Conference Call
COUNCIL AGENDA
June 18, 2018
COUNCIL MEETING AGENDA  
MONDAY, JUNE 18, 2018  
12:30 P.M. – 1:30 P.M. EASTERN  
DIAL-IN: (866) 646-6488, CONFERENCE CODE: 940-210-0922#

WELCOME/QUORUM  
12:30 p.m. – 12:35 p.m.  
5 min.

MINUTES  
Vote of Council by email concluded on June 8, 2018  
Ref 1  
12:35 p.m. – 12:40 p.m.  
5 min.

REPORTS  

Action Item/No Funding Required  
Diversity Plan (Hamilton-Aker)  
Ref 2  
12:40 p.m. – 12:50 p.m.  
10 min.

Action Item/No Funding Required  
Request to close the Litigation Assistance Partnership  
Project (LAPP) Program Support Fund (Reeder)  
Ref 3  
12:50 p.m. – 1:00 p.m.  
10 min.

New ABA Membership Model (Fukumura, Vance)  
Ref 4  
1:00 p.m. – 1:15 p.m.  
15 min.

Delegates’ Report  
Report from Section Delegates (Bivens, Donald, Drasco,  
Miller)  
Ref 5  
1:15 p.m. – 1:30 p.m.  
15 min.

• HOD Preliminary Agenda

100A CRIMINAL JUSTICE SECTION  
Urges bar associations, law schools, and other stakeholders to  
develop and increase curricular offerings through which law  
students provide pro bono representation of incarcerated  
individuals and those reentering society.  
Ref 6  
(page 123)
URGES LOUISIANA AND OREGON TO REQUIRE UNANIMOUS JURIES TO DETERMINE GUILT IN FELONY CRIMINAL CASES AND REJECT THE USE OF NON-UNANIMOUS JURIES WHERE CURRENTLY ALLOWED IN FELONY CASES.

URGES GOVERNMENTS TO ENACT PRESERVE TAX CODE PROVISIONS THAT ALLOW THE ALIMONY DEDUCTION FOR PAYORS AND TREAT ALIMONY AS TAXABLE INCOME TO PAYEES.

URGES PROVIDERS OF DOMESTIC AND INTERNATIONAL DISPUTE RESOLUTION TO EXPAND THEIR ROSTERS WITH MINORITIES, WOMEN, PERSONS WITH DISABILITIES, AND PERSONS OF DIFFERING SEXUAL ORIENTATIONS AND GENDER IDENTITIES (“DIVERSE NEUTRALS”), AND TO ENCOURAGE THE SELECTION OF DIVERSE NEUTRALS.

GRANTS REACREDITATION TO THE MEDICAL PROFESSIONAL LIABILITY AND LEGAL PROFESSIONAL LIABILITY PROGRAMS OF THE AMERICAN BOARD OF PROFESSIONAL LIABILITY ATTORNEYS FOR ADDITIONAL FIVE-YEAR TERMS AS DESIGNATED SPECIALTY CERTIFICATION PROGRAMS FOR LAWYERS.

SUPPORTS IN PRINCIPLE THE INTER-AMERICAN CONVENTION ON PROTECTING THE HUMAN RIGHTS OF OLDER PERSONS, AND ENCOURAGES THE UNITED NATIONS TO DRAFT A CONVENTION ON THE RIGHTS OF OLDER PERSONS.
Opposes the incarceration of individuals solely because they are unable to pay judicially imposed fines and fees, and adopts the black letter and commentary to the ABA Ten Guidelines on Court Fines and Fees, dated August 2018.

Adopts the American Bar Association Standards for Accreditation of Legal Plans dated August 2018, to ensure that Legal Plans are providing affordable access to legal services.
Left Intentionally Blank
Final Vote to Approve 2018-2019 Proposed Organizational Changes in Section Leadership Memo

Approve – 29
Do Not Approve – 0
Abstain – 0

The following email was sent on June 1, 2018 (deadline of June 8, 2018) to all members of the Section of Litigation Council:

Dear Council:

Section Chair Koji Fukumura has authorized me to request an email vote of the Council to approve the 2018-2019 proposed organizational changes in Section leadership as described in the attached memo. Our goal is to get the appointment letters out as soon as possible to allow appointed leaders to make their travel plans for ABA Annual Meeting, and for that we need your approval of these changes. If you have any questions, please do not hesitate to contact me.

Please respond directly to Cecilia Kukenis (Cecilia.kukenis@americanbar.org) by 5:00 p.m. CDT on Friday, June 8 with your vote.

Motion: To approve 2018-2019 Proposed Organizational Changes in Section Leadership memo

_______ Approve

_______ Do Not Approve

_______ Abstain

Thanks,

Gene
COUNCIL
GENERAL INFORMATION FORM

1. Name of your Section of Litigation Committee or Task Force:

2. Submitted by (your name): Franchesca Hamilton-Acker

3. Is this proposal seeking funding? _______ Yes _____x____ No

If yes, please complete the Reserves / Special Projects Application Form. Requests for funding of Special Projects must be submitted to the Section of Litigation 30 days prior to the Council Meetings.

4. This proposal is...(check one):
   _____ Informational _______ Information/Discussion
   ___x____Action Item/No Funding

5. Check the categories to which this proposal applies:
   _____ CLE _____ ABA Report with Recommendation (see questions 11-16)
   ___x__ Diversity _____ Section Bylaws
   _____ Membership _____ Section Policy
   _____ Publications _____ Co-Sponsorship
   _____ Website
   _____ Other (please describe)________________________________________________
________________________________________________________________________

6. Please attach Report or Proposal – if longer than four pages, provide an Executive Summary.

The Section of Litigation Council approved an Interim Diversity Plan in June 2017. The Diversity Committee of Council and I sought feedback from Section leaders over the past year and incorporated minor changes to the Interim Plan. We are now seeking approval of the attached, final Diversity & Inclusion Plan.

7. List estimated staff resources and name of staff person with whom you consulted:

   Associate Director Bridget Miller

8. List any additional Section entities with whom you have consulted and describe their position on your Report or Proposal:
9. Name of person who will present Proposal or Report to Council?
   _Franchesca Hamilton-Acker____________________

(Questions 10-15 are for an ABA Report with Recommendation)

10. Indicate whether your entity originated the Report with Recommendation. (Note: It is common practice to route other ABA entities' House of Delegates Reports to Section of Litigation committees for comment and possible Council action.) Report with Recommendation originated by:

    _____ Entity listed in No. 1 above
    _____ Other: __________________

11. Brief summary of Recommendation(s):

12. What position do you advise the Section of Litigation Council take concerning this Report with Recommendation?

    _____ Support
    _____ Oppose
    _____ Support and co-sponsor
    _____ Other (explain): ____________________

13. If the Recommendation has been submitted previously to the Section of Litigation or other ABA entities or if there is any ABA or Section position on the same or a similar subject, briefly describe the action(s) or position(s) taken:

14. Indicate deadline and reason action must be taken at this meeting:

15. List the name and telephone number of the person who can be contacted before the Council meeting concerning drafting problems, additional referrals, background information, and any other questions about the Report:

**Return to:**  
Kristie Bailey  
Office Administrator  
Section of Litigation  
321 N. Clark Street
**Section of Litigation Interim Diversity & Inclusion Plan**  
(June 2018 Approved June 2017)

**Historical Background**

In 2008, the American Bar Association House of Delegates adopted a Mission statement and four Goals for achieving that mission. Goal III is “Eliminate Bias and Enhance Diversity” and it includes two objectives:

1. Promote full and equal participation in the association, our profession, and the justice system by all persons.

2. Eliminate bias in the legal profession and the justice system.

The tenets of ABA Goal III were drawn from what was previously known as ABA’s Goal IX, which was “[t]o promote full and equal participation in the legal profession by minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities.” Under the current ABA Goal III Diversity Plan, “diversity” includes all four aspects of Goal III: gender, race/ethnicity, disability, and sexual orientation/gender identity.

The ABA Section of Litigation strongly supports Goal III. It is committed to ensuring equal opportunity in the profession, respecting the diversity and individualism of its members, recognizing the intrinsic value of diversity in the legal profession, and expanding the breadth of its membership.

The Section first adopted diversity as one of its strategic goals in its Strategic Plan of August 7, 1994. That Strategic Plan incorporated a core tenet of this Section and the lawyers it serves: “The legal profession will be open and hospitable to all.” The Strategic Plan contained an explicit goal to: “Diversify Section membership and leadership and promote diversity in the legal profession.”

In 2001, the Section adopted its first Diversity Implementation Plan. Working under that Plan, the Section implemented and maintained effective tactics for enhancing diversity and for meeting the needs and interests of diverse attorneys in the Section, with a strategic focus on lawyers of color, even though Goal IX at the time also extended to women and disabled lawyers with disabilities. The Section’s decision in 2001 to focus the Diversity Implementation Plan on lawyers of color recognized that women lawyers had attained more equal participation in the legal profession and in Section Leadership than lawyers of color. The 2001 Plan succeeded in increasing participation of lawyers of color in the Section in general and in the Section’s Leadership in particular. But the work was far from done.
In 2005 and 2006, the Section Council’s Diversity Committee and Staff reviewed the 2001 Plan, assessed what was working, what was not, what had been achieved, and what required redoubled efforts. The Committee and Staff also analyzed the plans and initiatives of other ABA entities to develop additional ideas and share best practices.

The Committee identified a crucial policy choice: whether to maintain the Section’s focus on lawyers of color or to broaden its diversity efforts. Based on input from the Section’s Leadership, consensus emerged: (1) there was much yet to be done on behalf of lawyers of color, and any expansion of the Section’s diversity effort should not erode that commitment; and (2) the Section needed to take a leadership role on other diversity issues limiting full participation in the profession, including disability, sex, sexual orientation, and gender identity.

The Section’s Council voted in January 2007 to support a proposal from the Section of Individual Rights and Responsibilities to add sexual orientation and gender identity to Goal IX. The amendment passed the ABA House of Delegates in February 2007.

In August 2007, the Council adopted a Diversity Plan that reaffirmed its unwavering strategic focus on lawyers of color by improving and enhancing the tactics aimed at lawyers of color in its 2001 Diversity Implementation Plan and adding strategies targeted to all of the characteristics identified in what is now Goal III. The Plan emphasizes the importance of a well-developed strategy, specific time lines and calendars, and individual accountability within the Section. All Section Leaders have diversity responsibilities and requirements for reporting that they have been fulfilled. Accountability runs throughout the Leadership and to the Chair and Executive Director.

The Diversity Plan categorizes action items into six areas: Leadership Commitment; Accountability; Communications and Training; Membership; Programs and Publications; and Outreach. Many of the particular items overlap but have been placed into a single category for ease of reference.

In September 2007, the Section adopted an update to its strategic plan titled “The Section at 40.” This forward-looking document commanded directed the Section to broadly diversify its membership and leadership, and made measurement and evaluation of success in implementing the Section’s Diversity Plan an essential strategy in the Section’s pursuit of the preeminence as the membership organization in the profession for litigators.

The Section of Litigation is proud of its position as a leader in the ABA and in the profession. It counts among its members some of the most renowned and dedicated lawyers in the nation. The goal of enhanced diversity can be achieved only with the unequivocal support and participation of these leaders, the Section’s Leadership and its Committees and Task Forces, and the individual commitment of all Section members. The Section pledges to use its resources and the dedication of its members, as
exemplified by what it has brought to other important issues, to ensure the full, equal participation of diverse lawyers in the ABA and the profession. The Diversity Plan ensures that the Section of Litigation will continue to lead the ABA and put in place best practices for all Goal III characteristics, with a systematic periodic review and, if necessary, further revisions.

Pursuant to this systematic review, the plan has undergone further refinements, especially regarding lesbian, gay, bisexual, and transgendered (“LGBT”) attorneys. The Plan in 2007 created an LGBT Working Group to investigate and make recommendations regarding the integration of LGBT lawyers into the Section and to explore and create programming regarding LGBT legal issues. The LGBT Working Group recommended creation of the LGBT Litigator Committee within the Section, and the Council adopted that recommendation in June 2008. In 2017, the Committee revised its name to the LGBT Law and Litigators Committee.

In the nine years that have passed since the Section last adopted changes to the Diversity Plan, the Section has expanded its diversity efforts, but it has not revised the 2008 Diversity Plan. Notable changes in diversity efforts include the 2011 creation of a Diversity Committee, which was renamed the Diversity & Inclusion Committee one year later. The Diversity & Inclusion Committee has taken on a variety of roles in the Section, including serving as a resource for open-enrollment committees and administering the Diversity Leaders Academy. The Section has also sponsored stand-alone conferences aimed specifically at women lawyers, lawyers of color, and LGBT lawyers.

In 2016, the Council approved a bylaw change that combined the role of Section Secretary with a new officer position: the Chief Diversity Officer (“CDO”). Section 6.5 of the Section’s Bylaws now states:

CHIEF DIVERSITY OFFICER AND SECRETARY. The Chief Diversity Officer and Secretary will have responsibility for overseeing staff in maintaining all books, papers, documents, and other property of the Section, except money. He/she shall keep a true record of the proceedings of Section and Council meetings and actions. He/she shall maintain, monitor, supervise and report at least annually at the ABA Annual Meeting on compliance by the Section and its component parts with the Section Diversity Plan. In furtherance of that role, he/she shall also liaise and consult with Committees within the Section, such as Diversity & Inclusion, among others, whose missions are focused on diversity.

In September 2016, the Council Diversity Committee (“CDC”), led by the CDO, began reviewing the 2008 Plan. The CDC determined that it would be appropriate to approach its review and revision process in two phases. The first phase involved recommending that the Diversity Plan reflect structural changes in the Section, such as the creation of the Diversity & Inclusion Committee and the CDO position. The Diversity Plan was also reorganized into two primary accountability grids, including one concerning Goal III diversity goals generally and one addressing specific diverse groups. (Previously, there were four separate grids for the four diverse groups.) Beginning in Fall 2017, the From Fall 2017 to Spring 2018, the CDO-CDC will undertake a more
comprehensive review of the Diversity Plan and will make appropriate recommendations requests to the Council’s approval of this revised plan.

Section of Litigation

Diversity & Inclusion Implementation Plan

The Section of Litigation undertakes the specific action steps with respect to all aspects of diversity within ABA Goal III and with respect to specific diverse groups. The charts on the following pages identify the action steps, WHO is responsible for those steps, and WHEN those steps will be taken.

I. Implementation steps for Section concerning Goal III diversity goals generally
   A. Leadership Commitment
   B. Accountability
   C. Communications and Training
   D. Membership
   E. Programs and Publications
   F. Outreach

II. Implementation steps for Section concerning specific diverse groups
   A. Leadership Commitment
   B. Communications and Training
   C. Membership
   D. Programs and Publications
   E. Outreach
### I. Implementation steps for Section concerning Goal III diversity goals generally

#### A. LEADERSHIP COMMITMENT

<table>
<thead>
<tr>
<th>Description</th>
<th>WHO</th>
<th>WHEN</th>
<th>Row</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evaluate and update the Section <a href="#">Diversity Plan</a> Diversity &amp; Inclusion Plan. Also, report recommended changes to the Plan and seek approval from the Council at ABA Annual meetings.</td>
<td>Chief Diversity Officer¹</td>
<td>Annually, for Report at ABA Annual Meeting</td>
<td>1</td>
</tr>
<tr>
<td>Select Council members as a Committee of the Council to work with the Chief Diversity Officer.</td>
<td>Chair-Elect</td>
<td>Annually</td>
<td>2</td>
</tr>
<tr>
<td>Select diverse members for the Advisory Committee on Nominations.</td>
<td>Executive Committee and Council</td>
<td>Fall Election of Advisory Committee on Nominations</td>
<td>3</td>
</tr>
<tr>
<td>Select diverse members for Council and Officer positions.</td>
<td>Chair-Elect, Advisory Committee on Nominations, and Council</td>
<td>Nominations Process</td>
<td>4</td>
</tr>
<tr>
<td>Compile ABA Goal III Report, including narrative statements with respect to diversity efforts.</td>
<td>Staff, reviewed by the Chief Diversity Officer, with input from the Diversity &amp; Inclusion Committee and the Division Directors</td>
<td>Annually, at Goal III report deadline</td>
<td>5</td>
</tr>
<tr>
<td>Evaluate the appointments process annually, including comparison analysis by year and in three-year rolling cycles, to ensure that diversity goals are met in Leadership appointments.</td>
<td>Chief Diversity Officer and Staff for report to Council</td>
<td>Annually, as part of and following Goal III review</td>
<td>6</td>
</tr>
<tr>
<td>Regularly monitor ongoing diversity initiatives throughout the ABA; report to Chief Diversity Officer.</td>
<td>Staff, supervised by Chief Diversity Officer</td>
<td>Ongoing, with formal reporting by Chief Diversity Officer at least annually</td>
<td>7</td>
</tr>
<tr>
<td>Provide a copy of the Diversity &amp; Inclusion Plan to each existing and incoming Committee Chair and Task Force Chair, together with a communication from the Section Chair and/or Chief Diversity Officer stressing the importance of the Plan and the requirement for active participation of each Leader in implementing the Plan.</td>
<td>Chief Diversity Officer and Chair</td>
<td>Annually</td>
<td>8</td>
</tr>
</tbody>
</table>

¹ References to the Chief Diversity Officer include the Chief Diversity Officer and his/her designee(s).
### B. ACCOUNTABILITY

| Require all Committee Chairs and Task Force Chairs to consider diversity in developing their Annual Plans. The Plans and periodic reporting must articulate whether they include diversity efforts, and, if not, why their functions do not permit advancement of Section diversity goals. | Committee Chairs and Task Force Chairs, reviewed by Chief Diversity Officer, Staff, and Division Directors | Annually and in reporting before leadership meetings | 9 |
| Require that the Membership and Marketing Committee Annual Plan include diversity efforts. [Concept taken from one row above] | Membership and Marketing Committee, reviewed by Chief Diversity Officer, Staff, and Division Directors | Annually and in reporting before leadership meetings | 10 |
| Follow up with those Committee Chairs and Task Force Chairs who have not completed their responsibilities under this Diversity Plan and provide them support to meet those responsibilities. | Chief Diversity Officer, Division Directors, and Staff | Ongoing | 11 |
| Prepare Calendar reflecting dates and tasks due under the Diversity Plan and provide them support to meet those responsibilities. | Chief Diversity Officer and Staff | Before Fall Leadership Meeting | 12 |
| At commencement of each bar year, provide each Leader with written description/reminder of their responsibilities and due dates. | Chief Diversity Officer and Staff | Before Fall Leadership Meeting | 13 |

