineffective assistance of counsel or of prosecutorial misconduct not known to the defense at the time of the plea, and 2) urging judges in all jurisdictions to reject plea agreements that include such provisions.

4. **Summary of Minority Views**
   None are known.
RESOLVED, That the American Bar Association adopts the black letter of the *ABA Criminal Justice Standards on Fair Trial, and Public Discourse* dated August 2013, to supplant the *ABA Criminal Justice Standards on Fair Trial and Free Press*. 
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PART I. GENERAL DEFINITIONS AND PURPOSES

Standard 8-1.1. Purposes of the Standards

(a) These Standards have three primary goals:
   (i) First, they are intended to provide a guide to best practices for lawyers and other
       professionals involved in criminal cases, including investigators and members of law
       enforcement, with respect to communications with the public;
   (ii) Second, they are intended to provide a guide to best practices for lawyers who provide
        public commentary or consult on criminal cases in which they are not personally involved;
   (iii) Third, they are intended to provide a guide to best practices for judges and judicial
        employees in anticipating and responding to public interest in criminal cases, and ensuring that
        jurors are not exposed to extrajudicial information about a case.

(b) With respect to each of these goals, these Standards reflect the views of the ABA that:
   (i) a transparent and open criminal justice system is of critical importance in our democracy;
   (ii) lawyers and others involved in the criminal justice system have a duty to ensure that
        criminal cases are conducted fairly and that verdicts are rendered solely on the basis of the
        evidence presented in court;
   (iii) lawyers and others involved in the criminal justice system also have a duty to promote
        respect for and confidence in the criminal justice system; and
   (iv) developments in information technology and in how individuals obtain information have
        made it unnecessary for purposes of these Standards to differentiate between members of the
        general public and those who are members of the traditional “Press” or “News Media.” This
        represents a departure from prior editions on these Standards, which were entitled “Fair Trial and
        Free Press.”

(c) While these Standards are intended to provide a basis for the formulation of internal
    guidelines within lawyers’ offices, the courts, and law enforcement agencies, they are not
    intended to serve as the basis in and of themselves for the imposition of professional discipline,
    to create substantive or procedural rights for accused or convicted persons, to create a standard of
    care for civil liability, or to serve as a predicate for a motion to suppress evidence or dismiss a
    charge.
Standard 8-1.2. Definitions of Terms Used in These Standards

For purposes of these Standards:

(a) An “extrajudicial statement” is any oral or written statement that is not made or presented in a courtroom in the course of judicial proceedings or in court filings or correspondence with the court or counsel in connection with a criminal matter. A “public extrajudicial statement” is any extrajudicial statement that a reasonable person would expect to be disseminated to the public or otherwise made available by means of public communication.

(b) A “criminal matter” ordinarily begins when an individual or entity has been publicly identified as a subject of a criminal investigation, arrested, or named in criminal charges, whichever is earliest, and ordinarily ends with a dismissal or verdict; provided, however, that if the charges are not dismissed and no verdict is reached, or a verdict has been reached but there is nevertheless a reasonable likelihood of a new trial, a “criminal matter” continues until the charges are dismissed or a verdict is reached in the new trial.

(c) A “lawyer participating in a criminal matter” is:

(i) any lawyer who is participating or who has participated in the investigation or litigation of the criminal matter;

(ii) any lawyer who is representing or who has represented a witness or likely witness in connection with the criminal matter; or

(iii) any lawyer who works for the same firm or government agency as a lawyer described in subsection (i) or (ii).

PART II. CONDUCT OF ATTORNEYS

Standard 8-2.1. Conduct by Lawyers Participating in a Criminal Matter

(a) Subject to any additional limitations imposed by local or professional rules, during the pendency of a criminal matter, a lawyer participating in that criminal matter should not make, cause to be made, condone or authorize the making of a public extrajudicial statement if the lawyer knows or reasonably should know that it will have a substantial likelihood of:

(i) influencing the outcome of that or any related criminal trial or prejudicing the jury venire, even if an untainted panel ultimately can be found;

(ii) unnecessarily heightening public condemnation of a defendant or a person or entity who has been publicly identified in the context of a criminal investigation, or of a witness or victim; or

(iii) undermining the public’s respect for the judicial process.
As a general matter, lawyers participating in a criminal matter should consult with their supervisors prior to making any public extrajudicial statements.

(b) During the pendency of a criminal matter, a lawyer participating in that criminal matter should make reasonable efforts to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the lawyer from making a public extrajudicial statement that the lawyer would be prohibited from making under these Standards or other applicable rules of professional conduct, or engaging in conduct prohibited by these Standards.

(c) This Standard should not be construed as prohibiting a lawyer participating in a criminal matter from releasing or authorizing the release of a record or document that the lawyer is required to release under state open records laws or the federal Freedom of Information Act, upon receipt of a proper request. A lawyer participating in a criminal matter should not place statements or evidence into the court record or into a document that is deemed an open record under applicable law solely for the purpose of circumventing this Standard. If the lawyer has reason to believe that the public release of a record or document would create a substantial probability of harm to the fairness of a trial or other overriding interest, the lawyer should consider seeking a sealing order pursuant to Standard 8-5.2.

(d) Nothing in these Standards is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile offenders or other protected categories of offenders, victims or witnesses, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct publicly made against him or her.

