Policy on Review and Approval of Reports by ABA Entities

Adopted August 9, 2019

Board Action

At its August meeting, the Board of Governors established a uniform procedure for review and approval of reports, white papers, and other documents released to the public expressing policy preferences by ABA entities that are not issued pursuant to the existing Blanket Authority procedures. (The Blanket Authority procedure adopted by the House of Delegates and described in the ABA Blanket Authority Handbook provides ABA sections and divisions—but not other ABA entities—the opportunity to submit their “policy statements” directly to governmental entities after providing advance notice to other entities and an opportunity for them to object or suggest changes to achieve consistency within the association.)

Just as the Blanket Authority review process allows ABA sections and divisions to present policy statements or express policy recommendations or preferences to governmental entities, the new review process enables sections, divisions, and other types of ABA entities to publicly disseminate reports, papers, studies, or other documents that make policy recommendations or express policy preferences following appropriate review and approval. (However, this new review process does not apply to any report or other document that is clearly disseminated by an ABA member, trial observer, or consultant solely in his or her personal capacity and that includes no statement regarding a connection to the ABA.)

Prior to the recent Board action, ABA entities other than sections and divisions did not have a consistent and coherent set of guidelines for issuing reports, papers, studies, or other documents containing policy recommendations. In addition, although sections and divisions have used Blanket Authority on occasion to issue such documents to the public, that practice was not recommended, as the ABA’s Blanket Authority policy only expressly authorizes sections and divisions to submit policy statements directly to governmental entities, not to release such statements to the general public. To fill this gap, the Board adopted the following Guidelines and Implementation Guidance; these will remain in effect until the 2020 Midyear Meeting, at which time the Board will review and assess the impact of this new review process.

Guidelines

1. Whether applicable to the public release of a report, white paper, discussion draft, study, or other written documents by any other name, the key to application of this review process is content (policy recommendations) and audience (the public), not title or designation.

2. These review and approval procedures must be followed whether the report or other document expressing policy preferences and intended for public release by any ABA entity is written by an ABA member, staff, paid consultant, trial observer, pro bono law firm, or other author.

3. Even where a grant document contemplates that the recipient ABA entity would issue reports, papers, studies, or other documents, these review and approval procedures must be followed before the document expressing policy preferences is publicly released. If the grant requires the issuance of a report or other document, this review cannot prevent release but may result in changes to the text of the document to comport with ABA policies.

4. Review and approval is not required under these procedures for the public release of reports or other documents containing purely informational, educational, or technical material unless the document also contains policy statements or preferences.
Implementation Guidance

--The Governmental Affairs Office (GAO) and the Policy and Planning Division must be provided an advance copy of any report or other document expressing a policy recommendation or preference and intended for public release, and they must be given the opportunity to review and work with the entity before it is authorized to be released.

--To fulfill this requirement, the report or other document must be sent to Larson Frisby in GAO at larson.frisby@americanbar.org and Janae LeFlore in the Policy and Planning Division at janae.leflore@americanbar.org at least ten (10) business days prior to the proposed release date. However, in situations where it is not possible to meet that deadline as confirmed by the Directors of GAO and Policy and Planning, the report or other document must be sent to GAO and Policy and Planning at least two (2) business days in advance of the proposed release date.

--GAO and the Policy and Planning Division should ensure that other ABA entities with relevant interests and jurisdiction are given notice before public release and dissemination of the report or other document.

--Any such documents intended for release to the media should also be reviewed by the Media Relations and Strategic Communications Division (MRSC) and their release coordinated or overseen by MRSC.

--Reports and other documents expressing policy positions on highly visible or politically sensitive subjects, as determined by the Directors of GAO and Policy and Planning, may not be publicly released until approved by the ABA President.

--All reports and other documents expressing a policy recommendation or preference that are not confined exclusively to expression of ABA-adopted policy must contain the following disclaimer prominently displayed on the title page of the document (or if there is no title page, then on the first page):

> The views expressed herein represent the opinions of the authors. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association or any of its entities.

Conclusion

Reports, white papers, studies, and other documents by ABA entities containing policy recommendations and intended for release to the public, when those issuances are not subject to Blanket Authority, must be provided to GAO and the Policy and Planning Division for review and approval before release or distribution. GAO and Policy and Planning will ensure that any stated policy positions or preferences are not inconsistent with existing ABA policies and that interested ABA entities are informed of the prospective reports or other documents prior to any public release. If the reports or other documents involve politically sensitive or highly visible subjects, those items will be referred by GAO or Policy and Planning to the ABA President for final approval, taking care to ensure that the Media Relations and Strategic Communications Division is advised in advance of any release. To reiterate, these new procedures will apply only to reports or other documents containing policy recommendations or preferences and intended for public release.

If you have any further questions, please contact Holly Cook, Associate Executive Director for Governmental Affairs at holly.cook@americanbar.org, or Alpha Brady, Senior Associate Executive Director and Chief Governance Officer at alpha.brady@americanbar.org