### C. COMMUNICATIONS AND TRAINING

| Publish the Diversity Plan in the Section’s online Leadership Portal, diversity web pages, Leadership Directory, By-Laws and Strategic Plan. | Staff | Ongoing | 14 |
| Regularly update the Diversity & Inclusion webpage to include:  
  - Issues of interest relating to diversity in the Section  
  - Links to other websites of interest  
  - Report on efforts and achievements of Section in diversity efforts  
  - Provide relevant data, such as Goal III report, publications, and membership information  
  - Profiles and success stories of diverse Leadership  
  - Follow-up individually with those who “Click here to get more information on Section Diversity” | Staff, with input from the Chief Diversity Officer and the Diversity & Inclusion Committee | Update monthly | 15 |
| Address needs and interests of diverse lawyers through editorial board membership and content. | Chief Diversity Officer, Publications Editors, and Editorial Board Chairs | Review annually | 16 |
| Develop Fall Leadership Meeting Agenda to fully train members of Leadership on their responsibilities and steps on how to succeed, with presentation by Chief Diversity Officer. | Chief Diversity Officer, Staff, Managing Directors, Diversity & Inclusion Committee | Annually, Fall Leadership Meeting | 17 |
| Provide diversity training to Section Leadership at least once each year. | Managing Directors and Chief Diversity Officer | Annually | 18 |

**D. MEMBERSHIP**

<table>
<thead>
<tr>
<th>WHO</th>
<th>WHEN</th>
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<tbody>
<tr>
<td>Staff and Chief Diversity Officer</td>
<td>Annually, as appropriate</td>
</tr>
<tr>
<td>Membership and Marketing Committee, Staff, Chief Diversity Officer</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Membership and Marketing Committee, Staff, Chief Diversity Officer</td>
<td>Periodic</td>
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**E. PROGRAMS AND PUBLICATIONS**

<table>
<thead>
<tr>
<th>WHO</th>
<th>WHEN</th>
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</thead>
<tbody>
<tr>
<td>Committee Chairs, Meeting Chairs, Staff, Chief Diversity Officer</td>
<td>ABA Annual Meeting, Section Annual Conference, CLE Seminars</td>
</tr>
<tr>
<td>Meeting Chairs, Program Chairs, Professional Development Committee, Diversity &amp; Inclusion Committee, and all open enrollment Committees</td>
<td>Ongoing</td>
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</tbody>
</table>
Include in general Section publications (not merely specialized newsletters) content addressing the needs and interests of diverse lawyers.

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<tr>
<th>F. OUTREACH</th>
<th>WHO</th>
<th>WHEN</th>
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<tbody>
<tr>
<td>Have Section Chair personally invite members and leaders of diverse bar associations in the host cities to programs and social events, consider waiving any registration fees for the leaders of such associations; leaders to follow up written invitations with calls, and identify members of Section Leadership to serve as hosts to such attendees.</td>
<td>Chair, Meeting Chairs, Leadership Hosts, Staff, and Chief Diversity Officer</td>
<td>Section Annual Conference, ABA Annual Meeting, Leadership meetings as appropriate</td>
<td>24</td>
</tr>
<tr>
<td>Create and strengthen ties with diverse bar associations in host cities of Section activities</td>
<td>Staff, Meeting Chairs, Membership and Marketing Committee, and Chief Diversity Officer</td>
<td>Ongoing, report to Chief Diversity Officer timely and 45 days prior to immediate next Council Meeting after each activity</td>
<td>27</td>
</tr>
<tr>
<td>● Encourage joint programming</td>
<td></td>
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<tr>
<td>● Solicit speakers from diverse bar associations in the host city for Section programs, and notify the program chairs early in the process of the mechanism for them to recruit local speakers</td>
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<tr>
<td>● Advertise Section programs in periodicals/newsletters directed to diverse lawyers</td>
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II. **Specific Implementation steps for Section concerning Goal III diversity goals**

Note: provisions applicable to “All diverse lawyers” include lawyers of color, women lawyers, disabled lawyers with disabilities, and LGBT lawyers.

<table>
<thead>
<tr>
<th><strong>A. LEADERSHIP COMMITMENT</strong></th>
<th><strong>WHO</strong></th>
<th><strong>WHEN</strong></th>
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<tbody>
<tr>
<td><strong>All diverse lawyers:</strong> Appoint diverse lawyers to positions of leadership in the Section that permit them to understand the overall operation of the Section, and the opportunity to work with leaders of the Section.</td>
<td>Chair-Elect and Managing Directors Designates</td>
<td>During Annual Appointments Process 28</td>
</tr>
<tr>
<td><strong>Lawyers of Color:</strong> Maintain a coordinated relationship with the Commission on Racial and Ethnic Diversity, the Presidential Advisory Council on Diversity in the Profession, and the Center for Racial and Ethnic Diversity.</td>
<td>Chief Diversity Officer and Staff</td>
<td>Ongoing 29</td>
</tr>
<tr>
<td><strong>Women lawyers:</strong> Maintain a coordinated relationship with the Commission on Women in the Profession.</td>
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<tr>
<td><strong>Disabled lawyers Lawyers with disabilities:</strong> Maintain a coordinated relationship with the Commission on Mental and Physical Disability Law.</td>
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<tr>
<td><strong>LGBT lawyers:</strong> Maintain a coordinated relationship with the Commission on Sexual Orientation and Gender Identity.</td>
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<thead>
<tr>
<th><strong>B. COMMUNICATIONS AND TRAINING</strong></th>
<th><strong>WHO</strong></th>
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<tbody>
<tr>
<td><strong>Disabled lawyers Lawyers with disabilities:</strong> Ensure Fall Leadership Orientation Meeting diversity training encompasses sensitivity training on problems encountered by lawyers with disabilities to eliminate or lessen stereotypes and misconceptions, and raise awareness of issues inherent in dealing with disabilities in meeting settings.</td>
<td>Chief Diversity Officer, Staff, Managing Directors, Diversity &amp; Inclusion Committee</td>
<td>Annually, Fall Leadership Meeting 30</td>
</tr>
<tr>
<td><strong>Disabled lawyers Lawyers with disabilities:</strong> Explore the establishment of an on-line (accessible and user-friendly) “community meeting place” for lawyers with disabilities to air specific issues and concerns.</td>
<td>Chief Diversity Officer, Diversity &amp; Inclusion Committee, and Staff</td>
<td>Ongoing 31</td>
</tr>
<tr>
<td><strong>LGBT lawyers:</strong> Review and revise application, registration and other similar materials to recognize same-sex partners.</td>
<td>Chief Diversity Officer and Staff, with input from LGBT Committee Chairs</td>
<td>Ongoing 32</td>
</tr>
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### C. MEMBERSHIP

<table>
<thead>
<tr>
<th><strong>WHO</strong></th>
<th><strong>WHEN</strong></th>
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</thead>
<tbody>
<tr>
<td>All diverse lawyers: Support the Diversity &amp; Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members.</td>
<td>Ongoing 33</td>
</tr>
<tr>
<td>Lawyers of color: Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members.</td>
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<tr>
<td>Women lawyers: Support the Woman Advocate Committee as a resource for women attorneys in the Section and for prospective members.</td>
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<tr>
<td>Disabled lawyers/Lawyers with disabilities: Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events.</td>
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<tr>
<td>LGBT lawyers: Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members.</td>
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### D. PROGRAMS AND PUBLICATIONS

<table>
<thead>
<tr>
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<th><strong>WHEN</strong></th>
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<tbody>
<tr>
<td>Lawyers of Color: Monitor and implement Section’s requirement to include lawyers of color as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies.</td>
<td>Ongoing 34</td>
</tr>
<tr>
<td>Women lawyers: Monitor and enforce requirement to include women lawyers, including women of color, as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies.</td>
<td></td>
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<tr>
<td>All diverse lawyers: Actively solicit diverse speakers from diverse bar associations located in host cities for Section meetings.</td>
<td>Ongoing 35</td>
</tr>
<tr>
<td>Disabled lawyers/Lawyers with disabilities: Hold all Section activities, including meetings, CLE programs, and social events, in facilities that are not only ADA compliant but assessed to be “user-friendly” in terms of meeting space, social event space, and bathroom facilities.</td>
<td>Ongoing 36</td>
</tr>
<tr>
<td><strong>Disabled lawyers/Lawyers with disabilities:</strong> Ensure that in-person Section CLE programming is accessible to all attendees, by accommodating requests for simultaneous “signing” by American Sign Language interpreters, live transcription, and other methods of assisting those with disabilities to listen and ask questions. Ensure that event/marketing collateral (web and print) includes a statement that invites persons with disabilities to request accommodations, as well as a deadline that gives sufficient time to respond to the requests and provide the accommodation.</td>
<td>Program Chairs, Meeting Chairs, Chief Diversity Officer, and Staff</td>
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| **Disabled lawyers/Lawyers with disabilities:** Explore ways to ensure that all Section websites are accessible and user-friendly to disabled lawyers following the ABA’s web accessibility standards. Upon the transition to the ABA’s new website, continue to create new accessible webpages. | Staff, Chief Diversity Officer | Ongoing | 38 |

| **Disabled lawyers/Lawyers with disabilities:** Continue to provide accessible options for written materials for CLE programming so that disabled lawyers can effectively access them. Ensure that MS Word files and PDFs are accessible. | Chief Diversity Officer, Publications and Content Officer, Staff | Ongoing | 39 |

| **Lawyers of color:** Enforce policy that the Section will co-sponsor programs with other ABA entities (e.g., Sections and Divisions) and with outside entities only if there are lawyers of color among the presenters. | Council, Staff | Ongoing | 40 |

| **Women lawyers:** Enforce policy that the Section will co-sponsor programs with other ABA entities (e.g., Sections and Divisions) and with outside entities only if there are women among the presenters. | Meeting Chairs, Program Chairs, Professional Development Committee Chairs, and Division Directors | Ongoing | 41 |

| **Women lawyers:** Develop and present programs addressing women’s issues and targeted to women lawyers, including women of color, at Section Meetings and Distance CLE. **LGBT lawyers:** Develop and present programs addressing LGBT issues at Section Meetings and Distance CLE. | Committee Chairs, Staff | Ongoing | 42 |

| **All diverse lawyers:** Submit proposals to offer programming at national conferences for diverse lawyers. **All diverse lawyers:** Encourage and solicit content written by diverse lawyers. | Committee Chairs, Staff | Ongoing | 43 |
### E. OUTREACH