Standard 8-2.2. Specific Guidance Regarding Prosecutorial Statements

(a) Statements regarding the following subject areas, when made by prosecutors, pose a particular risk of violating Standard 8-2.1(a) and therefore ordinarily should be avoided by a lawyer participating in a criminal matter as a prosecutor during the pendency of that matter:

(i) the prior criminal record of a defendant or a person or entity who has been publicly identified in the context of a criminal investigation;

(ii) the character, credibility, or reputation of a defendant or a person or entity who has been publicly identified in the context of a criminal investigation, or the race, ethnicity, creed, religion, or sexual orientation of such person unless such information is necessary to apprehend a suspect or fugitive;

(iii) the personal opinion of the prosecutor as to the guilt or innocence of a defendant or a person or entity who has been publicly identified in the context of a criminal investigation;

(iv) the existence or contents of any confession, admission, or statement given by a defendant or a person or entity who has been publicly identified in the context of a criminal investigation, or the refusal or failure of such person to make a statement;
(v) the performance or results of any examinations or tests, or the refusal or failure to submit to an examination or test by a defendant or a person or entity who has been publicly identified in the context of a criminal investigation;

(vi) the nature of physical evidence expected to be presented;

(vii) the identity, race, ethnicity, creed, religion, or sexual orientation, expected testimony, criminal record, character, reputation, or credibility of prospective witnesses other than the victim, and the race, ethnicity, creed, religion, sexual orientation, expected testimony, criminal record, character, reputation, or credibility of the victim;

(viii) the possibility of a plea of guilty to the offense charged, or other disposition;

and

(ix) information that the lawyer knows or has reason to know would be inadmissible as evidence in a trial.

(b) Public statements regarding the following subjects by a lawyer participating in a criminal matter as a prosecutor ordinarily will not violate Standard 8-2.1(a):

(i) statements necessary to inform the public of the nature and extent of the prosecutor’s action, such as:

(A) the existence of an investigation in progress, including the general length and scope of the investigation, and the identity of the investigating officer or agency;

(B) the facts and circumstances of an arrest, including the time and place, and the identity of the arresting officer or agency;

(C) the identity of the victim, when the release of that information is not otherwise prohibited by law or would not be harmful to the victim; and

(D) the general nature of the charges against a defendant, provided that the statement explains that the charge is an accusation and that the defendant is presumed innocent until and unless proven guilty;

(E) the name, age, residence, and occupation of a defendant;

(F) the scheduling or result of any stage in the judicial proceeding, and information necessary for the public to locate documents contained within the public court record of the matter.

(ii) statements that serve a legitimate law enforcement purpose, such as:

(A) statements reasonably necessary to warn the public of any ongoing dangers that may exist or to quell public fears; and
(B) statements reasonably necessary to obtain public assistance in solving a crime, obtaining evidence, or apprehending a suspect or fugitive.

Standard 8-2.3. Specific Guidance Regarding Defense Statements

(a) Public statements regarding the following subjects by a lawyer participating in a criminal matter as a defense attorney, if made after a criminal charge has been filed, pose a particular risk of violating Standard 8-2.1(a) and therefore ordinarily should be avoided by a lawyer participating in a criminal matter as a defense lawyer after a charge has been filed:

(i) the personal opinion of the defense attorney as to the guilt or innocence of the defendant;

(ii) the existence or contents of any confession, admission, or statement given by the defendant;

(iii) the performance or results of any examinations or tests, or the defendant's willingness to submit to an examination or test;

(iv) the nature of physical evidence expected to be presented;

(v) the identity, race, ethnicity, creed, religion, or sexual orientation, expected testimony, criminal record, character, reputation, or credibility of alleged victims or prospective witnesses;

(vi) the offer or refusal of a plea agreement or other disposition; and

(vii) information that the lawyer knows or has reason to know would be inadmissible as evidence in a trial.

(b) Public statements regarding the following subjects by a lawyer participating in a criminal case as a defense lawyer ordinarily will not violate Standard 8-2.1(a):

(i) the general nature of the defense;

(ii) the name, age, residence, and occupation of the defendant or a person or entity who has been publicly identified in the context of a criminal investigation;

(iii) the facts and circumstances of an arrest, including the time and place;

(iv) the scheduling or result of any stage in the judicial proceeding, and information necessary for the public to locate documents contained within the public court record of the case; and

(v) a request for assistance in obtaining evidence;
(c) If the mere filing of a criminal charge is likely to cause grave harm to the defendant’s business, career, employment, or financial condition prior to the resolution of the criminal case, which harm will not likely be substantially repaired by later exoneration of the defendant, the lawyer may participate in the formulation of a response to the charge by the defendant or the defendant’s other representatives to mitigate the harm that includes an accurate public extrajudicial statement concerning:

(i) the performance of any examinations or tests, or the defendant’s willingness to submit to an examination or test;
(ii) the nature of physical evidence expected to be presented; or
(iii) the identity, expected testimony, or credibility of prospective witnesses.

The decision to participate in the formulation of such a response should not be made lightly. When such a statement is issued, it should be limited to such information as is necessary to mitigate the harm caused by the charge.

Standard 8-2.4. Statements by Legal Commentators and Consultants

(a) A lawyer may serve an important role of educating the public regarding the criminal justice system by providing legal commentary with respect to a criminal case. A lawyer may also legitimately provide consulting services to a newsgathering entity or individual about a criminal case. A lawyer who is participating in a criminal matter should not undertake either of these roles – commentator or consultant – with respect to that criminal matter.

(b) A lawyer who is serving as a legal commentator should strive to ensure that the lawyer’s commentary enhances the public’s understanding of the criminal matter and of the criminal justice system generally, promotes respect for the judicial system, and does not materially prejudice the fair administration of justice, in the particular case or in general. To that end, a legal commentator should:

(i) Have an understanding of the law and facts of the matter so as to be competent to serve as a commentator;
(ii) Refrain from providing commentary designed to sensationalize a criminal matter; and
(iii) Prior to providing commentary, disclose to the public or the entity or individual requesting commentary any interests the lawyer has in the proceedings, including:
   (A) the representation of a client, past or present, who may be affected by the proceedings;
   (B) any relationships with the lawyers, judge, victim, witnesses or parties in the proceedings; and
   (C) the fact that the lawyer is being compensated for providing commentary, if that is the case, and the source of such compensation.

(c) A lawyer serving as a commentator should exercise great caution if asked to express personal opinions regarding the performance of the participants or the likely outcome of the proceedings. If the lawyer chooses to respond to such inquiries, the lawyer should identify with specificity the basis for any such opinions.
(d) A lawyer serving as a legal commentator or consultant should not help provide information:

(i) that is under seal;
(ii) that was obtained in violation of a protective order;
(iii) that is grand jury information that has not been released; or
(iv) the disclosure of which would violate the lawyer’s duty of confidentiality or loyalty.

PART III. CONDUCT OF LAW ENFORCEMENT OFFICERS AND EMPLOYEES IN CRIMINAL CASES


(a) Subject to any additional limitations imposed by local or professional rules, law enforcement officers and employees of law enforcement agencies should not make, cause to be made, condone or authorize the making of a public extrajudicial statement that a lawyer would be prohibited from making pursuant to Standards 8-2.1 and 8-2.2.

(b) Law enforcement officers and employees of law enforcement agencies should not disclose, cause to be disclosed, or condone or authorize the disclosure of information, images, or documents relating to a criminal matter that are not part of the public court record. This Standard should not be construed as prohibiting law enforcement officers and employees of law enforcement agencies from releasing or authorizing the release of a record or document that the agency is required to release under state open records laws or the federal Freedom of Information Act, upon receipt of a proper request. A law enforcement officer or employee of a law enforcement agency should not place statements or evidence into the court record or into a document that is deemed an open record under applicable law solely for the purpose of circumventing this Standard.

(c) Nothing in this standard is intended to preclude any law enforcement officer or employee of a law enforcement agency from replying to charges of misconduct that are publicly made against him or her or from participating appropriately in any legislative, administrative, or investigative hearing.

Standard 8-3.2. Conduct with Respect to an Individual in Custody

(a) Law enforcement officers and employees of law enforcement agencies should not exercise their authority over an individual in a manner deliberately designed to increase the likelihood that images of the individual in custody will be disseminated to the public or otherwise made available by means of public communication.

(b) Law enforcement officers and employees of law enforcement agencies who receive a request for an interview with an individual in their custody should transmit that request to the
individual only upon the approval of the individual’s lawyer, where that individual is represented by counsel in a pending challenge to his confinement.

PART IV. CONDUCT OF JUDGES AND COURT PERSONNEL IN CRIMINAL CASES

Standard 8-4.1. Extrajudicial Statements and Disclosure of Information by Court Personnel

(a) Subject to any additional limitations imposed by the applicable rules of judicial conduct or other local or professional rules, court personnel, including judges and law clerks, should not make, cause to be made, or condone or authorize the making of any public extrajudicial statement about a criminal matter other than one concerning the processing of the case.

(b) Court personnel, including judges and law clerks, should not disclose, cause to be disclosed, or condone or authorize the disclosure of information, images, or documents relating to a criminal matter that are not part of the public court record. This Standard should not be construed as prohibiting court personnel from releasing or authorizing the release of a record or document that the court is required to release under state open records laws or the federal Freedom of Information Act, upon receipt of a proper request.

PART V. CONDUCT OF JUDICIAL PROCEEDINGS IN CRIMINAL CASES

Standard 8-5.1. Prior Restraints

(a) Protecting the fairness of a criminal trial is by itself an insufficient basis for rules or judicial orders prohibiting members of the public from disseminating or otherwise making available by means of public communication any information in their possession relating to a criminal matter.

(b) If a lawyer participating in a criminal matter, or other person subject to these Standards, has repeatedly violated these Standards, a judicial order restraining such persons from making further public statements or disclosing non-public information in violation of these Standards may be appropriate. Such orders should be used sparingly and, when used, should be specific in describing to whom the order applies and what statements are prohibited. Prior to issuing such an order, the court should provide notice and an opportunity to be heard to those who would be affected by the proposed order and the public. Any such order should include written findings sufficient to justify its issuance, including that continued violations create a substantial danger to the fairness of the trial or other compelling interest, that the proposed order will effectively prevent or substantially lessen the potential harm, and that there is no less restrictive alternative reasonably available to prevent that harm.
Standard 8-5.2. Public Access to Judicial Proceedings and Related Documents and Exhibits

(a) Subject to the limitations set forth below, in any criminal matter, the public presumptively should have access to all judicial proceedings, related documents and exhibits, and any record made thereof not otherwise required to remain confidential. A court may impose reasonable time, place and manner limitations on public access.

(b) A court may issue a closure order to deny access to the public to specified portions of a judicial proceeding or to a related document or exhibit only after:

(i) conducting a hearing after reasonable notice and an opportunity to be heard on the proposed order has been provided to the parties and the public; and

(ii) setting forth specific written findings on the record that:
   (A) public access would create a substantial probability of harm to the fairness of the trial or other overriding interest which substantially outweighs the defendant's or the public’s interest in public access;
   (B) the proposed closure order will effectively prevent or substantially lessen the potential harm; and
   (C) there is no less restrictive alternative reasonably available to prevent that harm, including any of the measures listed in Standard 8-5.3 or permitting access to one or more representatives of the public.