<table>
<thead>
<tr>
<th>Description</th>
<th>WHO</th>
<th>WHEN</th>
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<tbody>
<tr>
<td><strong>Lawyers of color and LGBT lawyers:</strong> Provide support, including financial support where appropriate, to initiatives that seek to increase opportunities to gain experience, e.g., through judicial internships (JIOP).</td>
<td>Council, JIOP Committee, and Staff</td>
<td>Annually in Budget Process</td>
</tr>
<tr>
<td><strong>Lawyers of color:</strong> Support law school scholarships for persons of color and support ongoing ABA or other initiatives that provide funding to build the pipeline and assist persons of color to attend law school.</td>
<td>Council and Staff</td>
<td>Annually in Budget Process</td>
</tr>
<tr>
<td><strong>Lawyers of color and LGBT lawyers:</strong> Use JIOP to strengthen ties to law schools as a means of encouraging new membership and diversity.</td>
<td>Chair, academics who serve in Leadership, Meeting Chairs, JIOP Committee, and Staff</td>
<td>Ongoing</td>
</tr>
</tbody>
</table>
| **Lawyers of color, Women lawyers and LGBT lawyers:** Young Lawyers Leadership Program  
  - Require lawyers of color and women in classes of YLLP members, and LGBT in frequent if not all classes  
  - Provide that one of the duties of YLLP members is recruitment of other young lawyers and diverse young lawyers | Division VI Directors, Y LLP Co-Chairs and Members, and Y LLP Mentors | Ongoing, report on recruiting efforts at bar year-end |
| **Lawyers of color, disabled lawyers with disabilities, LGBT lawyers:** Diverse Leaders Academy  
  - Provide opportunities for lawyers in under-represented groups such as racial/ethnically diverse lawyers, persons with disabilities, and lesbian, gay, bisexual and transgender persons, to participate in leadership, thereby building a pipeline of future Section leaders. | Division VI Directors, and Diversity & Inclusion Committee | Ongoing |
<p>| <strong>All diverse lawyers:</strong> Actively seek to involve in Section activities diverse lawyers who are leaders in local, state, and national bar associations, including ethnic and minority bar associations, women’s bar associations, and LGBT bar associations. | Chief Diversity Officer, Diversity &amp; Inclusion Committee, and Chair | Ongoing |
| <strong>Lawyers of color and LGBT lawyers:</strong> Follow-up with JIOP alumni and maintain alumni network to encourage membership and participation in Section and inclusion in committee and publication leadership positions. | JIOP Committee, Staff | Annually |</p>
<table>
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<tr>
<th>WHO</th>
<th>TASK</th>
<th>WHEN</th>
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<tbody>
<tr>
<td>Academics who serve in Leadership (shared)</td>
<td><strong>Lawyers of color:</strong> Use JIOP to strengthen ties to law schools as a means of encouraging new membership and diversity.</td>
<td>Ongoing</td>
<td>47</td>
</tr>
<tr>
<td>Advisory Committee on Nominations (shared)</td>
<td>Select diverse members for Council and Officer positions.</td>
<td>Nominations Process</td>
<td>4</td>
</tr>
<tr>
<td>Chair (shared)</td>
<td>Provide a copy of the Diversity Plan/Diversity &amp; Inclusion Plan to each existing and incoming Committee Chair and Task Force Chair, together with a communication from the Section Chair and/or Chief Diversity Officer stressing the importance of the Plan and the requirement for active participation of each Leader in implementing the Plan.</td>
<td>Annually</td>
<td>8</td>
</tr>
<tr>
<td>Chair (shared)</td>
<td>Have Section Chair personally invite members and leaders of diverse bar associations in the host cities to programs and social events, consider waiving any registration fees for the leaders of such associations; leaders to follow up written invitations with calls, and identify members of Section Leadership to serve as hosts to such attendees.</td>
<td>Section Annual Conference, ABA Annual Meeting, Leadership meetings as appropriate</td>
<td>26</td>
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<td>Chair (shared)</td>
<td><strong>Lawyers of color:</strong> Use JIOP to strengthen ties to law schools as a means of encouraging new membership and diversity.</td>
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<td>Chair (shared)</td>
<td><strong>All diverse lawyers:</strong> Actively seek to involve in Section activities diverse lawyers who are leaders in local, state, and national bar associations, including ethnic and minority bar associations, women’s bar associations, and LGBT bar associations.</td>
<td>Ongoing</td>
<td>50</td>
</tr>
<tr>
<td>Chair-Elect</td>
<td>Select Council members as a Committee of the Council to work with the Chief Diversity Officer.</td>
<td>Annually</td>
<td>2</td>
</tr>
<tr>
<td>Chair-Elect (shared)</td>
<td>Select diverse members for Council and Officer positions.</td>
<td>Nominations Process</td>
<td>4</td>
</tr>
<tr>
<td>Chair-Elect (shared)</td>
<td><strong>All diverse lawyers:</strong> Appoint diverse lawyers to positions of leadership in the Section that permit them to understand the overall operation of the Section, and the opportunity to work with leaders of the Section.</td>
<td>During Annual Appointments Process</td>
<td>28</td>
</tr>
<tr>
<td>Chief Diversity Officer (or his/her designee)</td>
<td>Evaluate and update the Section Diversity Plan/Diversity &amp; Inclusion Plan. Also, report recommended changes to the Plan and seek approval from the Council at ABA Annual meetings.</td>
<td>Annually, for Report at ABA Annual Meeting</td>
<td>1</td>
</tr>
<tr>
<td>Chief Diversity Officer (or his/her designee) (shared)</td>
<td>Compile ABA Goal III Report, including narrative statements with respect to diversity efforts.</td>
<td>Annually, at Goal III report deadline</td>
<td>5</td>
</tr>
<tr>
<td>Chief Diversity Officer (or his/her designee) (shared)</td>
<td>Evaluate the appointments process annually, including comparison analysis by year and in three-year rolling cycles, to ensure that diversity goals are met in Leadership appointments.</td>
<td>Annually, as part of and following Goal III review</td>
<td>6</td>
</tr>
<tr>
<td>Chief Diversity Officer (or his/her designee) (shared)</td>
<td>Regularly monitor ongoing diversity initiatives throughout the ABA; report to Chief Diversity Officer.</td>
<td>Ongoing, with formal reporting by Chief Diversity Officer at least annually</td>
<td>7</td>
</tr>
<tr>
<td>Action</td>
<td>Description</td>
<td>Frequency</td>
<td>Page</td>
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<td>Chief Diversity Officer (or his/her designee) (shared)</td>
<td>Provide a copy of the Diversity Plan to each existing and incoming Committee Chair and Task Force Chair, together with a communication from the Section Chair and/or Chief Diversity Officer stressing the importance of the Plan and the requirement for active participation of each Leader in implementing the Plan.</td>
<td>Annually</td>
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<td>Chief Diversity Officer (or his/her designee) (shared)</td>
<td>Require all Committee Chairs and Task Force Chairs to consider diversity in developing their Annual Plans. The Plans and periodic reporting must articulate whether they include diversity efforts, and, if not, why their functions do not permit advancement of Section diversity goals.</td>
<td>Annually and monthly</td>
<td>9</td>
</tr>
<tr>
<td>Chief Diversity Officer (or his/her designee) (shared)</td>
<td>Require that the Membership and Marketing Committee Annual Plan include diversity efforts.</td>
<td>Annually and monthly</td>
<td>10</td>
</tr>
<tr>
<td>Chief Diversity Officer (or his/her designee) (shared)</td>
<td>Follow up with those Committee and Task Force Chairs who have not completed their responsibilities under this Diversity Plan and provide them support to meet those responsibilities.</td>
<td>Ongoing</td>
<td>11</td>
</tr>
<tr>
<td>Chief Diversity Officer (or his/her designee) (shared)</td>
<td>Prepare Calendar reflecting dates and tasks due under the Diversity Plan.</td>
<td>Before Fall Leadership Meeting</td>
<td>12</td>
</tr>
<tr>
<td>Chief Diversity Officer (or his/her designee) (shared)</td>
<td>At commencement of each bar year, provide each Leader with written description/reminder of their responsibilities and due dates.</td>
<td>Before Fall Leadership Meeting</td>
<td>13</td>
</tr>
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</table>
| Chief Diversity Officer (or his/her designee) (shared) | Regularly update the Diversity & Inclusion webpage to include:  
- Issues of interest relating to diversity in the Section  
- Links to other websites of interest  
- Report on efforts and achievements of Section in diversity efforts  
- Provide relevant data, such as Goal III report, publications, and membership information  
- Profiles and success stories of diverse Leadership  
Follow-up individually with those who “Click here to get more information on Section Diversity” | Update monthly | 15 |
<p>| Chief Diversity Officer (or his/her designee) (shared) | Address needs and interests of diverse lawyers through editorial board membership and content. | Review annually | 16 |
| Chief Diversity Officer (or his/her designee) (shared) | Develop Fall Leadership Meeting Agenda to fully train members of Leadership on their responsibilities and steps on how to succeed, with presentation by Chief Diversity Officer. | Annually, Fall Leadership Meeting | 17 |
| Chief Diversity Officer (or his/her designee) (shared) | Provide diversity training to Section Leadership at least once each year. | Annually | 18 |
| Chief Diversity Officer (or his/her designee) (shared) | Develop a plan for presentation to the ABA Standing Committee on Membership to offer joint memberships with diverse bar associations. | Annually, as appropriate | 19 |
| Chief Diversity Officer (or his/her designee) (shared) | Develop recruitment/retention materials with a focus on diverse lawyers and new lawyers. | Ongoing | 20 |
| Chief Diversity Officer (or his/her designee) (shared) | Prepare and update a Diversity Recruiting Plan for the Section articulating and coordinating efforts to diversify membership. | Periodic | 21 |
| Chief Diversity Officer (or his/her designee) (shared) | Co-sponsor programs or activities with diverse law school associations in meeting host cities. | ABA Annual Meeting, Section Annual Conference, CLE Seminars | 22 |</p>
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<tr>
<th><strong>Chief Diversity Officer (or his/her designee) (shared)</strong></th>
<th>Have Section Chair personally invite members and leaders of diverse bar associations in the host cities to programs and social events, consider waiving any registration fees for the leaders of such associations; leaders to follow up written invitations with calls, and identify members of Section Leadership to serve as hosts to such attendees.</th>
<th>Section Annual Conference, ABA Annual Meeting, Leadership meetings as appropriate</th>
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<td><strong>Chief Diversity Officer (or his/her designee) (shared)</strong></td>
<td>Create and strengthen ties with diverse bar associations in host cities of Section activities  - Encourage joint programming  - Solicit speakers from diverse bar associations in the host city for Section programs, and notify the program chairs early in the process of the mechanism for them to recruit local speakers  Advertise Section programs in periodicals/newsletters directed to diverse lawyers</td>
<td>Ongoing, report to Chief Diversity Officer timely and 45 days prior to immediate next Council Meeting after each activity</td>
<td>27</td>
</tr>
<tr>
<td><strong>Chief Diversity Officer (or his/her designee) (shared)</strong></td>
<td><strong>Lawyers of Color:</strong> Maintain a coordinated relationship with the Commission on Racial and Ethnic Diversity, the Presidential Advisory Council on Diversity in the Profession, and the Center for Racial and Ethnic Diversity.  <strong>Women lawyers:</strong> Maintain a coordinated relationship with the Commission on Women in the Profession.  <strong>Disabled lawyers/Lawyers with disabilities:</strong> Maintain a coordinated relationship with the Commission on Mental and Physical Disability Law.  <strong>LGBT lawyers:</strong> Maintain a coordinated relationship with the Commission on Sexual Orientation and Gender Identity.</td>
<td>Ongoing</td>
<td>29</td>
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<td><strong>Chief Diversity Officer (or his/her designee) (shared)</strong></td>
<td><strong>Disabled lawyers/Lawyers with disabilities:</strong> Ensure Fall Leadership Orientation Meeting diversity training encompasses sensitivity training on problems encountered by lawyers with disabilities to eliminate or lessen stereotypes and misconceptions, and raise awareness of issues inherent in dealing with disabilities in meeting settings.</td>
<td>Annually, Fall Leadership Meeting</td>
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<td><strong>Chief Diversity Officer (or his/her designee) (shared)</strong></td>
<td><strong>Disabled lawyers/Lawyers with disabilities:</strong> Explore the establishment of an on-line (accessible and user-friendly) “community meeting place” for lawyers with disabilities to air specific issues and concerns.</td>
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<td>31</td>
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<td><strong>Chief Diversity Officer (or his/her designee) (shared)</strong></td>
<td><strong>LGBT lawyers:</strong> Review and revise application, registration and other similar materials to recognize same-sex partners.</td>
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<td><strong>Chief Diversity Officer (or his/her designee) (shared)</strong></td>
<td><strong>All diverse lawyers:</strong> Support the Diversity &amp; Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members  <strong>Lawyers of color:</strong> Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members.  <strong>Women lawyers:</strong> Support the Woman Advocate Committee as a resource for women attorneys in the Section and for prospective members.  <strong>Disabled lawyers/Lawyers with disabilities:</strong> Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events.  <strong>LGBT lawyers:</strong> Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members.</td>
<td>Ongoing</td>
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<tr>
<td>Role/Group (shared)</td>
<td>Task Description</td>
<td>Schedule</td>
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<tr>
<td>Chief Diversity Officer (or his/her designee)</td>
<td><strong>Disabled lawyers/Lawyers with disabilities:</strong> Ensure that in-person Section CLE programming is accessible to all attendees, by accommodating requests for simultaneous “signing” by American Sign Language interpreters, live transcription, and other methods of assisting those with disabilities to listen and ask questions.</td>
<td>Ongoing</td>
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<td></td>
<td><strong>Disabled lawyers/Lawyers with disabilities:</strong> Explore ways to ensure that all Section websites are accessible and user-friendly to disabled lawyers with disabilities.</td>
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<td><strong>Disabled lawyers/Lawyers with disabilities:</strong> Explore options for providing written materials for CLE programming so that disabled lawyers with disabilities can effectively access them, such as by offering them in recorded form or in machine-readable formats.</td>
<td>Ongoing</td>
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<td><strong>All diverse lawyers:</strong> Actively seek to involve in Section activities diverse lawyers who are leaders in local, state, and national bar associations, including ethnic and minority bar associations, women’s bar associations, and LGBT bar associations.</td>
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<td>Committee Chairs (shared)</td>
<td>Require all Committee Chairs and Task Force Chairs to consider diversity in developing their Annual Plans. The Plans and periodic reporting must articulate whether they include diversity efforts, and, if not, why their functions do not permit advancement of Section diversity goals.</td>
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<td>Committee Chairs (shared)</td>
<td>Co-sponsor programs or activities with diverse law school associations in meeting host cities.</td>
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<td>Committee Chairs (shared)</td>
<td><strong>Lawyers of Color:</strong> Monitor and implement Section’s requirement to include lawyers of color as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies. <strong>Women lawyers:</strong> Monitor and enforce requirement to include women lawyers, including women of color, as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies.</td>
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<td>Committee Chairs (shared)</td>
<td><strong>All diverse lawyers:</strong> Submit proposals to offer programming at national conferences for diverse lawyers.</td>
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<td>Council (shared)</td>
<td>Select diverse members for the Advisory Committee on Nominations.</td>
<td>Fall Election of Advisory Committee on Nominations</td>
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<td>Council (shared)</td>
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| Council (shared) | **All diverse lawyers:** Support the Diversity & Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members  
**Lawyers of color:** Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members.  
**Women lawyers:** Support the Woman Advocate Committee as a resource for women attorneys in the Section and for prospective members.  
**Lawyers with disabilities:** Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events.  
**LGBT lawyers:** Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members. | Ongoing | 33 |
| Council (shared) | **Lawyers of color:** Enforce policy that the Section will co-sponsor programs with other ABA entities (e.g., Sections and Divisions) and with outside entities only if there are lawyers of color among the presenters.  
**Women lawyers:** Enforce policy that the Section will co-sponsor programs with other ABA entities (e.g., Sections and Divisions) and with outside entities only if there are women among the presenters. | Ongoing | 40 |
| Council (shared) | **Lawyers of color:** Provide support, including financial support where appropriate, to initiatives that seek to increase opportunities for lawyers of color to gain experience, e.g., through judicial internships (JIOP).  
**Women lawyers:** Support law school scholarships for persons of color and support ongoing ABA or other initiatives that provide funding to build the pipeline and assist persons of color to attend law school. | Annually in Budget Process | 45 |
| Council (shared) | **Lawyers of color:** Compile ABA Goal III Report, including narrative statements with respect to diversity efforts.  
**Women lawyers:** Develop Fall Leadership Meeting Agenda to fully train members of Leadership on their responsibilities and steps on how to succeed, with presentation by Chief Diversity Officer.  
**Disabled lawyers:** Develop and present programs addressing diversity issues at Section Meetings and Distance CLE.  
**Disabled lawyers:** Develop and present programs addressing diversity issues at Section Meetings and Distance CLE.  
**Disabled lawyers:** Ensure Fall Leadership Orientation Meeting diversity training encompasses sensitivity training on problems encountered by lawyers with disabilities to eliminate or lessen stereotypes and misconceptions, and raise awareness of issues inherent in dealing with disabilities in meeting settings.  
**Disabled lawyers:** Explore the establishment of an on-line (accessible and user-friendly) “community meeting place” for lawyers with disabilities to air specific issues and concerns. | Annually, at Goal III report deadline, Annually, Fall Leadership Meeting, Ongoing, Fall Leadership Meeting | 5, 17, 23, 30, 31 |

Diversity & Inclusion Committee (shared) | Regularly update the Diversity & Inclusion webpage to include:  
- Issues of interest relating to diversity in the Section  
- Links to other websites of interest  
- Report on efforts and achievements of Section in diversity efforts  
- Provide relevant data, such as Goal III report, publications, and membership information  
- Profiles and success stories of diverse Leadership.  
Follow-up individually with those who “Click here to get more information on Section Diversity” | Update monthly | 15 |
| Diversity & Inclusion Committee Chairs (shared) | **All diverse lawyers:** Support the Diversity & Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members  
**Lawyers of color:** Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members.  
**Women lawyers:** Support the Woman Advocate Committee as a resource for women attorneys in the Section and for prospective members.  
**Disabled lawyers/Lawyers with disabilities:** Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events.  
**LGBT lawyers:** Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members. | Ongoing | 33 |
| Diversity & Inclusion Committee (shared) | **Lawyers of color, disabled lawyers with disabilities, LGBT lawyers:**  
**Diverse Leaders Academy**  
Provide opportunities for lawyers in under-represented groups such as racial/ethnically diverse lawyers, persons with disabilities, and lesbian, gay, bisexual and transgender persons, to participate in leadership, thereby building a pipeline of future Section leaders. | Ongoing | 49 |
| Diversity & Inclusion Committee (shared) | **All diverse lawyers:** Actively seek to involve in Section activities diverse lawyers who are leaders in local, state, and national bar associations, including ethnic and minority bar associations, women’s bar associations, and LGBT bar associations. | Ongoing | 50 |
| Division Directors (shared) | Compile ABA Goal III Report, including narrative statements with respect to diversity efforts. | Annually, at Goal III report deadline | 5 |
| Division Directors (shared) | Require all Committee Chairs and Task Force Chairs to consider diversity in developing their Annual Plans. The Plans and periodic reporting must articulate whether they include diversity efforts, and, if not, why their functions do not permit advancement of Section diversity goals. | Annually and monthly | 9 |
| Division Directors (shared) | Require that the Membership and Marketing Committee Annual Plan include diversity efforts. | Annually and monthly | 10 |
| Division Directors (shared) | Follow up with those Committee and Task Force Chairs who have not completed their responsibilities under this [Diversity Plan](#) and provide them support to meet those responsibilities. | Ongoing | 11 |
| Division Directors (shared) | Comply with ABA MCLE Accreditation requirement to include diverse lawyers on panels of a certain size. | 60 days before each program to occur | 25 |
| Division Directors (shared) | All diverse lawyers: Support the Diversity & Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members.  
Lawyers of color: Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members.  
Women lawyers: Support the Woman Advocate Committee as a resource for women attorneys in the Section and for prospective members.  
Disabled lawyers, lawyers with disabilities: Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events.  
LGBT lawyers: Support the Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members. | Ongoing | 33 |
| Division Directors (shared) | Lawyers of Color: Monitor and implement Section’s requirement to include lawyers of color as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies.  
Women lawyers: Monitor and enforce requirement to include women lawyers, including women of color, as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies. | Ongoing | 34 |
| Division Directors (shared) | Women lawyers: Develop and present programs addressing women’s issues and targeted to women lawyers, including women of color, at Section Meetings and Distance CLE.  
LGBT lawyers: Develop and present programs addressing LGBT issues at Section Meetings and Distance CLE. | Ongoing | 41 |
| Division Directors (shared) | Lawyers of color: Require lawyers of color in all Section publications.  
Women lawyers: Require women lawyers in all Section publications.  
LGBT lawyers: Encourage and solicit content written by LGBT lawyers or addressing topics of importance to LGBT issues | Ongoing | 44 |
| Division VI Directors (shared) | Lawyers of color: Young Lawyers Leadership Program  
- Require lawyers of color in classes of YLLP members  
- Provide that one of the duties of YLLP members is recruitment of other young lawyers and diverse young lawyers  
Women lawyers: Young Lawyers Leadership Program  
- Require women lawyers in classes of YLLP members  
Provide that one of the duties of YLLP members is recruitment of other young lawyers and diverse young lawyers | Ongoing, report on recruiting efforts at bar year-end | 48 |
| Division VI Directors (shared) | Lawyers of color, disabled lawyers with disabilities, LGBT lawyers: **Diverse Leaders Academy**
Provide opportunities for lawyers in under-represented groups such as racial/ethnically diverse lawyers, persons with disabilities, and lesbian, gay, bisexual and transgender persons, to participate in leadership, thereby building a pipeline of future Section leaders. | Ongoing | 49 |
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<td>Editorial Board Chairs (shared)</td>
<td>Address needs and interests of diverse lawyers through editorial board membership and content.</td>
<td>Review annually</td>
<td>16</td>
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<tr>
<td>Executive Committee (shared)</td>
<td>Select diverse members for the Advisory Committee on Nominations.</td>
<td>Fall Election of Advisory Committee on Nominations</td>
<td>3</td>
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<tr>
<td>JIOP Committee (shared)</td>
<td><strong>Lawyers of color:</strong> Provide support, including financial support where appropriate, to initiatives that seek to increase opportunities for lawyers of color to gain experience, e.g., through judicial internships (JIOP).</td>
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<td>JIOP Committee (shared)</td>
<td><strong>Lawyers of color:</strong> Use JIOP to strengthen ties to law schools as a means of encouraging new membership and diversity.</td>
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<td>Leadership Hosts (shared)</td>
<td>Have Section Chair personally invite members and leaders of diverse bar associations in the host cities to programs and social events, consider waiving any registration fees for the leaders of such associations; leaders to follow up written invitations with calls, and identify members of Section Leadership to serve as hosts to such attendees.</td>
<td>Section Annual Conference, ABA Annual Meeting, Leadership meetings as appropriate</td>
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<td>LGBT Law and Litigators Committee (shared)</td>
<td>Develop and present programs addressing diversity issues at Section Meetings and Distance CLE.</td>
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<td>LGBT Law and Litigators Committee Chairs (shared)</td>
<td><strong>LGBT lawyers:</strong> Review and revise application, registration and other similar materials to recognize same-sex partners.</td>
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<td>LGBT Law and Litigators Committee Chairs (shared)</td>
<td><strong>All diverse lawyers:</strong> Support the Diversity &amp; Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members. <strong>Lawyers of color:</strong> Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members. <strong>Women lawyers:</strong> Support the Woman Advocate Committee as a resource for women attorneys in the Section and for prospective members. <strong>Disabled lawyers with disabilities:</strong> Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events. <strong>LGBT lawyers:</strong> Support the Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members.</td>
<td>Ongoing</td>
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<tr>
<td>Managing Directors (shared)</td>
<td>Develop Fall Leadership Meeting Agenda to fully train members of Leadership on their responsibilities and steps on how to succeed, with presentation by Chief Diversity Officer.</td>
<td>Annually, Fall Leadership Meeting</td>
<td>17</td>
</tr>
<tr>
<td>Managing Directors (shared)</td>
<td>Provide diversity training to Section Leadership at least once each year.</td>
<td>Annually</td>
<td>18</td>
</tr>
<tr>
<td>Role</td>
<td>Task</td>
<td>Timeline</td>
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<tr>
<td>Managing Directors</td>
<td><strong>All diverse lawyers:</strong> Appoint diverse lawyers to positions of leadership in the Section that permit them to understand the overall operation of the Section, and the opportunity to work with leaders of the Section.</td>
<td>During Annual Appointments Process</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Disabled lawyers/Lawyers with disabilities:</strong> Ensure Fall Leadership Orientation Meeting diversity training encompasses sensitivity training on problems encountered by lawyers with disabilities to eliminate or lessen stereotypes and misconceptions, and raise awareness of issues inherent in dealing with disabilities in meeting settings.</td>
<td>Annually, Fall Leadership Meeting</td>
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<td></td>
<td><strong>All diverse lawyers:</strong> Support the Diversity &amp; Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members</td>
<td>Ongoing</td>
<td></td>
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<tr>
<td></td>
<td><strong>Lawyers of color:</strong> Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members.</td>
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<tr>
<td></td>
<td><strong>Women lawyers:</strong> Support the Woman Advocate Committee as a resource for women attorneys in the Section and for prospective members.</td>
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<td><strong>Disabled lawyers/Lawyers with disabilities:</strong> Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events.</td>
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<td><strong>LGBT lawyers:</strong> Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members.</td>
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<td></td>
<td><strong>Lawyers of Color:</strong> Monitor and implement Section’s requirement to include lawyers of color as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies.</td>
<td>Ongoing</td>
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<td><strong>Women lawyers:</strong> Monitor and enforce requirement to include women lawyers, including women of color, as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies.</td>
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<td><strong>All diverse lawyers:</strong> Actively solicit diverse speakers from diverse bar associations located in host cities for Section meetings.</td>
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<td></td>
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<td></td>
<td><strong>Disabled lawyers/Lawyers with disabilities:</strong> Hold all Section activities, including meetings, CLE programs, and social events, in facilities that are not only ADA compliant but assessed to be “user-friendly” in terms of meeting space, social event space, and bathroom facilities.</td>
<td>Ongoing</td>
<td></td>
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<tr>
<td></td>
<td>Co-sponsor programs or activities with diverse law school associations in meeting host cities.</td>
<td>ABA Annual Meeting, Section Annual Conference, CLE Seminars</td>
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<tr>
<td></td>
<td>Develop and present programs addressing diversity issues at Section Meetings and Distance CLE.</td>
<td>Ongoing</td>
<td></td>
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<tr>
<td></td>
<td>Comply with ABA MCLE Accreditation requirement to include diverse lawyers on panels of a certain size.</td>
<td>60 days before each program to occur</td>
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</tr>
<tr>
<td>Meeting Chairs (shared)</td>
<td>Have the Section Chair personally invite members and leaders of diverse bar associations in the host cities to programs and social events, consider waiving any registration fees for the leaders of such associations; leaders to follow up written invitations with calls, and identify Section Leadership to serve as hosts to such attendees.</td>
<td>Section Annual Conference, ABA Annual Meeting, Leadership meetings as appropriate 26</td>
<td></td>
</tr>
</tbody>
</table>
| Meeting Chairs (shared) | Create and strengthen ties with diverse bar associations in host cities of Section activities  
- Encourage joint programming  
- Solicit speakers from diverse bar associations in the host city for Section programs, and notify the program chairs early in the process of the mechanism for them to recruit local speakers  
Advertise Section programs in periodicals/newsletters directed to diverse lawyers | Ongoing, report to Chief Diversity Officer timely and 45 days prior to immediate next Council Meeting after each activity 27 |
| Meeting Chairs (shared) | **Lawyers of Color**: Monitor and implement Section’s requirement to include lawyers of color as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies.  
**Women lawyers**: Monitor and enforce requirement to include women lawyers, including women of color, as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies. | Ongoing 34 |
| Meeting Chairs (shared) | **All diverse lawyers**: Actively solicit diverse speakers from diverse bar associations located in host cities for Section meetings. | Ongoing 35 |
| Meeting Chairs (shared) | **Disabled lawyers**: Hold all Section activities, including meetings, CLE programs, and social events, in facilities that are not only ADA compliant but assessed to be “user-friendly” in terms of meeting space, social event space, and bathroom facilities. | Ongoing 36 |
| Meeting Chairs (shared) | **Disabled lawyers**: Ensure that in-person Section CLE programming is accessible to all attendees, by accommodating requests for simultaneous “signing” by American Sign Language interpreters, live transcription, and other methods of assisting those with disabilities to listen and ask questions. | Ongoing 37 |
| Meeting Chairs (shared) | **Women lawyers**: Develop and present programs addressing women’s issues and targeted to women lawyers, including women of color, at Section Meetings and Distance CLE.  
**LGBT lawyers**: Develop and present programs addressing LGBT issues at Section Meetings and Distance CLE. | Ongoing 41 |
<p>| Meeting Chairs (shared) | <strong>Lawyers of color</strong>: Use JIOP to strengthen ties to law schools as a means of encouraging new membership and diversity. | Ongoing 47 |
| Membership and Marketing Committee (shared) | Require that the Membership and Marketing Committee Annual Plan include diversity efforts. | Annually and monthly 10 |
| Membership and Marketing Committee (shared) | Develop recruitment/retention materials with a focus on diverse lawyers and new lawyers. | Ongoing 20 |
| Membership and Marketing Committee (shared) | Prepare and update a Diversity Recruiting Plan for the Section articulating and coordinating efforts to diversify membership. | Periodic 21 |</p>
<table>
<thead>
<tr>
<th>Committee</th>
<th>Description</th>
<th>Ongoing</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Membership and Marketing Committee (shared)</td>
<td>Create and strengthen ties with diverse bar associations in host cities of Section activities</td>
<td>Ongoing, report to Chief Diversity Officer timely and 45 days prior to immediate next Council Meeting after each activity</td>
<td>27</td>
</tr>
<tr>
<td>Membership and Marketing Committee (shared)</td>
<td>All diverse lawyers: Support the Diversity &amp; Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members. Lawyers of color: Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members. Women lawyers: Support the Woman Advocate Committee as a resource for women attorneys in the Section and for prospective members. Disabled lawyers: Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events. LGBT lawyers: Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members.</td>
<td>Ongoing</td>
<td>33</td>
</tr>
<tr>
<td>Minority Trial Lawyer Committee (shared)</td>
<td>Develop and present programs addressing diversity issues at Section Meetings and Distance CLE.</td>
<td>Ongoing</td>
<td>23</td>
</tr>
<tr>
<td>Minority Trial Lawyer Committee Chairs (shared)</td>
<td>All diverse lawyers: Support the Diversity &amp; Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members. Lawyers of color: Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members. Women lawyers: Support the Woman Advocate Committee as a resource for women attorneys in the Section and for prospective members. Disabled lawyers: Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events. LGBT lawyers: Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members.</td>
<td>Ongoing</td>
<td>33</td>
</tr>
<tr>
<td>Open Enrollment Committees (shared)</td>
<td>Develop and present programs addressing diversity issues at Section Meetings and Distance CLE.</td>
<td>Ongoing</td>
<td>23</td>
</tr>
<tr>
<td>Professional Development Committee (shared)</td>
<td>Develop and present programs addressing diversity issues at Section Meetings and Distance CLE.</td>
<td>Ongoing</td>
<td>23</td>
</tr>
<tr>
<td>Professional Development Committee (shared)</td>
<td>Women lawyers: Develop and present programs addressing women’s issues and targeted to women lawyers, including women of color, at Section Meetings and Distance CLE. LGBT lawyers: Develop and present programs addressing LGBT issues at Section Meetings and Distance CLE.</td>
<td>Ongoing</td>
<td>41</td>
</tr>
<tr>
<td>Role (shared)</td>
<td>Task Description</td>
<td>Deadline</td>
<td>Notes</td>
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<tr>
<td>Program Chairs</td>
<td>Develop and present programs addressing diversity issues at Section Meetings and Distance CLE.</td>
<td>Ongoing</td>
<td>23</td>
</tr>
<tr>
<td>Program Chairs</td>
<td>Comply with ABA MCLE Accreditation requirement to include diverse lawyers on panels of a certain size.</td>
<td>60 days before each program to occur</td>
<td>25</td>
</tr>
<tr>
<td>Program Chairs</td>
<td><strong>All diverse lawyers:</strong> Actively solicit diverse speakers from diverse bar associations located in host cities for Section meetings.</td>
<td>Ongoing</td>
<td>35</td>
</tr>
<tr>
<td>Program Chairs</td>
<td><strong>Lawyers with disabilities/Disabled lawyers:</strong> Ensure that in-person Section CLE programming is accessible to all attendees, by accommodating requests for simultaneous “signing” by American Sign Language interpreters, live transcription, and other methods of assisting those with disabilities to listen and ask questions.</td>
<td>Ongoing</td>
<td>37</td>
</tr>
<tr>
<td>Program Chairs</td>
<td><strong>Women lawyers:</strong> Develop and present programs addressing women’s issues and targeted to women lawyers, including women of color, at Section Meetings and Distance CLE. <strong>LGBT lawyers:</strong> Develop and present programs addressing LGBT issues at Section Meetings and Distance CLE.</td>
<td>Ongoing</td>
<td>41</td>
</tr>
<tr>
<td>Publications and Content Officer</td>
<td><strong>Lawyers with disabilities/Disabled lawyers:</strong> Explore options for providing written materials for CLE programming so that lawyers with disabilities can effectively access them, such as by offering them in recorded form or in machine-readable formats.</td>
<td>Ongoing</td>
<td>39</td>
</tr>
<tr>
<td>Publications Editors</td>
<td>Address needs and interests of diverse lawyers through editorial board membership and content.</td>
<td>Review annually</td>
<td>16</td>
</tr>
<tr>
<td>Publications Editors</td>
<td>Include in general Section publications (not merely specialized newsletters) content addressing the needs and interests of diverse lawyers.</td>
<td>Ongoing</td>
<td>24</td>
</tr>
<tr>
<td>Publications Editors</td>
<td><strong>All diverse lawyers:</strong> Encourage and solicit content written by diverse lawyers.</td>
<td>Ongoing</td>
<td>43</td>
</tr>
<tr>
<td>Publications Editors</td>
<td><strong>Lawyers of color:</strong> Require lawyers of color in all Section publications. <strong>Women lawyers:</strong> Require women lawyers in all Section publications. <strong>LGBT lawyers:</strong> Encourage and solicit content written by LGBT lawyers or addressing topics of importance to LGBT issues.</td>
<td>Ongoing</td>
<td>44</td>
</tr>
<tr>
<td>Staff</td>
<td>Compile ABA Goal III Report, including narrative statements with respect to diversity efforts.</td>
<td>Annually, at Goal III report deadline</td>
<td>5</td>
</tr>
<tr>
<td>Staff</td>
<td>Evaluate the appointments process annually, including comparison analysis by year and in three-year rolling cycles, to ensure that diversity goals are met in Leadership appointments.</td>
<td>Annually, as part of and following Goal III review</td>
<td>6</td>
</tr>
<tr>
<td>Staff</td>
<td>Regularly monitor ongoing diversity initiatives throughout the ABA; report to Chief Diversity Officer.</td>
<td>Ongoing, with formal reporting by Chief Diversity Officer at least annually</td>
<td>7</td>
</tr>
<tr>
<td>Staff</td>
<td>Require all Committee Chairs and Task Force Chairs to consider diversity in developing their Annual Plans. The Plans and periodic reporting must articulate whether they include diversity efforts, and, if not, why their functions do not permit advancement of Section diversity goals.</td>
<td>Annually and monthly</td>
<td>9</td>
</tr>
<tr>
<td>Staff</td>
<td>Require that the Membership and Marketing Committee Annual Plan include diversity efforts.</td>
<td>Annually and monthly</td>
<td>10</td>
</tr>
<tr>
<td>Staff</td>
<td>Follow up with those Committee and Task Force Chairs who have not completed their responsibilities under this Diversity &amp; Inclusion Plan and provide them support to meet those responsibilities.</td>
<td>Ongoing</td>
<td>11</td>
</tr>
<tr>
<td>Staff (shared)</td>
<td>Prepare Calendar reflecting dates and tasks due under the Diversity Plan, Diversity &amp; Inclusion Plan.</td>
<td>Before Fall Leadership Meeting</td>
<td>12</td>
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<tr>
<td>Staff (shared)</td>
<td>At commencement of each bar year, provide each Leader with written description/reminder of their responsibilities and due dates.</td>
<td>Before Fall Leadership Meeting</td>
<td>13</td>
</tr>
<tr>
<td>Staff</td>
<td>Publish the Diversity Plan, Diversity &amp; Inclusion Plan in the Section’s online Leadership Portal, diversity web pages, Leadership Directory, By-Laws and Strategic Plan.</td>
<td>Ongoing</td>
<td>14</td>
</tr>
</tbody>
</table>
| Staff (shared) | Regularly update the Diversity & Inclusion webpage to include:  
  - Issues of interest relating to diversity in the Section  
  - Links to other websites of interest  
  - Report on efforts and achievements of Section in diversity efforts  
  - Provide relevant data, such as Goal III report, publications, and membership information  
  - Profiles and success stories of diverse Leadership  
  Follow-up individually with those who “Click here to get more information on Section Diversity” | Update monthly | 15 |
| Staff (shared) | Develop Fall Leadership Meeting Agenda to fully train members of Leadership on their responsibilities and steps on how to succeed, with presentation by Chief Diversity Officer. | Annually, Fall Leadership Meeting | 17 |
| Staff (shared) | Develop a plan for presentation to the ABA Standing Committee on Membership to offer joint memberships with diverse bar associations. | Annually, as appropriate | 19 |
| Staff (shared) | Develop recruitment/retention materials with a focus on diverse lawyers and new lawyers. | Ongoing | 20 |
| Staff (shared) | Prepare and update a Diversity Recruiting Plan for the Section articulating and coordinating efforts to diversify membership. | Periodic | 21 |
| Staff (shared) | Co-sponsor programs or activities with diverse law school associations in meeting host cities. | ABA Annual Meeting, Section Annual Conference, CLE Seminars | 22 |
| Staff (shared) | Comply with ABA MCLE Accreditation requirement to include diverse lawyers on panels of a certain size. | 60 days before each program to occur | 25 |
| Staff (shared) | Have Section Chair personally invite members and leaders of diverse bar associations in the host cities to programs and social events, consider waiving any registration fees for the leaders of such associations; leaders to follow up written invitations with calls, and identify Section Leadership to serve as hosts to such attendees. | Section Annual Conference, ABA Annual Meeting, Leadership meetings as appropriate | 26 |
| Staff (shared) | Create and strengthen ties with diverse bar associations in host cities of Section activities  
  - Encourage joint programming  
  - Solicit speakers from diverse bar associations in the host city for Section programs, and notify the program chairs early in the process of the mechanism for them to recruit local speakers  
  Advertise Section programs in periodicals/newsletters directed to diverse lawyers | Ongoing, report to Chief Diversity Officer timely and 45 days prior to immediate next Council Meeting after each activity | 27 |
| Staff (shared) | **Lawyers of Color**: Maintain a coordinated relationship with the Commission on Racial and Ethnic Diversity, the Presidential Advisory Council on Diversity in the Profession, and the Center for Racial and Ethnic Diversity.  
**Women lawyers**: Maintain a coordinated relationship with the Commission on Women in the Profession.  
**Lawyers with disabilities/Disabled lawyers**: Maintain a coordinated relationship with the Commission on Mental and Physical Disability Law.  
**LGBT lawyers**: Maintain a coordinated relationship with the Commission on Sexual Orientation and Gender Identity. | Ongoing | 29 |
| Staff (shared) | **Lawyers with disabilities/Disabled lawyers**: Ensure Fall Leadership Orientation Meeting diversity training encompasses sensitivity training on problems encountered by lawyers with disabilities to eliminate or lessen stereotypes and misconceptions, and raise awareness of issues inherent in dealing with disabilities in meeting settings. | Annually, Fall Leadership Meeting | 30 |
| Staff (shared) | **Lawyers with disabilities/Disabled lawyers**: Explore the establishment of an on-line (accessible and user-friendly) “community meeting place” for lawyers with disabilities to air specific issues and concerns. | Ongoing | 31 |
| Staff (shared) | **LGBT lawyers**: Review and revise application, registration and other similar materials to recognize same-sex partners. | Ongoing | 32 |
| Staff (shared) | **All diverse lawyers**: Support the Diversity & Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members  
**Lawyers of color**: Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members.  
**Women lawyers**: Support the Woman Advocate Committee as a resource for women attorneys in the Section and for prospective members.  
**Lawyers with disabilities/Disabled lawyers**: Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events.  
**LGBT lawyers**: Support the Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members. | Ongoing | 33 |
| Staff (shared) | **Lawyers of Color**: Monitor and implement Section’s requirement to include lawyers of color as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies.  
**Women lawyers**: Monitor and enforce requirement to include women lawyers, including women of color, as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies. | Ongoing | 34 |
<p>| Staff (shared) | <strong>Lawyers with disabilities/Disabled lawyers</strong>: Hold all Section activities, including meetings, CLE programs, and social events, in facilities that are not only ADA compliant but assessed to be “user-friendly” in terms of meeting space, social event space, and bathroom facilities. | Ongoing | 36 |
| Staff (shared) | <strong>Lawyers with disabilities/Disabled lawyers</strong>: Ensure that in-person Section CLE programming is accessible to all attendees, by accommodating requests for simultaneous “signing” by American Sign Language interpreters, live transcription, and other methods of assisting those with disabilities to listen and ask questions. | Ongoing | 37 |</p>
<table>
<thead>
<tr>
<th>Task Force Chair (shared)</th>
<th><strong>Lawyers with disabilities</strong>/Disabled lawyers:</th>
<th>Explore ways to ensure that all Section websites are accessible and user-friendly to disabled lawyers with disabilities.</th>
<th>Ongoing</th>
<th>38</th>
</tr>
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<tr>
<td>Staff (shared)</td>
<td><strong>Lawyers with disabilities</strong>/Disabled lawyers:</td>
<td>Explore options for providing written materials for CLE programming so that disabled lawyers with disabilities can effectively access them, such as by offering them in recorded form or in machine-readable formats.</td>
<td>Ongoing</td>
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<td>Staff (shared)</td>
<td><strong>Lawyers of color:</strong></td>
<td>Enforce policy that the Section will co-sponsor programs with other ABA entities (e.g., Sections and Divisions) and with outside entities only if there are lawyers of color among the presenters. <strong>Women lawyers:</strong></td>
<td>Enforce policy that the Section will co-sponsor programs with other ABA entities (e.g., Sections and Divisions) and with outside entities only if there are women among the presenters.</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Staff (shared)</td>
<td>All diverse lawyers:</td>
<td>Submit proposals to offer programming at national conferences for diverse lawyers.</td>
<td>Ongoing</td>
<td>42</td>
</tr>
<tr>
<td>Staff (shared)</td>
<td><strong>Lawyers of color:</strong></td>
<td>Require lawyers of color in all Section publications. <strong>Women lawyers:</strong></td>
<td>Require women lawyers in all Section publications. <strong>LGBT lawyers:</strong></td>
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<td>Staff (shared)</td>
<td><strong>Lawyers of color:</strong></td>
<td>Provide support, including financial support where appropriate, to initiatives that seek to increase opportunities for lawyers of color to gain experience, e.g., through judicial internships (JIOP).</td>
<td>Annually in Budget Process</td>
<td>45</td>
</tr>
<tr>
<td>Staff (shared)</td>
<td><strong>Lawyers of color:</strong></td>
<td>Support law school scholarships for persons of color and support ongoing ABA or other initiatives that provide funding to build the pipeline and assist persons of color to attend law school.</td>
<td>Annually in Budget Process</td>
<td>46</td>
</tr>
<tr>
<td>Staff (shared)</td>
<td><strong>Lawyers of color:</strong></td>
<td>Use JIOP to strengthen ties to law schools as a means of encouraging new membership and diversity.</td>
<td>Ongoing</td>
<td>47</td>
</tr>
<tr>
<td>Task Force Chair (shared)</td>
<td>Require all Committee Chairs and Task Force Chairs to consider diversity in developing their Annual Plans. The Plans and periodic reporting must articulate whether they include diversity efforts, and, if not, why their functions do not permit advancement of Section diversity goals.</td>
<td>Annually and monthly</td>
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<td>Woman Advocate Committee (shared)</td>
<td></td>
<td>Develop and present programs addressing diversity issues at Section Meetings and Distance CLE.</td>
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</tr>
<tr>
<td>Woman Advocate Committee Chairs (shared)</td>
<td>All diverse lawyers:</td>
<td>Support the Diversity &amp; Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members. <strong>Lawyers of color:</strong></td>
<td>Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members. <strong>Women lawyers:</strong></td>
<td>Support the Woman Advocate Committee as a resource for women attorneys in the Section and for prospective members. <strong>Lawyers with disabilities</strong>/Disabled lawyers:</td>
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</table>
| YLLP Co-Chairs and Members, and YLLP Mentors (shared) | **Lawyers of color:**  
Young Lawyers Leadership Program  
- Require lawyers of color in classes of YLLP members  
- Provide that one of the duties of YLLP members is recruitment of other young lawyers and diverse young lawyers  
**Women lawyers:**  
Young Lawyers Leadership Program  
- Require women lawyers in classes of YLLP members  
Provide that one of the duties of YLLP members is recruitment of other young lawyers and diverse young lawyers | Ongoing, report on recruiting efforts at bar year-end |
Section of Litigation Diversity & Inclusion Plan
(June 2018)