(c) In determining whether a closure order should issue, the court may accept the items for which a seal is being requested under seal, in camera or in any other manner designed to permit a party to make a prima facie showing without public disclosure of that matter. The motion seeking to close access to those items must itself, however, be filed in open court unless the requirements of subsection (b) are met.

(d) If the court issues a closure or sealing order, the court should consider imposing a time limit on the duration of that order and requiring the party that sought the order to report back to the court within a specified time period as to whether continued closure or sealing is justified pursuant to the requirements set forth in subsection (b). If those requirements are no longer met, the documents or transcripts of any sealed proceeding should be unsealed.

Standard 8-5.3. Mitigating the effects of publicity on the fairness of a trial

If a case has been the subject of significant publicity, the court should consider the following options, to the extent available under applicable law in the jurisdiction and subject to the standards elaborated below, as means of mitigating the prejudicial effects of such publicity. The court should select the most effective option or options in light of the circumstances presented that will be the least disruptive to the proceedings and to jurors. The options include:

(a) ordering a continuance;
(b) conducting voir dire as to pretrial publicity;
providing clear cautionary instructions to the jury from the outset of jury selection;
providing clear cautionary instructions to court personnel, parties, lawyers, and witnesses;
providing lawyers with additional peremptory challenges;
impanelling additional alternate jurors;
importing jurors from another district or locality;
ordering a severance;
impanelling an anonymous jury;
sequestering the jury; and
ordering a change of venue.

Standard 8-5.4. Voir dire

If it is likely that any prospective jurors have been exposed to prejudicial publicity, they should be individually questioned to determine what they have read and heard about the case and how any exposure has affected their attitudes toward the trial. Questioning should take place outside the presence of other chosen and prospective jurors and in the presence of counsel. A record of prospective jurors’ examinations should be maintained and any written questionnaires used should be preserved as part of the court record.

Standard 8-5.5. Cautionary jury instructions

(a) The court should instruct potential jurors and jurors that they must:

(i) avoid any extrajudicial information about the case;
(ii) not seek out any extrajudicial information related directly or indirectly to the case;
(iii) not communicate about the case with anyone except as authorized by the court; and
(iv) immediately inform the court if they become aware that any other juror has violated the court’s instructions.

(b) The court’s instructions should explain the rationale for these prohibitions and specifically address how the prohibitions relate to the types of information sources and means of communication that the jurors and potential jurors may be accustomed to using in their daily lives.

(c) These instructions should be given:

(i) to potential jurors at the beginning of jury selection, and, as warranted, throughout the jury selection process until a jury has been selected and sworn; and
(ii) to jurors at the conclusion of every trial day, and before breaks if the court deems it appropriate.
(d) If, during the trial, the court determines that information has been disseminated or otherwise made publicly available that goes beyond the record on which the case is to be submitted to the jury and raises serious questions of prejudice, the court may on its own motion or on the motion of either party question each juror, out of the presence of the others, about exposure to that information. The examination should take place in the presence of counsel, and a record of the examination should be kept. If the court determines that a juror is no longer likely to be able to render a fair and impartial verdict based solely on the evidence in the trial, the court should excuse the juror.

(e) The court should consider providing post-verdict guidance to jurors concerning any inquiries they may receive about the case including their right to respond or not respond to inquiries about the case and cautioning them about related risks, including the potential prejudice to subsequent related proceedings.

Standard 8-5.6. Court plans for accommodating public interest in a criminal matter

(a) Standing rules for the jurisdiction. To the extent practicable, jurisdictions should adopt standing orders or rules of court for accommodating public interest in any particular criminal matter. These standing orders should include general provisions concerning:

(i) the procedures to be followed for individuals and entities to request official designation as representative sources of coverage, including but not limited to recording or broadcasting by electronic or other media of judicial proceedings in the criminal matter;

(ii) the extent to which such coverage, including recording or broadcasting by electronic or other media, is authorized by applicable statute and rules of court, in courtrooms, immediately adjacent areas, and in other parts of the courthouse and its environs;

(iii) conditions, limitations, and guidelines that will allow such coverage as is permitted to take place in a manner that will be unobtrusive, will not distract or otherwise adversely affect witnesses, jurors, or other trial participants, and will not otherwise interfere with the administration of justice, including:

(A) how seats in the courtroom will be allocated if sufficient seating is not available to accommodate all those with interest in attending, and any alternative arrangements that can be made to accommodate overflow interest;

(B) how documents and other exhibits will be made available; and

(C) any applicable rules limiting the public dissemination of visual images of jurors, judges, witnesses, or other trial participants, and any other restrictions on the dissemination of information about jurors, judges, witnesses, or other trial participants.

(b) Matter-specific rules. For matters in which there is likely to be significant public interest, the trial judge court should adopt and make available specific orders to effectuate subsection (a)(iii) of this standard at the earliest practicable time.
**EXECUTIVE SUMMARY**

1. **Summary of the Resolution**
   This resolution will create the *ABA Criminal Justice Standards on Fair Trial and Public Discourse*. These Standards will update the previous *Fair Trial and Free Press* Standards that were published in 1991.

2. **Summary of the Issue that the Resolution Addresses**
   The *Fair Trial and Public Discourse* Standards will address the changes that have occurred in the fields of media and criminal justice since the *Fair Trial and Free Press* Standards were published in 1991.