Historical Background

In 2008, the American Bar Association House of Delegates adopted a Mission statement and four Goals for achieving that mission. Goal III is “Eliminate Bias and Enhance Diversity” and it includes two objectives:

1. Promote full and equal participation in the association, our profession, and the justice system by all persons.

2. Eliminate bias in the legal profession and the justice system.

The tenets of ABA Goal III were drawn from what was previously known as ABA’s Goal IX, which was “[t]o promote full and equal participation in the legal profession by minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities.” Under the current ABA Goal III Diversity Plan, “diversity” includes all four aspects of Goal III: gender, race/ethnicity, disability, and sexual orientation/gender identity.

The ABA Section of Litigation strongly supports Goal III. It is committed to ensuring equal opportunity in the profession, respecting the diversity and individualism of its members, recognizing the intrinsic value of diversity in the legal profession, and expanding the breadth of its membership.

The Section first adopted diversity as one of its strategic goals in its Strategic Plan of August 7, 1994. That Strategic Plan incorporated a core tenet of this Section and the lawyers it serves: “The legal profession will be open and hospitable to all.” The Strategic Plan contained an explicit goal to: “Diversify Section membership and leadership and promote diversity in the legal profession.”

In 2001, the Section adopted its first Diversity Implementation Plan. Working under that Plan, the Section implemented and maintained effective tactics for enhancing diversity and for meeting the needs and interests of diverse attorneys in the Section, with a strategic focus on lawyers of color, even though Goal IX at the time also extended to women and lawyers with disabilities. The Section’s decision in 2001 to focus the Diversity Implementation Plan on lawyers of color recognized that women lawyers had attained more equal participation in the legal profession and in Section Leadership than lawyers of color. The 2001 Plan succeeded in increasing participation of lawyers of color in the Section in general and in the Section’s Leadership in particular. But the work was far from done.
In 2005 and 2006, the Section Council’s Diversity Committee and Staff reviewed the 2001 Plan, assessed what was working, what was not, what had been achieved, and what required redoubled efforts. The Committee and Staff also analyzed the plans and initiatives of other ABA entities to develop additional ideas and share best practices.

The Committee identified a crucial policy choice: whether to maintain the Section’s focus on lawyers of color or to broaden its diversity efforts. Based on input from the Section’s Leadership, consensus emerged: (1) there was much yet to be done on behalf of lawyers of color, and any expansion of the Section’s diversity effort should not erode that commitment; and (2) the Section needed to take a leadership role on other diversity issues limiting full participation in the profession, including disability, sex, sexual orientation, and gender identity.

The Section’s Council voted in January 2007 to support a proposal from the Section of Individual Rights and Responsibilities to add sexual orientation and gender identity to Goal IX. The amendment passed the ABA House of Delegates in February 2007.

In August 2007, the Council adopted a Diversity Plan that reaffirmed its unwavering strategic focus on lawyers of color by improving and enhancing the tactics aimed at lawyers of color in its 2001 Diversity Implementation Plan and adding strategies targeted to all of the characteristics identified in what is now Goal III. The Plan emphasizes the importance of a well-developed strategy, specific time lines and calendars, and individual accountability within the Section. All Section Leaders have diversity responsibilities and requirements for reporting that they have been fulfilled. Accountability runs throughout the Leadership and to the Chair and Executive Director.

The Diversity Plan categorizes action items into six areas: Leadership Commitment; Accountability; Communications and Training; Membership; Programs and Publications; and Outreach. Many of the particular items overlap but have been placed into a single category for ease of reference.

In September 2007, the Section adopted an update to its strategic plan titled “The Section at 40.” This forward-looking document directed the Section to broadly diversify its membership and leadership, and made measurement and evaluation of success in implementing the Section’s Diversity Plan an essential strategy in the Section’s pursuit of preeminence as the membership organization for litigators.

The Section of Litigation is proud of its position as a leader in the ABA and in the profession. It counts among its members some of the most renowned and dedicated lawyers in the nation. The goal of enhanced diversity can be achieved only with the unequivocal support, participation, and individual commitment of all Section members. The Section pledges to use its resources and the dedication of its members, as exemplified by what it has brought to other important issues, to ensure the full, equal participation of
diverse lawyers in the ABA and the profession. The Diversity Plan ensures that the Section of Litigation will continue to lead the ABA and put in place best practices for all Goal III characteristics, with a systematic periodic review and, if necessary, further revisions.

Pursuant to this systematic review, the plan has undergone further refinements, especially regarding lesbian, gay, bisexual, and transgendered (“LGBT”) attorneys. The Plan in 2007 created an LGBT Working Group to investigate and make recommendations regarding the integration of LGBT lawyers into the Section and to explore and create programming regarding LGBT legal issues. The LGBT Working Group recommended creation of the LGBT Litigator Committee within the Section, and the Council adopted that recommendation in June 2008. In 2017, the Committee revised its name to the LGBT Law and Litigators Committee.

In the nine years that have passed since the Section last adopted changes to the Diversity Plan, the Section has expanded its diversity efforts, but it has not revised the 2008 Diversity Plan. Notable changes in diversity efforts include the 2011 creation of a Diversity Committee, which was renamed the Diversity & Inclusion Committee one year later. The Diversity & Inclusion Committee has taken on a variety of roles in the Section, including serving as a resource for open-enrollment committees and administering the Diversity Leaders Academy. The Section has also sponsored stand-alone conferences aimed specifically at women lawyers, lawyers of color, and LGBT lawyers.

In 2016, the Council approved a bylaw change that combined the role of Section Secretary with a new officer position: the Chief Diversity Officer (“CDO”). Section 6.5 of the Section’s Bylaws now states:

CHIEF DIVERSITY OFFICER AND SECRETARY. The Chief Diversity Officer and Secretary will have responsibility for overseeing staff in maintaining all books, papers, documents, and other property of the Section, except money. He/she shall keep a true record of the proceedings of Section and Council meetings and actions. He/she shall maintain, monitor, supervise and report at least annually at the ABA Annual Meeting on compliance by the Section and its component parts with the Section Diversity Plan. In furtherance of that role, he/she shall also liaise and consult with Committees within the Section, such as Diversity & Inclusion, among others, whose missions are focused on diversity.

In September 2016, the Council Diversity Committee (“CDC”), led by the CDO, began reviewing the 2008 Plan. The CDC determined that it would be appropriate to approach the review and revision process in two phases. The first phase involved recommending that the Diversity Plan reflect structural changes in the Section, such as the creation of the Diversity & Inclusion Committee and the CDO position. The Diversity Plan was also reorganized into two primary accountability grids, including one concerning Goal III diversity goals generally and one addressing specific diverse groups. (Previously, there were four separate grids for the four diverse groups.) From Fall 2017 to Spring 2018, the CDC undertook a more comprehensive review of the Diversity Plan and requests Council’s approval of this revised plan.
Section of Litigation  
Diversity & Inclusion Implementation Plan

The Section of Litigation undertakes specific action steps with respect to all aspects of diversity within ABA Goal III and with respect to specific diverse groups. The charts on the following pages identify the action steps, WHO is responsible for those steps, and WHEN those steps will be taken.

I. Implementation steps for Section concerning Goal III diversity goals generally
A. Leadership Commitment  
B. Accountability  
C. Communications and Training  
D. Membership  
E. Programs and Publications  
F. Outreach

II. Implementation steps for Section concerning specific diverse groups
A. Leadership Commitment  
B. Communications and Training  
C. Membership  
D. Programs and Publications  
E. Outreach
## I. Implementation steps for Section concerning Goal III diversity goals generally

### A. LEADERSHIP COMMITMENT

<table>
<thead>
<tr>
<th>Step Description</th>
<th>WHO</th>
<th>WHEN</th>
<th>Row</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evaluate and update the Section Diversity &amp; Inclusion Plan. Also, report recommended changes to the Plan and seek approval from the Council at ABA Annual meetings.</td>
<td>Chief Diversity Officer¹</td>
<td>Annually, for Report at ABA Annual Meeting</td>
<td>1</td>
</tr>
<tr>
<td>Select Council members to work with the Chief Diversity Officer.</td>
<td>Chair-Elect</td>
<td>Annually</td>
<td>2</td>
</tr>
<tr>
<td>Select diverse members for the Advisory Committee on Nominations.</td>
<td>Executive Committee and Council</td>
<td>Fall Election of Advisory Committee on Nominations</td>
<td>3</td>
</tr>
<tr>
<td>Select diverse members for Council and Officer positions.</td>
<td>Chair-Elect, Advisory Committee on Nominations, and Council</td>
<td>Nominations Process</td>
<td>4</td>
</tr>
<tr>
<td>Compile ABA Goal III Report, including narrative statements with respect to diversity efforts.</td>
<td>Staff, reviewed by the Chief Diversity Officer, with input from the Diversity &amp; Inclusion Committee and the Division Directors</td>
<td>Annually, at Goal III report deadline</td>
<td>5</td>
</tr>
<tr>
<td>Evaluate the appointments process annually, including comparison analysis by year and in three-year rolling cycles, to ensure that diversity goals are met in Leadership appointments.</td>
<td>Chief Diversity Officer and Staff for report to Council</td>
<td>Annually, as part of and following Goal III review</td>
<td>6</td>
</tr>
<tr>
<td>Regularly monitor ongoing diversity initiatives throughout the ABA; report to Chief Diversity Officer.</td>
<td>Staff, supervised by Chief Diversity Officer</td>
<td>Ongoing, with formal reporting by Chief Diversity Officer at least annually</td>
<td>7</td>
</tr>
<tr>
<td>Provide a copy of the Diversity &amp; Inclusion Plan to each existing and incoming Committee Chair and Task Force Chair, together with a communication from the Section Chair and/or Chief Diversity Officer stressing the importance of the Plan and the requirement for active participation of each Leader in implementing the Plan.</td>
<td>Chief Diversity Officer and Chair</td>
<td>Annually</td>
<td>8</td>
</tr>
</tbody>
</table>

¹ References to the Chief Diversity Officer include the Chief Diversity Officer and his/her designee(s).
### B. ACCOUNTABILITY

| Require all Committee Chairs and Task Force Chairs to consider diversity in developing their Annual Plans. The Plans and periodic reporting must articulate whether they include diversity efforts, and, if not, why their functions do not permit advancement of Section diversity goals. |
| Committee Chairs and Task Force Chairs, reviewed by Chief Diversity Officer, Staff, and Division Directors |
| Annually and in reporting before leadership meetings |
| Require that the Membership and Marketing Committee Annual Plan include diversity efforts. [Concept taken from one row above] |
| Membership and Marketing Committee, reviewed by Chief Diversity Officer, Staff, and Division Directors |
| Annually and in reporting before leadership meetings |
| Follow up with those Committee Chairs and Task Force Chairs who have not completed their responsibilities under this Diversity & Inclusion Plan and provide them support to meet those responsibilities. |
| Chief Diversity Officer, Division Directors, and Staff |
| Ongoing |
| Prepare Calendar reflecting dates and tasks due under the Diversity & Inclusion Plan. |
| Chief Diversity Officer and Staff |
| Before Fall Leadership Meeting |
| At commencement of each bar year, provide each Leader with written description/reminder of their responsibilities and due dates. |
| Chief Diversity Officer and Staff |
| Before Fall Leadership Meeting |

### C. COMMUNICATIONS AND TRAINING

<p>| Publish the Diversity &amp; Inclusion Plan in the Section’s online Leadership Portal, diversity web pages, Leadership Directory, By-Laws and Strategic Plan. |
| Staff |
| Ongoing |
| Regularly update the Diversity &amp; Inclusion webpage to include: |
| Staff, with input from the Chief Diversity Officer and the Diversity &amp; Inclusion Committee |
| Update monthly |
| - Issues of interest relating to diversity in the Section |
| - Links to other websites of interest |
| - Report on efforts and achievements of Section in diversity efforts |
| - Provide relevant data, such as Goal III report, publications, and membership information |
| - Profiles and success stories of diverse Leadership |
| - Follow-up individually with those who “Click here to get more information on Section Diversity” |</p>
<table>
<thead>
<tr>
<th>Address needs and interests of diverse lawyers through editorial board membership and content.</th>
<th>Chief Diversity Officer, Publications Editors, and Editorial Board Chairs</th>
<th>Review annually</th>
<th>16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Develop Fall Leadership Meeting Agenda to fully train members of Leadership on their responsibilities and steps on how to succeed, with presentation by Chief Diversity Officer.</td>
<td>Chief Diversity Officer, Staff, Managing Directors, Diversity &amp; Inclusion Committee</td>
<td>Annually, Fall Leadership Meeting</td>
<td>17</td>
</tr>
<tr>
<td>Provide diversity training to Section Leadership at least once each year.</td>
<td>Managing Directors and Chief Diversity Officer</td>
<td>Annually</td>
<td>18</td>
</tr>
</tbody>
</table>

### D. MEMBERSHIP

<table>
<thead>
<tr>
<th>WHO</th>
<th>WHEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Develop a plan for presentation to the ABA Standing Committee on Membership to offer joint memberships with diverse bar associations.</td>
<td>Staff and Chief Diversity Officer</td>
</tr>
<tr>
<td>Develop recruitment/retention materials with a focus on diverse lawyers and new lawyers.</td>
<td>Membership and Marketing Committee, Staff, Chief Diversity Officer</td>
</tr>
<tr>
<td>Prepare and update a Diversity Recruiting Plan for the Section articulating and coordinating efforts to diversify membership.</td>
<td>Membership and Marketing Committee, Staff, Chief Diversity Officer</td>
</tr>
</tbody>
</table>

### E. PROGRAMS AND PUBLICATIONS

<table>
<thead>
<tr>
<th>WHO</th>
<th>WHEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Co-sponsor programs or activities with diverse law school associations in meeting host cities.</td>
<td>Committee Chairs, Meeting Chairs, Staff, Chief Diversity Officer</td>
</tr>
<tr>
<td>Develop and present programs addressing diversity issues at Section Meetings and Distance CLE.</td>
<td>Meeting Chairs, Program Chairs, Professional Development Committee, Diversity &amp; Inclusion Committee, and all open enrollment Committees</td>
</tr>
</tbody>
</table>
Include in general Section publications (not merely specialized newsletters) content addressing the needs and interests of diverse lawyers.

<table>
<thead>
<tr>
<th>F. OUTREACH</th>
<th>WHO</th>
<th>WHEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Have Section Chair personally invite members and leaders of diverse bar associations in the host cities to programs and social events, consider waiving any registration fees for the leaders of such associations; leaders to follow up written invitations with calls, and identify members of Section Leadership to serve as hosts to such attendees.</td>
<td>Chair, Meeting Chairs, Leadership Hosts, Staff, and Chief Diversity Officer</td>
<td>Section Annual Conference, ABA Annual Meeting, Leadership meetings as appropriate</td>
</tr>
</tbody>
</table>
| Create and strengthen ties with diverse bar associations in host cities of Section activities  
  ● Encourage joint programming  
  ● Solicit speakers from diverse bar associations in the host city for Section programs, and notify the program chairs early in the process of the mechanism for them to recruit local speakers  
  ● Advertise Section programs in periodicals/newsletters directed to diverse lawyers | Staff, Meeting Chairs, Membership and Marketing Committee, and Chief Diversity Officer | Ongoing, report to Chief Diversity Officer timely and 45 days prior to immediate next Council Meeting after each activity |
II. Specific Implementation steps for Section concerning Goal III diversity goals

Note: provisions applicable to “All diverse lawyers” include lawyers of color, women lawyers, lawyers with disabilities, and LGBT lawyers.

<table>
<thead>
<tr>
<th>A. LEADERSHIP COMMITMENT</th>
<th>WHO</th>
<th>WHEN</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All diverse lawyers:</strong> Appoint diverse lawyers to positions of leadership in the Section that permit them to understand the overall operation of the Section, and the opportunity to work with leaders of the Section.</td>
<td>Chair-Elect and Managing Directors Designates</td>
<td>During Annual Appointments Process 28</td>
</tr>
<tr>
<td><strong>Lawyers of Color:</strong> Maintain a coordinated relationship with the Commission on Racial and Ethnic Diversity, the Presidential Advisory Council on Diversity in the Profession, and the Center for Racial and Ethnic Diversity.</td>
<td>Chief Diversity Officer and Staff</td>
<td>Ongoing 29</td>
</tr>
<tr>
<td><strong>Women lawyers:</strong> Maintain a coordinated relationship with the Commission on Women in the Profession.</td>
<td>Chief Diversity Officer and Staff</td>
<td>Ongoing 29</td>
</tr>
<tr>
<td><strong>Lawyers with disabilities:</strong> Maintain a coordinated relationship with the Commission on Mental and Physical Disability Law.</td>
<td>Chief Diversity Officer and Staff</td>
<td>Ongoing 29</td>
</tr>
<tr>
<td><strong>LGBT lawyers:</strong> Maintain a coordinated relationship with the Commission on Sexual Orientation and Gender Identity.</td>
<td>Chief Diversity Officer and Staff</td>
<td>Ongoing 29</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>B. COMMUNICATIONS AND TRAINING</th>
<th>WHO</th>
<th>WHEN</th>
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</thead>
<tbody>
<tr>
<td><strong>Lawyers with disabilities:</strong> Ensure Fall Leadership Orientation Meeting diversity training encompasses sensitivity training on problems encountered by lawyers with disabilities to eliminate or lessen stereotypes and misconceptions, and raise awareness of issues inherent in dealing with disabilities in meeting settings.</td>
<td>Chief Diversity Officer, Staff, Managing Directors, Diversity &amp; Inclusion Committee</td>
<td>Annually, Fall Leadership Meeting 30</td>
</tr>
<tr>
<td><strong>Lawyers with disabilities:</strong> Explore the establishment of an on-line (accessible and user-friendly) “community meeting place” for lawyers with disabilities to air specific issues and concerns.</td>
<td>Chief Diversity Officer, Diversity &amp; Inclusion Committee, and Staff</td>
<td>Ongoing 31</td>
</tr>
<tr>
<td><strong>LGBT lawyers:</strong> Review and revise application, registration and other similar materials to recognize same-sex partners.</td>
<td>Chief Diversity Officer and Staff, with input from LGBT Committee Chairs</td>
<td>Ongoing 32</td>
</tr>
</tbody>
</table>
### C. MEMBERSHIP

<table>
<thead>
<tr>
<th>WHO</th>
<th>WHEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Diversity Officer, Council, Staff, Managing Directors, Division Directors, Membership and Marketing Committee, and Chairs of the identified Committees (Diversity &amp; Inclusion, Minority Trial Lawyer, Woman Advocate, JIOP, LGBT Law and Litigators)</td>
<td>Ongoing</td>
</tr>
</tbody>
</table>

| **All diverse lawyers:** Support the Diversity & Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members |
| **Lawyers of color:** Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members. |
| **Women lawyers:** Support the Woman Advocate Committee as a resource for women attorneys in the Section and for prospective members. |
| **Lawyers with disabilities:** Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events. |
| **LGBT lawyers:** Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members. |

### D. PROGRAMS AND PUBLICATIONS

<table>
<thead>
<tr>
<th>WHO</th>
<th>WHEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Managing Directors, Division Directors, Committee Chairs, Meeting Chairs, and Staff</td>
<td>Ongoing</td>
</tr>
</tbody>
</table>

| **Lawyers of Color:** Monitor and implement Section’s requirement to include lawyers of color as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies. |
| **Women lawyers:** Monitor and enforce requirement to include women lawyers, including women of color, as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies. |
| **All diverse lawyers:** Actively solicit diverse speakers from diverse bar associations located in host cities for Section meetings. |
| **Lawyers with disabilities:** Hold all Section activities, including meetings, CLE programs, and social events, in facilities that are not only ADA compliant but assessed to be “user-friendly” in terms of meeting space, social event space, and bathroom facilities. |

<p>| Managing Directors, Meeting Chairs, and Staff | Ongoing |
| Meeting Chairs, Program Chairs, and Managing Directors | Ongoing |
| Managing Directors, Meeting Chairs, and Staff | Ongoing |
| <strong>Lawyers with disabilities:</strong> Ensure that in-person Section CLE programming is accessible to all attendees, by accommodating requests for simultaneous “signing” by American Sign Language interpreters, live transcription, and other methods of assisting those with disabilities to listen and ask questions. Ensure that event/marketing collateral (web and print) includes a statement that invites persons with disabilities to request accommodations, as well as a deadline that gives sufficient time to respond to the requests and provide the accommodation. | Program Chairs, Meeting Chairs, Chief Diversity Officer, and Staff | Ongoing | 37 |
| <strong>Lawyers with disabilities:</strong> Explore ways to ensure that all Section websites are accessible and user-friendly to lawyers with disabilities following the ABA’s web accessibility standards. Upon the transition to the ABA’s new website, continue to create new accessible webpages. | Staff, Chief Diversity Officer | Ongoing | 38 |
| <strong>Lawyers with disabilities:</strong> Continue to provide accessible options for written materials for CLE programming so that lawyers with disabilities can effectively access them. Ensure that MS Word files and PDFs are accessible. | Chief Diversity Officer, Publications and Content Officer, Staff | Ongoing | 39 |
| <strong>Lawyers of color:</strong> Enforce policy that the Section will co-sponsor programs with other ABA entities (e.g., Sections and Divisions) and with outside entities only if there are lawyers of color among the presenters. | Council, Staff | Ongoing | 40 |
| <strong>Women lawyers:</strong> Enforce policy that the Section will co-sponsor programs with other ABA entities (e.g., Sections and Divisions) and with outside entities only if there are women among the presenters. | | | |
| <strong>Women lawyers:</strong> Develop and present programs addressing women’s issues and targeted to women lawyers, including women of color, at Section Meetings and Distance CLE. | Meeting Chairs, Program Chairs, Professional Development Committee Chairs, and Division Directors | Ongoing | 41 |
| <strong>LGBT lawyers:</strong> Develop and present programs addressing LGBT issues at Section Meetings and Distance CLE. | | | |
| <strong>All diverse lawyers:</strong> Submit proposals to offer programming at national conferences for diverse lawyers. | Committee Chairs, Staff | Ongoing | 42 |
| <strong>All diverse lawyers:</strong> Encourage and solicit content written by diverse lawyers. | Committee Chairs | Ongoing | 43 |</p>
<table>
<thead>
<tr>
<th>All diverse lawyers:</th>
<th>Feature diverse lawyers in all Section publications.</th>
<th>Publications Editors, Division Directors, and Staff</th>
<th>Ongoing</th>
<th>44</th>
</tr>
</thead>
</table>

### E. OUTREACH

<table>
<thead>
<tr>
<th><strong>Lawyers of color and LGBT lawyers</strong>: Provide support, including financial support where appropriate, to initiatives that seek to increase opportunities to gain experience, e.g., through judicial internships (JIOP).</th>
<th>Council, JIOP Committee, and Staff</th>
<th>Annually in Budget Process</th>
<th>45</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lawyers of color</strong>: Support law school scholarships for persons of color and support ongoing ABA or other initiatives that provide funding to build the pipeline and assist persons of color to attend law school.</td>
<td>Council and Staff</td>
<td>Annually in Budget Process</td>
<td>46</td>
</tr>
<tr>
<td><strong>Lawyers of color and LGBT lawyers</strong>: Use JIOP to strengthen ties to law schools as a means of encouraging new membership and diversity.</td>
<td>Chair, academics who serve in Leadership, Meeting Chairs, JIOP Committee, and Staff</td>
<td>Ongoing</td>
<td>47</td>
</tr>
</tbody>
</table>
| **Lawyers of color, Women lawyers and LGBT lawyers**: Young Lawyers Leadership Program  
- Require lawyers of color and women in classes of YLLP members, and LGBT in frequent if not all classes  
- Provide that one of the duties of YLLP members is recruitment of other young lawyers and diverse young lawyers | Division VI Directors, YLLP Co-Chairs and Members, and YLLP Mentors | Ongoing, report on recruiting efforts at bar year-end | 48 |
| **Lawyers of color, lawyers with disabilities, LGBT lawyers**: Diverse Leaders Academy  
- Provide opportunities for lawyers in under-represented groups such as racial/ethnically diverse lawyers, persons with disabilities, and lesbian, gay, bisexual and transgender persons, to participate in leadership, thereby building a pipeline of future Section leaders. | Division VI Directors, and Diversity & Inclusion Committee | Ongoing | 49 |
<p>| <strong>All diverse lawyers</strong>: Actively seek to involve in Section activities diverse lawyers who are leaders in local, state, and national bar associations, including ethnic and minority bar associations, women’s bar associations, and LGBT bar associations. | Chief Diversity Officer, Diversity &amp; Inclusion Committee, and Chair | Ongoing | 50 |
| <strong>Lawyers of color and LGBT lawyers</strong>: Follow-up with JIOP alumni and maintain alumni network to encourage membership and participation in Section and inclusion in committee and publication leadership positions. | JIOP Committee, Staff | Annually | 51 |</p>
<table>
<thead>
<tr>
<th>WHO</th>
<th>TASK</th>
<th>WHEN</th>
<th>ROW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Academics who serve in Leadership (shared)</td>
<td><strong>Lawyers of color:</strong> Use JIOP to strengthen ties to law schools as a means of encouraging new membership and diversity.</td>
<td>Ongoing</td>
<td>47</td>
</tr>
<tr>
<td>Advisory Committee on Nominations (shared)</td>
<td>Select diverse members for Council and Officer positions.</td>
<td>Nominations Process</td>
<td>4</td>
</tr>
<tr>
<td>Chair (shared)</td>
<td>Provide a copy of the Diversity &amp; Inclusion Plan to each existing and incoming Committee Chair and Task Force Chair, together with a communication from the Section Chair and/or Chief Diversity Officer stressing the importance of the Plan and the requirement for active participation of each Leader in implementing the Plan.</td>
<td>Annually</td>
<td>8</td>
</tr>
<tr>
<td>Chair (shared)</td>
<td>Have Section Chair personally invite members and leaders of diverse bar associations in the host cities to programs and social events, consider waiving any registration fees for the leaders of such associations; leaders to follow up written invitations with calls, and identify members of Section Leadership to serve as hosts to such attendees.</td>
<td>Section Annual Conference, ABA Annual Meeting, Leadership meetings as appropriate</td>
<td>26</td>
</tr>
<tr>
<td>Chair (shared)</td>
<td><strong>Lawyers of color:</strong> Use JIOP to strengthen ties to law schools as a means of encouraging new membership and diversity.</td>
<td>Ongoing</td>
<td>47</td>
</tr>
<tr>
<td>Chair (shared)</td>
<td><strong>All diverse lawyers:</strong> Actively seek to involve in Section activities diverse lawyers who are leaders in local, state, and national bar associations, including ethnic and minority bar associations, women’s bar associations, and LGBT bar associations.</td>
<td>Ongoing</td>
<td>50</td>
</tr>
<tr>
<td>Chair-Elect</td>
<td>Select Council members as a Committee of the Council to work with the Chief Diversity Officer.</td>
<td>Annually</td>
<td>2</td>
</tr>
<tr>
<td>Chair-Elect (shared)</td>
<td>Select diverse members for Council and Officer positions.</td>
<td>Nominations Process</td>
<td>4</td>
</tr>
<tr>
<td>Chair-Elect (shared)</td>
<td><strong>All diverse lawyers:</strong> Appoint diverse lawyers to positions of leadership in the Section that permit them to understand the overall operation of the Section, and the opportunity to work with leaders of the Section.</td>
<td>During Annual Appointments Process</td>
<td>28</td>
</tr>
<tr>
<td>Chief Diversity Officer (or his/her designee)</td>
<td>Evaluate and update the Section Diversity &amp; Inclusion Plan. Also, report recommended changes to the Plan and seek approval from the Council at ABA Annual meetings.</td>
<td>Annually, for Report at ABA Annual Meeting</td>
<td>1</td>
</tr>
<tr>
<td>Chief Diversity Officer (or his/her designee) (shared)</td>
<td>Compile ABA Goal III Report, including narrative statements with respect to diversity efforts.</td>
<td>Annually, at Goal III report deadline</td>
<td>5</td>
</tr>
<tr>
<td>Chief Diversity Officer (or his/her designee) (shared)</td>
<td>Evaluate the appointments process annually, including comparison analysis by year and in three-year rolling cycles, to ensure that diversity goals are met in Leadership appointments.</td>
<td>Annually, as part of and following Goal III review</td>
<td>6</td>
</tr>
<tr>
<td>Chief Diversity Officer (or his/her designee) (shared)</td>
<td>Regularly monitor ongoing diversity initiatives throughout the ABA; report to Chief Diversity Officer.</td>
<td>Ongoing, with formal reporting by Chief Diversity Officer at least annually</td>
<td>7</td>
</tr>
<tr>
<td>#</td>
<td>Action Description</td>
<td>Responsible Party (shared)</td>
<td>Frequency</td>
</tr>
<tr>
<td>---</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>1</td>
<td>Provide a copy of the Diversity &amp; Inclusion Plan to each existing and incoming Committee Chair and Task Force Chair, together with a communication from the Section Chair and/or Chief Diversity Officer stressing the importance of the Plan and the requirement for active participation of each Leader in implementing the Plan.</td>
<td>Chief Diversity Officer (or his/her designee)</td>
<td>Annually</td>
</tr>
<tr>
<td>2</td>
<td>Require all Committee Chairs and Task Force Chairs to consider diversity in developing their Annual Plans. The Plans and periodic reporting must articulate whether they include diversity efforts, and, if not, why their functions do not permit advancement of Section diversity goals.</td>
<td>Chief Diversity Officer (or his/her designee)</td>
<td>Annually and monthly</td>
</tr>
<tr>
<td>3</td>
<td>Require that the Membership and Marketing Committee Annual Plan include diversity efforts.</td>
<td>Chief Diversity Officer (or his/her designee)</td>
<td>Annually and monthly</td>
</tr>
<tr>
<td>4</td>
<td>Follow up with those Committee and Task Force Chairs who have not completed their responsibilities under this Diversity &amp; Inclusion Plan and provide them support to meet those responsibilities.</td>
<td>Chief Diversity Officer (or his/her designee)</td>
<td>Ongoing</td>
</tr>
<tr>
<td>5</td>
<td>Prepare Calendar reflecting dates and tasks due under the Diversity &amp; Inclusion Plan.</td>
<td>Chief Diversity Officer (or his/her designee)</td>
<td>Before Fall Leadership Meeting</td>
</tr>
<tr>
<td>6</td>
<td>At commencement of each bar year, provide each Leader with written description/reminder of their responsibilities and due dates.</td>
<td>Chief Diversity Officer (or his/her designee)</td>
<td>Before Fall Leadership Meeting</td>
</tr>
</tbody>
</table>
| 7 | Regularly update the Diversity & Inclusion webpage to include:  
  - Issues of interest relating to diversity in the Section  
  - Links to other websites of interest  
  - Report on efforts and achievements of Section in diversity efforts  
  - Provide relevant data, such as Goal III report, publications, and membership information  
  - Profiles and success stories of diverse Leadership  
  Follow-up individually with those who “Click here to get more information on Section Diversity” | Chief Diversity Officer (or his/her designee) | Update monthly |
| 8 | Address needs and interests of diverse lawyers through editorial board membership and content.                                                                                                                  | Chief Diversity Officer (or his/her designee) | Review annually |
| 9 | Develop Fall Leadership Meeting Agenda to fully train members of Leadership on their responsibilities and steps on how to succeed, with presentation by Chief Diversity Officer. | Chief Diversity Officer (or his/her designee) | Annually, Fall Leadership Meeting |
| 10| Provide diversity training to Section Leadership at least once each year.                                                                                                                                          | Chief Diversity Officer (or his/her designee) | Annually   |
| 11| Develop a plan for presentation to the ABA Standing Committee on Membership to offer joint memberships with diverse bar associations.                                                                             | Chief Diversity Officer (or his/her designee) | Annually, as appropriate |
| 12| Develop recruitment/retention materials with a focus on diverse lawyers and new lawyers.                                                                                                                         | Chief Diversity Officer (or his/her designee) | Ongoing   |
| 13| Prepare and update a Diversity Recruiting Plan for the Section articulating and coordinating efforts to diversify membership.                                                                                      | Chief Diversity Officer (or his/her designee) | Periodic |
| 14| Co-sponsor programs or activities with diverse law school associations in meeting host cities.                                                                                                                   | Chief Diversity Officer (or his/her designee) | ABA Annual Meeting, Section Annual Conference, CLE Seminars |