3. **Please Explain How the Proposed Policy Position will address the issue**
   Through a lengthy and extensive process these Standards were developed by a task force, and reviewed by the Criminal Justice Standards Committee, and approved by the Criminal Justice Council. Although there have been significant changes in the relationship between criminal justice and media since the adoption of the FTFP Standards, the outdated FTFP Standards are at present the only comprehensive source of ABA policy relating to the relationship between law and media.

4. **Summary of Minority Views**
   None are known.
RESOLVED, That the American Bar Association urges Congress to amend the Electronic Communications Privacy Act (“ECPA”) to reflect the technological and societal changes which have occurred since the original passage of the statute.

FURTHER RESOLVED, That any ECPA amendments should include the following:

A) A governmental entity may require an entity covered by ECPA (a provider of wire or electronic communication service or a provider of remote computing service) to disclose communications that are not readily accessible to the public only when a search warrant is issued on a showing of probable cause, regardless of the age of the communications, the means or status of their storage or the provider’s access to or use of the communications in its normal business operations.

B) A governmental entity may access, or may require a covered entity to provide, prospectively or retrospectively, location information regarding a mobile communications device only when a warrant is issued on a showing of probable cause.

C) A governmental entity may access, or may require a covered entity to provide, prospectively or in real time, dialed number information, email to and from information or other data currently covered by the authority for pen registers and trap and trace devices only after judicial review and a court finding that the governmental entity has made a showing at least as strong as the showing required under Section 2703(d) of the ECPA.

D) Where the Stored Communications Act authorizes a subpoena to acquire information, a governmental entity may use such subpoenas only for information related to a specified account(s) or individual(s). All non-particularized requests must be subject to prior judicial approval.
EXECUTIVE SUMMARY

1. Summary of the Resolution

   The resolution urges Congress to amend the Electronic Communications Privacy Act (“ECPA”) to reflect technological and societal changes that have occurred since its passage in 1986.

2. Summary of the Issue that the Resolution Addresses

   The ECPA set forth standards for law enforcement access to electronic communications and associated data, affording important privacy protections to subscribers of emerging wireless and Internet technologies. Technology has advanced dramatically since 1986, and ECPA has been outpaced. The statute has not undergone a significant revision since it was enacted in 1986 - centuries ago in Internet time. As a result, ECPA is a patchwork of confusing standards that have been interpreted inconsistently by the courts, creating uncertainty for both service providers and law enforcement agencies. ECPA can no longer be applied in a clear and consistent way, and, consequently, the vast amount of personal information generated by today’s digital communication services may no longer be adequately protected.

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

   This resolution urges the adoption of amendments to the ECPA to address the issues set forth above.

4. Summary of Minority Views

   None known.
RESOLVED, That the American Bar Association supports enactment of comprehensive legislation to authorize needed permanent and temporary federal judgeships, with particular focus on the federal districts with identified judicial emergencies so that affected courts may adjudicate all cases in a fair, just and timely manner.

FURTHER RESOLVED, That the American Bar Association urges the President of the United States to advance nominees for current vacancies for federal judicial positions promptly and the United States Senate to hear and vote on those nominations expeditiously, with particular focus on the vacancies in the federal districts with identified judicial emergencies so that affected courts may adjudicate all cases in a fair, just and timely manner.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution urges Congress to authorize additional temporary and permanent judgeships with particular focus on federal districts with identified judicial emergencies. The Resolution also urges the President of the United States and the United States Senate to fill existing judicial vacancies in an expeditious manner.

2. Summary of the Issue that the Resolution Addresses

Congress has not passed comprehensive legislation authorizing additional judgeships since 1990. Since that time, federal district courts have experienced a 38 percent growth in caseloads but have seen only a 4 percent increase in judgeships. Legislation is needed to ensure that the federal judiciary has the judgeships it needs to adjudicate all cases in a prompt, efficient, and fair manner. As of May 16, 2013, there are 85 federal judicial vacancies and 24 nominations pending. Filling these existing judicial vacancies is essential.

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

The proposed policy supports the authorization of additional permanent and temporary federal judgeships, and urges that existing federal judicial vacancies be filled in an expeditious manner. These measures are necessary to ensure that the nation’s federal courts may adjudicate all cases in a fair, just and timely manner.

4. Summary of Minority Views

None known.
RESOLVED, That the American Bar Association urges Congress to repeal Section 43 of Title 18 of the United States Code (The Animal Enterprise Terrorism Act).

FURTHER RESOLVED, That until such time as the constitutionality of the Act is resolved, urges the Department of Justice to forbear from any further prosecutions under the Act.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution calls for the repeal of 18 USC § 43 and addresses its infringements on the First Amendment right to free speech and assembly and the Fifth Amendment right to due process.

2. Summary of the Issue that the Resolution Addresses

18 USC §43 was enacted to make it a federal crime to use “a facility of” interstate commerce “for the purpose of damaging or interfering with the operations of an animal enterprise” and vaguely lists what constitutes damage and interference. This Resolution is intended to address 18 USC § 43 and its infringements on the First Amendment right to free speech and assembly and the Fifth Amendment right to due process. 18 USC §43 was enacted to make it a federal crime to use “a facility of” interstate commerce “for the purpose of damaging or interfering with the operations of an animal enterprise” by “intentionally damag[ing] or caus[ing] the loss of any real or personal property” connected to an animal enterprise; by “intentionally plac[ing] a person in reasonable fear” of death or serious bodily injury by “threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation;” or by “conspir[ing] or attempt[ing] to do so. The law purports to address domestic terrorism; however, it misapplies the term to cover a host of otherwise constitutionally protected activity. The law raises serious constitutional concerns because by targeting conduct that also causes only economic harm, such as lost profits, it reaches protected First Amendment activity including leafleting, protesting and picketing.