53
<table>
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<tr>
<th>Chief Diversity Officer (or his/her designee) (shared)</th>
<th>Have Section Chair personally invite members and leaders of diverse bar associations in the host cities to programs and social events, consider waiving any registration fees for the leaders of such associations; leaders to follow up written invitations with calls, and identify members of Section Leadership to serve as hosts to such attendees.</th>
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| Chief Diversity Officer (or his/her designee) (shared) | Create and strengthen ties with diverse bar associations in host cities of Section activities  
- Encourage joint programming  
- Solicit speakers from diverse bar associations in the host city for Section programs, and notify the program chairs early in the process of the mechanism for them to recruit local speakers  
Advertise Section programs in periodicals/newsletters directed to diverse lawyers | Ongoing, report to Chief Diversity Officer timely and 45 days prior to immediate next Council Meeting after each activity | 27 |
| Chief Diversity Officer (or his/her designee) (shared) | **Lawyers of Color:** Maintain a coordinated relationship with the Commission on Racial and Ethnic Diversity, the Presidential Advisory Council on Diversity in the Profession, and the Center for Racial and Ethnic Diversity.  
**Women lawyers:** Maintain a coordinated relationship with the Commission on Women in the Profession.  
**Lawyers with disabilities:** Maintain a coordinated relationship with the Commission on Mental and Physical Disability Law.  
**LGBT lawyers:** Maintain a coordinated relationship with the Commission on Sexual Orientation and Gender Identity. | Ongoing | 29 |
| Chief Diversity Officer (or his/her designee) (shared) | **Lawyers with disabilities:** Ensure Fall Leadership Orientation Meeting diversity training encompasses sensitivity training on problems encountered by lawyers with disabilities to eliminate or lessen stereotypes and misconceptions, and raise awareness of issues inherent in dealing with disabilities in meeting settings. | Annually, Fall Leadership Meeting | 30 |
| Chief Diversity Officer (or his/her designee) (shared) | **Lawyers with disabilities:** Explore the establishment of an on-line (accessible and user-friendly) “community meeting place” for lawyers with disabilities to air specific issues and concerns. | Ongoing | 31 |
| Chief Diversity Officer (or his/her designee) (shared) | **LGBT lawyers:** Review and revise application, registration and other similar materials to recognize same-sex partners. | Ongoing | 32 |
| Chief Diversity Officer (or his/her designee) (shared) | **All diverse lawyers:** Support the Diversity & Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members  
**Lawyers of color:** Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members.  
**Women lawyers:** Support the Woman Advocate Committee as a resource for women attorneys in the Section and for prospective members.  
**Lawyers with disabilities:** Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events.  
**LGBT lawyers:** Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members. | Ongoing | 33 |
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<th>Frequency</th>
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<td>Chief Diversity Officer (or his/her designee) (shared)</td>
<td><strong>Lawyers with disabilities:</strong> Ensure that in-person Section CLE programming is accessible to all attendees, by accommodating requests for simultaneous “signing” by American Sign Language interpreters, live transcription, and other methods of assisting those with disabilities to listen and ask questions.</td>
<td>Ongoing</td>
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<tr>
<td>Chief Diversity Officer (or his/her designee) (shared)</td>
<td><strong>Lawyers with disabilities:</strong> Explore ways to ensure that all Section websites are accessible and user-friendly to lawyers with disabilities.</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Chief Diversity Officer (or his/her designee) (shared)</td>
<td><strong>Lawyers with disabilities:</strong> Explore options for providing written materials for CLE programming so that lawyers with disabilities can effectively access them, such as by offering them in recorded form or in machine-readable formats.</td>
<td>Ongoing</td>
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<td>Chief Diversity Officer (or his/her designee) (shared)</td>
<td><strong>All diverse lawyers:</strong> Actively seek to involve in Section activities diverse lawyers who are leaders in local, state, and national bar associations, including ethnic and minority bar associations, women’s bar associations, and LGBT bar associations.</td>
<td>Ongoing</td>
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<td>Committee Chairs (shared)</td>
<td>Require all Committee Chairs and Task Force Chairs to consider diversity in developing their Annual Plans. The Plans and periodic reporting must articulate whether they include diversity efforts, and, if not, why their functions do not permit advancement of Section diversity goals.</td>
<td>Annually and monthly</td>
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<td>Committee Chairs (shared)</td>
<td>Co-sponsor programs or activities with diverse law school associations in meeting host cities.</td>
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<td>Committee Chairs (shared)</td>
<td><strong>Lawyers of Color:</strong> Monitor and implement Section’s requirement to include lawyers of color as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies. <strong>Women lawyers:</strong> Monitor and enforce requirement to include women lawyers, including women of color, as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies.</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Committee Chairs (shared)</td>
<td><strong>All diverse lawyers:</strong> Submit proposals to offer programming at national conferences for diverse lawyers.</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Council (shared)</td>
<td>Select diverse members for the Advisory Committee on Nominations.</td>
<td>Fall Election of Advisory Committee on Nominations</td>
</tr>
<tr>
<td>Council (shared)</td>
<td>Select diverse members for Council and Officer positions.</td>
<td>Nominations Process</td>
</tr>
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| Council (shared) | **All diverse lawyers:** Support the Diversity & Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members.  
**Lawyers of color:** Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members.  
**Women lawyers:** Support the Woman Advocate Committee as a resource for women attorneys in the Section and for prospective members.  
**Lawyers with disabilities:** Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events.  
**LGBT lawyers:** Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members. | Ongoing | 33 |
| Council (shared) | **Lawyers of color:** Enforce policy that the Section will co-sponsor programs with other ABA entities (e.g., Sections and Divisions) and with outside entities only if there are lawyers of color among the presenters.  
**Women lawyers:** Enforce policy that the Section will co-sponsor programs with other ABA entities (e.g., Sections and Divisions) and with outside entities only if there are women among the presenters. | Ongoing | 40 |
| Council (shared) | **Lawyers of color:** Provide support, including financial support where appropriate, to initiatives that seek to increase opportunities for lawyers of color to gain experience, e.g., through judicial internships (JIOP).  
**Women lawyers:** Support law school scholarships for persons of color and support ongoing ABA or other initiatives that provide funding to build the pipeline and assist persons of color to attend law school. | Annually in Budget Process | 45 |
| Diversity & Inclusion Committee (shared) | Compile ABA Goal III Report, including narrative statements with respect to diversity efforts. | Annually, at Goal III report deadline | 5 |
| Diversity & Inclusion Committee (shared) | Regularly update the Diversity & Inclusion webpage to include:  
- Issues of interest relating to diversity in the Section  
- Links to other websites of interest  
- Report on efforts and achievements of Section in diversity efforts  
- Provide relevant data, such as Goal III report, publications, and membership information  
- Profiles and success stories of diverse Leadership  
Follow-up individually with those who “Click here to get more information on Section Diversity.” | Update monthly | 15 |
| Diversity & Inclusion Committee (shared) | Develop Fall Leadership Meeting Agenda to fully train members of Leadership on their responsibilities and steps on how to succeed, with presentation by Chief Diversity Officer. | Annually, Fall Leadership Meeting | 17 |
| Diversity & Inclusion Committee (shared) | Develop and present programs addressing diversity issues at Section Meetings and Distance CLE. | Ongoing | 23 |
| Diversity & Inclusion Committee (shared) | **Lawyers with disabilities:** Ensure Fall Leadership Orientation Meeting diversity training encompasses sensitivity training on problems encountered by lawyers with disabilities to eliminate or lessen stereotypes and misconceptions, and raise awareness of issues inherent in dealing with disabilities in meeting settings. | Annually, Fall Leadership Meeting | 30 |
| Diversity & Inclusion Committee (shared) | **Lawyers with disabilities:** Explore the establishment of an on-line (accessible and user-friendly) “community meeting place” for lawyers with disabilities to air specific issues and concerns. | Ongoing | 31 |
| Committee Chairs (shared) | All diverse lawyers:  
| Support the Diversity & Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members  
| **Lawyers of color:** Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members.  
| **Women lawyers:** Support the Woman Advocate Committee as a resource for women attorneys in the Section and for prospective members.  
| **Lawyers with disabilities:** Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events.  
| **LGBT lawyers:** Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members. |
| Ongoing | 33 |

| Diversity & Inclusion Committee (shared) | Lawyers of color, lawyers with disabilities, LGBT lawyers:  
| Diverse Leaders Academy  
| Provide opportunities for lawyers in under-represented groups such as racial/ethnically diverse lawyers, persons with disabilities, and lesbian, gay, bisexual and transgender persons, to participate in leadership, thereby building a pipeline of future Section leaders. |
| Ongoing | 49 |

| Diversity & Inclusion Committee (shared) | All diverse lawyers: Actively seek to involve in Section activities diverse lawyers who are leaders in local, state, and national bar associations, including ethnic and minority bar associations, women’s bar associations, and LGBT bar associations. |
| Ongoing | 50 |

| Division Directors (shared) | Compile ABA Goal III Report, including narrative statements with respect to diversity efforts. |
| Annually, at Goal III report deadline | 5 |

| Division Directors (shared) | Require all Committee Chairs and Task Force Chairs to consider diversity in developing their Annual Plans. The Plans and periodic reporting must articulate whether they include diversity efforts, and, if not, why their functions do not permit advancement of Section diversity goals. |
| Annually and monthly | 9 |

| Division Directors (shared) | Require that the Membership and Marketing Committee Annual Plan include diversity efforts. |
| Annually and monthly | 10 |

| Division Directors (shared) | Follow up with those Committee and Task Force Chairs who have not completed their responsibilities under this Diversity & Inclusion Plan and provide them support to meet those responsibilities. |
| Ongoing | 11 |

<p>| Division Directors (shared) | Comply with ABA MCLE Accreditation requirement to include diverse lawyers on panels of a certain size. |
| 60 days before each program to occur | 25 |</p>
<table>
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<tr>
<th>Division Directors (shared)</th>
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<tr>
<td><strong>Lawyers of color</strong>: Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members.</td>
<td><strong>Women lawyers</strong>: Support the Women Advocate Committee as a resource for women attorneys in the Section and for prospective members.</td>
<td><strong>LGBT lawyers</strong>: Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members.</td>
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<td>Monitor and implement Section's requirement to include lawyers of color as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies.</td>
<td>Monitor and enforce requirement to include women lawyers, including women of color, as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies.</td>
<td>Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events.</td>
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<tr>
<td>Young Lawyers Leadership Program: Require lawyers of color in classes of YLLP members. Provide that one of the duties of YLLP members is recruitment of other young lawyers and diverse young lawyers.</td>
<td>Women lawyers: Develop and present programs addressing women's issues and targeted to women lawyers, including women of color, at Section Meetings and Distance CLE.</td>
<td>LGBT lawyers: Develop and present programs addressing LGBT issues at Section Meetings and Distance CLE.</td>
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<td>Ongoing</td>
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<td>Ongoing</td>
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<tr>
<td>48</td>
<td>44</td>
<td>41</td>
</tr>
</tbody>
</table>

Lawyers of color must continue to promote diversity and inclusion in the Section by:
- Actively recruiting and encouraging other lawyers of color to participate in Sections activities, including committees, leadership roles, and social events.
- Encouraging diverse lawyers to attend and participate in Section meetings and events.
- Developing and presenting programs that address the unique challenges and opportunities for diverse attorneys in the legal profession.

In addition, lawyers of color must continue to support and promote diverse lawyers in the Section by:
- Actively recruiting and encouraging other lawyers of color to participate in Sections activities, including committees, leadership roles, and social events.
- Developing and presenting programs that address the unique challenges and opportunities for diverse attorneys in the legal profession.
- Encouraging diverse lawyers to attend and participate in Section meetings and events.

The Section is committed to promoting diversity and inclusion by:
- Encouraging all lawyers to participate in Sections activities, including committees, leadership roles, and social events.
- Developing and presenting programs that address the unique challenges and opportunities for diverse attorneys in the legal profession.
- Encouraging diverse lawyers to attend and participate in Section meetings and events.