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

The proposed resolution calls for the repeal of the unconstitutional statute thereby eliminating the infringements on the First Amendment right to free speech and assembly and the Fifth Amendment right to due process.

4. Summary of Minority Views or Opposition Which Have Been Identified
RESOLVED, That the American Bar Association urges governments to promote the human right to adequate housing for all through increased funding, development and implementation of affordable housing strategies and to prevent infringement of that right.
EXCLUSIVE SUMMARY

1. Summary of the Resolution

This resolution calls upon federal, state, local, territorial, and tribal governments to progressively implement policies promoting the human right to adequate housing for all including veterans, people with disabilities, older persons, families, single individuals, and unaccompanied youth, and urges the federal government to lead by example through increased efforts to support and develop the right to housing domestically and at the international level.

This resolution, as a whole, provides a framework for progressive realization of that right. As such, implementing the human right to housing would not require the government to immediately build a home for each person in America or to provide housing for all free of charge overnight. However, it does require more than some provision for emergency shelter, piecemeal implementation of housing affordability programs, and intermittent enforcement of non-discrimination laws, all of which exist in some form in all local U.S. communities and have failed as a whole to eliminate homelessness or poverty. It requires an affirmative commitment to progressively realize the right to fully adequate housing, whether through public funding, market regulation, private enforcement, or a combination of all of the above.

2. Summary of the Issue that the Resolution Addresses

Despite the nation’s commitment to human rights ideals, its practices have often fallen short. The U.S. has a strong tradition of promoting affordable, accessible housing, but programs have been under-funded and under-implemented. Furthermore, over the past 30 years there has been a significant disinvestment in public and subsidized housing at the federal level. Families continue to face foreclosures, many as a result of predatory lending practices, but even as homes without families multiply, families without homes cannot access them. Many tenants pay more than 50% of their income toward rent, putting them one paycheck away from homelessness. Homelessness is an ongoing and increasingly prevalent violation of the most basic essence of the human right to housing in the United States and requires an immediate remedy. In 2011, cities across the country noted an average 16% increase in the number of homeless families. From the 2009-10 school year to the 2010-11 school year, the number of homeless school children increased by 13% to over one million children.

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

This resolution calls on the U.S. government at all levels to more fully implement the right to housing as a legal commitment. Asserting housing as a human right will create a common goal and a clear framework to:
a. Help government agencies set priorities to implement the right to housing  
b. Provide support for advocacy groups  
c. Create pressure to end policies which fail to guarantee human rights  
d. Allow us to focus on how to solve the problem rather than worrying about whether the U.S. government has a duty to solve the problem

4. **Summary of Minority Views**

None to date.
RESOLVED, That the American Bar Association condemns unauthorized, illegal intrusions by foreign governments, organizations, and individuals into the computer networks utilized by lawyers and law firms;

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governmental bodies to examine, and if necessary, amend or supplement, existing laws to promote deterrence and provide appropriate sanctions for unauthorized, illegal intrusions into the computer networks utilized by lawyers and law firms;

FURTHER RESOLVED, That the American Bar Association urges the United States government to work with other nations and international organizations to develop legal mechanisms and policies to deter, prevent, and punish unauthorized, illegal intrusions into the computer networks utilized by lawyers and law firms;

FURTHER RESOLVED, That while the American Bar Association supports governmental actions, policies, practices and procedures to combat unauthorized, illegal intrusions into the computer networks utilized by lawyers and law firms that respect and preserve client confidentiality, the ABA opposes governmental measures that would have the effect of eroding the attorney-client privilege, the work product doctrine, the confidential lawyer-client relationship, or traditional state court and bar regulation and oversight of lawyers and the legal profession; and

FURTHER RESOLVED, That the American Bar Association urges the legal profession to safeguard its computer networks to protect confidential client information from unauthorized or illegal intrusions and to reasonably inform clients about intrusions that may compromise their confidential information.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution condemns unauthorized, illegal intrusions into the computer networks utilized by lawyers and law firms; urges federal, state, and other governmental bodies to examine and amend existing laws to fight such intrusions; urges the United States government to work with other nations and international organizations to deter, prevent, and punish such intrusions; supports governmental measures to combat such intrusions that respect and preserve client confidentiality while opposing governmental measures that would erode the attorney-client privilege, work product, the confidential lawyer-client relationship, or traditional state court and bar regulation of lawyers; and urges the legal profession to safeguard its computer networks to protect confidential client information and to reasonably inform clients about intrusions that may compromise their confidential information.

2. Summary of the Issue that the Resolution Addresses

As American businesses and government agencies become increasingly reliant upon network communications, they grow more vulnerable to information security attacks. Sophisticated attacks increasingly target both citizen information and national security assets. Criminals, terrorists, and nation states all see potential gains from attacking information systems. These threats to highly sensitive information trigger concerns from the national security community, privacy advocates, and industry leaders alike, and seriously threaten client confidentiality.

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

By adopting the proposed resolution, the ABA will be able to play a leading role in urging the United States government and other governmental bodies to examine, and if necessary, amend or supplement existing laws in order to discourage, prevent, and punish malicious intrusions into lawyer and law firm networks, but only in a fashion that protects client confidentiality, the attorney-client privilege, the larger confidential lawyer-client relationship, and traditional state court and bar regulation and oversight of lawyers and the legal profession.

4. Summary of Minority Views

The Cybersecurity Legal Task Force is unaware of any minority views.
Standard 509. REQUIRED DISCLOSURES CONSUMER INFORMATION
(redlined to existing Standards)

(a) All consumer information that a law school reports, publicizes or distributes shall be complete, accurate and not misleading to a reasonable law school student or applicant. Schools shall use due diligence in obtaining and verifying consumer such information. Violations of these obligations may result in sanctions under Rule 16 of the Rules of Procedure for Approval of Law Schools.

(b) A law school shall publicly disclose on its website, in the form and manner and for the time frame designated by the Council, the following information: consumer information in the following categories:

(1) admissions data;

(2) tuition, and fees, living costs, and financial aid, conditional scholarships and refunds;

(3) conditional scholarships;

(4) enrollment data, including academic, transfer, and other attrition/graduation rates;

(5) numbers of full-time and part-time faculty, professional librarians, and administrators;

(6) curricular offerings, academic calendar, and academic requirements class sizes for first year and upper class courses; number of seminar, clinical and co-curricular offerings;

(6) library resources;

(7) facilities; and

(7) employment outcomes; and

(8) bar passage data.

(c) A law school shall publicly disclose on its website, in a readable and comprehensive manner, the following information on a current basis:

(1) refund policies;

(2) curricular offerings, academic calendar, and academic requirements; and
(3) its policies regarding the transfer of credit earned at another institution of higher education. The law school’s transfer of credit policies must include, at a minimum:

(i)(1) A statement of the criteria established by the law school regarding the transfer of credit earned at another institution; and

(ii)(2) A list of institutions, if any, with which the law school has established an articulation agreement.

(d) A law school shall publicly disclose the employment outcomes of its J.D. graduates on its website.

(1) The employment outcomes shall be posted on the school’s website each year by March 31 or such other date as the Council may establish.

(2) The employment outcomes posted must be accurate as of February 15th for persons who graduated with a J.D. degree between September 1 two calendar years prior and August 31 one calendar year prior.

(3) The employment outcomes posted shall remain on the school’s website for at least three years, so that at any time at least three graduating classes’ data are posted.

(4) The employment outcomes shall be gathered and disclosed in accordance with the form, instructions and definitions approved by the Council.

(e) A law school shall publicly disclose on its website, in the form designated by the Council, its conditional scholarship retention data. A law school shall also distribute this data required under Standard 509(b)(3) to all applicants being offered conditional scholarships at the time the scholarship offer is extended.

(f) If a law school elects to make a public disclosure of its status as a law school approved by the Council, it shall do so accurately and shall include the name and contact information of the Council.

Interpretation 509-1
A law school that lists in its course offerings a significant number of courses that have not been offered during the past two academic years and that are not being offered in the current academic year is not in compliance with this Standard. Current curricular offerings, for the purposes of Standard 509(c), are only those courses offered in the current and past two academic years.

Interpretation 509-2
Subject to the requirements of subsection (a) above, a law school may publicize or distribute additional information regarding the employment outcomes of its graduates. A law school may
publicize or distribute information in addition to that required by this Standard, including but not limited to the employment outcomes of its graduates, as long as such information complies with the requirements of subsection (a).

Interpretation 509-3

Any information, beyond that required by the Council, regarding graduates’ salaries that a law school reports, publicizes or distributes must clearly identify the number of salaries and the percentage of graduates included in that information.

Interpretation 509-4 509-3

A conditional scholarship is any financial aid award, the retention of which is dependent upon the student maintaining a minimum grade point average or class standing, other than that ordinarily required to remain in good academic standing.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The revisions to Standard 509 include a change to the title of the Standard from “Consumer Information” to “Required Disclosures”. The purpose for this change is two-fold: (a) the term “consumer information” leads to possible confusion over potential liability of schools under state consumer information statutes; and (b) students and prospective students should not be thought of strictly speaking as consumers.

The revisions to the Standard divide the information that the Standard requires a law school to publish on its website into two categories: (1) that for which the Council prescribes a particular form and manner of publication; and (2) that which the school must disclose in a readable and comprehensive manner. The revised Standard covers these two categories in 509(b) and 509(c), respectively.

The Council has prescribed forms for the disclosure of the employment information required by 509(b)(3) and the conditional scholarship information required by 509(b)(7). For the remaining disclosures required by 509(b), law schools are able to generate a table from the online ABA Annual Questionnaire based on the information provided annually by the schools.

The disclosures required by 509(c) are not susceptible to a uniform format and are therefore governed by the “readable and comprehensible” requirement.

With the addition in subsection (b) of the requirement that all information must be disclosed “in the form and manner and for the time frame designated by the Council”, the provisions in current Standard 509(d) are redundant and unnecessary.

2. Summary of the Issue that the Resolution Addresses

The changes clarify for law schools the reporting requirements regarding consumer information.

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

The resolution proposes changes in the ABA Standards and Rules of Procedure for Approval of Law Schools.

4. Summary of Minority Views

Not that the Section is aware of.
RESOLUTION WITH REPORT ON ARCHIVING

RESOLUTION

RESOLVED, That the Association policies set forth in Attachment 1 to Report 400 dated August 2013, are archived and no longer considered to be current policy of the American Bar Association and shall not be expressed as such.

FURTHER RESOLVED, That policies which have been archived may be reactivated at the request of the original sponsoring entities. If the original sponsoring entities no longer exist, requests may be brought to the Secretary to be placed on a reactivation list for action by the House of Delegates. Such reactivated policies shall be considered current policy for the Association and shall be expressed as such.

FURTHER RESOLVED, That the Board of Governors may act to reactivate policies when the House of Delegates is not in session.
Attachment 1
(Policies to be Archived)

26. Balloting Statutes
Standing Committee on Election Law
August, 2003
Election Law (Reports Nos. 105B and 115)

For action on the Committee’s first recommendation (Report No. 105B) amending the ABA Model Code of Judicial Conduct in light of recent First Amendment challenges to judicial campaign speech restrictions, see Judicial Independence on page 23.

The Committee’s second recommendation (Report No. 115), adopting Model Statutory Language on Provisional Balloting and Commentary, dated August 2003, which provides specific guidance to states that must draft provisional balloting statutes according to the Help American Vote Act of 2002, which was cosponsored by the Section of State and Local Government Law, the Government and Public Sector Lawyers Division and the Section of Administrative Law and Regulatory Practice, was approved. It reads:

RESOLVED, That the American Bar Association adopts Model Statutory Language on Provisional Balloting and Commentary, dated August 2003.

MODEL STATUTORY LANGUAGE ON PROVISIONAL BALLOTING AND COMMENTARY
(August 2003)

1) At all elections, the following individuals shall be permitted to cast a provisional ballot:

   a) an individual who claims to be properly registered and eligible to vote at the election district, but whose name does not appear on the general register and whose registration cannot be determined by the inspectors of elections; or

   b) an individual voting for the first time at the election district, but who is unable to produce required identification; or

   c) an individual who has applied for an absentee ballot, but who has not returned the absentee ballot; or

   d) an individual who presents a judicial order to vote; or

   e) an individual whom an election official asserts is not eligible to vote.

2) Prior to casting the provisional ballot, the elector shall be required to sign a uniform affidavit, that shall be used by all jurisdictions within the state, on the provisional ballot envelope.

   a) The election official shall make clear to the elector that in order for the provisional ballot to be evaluated by the canvassing board, the elector must print his/her name and address and sign and date the affidavit.

6 Marvin E. Aspen of Illinois and Robert K. Pirraglia of Rhode Island abstained from voting with respect to this recommendation.
b) A jurisdiction may place notice of penalties for violations of election laws and procedures on the provisional ballot envelope.

c) A jurisdiction may allow an elector to provide additional information, such as date, location or means of registration, on the provisional ballot envelope in order to facilitate the evaluation by the canvassing board, so long as the provision of such information is voluntary.

3) After the provisional ballot has been cast,

a) the elector shall

i) place the provisional ballot in a secrecy envelope, and

ii) place the secrecy envelope in the provisional ballot envelope;

b) the election official shall

i) provide written information to the elector explaining the system for verifying ballots as well as a provisional ballot envelope number, and

ii) ensure that all provisional ballots shall remain sealed in their provisional ballot envelopes for return to the canvassing board.

4) Within three business days of the election, the canvassing board shall examine each provisional ballot envelope to determine if the individual voting that ballot was entitled to vote at the election district in the election. One authorized representative of each candidate in a primary or election, who is an elector in the county, shall be permitted to remain in the room in which the determination is being made if he does not impede the orderly conduct of the determination.

a) Uniform standards shall be developed and applied for the purposes of verifying provisional ballots within a state.

5) If it is determined that the individual was registered and entitled to vote at the election district where the ballot was cast, the ballot shall be counted.

6) If it is determined that the elector voting the provisional ballot was not registered, the provisional ballot shall not be counted and the ballot shall remain in the provisional ballot envelope and shall be reflected as rejected as ineligible.

7) If it is determined that the elector voting the provisional ballot was eligible to vote but not at the election district where the ballot was cast, the canvassing board shall open the envelope, with due regard to the secrecy of the ballot, and only
count that portion of the ballot that the elector would have been eligible to vote in the proper election district and at the election district where the vote was cast.

8) The department of elections shall establish a World Wide Web site and a toll-free telephone number to permit an elector who cast a provisional ballot to determine, by means of the provisional ballot envelope number, whether the vote was counted and, if the vote was not counted, the reason that it was not counted.

9) For purposes of this section, the following definitions shall apply:

a) **Canvassing Board** means the entity established by state law that is charged with determining the validity of voter registration for purpose of counting provisional ballots or certifying elections, recounts, or challenges in an election.

b) **Department of Elections** means the state, local, or territorial entity responsible for the administration of elections.

c) **Elector** means an individual who is eligible to vote.

d) **Jurisdiction** means a political boundary of election districts in which the election is administered (e.g., the entire state for an election for the U.S. Senate, the district for an election for the U.S. House of Representatives).

e) **Provisional Ballot** means a ballot issued by the judge of elections on election day to an individual who claims to be a registered elector when the individual's name does not appear on the general register and the individual's registration cannot be verified or where the individual is determined to be ineligible.

f) **Provisional Ballot Envelope Number** means the number assigned to the provisional ballot envelope. The number will be used by the voter as a means of verifying whether or not the vote was counted.
EXECUTIVE SUMMARY

1. **Summary of the resolution**
   This resolution archives Association Policies that are 10 years old or older. A policy that is archived is not rescinded. It is retained for historical purposes, but cannot be expressed as a current position of the ABA.

2. **Summary of the issue which the resolution addresses**
   The archiving project, mandated by the House of Delegates in 1996, will improve the usefulness of the catalogued Association positions on issues of public policy. Many of the Association’s positions were adopted decades ago and are no longer relevant or effective.

3. **An explanation of how the proposed policy will address the issue**
   The archiving project will allow the Association to pursue primary objectives by focusing on current matters. It will prevent an outdated ABA policy from being cited in an attempt to refute Association witnesses testifying on more recent policy positions.

4. **A summary of any minority views or opposition which have been identified**
   None at this time.