The Section is committed to promoting diversity and inclusion by:
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<td><strong>Lawyers of color, lawyers with disabilities, LGBT lawyers: Diverse Leaders Academy</strong> &lt;br&gt;Provide opportunities for lawyers in under-represented groups such as racial/ethnically diverse lawyers, persons with disabilities, and lesbian, gay, bisexual and transgender persons, to participate in leadership, thereby building a pipeline of future Section leaders.</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Editorial Board Chairs (shared)</td>
<td>Address needs and interests of diverse lawyers through editorial board membership and content.</td>
<td>Review annually</td>
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<td>Executive Committee (shared)</td>
<td>Select diverse members for the Advisory Committee on Nominations.</td>
<td>Fall Election of Advisory Committee on Nominations</td>
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<td>JIOP Committee (shared)</td>
<td><strong>Lawyers of color:</strong> Provide support, including financial support where appropriate, to initiatives that seek to increase opportunities for lawyers of color to gain experience, e.g., through judicial internships (JIO).&lt;br&gt;<strong>Lawyers of color:</strong> Use JIOP to strengthen ties to law schools as a means of encouraging new membership and diversity.</td>
<td>Annually in Budget Process; Ongoing</td>
</tr>
<tr>
<td>Leadership Hosts (shared)</td>
<td>Have Section Chair personally invite members and leaders of diverse bar associations in the host cities to programs and social events, consider waiving any registration fees for the leaders of such associations; leaders to follow up written invitations with calls, and identify members of Section Leadership to serve as hosts to such attendees.</td>
<td>Section Annual Conference, ABA Annual Meeting, Leadership meetings as appropriate</td>
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<td>LGBT Law and Litigators Committee Chairs (shared)</td>
<td>Develop and present programs addressing diversity issues at Section Meetings and Distance CLE.</td>
<td>Ongoing</td>
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<td>LGBT Law and Litigators Committee Chairs (shared)</td>
<td><strong>LGBT lawyers:</strong> Review and revise application, registration and other similar materials to recognize same-sex partners.</td>
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<td>LGBT Law and Litigators Committee Chairs (shared)</td>
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<td>Managing Directors (shared)</td>
<td>Develop Fall Leadership Meeting Agenda to fully train members of Leadership on their responsibilities and steps on how to succeed, with presentation by Chief Diversity Officer.</td>
<td>Annually, Fall Leadership Meeting</td>
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<td>Managing Directors (shared)</td>
<td>Provide diversity training to Section Leadership at least once each year.</td>
<td>Annually</td>
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<tr>
<td>Role (shared)</td>
<td>Task</td>
<td>Timeframe</td>
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<td>Managing Directors</td>
<td>All diverse lawyers: Appoint diverse lawyers to positions of leadership in the Section that permit them to understand the overall operation of the Section, and the opportunity to work with leaders of the Section.</td>
<td>During Annual Appointments Process</td>
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<td>Managing Directors</td>
<td>Lawyers with disabilities: Ensure Fall Leadership Orientation Meeting diversity training encompasses sensitivity training on problems encountered by lawyers with disabilities to eliminate or lessen stereotypes and misconceptions, and raise awareness of issues inherent in dealing with disabilities in meeting settings.</td>
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<td>Managing Directors</td>
<td>Lawyers with disabilities: Hold all Section activities, including meetings, CLE programs, and social events, in facilities that are not only ADA compliant but assessed to be “user-friendly” in terms of meeting space, social event space, and bathroom facilities.</td>
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<td>Meeting Chairs (shared)</td>
<td>Develop and present programs addressing diversity issues at Section Meetings and Distance CLE.</td>
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<td>Comply with ABA MCLE Accreditation requirement to include diverse lawyers on panels of a certain size.</td>
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<td>Have Section Chair personally invite members and leaders of diverse bar associations in the host cities to programs and social events, consider waiving any registration fees for the leaders of such associations; leaders to follow up written invitations with calls, and identify Section Leadership to serve as hosts to such attendees.</td>
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| Meeting Chairs (shared) | Create and strengthen ties with diverse bar associations in host cities of Section activities  
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- Solicit speakers from diverse bar associations in the host city for Section programs, and notify the program chairs early in the process of the mechanism for them to recruit local speakers  
Advertise Section programs in periodicals/newsletters directed to diverse lawyers | Ongoing, report to Chief Diversity Officer timely and 45 days prior to immediate next Council Meeting after each activity 27 |
| Meeting Chairs (shared) | **Lawyers of Color:** Monitor and implement Section’s requirement to include lawyers of color as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies.  
**Women lawyers:** Monitor and enforce requirement to include women lawyers, including women of color, as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies. | Ongoing 34 |
| Meeting Chairs (shared) | **All diverse lawyers:**  
Actively solicit diverse speakers from diverse bar associations located in host cities for Section meetings. | Ongoing 35 |
| Meeting Chairs (shared) | **Lawyers with disabilities:** Hold all Section activities, including meetings, CLE programs, and social events, in facilities that are not only ADA compliant but assessed to be “user-friendly” in terms of meeting space, social event space, and bathroom facilities. | Ongoing 36 |
| Meeting Chairs (shared) | **Lawyers with disabilities:** Ensure that in-person Section CLE programming is accessible to all attendees, by accommodating requests for simultaneous “signing” by American Sign Language interpreters, live transcription, and other methods of assisting those with disabilities to listen and ask questions. | Ongoing 37 |
| Meeting Chairs (shared) | **Women lawyers:** Develop and present programs addressing women’s issues and targeted to women lawyers, including women of color, at Section Meetings and Distance CLE.  
**LGBT lawyers:** Develop and present programs addressing LGBT issues at Section Meetings and Distance CLE. | Ongoing 41 |
<p>| Meeting Chairs (shared) | <strong>Lawyers of color:</strong> Use JIOP to strengthen ties to law schools as a means of encouraging new membership and diversity. | Ongoing 47 |
| Membership and Marketing Committee (shared) | Require that the Membership and Marketing Committee Annual Plan include diversity efforts. | Annually and monthly 10 |
| Membership and Marketing Committee (shared) | Develop recruitment/retention materials with a focus on diverse lawyers and new lawyers. | Ongoing 20 |
| Membership and Marketing Committee (shared) | Prepare and update a Diversity Recruiting Plan for the Section articulating and coordinating efforts to diversify membership. | Periodic 21 |</p>
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Advertise Section programs in periodicals/newsletters directed to diverse lawyers | Ongoing, report to Chief Diversity Officer timely and 45 days prior to immediate next Council Meeting after each activity | 27 |
| Membership and Marketing Committee (shared) | All diverse lawyers: Support the Diversity & Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members  
Lawyers of color: Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members  
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Lawyers with disabilities: Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events  
LGBT lawyers: Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members | Ongoing | 33 |
| Minority Trial Lawyer Committee (shared) | Develop and present programs addressing diversity issues at Section Meetings and Distance CLE. | Ongoing | 23 |
| Minority Trial Lawyer Committee Chairs (shared) | All diverse lawyers: Support the Diversity & Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members  
Lawyers of color: Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members  
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Lawyers with disabilities: Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events  
LGBT lawyers: Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members | Ongoing | 33 |
| Open Enrollment Committees (shared) | Develop and present programs addressing diversity issues at Section Meetings and Distance CLE. | Ongoing | 23 |
| Professional Development Committee (shared) | Develop and present programs addressing diversity issues at Section Meetings and Distance CLE. | Ongoing | 23 |
| Professional Development Committee (shared) | Women lawyers: Develop and present programs addressing women's issues and targeted to women lawyers, including women of color, at Section Meetings and Distance CLE.  
LGBT lawyers: Develop and present programs addressing LGBT issues at Section Meetings and Distance CLE. | Ongoing | 41 |
<p>| Program Chairs (shared) | Develop and present programs addressing diversity issues at Section Meetings and Distance CLE. | Ongoing | 23 |</p>
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<tr>
<th>Role (shared)</th>
<th>Task Description</th>
<th>Timeframe</th>
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<td>Program Chairs</td>
<td>Comply with ABA MCLE Accreditation requirement to include diverse lawyers on panels of a certain size.</td>
<td>60 days before each program to occur</td>
<td>25</td>
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<tr>
<td>Program Chairs</td>
<td><strong>All diverse lawyers:</strong> Actively solicit diverse speakers from diverse bar associations located in host cities for Section meetings.</td>
<td>Ongoing</td>
<td>35</td>
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<tr>
<td>Program Chairs</td>
<td><strong>Lawyers with disabilities:</strong> Ensure that in-person Section CLE programming is accessible to all attendees, by accommodating requests for simultaneous “signing” by American Sign Language interpreters, live transcription, and other methods of assisting those with disabilities to listen and ask questions.</td>
<td>Ongoing</td>
<td>37</td>
</tr>
<tr>
<td>Program Chairs</td>
<td><strong>Women lawyers:</strong> Develop and present programs addressing women’s issues and targeted to women lawyers, including women of color, at Section Meetings and Distance CLE. <strong>LGBT lawyers:</strong> Develop and present programs addressing LGBT issues at Section Meetings and Distance CLE.</td>
<td>Ongoing</td>
<td>41</td>
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<tr>
<td>Publications and Content Officer (shared)</td>
<td><strong>Lawyers with disabilities:</strong> Explore options for providing written materials for CLE programming so that lawyers with disabilities can effectively access them, such as by offering them in recorded form or in machine-readable formats.</td>
<td>Ongoing</td>
<td>39</td>
</tr>
<tr>
<td>Publications Editors (shared)</td>
<td>Address needs and interests of diverse lawyers through editorial board membership and content.</td>
<td>Review annually</td>
<td>16</td>
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<td>Publications Editors</td>
<td>Include in general Section publications (not merely specialized newsletters) content addressing the needs and interests of diverse lawyers.</td>
<td>Ongoing</td>
<td>24</td>
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<td>Publications Editors</td>
<td><strong>All diverse lawyers:</strong> Encourage and solicit content written by diverse lawyers.</td>
<td>Ongoing</td>
<td>43</td>
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<tr>
<td>Publications Editors (shared)</td>
<td><strong>Lawyers of color:</strong> Require lawyers of color in all Section publications. <strong>Women lawyers:</strong> Require women lawyers in all Section publications. <strong>LGBT lawyers:</strong> Encourage and solicit content written by LGBT lawyers or addressing topics of importance to LGBT issues.</td>
<td>Ongoing</td>
<td>44</td>
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<tr>
<td>Staff (shared)</td>
<td>Compile ABA Goal III Report, including narrative statements with respect to diversity efforts.</td>
<td>Annually, at Goal III report deadline</td>
<td>5</td>
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<tr>
<td>Staff (shared)</td>
<td>Evaluate the appointments process annually, including comparison analysis by year and in three-year rolling cycles, to ensure that diversity goals are met in Leadership appointments.</td>
<td>Annually, as part of and following Goal III review</td>
<td>6</td>
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<tr>
<td>Staff (shared)</td>
<td>Regularly monitor ongoing diversity initiatives throughout the ABA; report to Chief Diversity Officer.</td>
<td>Ongoing, with formal reporting by Chief Diversity Officer at least annually</td>
<td>7</td>
</tr>
<tr>
<td>Staff (shared)</td>
<td>Require all Committee Chairs and Task Force Chairs to consider diversity in developing their Annual Plans. The Plans and periodic reporting must articulate whether they include diversity efforts, and, if not, why their functions do not permit advancement of Section diversity goals.</td>
<td>Annually and monthly</td>
<td>9</td>
</tr>
<tr>
<td>Staff (shared)</td>
<td>Require that the Membership and Marketing Committee Annual Plan include diversity efforts.</td>
<td>Annually and monthly</td>
<td>10</td>
</tr>
<tr>
<td>Staff (shared)</td>
<td>Follow up with those Committee and Task Force Chairs who have not completed their responsibilities under this Diversity &amp; Inclusion Plan and provide them support to meet those responsibilities.</td>
<td>Ongoing</td>
<td>11</td>
</tr>
<tr>
<td>Staff (shared)</td>
<td>Prepare Calendar reflecting dates and tasks due under the Diversity &amp; Inclusion Plan.</td>
<td>Before Fall Leadership Meeting</td>
<td>12</td>
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</tr>
<tr>
<td>Staff (shared)</td>
<td>At commencement of each bar year, provide each Leader with written description/reminder of their responsibilities and due dates.</td>
<td>Before Fall Leadership Meeting</td>
<td>13</td>
</tr>
<tr>
<td>Staff</td>
<td>Publish the Diversity &amp; Inclusion Plan in the Section’s online Leadership Portal, diversity web pages, Leadership Directory, By-Laws and Strategic Plan.</td>
<td>Ongoing</td>
<td>14</td>
</tr>
</tbody>
</table>
| Staff (shared) | Regularly update the Diversity & Inclusion webpage to include:  
- Issues of interest relating to diversity in the Section  
- Links to other websites of interest  
- Report on efforts and achievements of Section in diversity efforts  
- Provide relevant data, such as Goal III report, publications, and membership information  
- Profiles and success stories of diverse Leadership  
Follow-up individually with those who “Click here to get more information on Section Diversity” | Update monthly | 15 |
| Staff (shared) | Develop Fall Leadership Meeting Agenda to fully train members of Leadership on their responsibilities and steps on how to succeed, with presentation by Chief Diversity Officer. | Annually, Fall Leadership Meeting | 17 |
| Staff (shared) | Develop a plan for presentation to the ABA Standing Committee on Membership to offer joint memberships with diverse bar associations. | Annually, as appropriate | 19 |
| Staff (shared) | Develop recruitment/retention materials with a focus on diverse lawyers and new lawyers. | Ongoing | 20 |
| Staff (shared) | Prepare and update a Diversity Recruiting Plan for the Section articulating and coordinating efforts to diversify membership. | Periodic | 21 |
| Staff (shared) | Co-sponsor programs or activities with diverse law school associations in meeting host cities. | ABA Annual Meeting, Section Annual Conference, CLE Seminars | 22 |
| Staff (shared) | Comply with ABA MCLE Accreditation requirement to include diverse lawyers on panels of a certain size. | 60 days before each program to occur | 25 |
| Staff (shared) | Have Section Chair personally invite members and leaders of diverse bar associations in the host cities to programs and social events, consider waiving any registration fees for the leaders of such associations; leaders to follow up written invitations with calls, and identify Section Leadership to serve as hosts to such attendees. | Section Annual Conference, ABA Annual Meeting, Leadership meetings as appropriate | 26 |
| Staff (shared) | Create and strengthen ties with diverse bar associations in host cities of Section activities  
- Encourage joint programming  
- Solicit speakers from diverse bar associations in the host city for Section programs, and notify the program chairs early in the process of the mechanism for them to recruit local speakers  
Advertise Section programs in periodicals/newsletters directed to diverse lawyers | Ongoing, report to Chief Diversity Officer timely and 45 days prior to immediate next Council Meeting after each activity | 27 |
| Staff (shared) | **Lawyers of Color**: Maintain a coordinated relationship with the Commission on Racial and Ethnic Diversity, the Presidential Advisory Council on Diversity in the Profession, and the Center for Racial and Ethnic Diversity.  
**Women lawyers**: Maintain a coordinated relationship with the Commission on Women in the Profession.  
**Lawyers with disabilities**: Maintain a coordinated relationship with the Commission on Mental and Physical Disability Law.  
**LGBT lawyers**: Maintain a coordinated relationship with the Commission on Sexual Orientation and Gender Identity. | Ongoing | 29 |
| Staff (shared) | **Lawyers with disabilities**: Ensure Fall Leadership Orientation Meeting diversity training encompasses sensitivity training on problems encountered by lawyers with disabilities to eliminate or lessen stereotypes and misconceptions, and raise awareness of issues inherent in dealing with disabilities in meeting settings. | Annually, Fall Leadership Meeting | 30 |
| Staff (shared) | **Lawyers with disabilities**: Explore the establishment of an on-line (accessible and user-friendly) “community meeting place” for lawyers with disabilities to air specific issues and concerns. | Ongoing | 31 |
| Staff (shared) | **LGBT lawyers**: Review and revise application, registration and other similar materials to recognize same-sex partners. | Ongoing | 32 |
| Staff (shared) | **All diverse lawyers**: Support the Diversity & Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members  
**Lawyers of color**: Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members.  
**Women lawyers**: Support the Woman Advocate Committee as a resource for women attorneys in the Section and for prospective members.  
**Lawyers with disabilities**: Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events.  
**LGBT lawyers**: Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members. | Ongoing | 33 |
| Staff (shared) | **Lawyers of Color**: Monitor and implement Section’s requirement to include lawyers of color as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies.  
**Women lawyers**: Monitor and enforce requirement to include women lawyers, including women of color, as presenters in all Section programming, and report efforts to Chief Diversity Officer and Managing Directors timely to correct deficiencies. | Ongoing | 34 |
| Staff (shared) | **Lawyers with disabilities**: Hold all Section activities, including meetings, CLE programs, and social events, in facilities that are not only ADA compliant but assessed to be “user-friendly” in terms of meeting space, social event space, and bathroom facilities. | Ongoing | 36 |
| Staff (shared) | **Lawyers with disabilities**: Ensure that in-person Section CLE programming is accessible to all attendees, by accommodating requests for simultaneous “signing” by American Sign Language interpreters, live transcription, and other methods of assisting those with disabilities to listen and ask questions. | Ongoing | 37 |
| Staff (shared) | **Lawyers with disabilities**: Explore ways to ensure that all Section websites are accessible and user-friendly to lawyers with disabilities. | Ongoing | 38 |
| Staff (shared) | **Lawyers with disabilities**: Explore options for providing written materials for CLE programming so that lawyers with disabilities can effectively access them, such as by offering them in recorded form or in machine-readable formats. | Ongoing | 39 |
| Staff (shared) | **Lawyers of color**: Enforce policy that the Section will co-sponsor programs with other ABA entities (e.g., Sections and Divisions) and with outside entities only if there are lawyers of color among the presenters.  
**Women lawyers**: Enforce policy that the Section will co-sponsor programs with other ABA entities (e.g., Sections and Divisions) and with outside entities only if there are women among the presenters. | Ongoing | 40 |
| Staff (shared) | **All diverse lawyers**: Submit proposals to offer programming at national conferences for diverse lawyers. | Ongoing | 42 |
| Staff (shared) | **Lawyers of color**: Require lawyers of color in all Section publications.  
**Women lawyers**: Require women lawyers in all Section publications.  
**LGBT lawyers**: Encourage and solicit content written by LGBT lawyers or addressing topics of importance to LGBT issues. | Ongoing | 44 |
| Staff (shared) | **Lawyers of color**: Provide support, including financial support where appropriate, to initiatives that seek to increase opportunities for lawyers of color to gain experience, e.g., through judicial internships (JIOP). | Annually in Budget Process | 45 |
| Staff (shared) | **Lawyers of color**: Support law school scholarships for persons of color and support ongoing ABA or other initiatives that provide funding to build the pipeline and assist persons of color to attend law school. | Annually in Budget Process | 46 |
| Staff (shared) | **Lawyers of color**: Use JIOP to strengthen ties to law schools as a means of encouraging new membership and diversity. | Ongoing | 47 |
| Task Force Chair (shared) | Require all Committee Chairs and Task Force Chairs to consider diversity in developing their Annual Plans. The Plans and periodic reporting must articulate whether they include diversity efforts, and, if not, why their functions do not permit advancement of Section diversity goals. | Annually and monthly | 9 |
| Woman Advocate Committee (shared) | Develop and present programs addressing diversity issues at Section Meetings and Distance CLE. | Ongoing | 23 |
| Woman Advocate Committee Chairs (shared) | **All diverse lawyers**: Support the Diversity & Inclusion and JIOP Committees as resources for diverse lawyers in the Section and prospective members  
**Lawyers of color**: Support the Minority Trial Lawyer Committee as a resource for lawyers of color in the Section and for prospective members.  
**Women lawyers**: Support the Woman Advocate Committee as a resource for women attorneys in the Section and for prospective members.  
**Lawyers with disabilities**: Actively recruit lawyers with visual, hearing/speaking and mobility impairments to participate in Section as Committee members, presenters, Leaders, and at social events.  
**LGBT lawyers**: Support the LGBT Law and Litigators Committee as a resource for LGBT attorneys in the Section and for prospective members. | Ongoing | 33 |
| YLLP Co-Chairs and Members, and YLLP Mentors (shared) | **Lawyers of color:**  
Young Lawyers Leadership Program  
- Require lawyers of color in classes of YLLP members  
- Provide that one of the duties of YLLP members is recruitment of other young lawyers and diverse young lawyers  
**Women lawyers:**  
Young Lawyers Leadership Program  
- Require women lawyers in classes of YLLP members  
Provide that one of the duties of YLLP members is recruitment of other young lawyers and diverse young lawyers | Ongoing, report on recruiting efforts at bar year-end |
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<tbody>
<tr>
<td></td>
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<td>48</td>
</tr>
</tbody>
</table>
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COUNCIL
GENERAL INFORMATION FORM

1. Name of your Section of Litigation Committee or Task Force:  
   N/A

2. Submitted by (your name):  James A. Reeder, Jr.

3. Is this proposal seeking funding?    _______ Yes    ____x___ No

   If yes, please complete the Reserves / Special Projects Application Form.  
   Requests for funding of Special Projects must be submitted to the Section of Litigation 30 days prior to the Council Meetings.

4. This proposal is…(check one):  
   _____ Informational     _____ Information/Discussion    
   ____x____Action Item/No Funding

5. Check the categories to which this proposal applies:
   _____ CLE     _____ ABA Report with Recommendation (see questions 11-16)  
   _____ Diversity   _____ Section Bylaws  
   _____ Membership    _____ Section Policy  
   _____ Publications   _____ Co-Sponsorship  
   _____ Website      
   ____x__ Other (please describe)________________________________________________
   __________________________________________________________________________

6. Please attach Report or Proposal – if longer than four pages, provide an Executive Summary.

In 2008, the Section of Litigation Council voted to defund the Litigation Assistance Partnership Project (LAPP).  LAPP was a Section project started in 1989 to serve as a conduit between law firms’ pro bono resources and the needs of legal service and public interest programs.  At some point in its tenure as a Section project, a Fund for Justice and Education (FJE) Program Support Fund (PSF) was created to allow for the seeking of outside funding for the project. The LAPP PSF has remained dormant since the Section funding for the project ended.

As part of a recent FJE review, the LAPP PSF was identified as being out of compliance with the ABA Policy on the Establishment, Maintenance, and Use of Program Support Funds (June 2015) that requires a minimum level of activity for a PSF.  In Section staff discussions with ABA Finance, it was determined that since the funds currently in the PSF were not temporarily restricted (i.e., funds from outside donors), these funds could be used for other FJE-approved Section projects.
As Budget Officer, I recommend that the dormant LAPP PSF be closed and the funds ($15,691.35 as of May 2018) be transferred to the Civiletti Endowment Fund. This will increase the balance in the Civiletti Endowment Fund over the threshold $750,000 to allow for the Section to use the earnings for its FJE projects.

7. List estimated staff resources and name of staff person with whom you consulted:

   Section Director Cecilia Kukenis, Associate Director Bridget Miller and Business Development Manager Madalyn Messer-Brooks

8. List any additional Section entities with whom you have consulted and describe their position on your Report or Proposal:

9. Name of person who will present Proposal or Report to Council?
   __James A. Reeder, Jr.____________________

(Questions 10-15 are for an ABA Report with Recommendation)

10. Indicate whether your entity originated the Report with Recommendation. (Note: It is common practice to route other ABA entities' House of Delegates Reports to Section of Litigation committees for comment and possible Council action.) Report with Recommendation originated by:

    _____ Entity listed in No. 1 above               _____ Other: ______________

11. Brief summary of Recommendation(s):

12. What position do you advise the Section of Litigation Council take concerning this Report with Recommendation?

    _____ Support                        _____ Oppose

    _____ Support and co-sponsor        _____ Other (explain): ______________

13. If the Recommendation has been submitted previously to the Section of Litigation or other ABA entities or if there is any ABA or Section position on the same or a similar subject, briefly describe the action(s) or position(s) taken:
### American Bar Association

**Gift and Endowment Report**

Fiscal Year: 2018  
Period: MAY-18  
ABA Entity: 03: FJE  
ABA Fund: 33: FJE GIFT FUND  
ABA Resp: 15310: LITIGATION  
ABA LOB: 4002062: LITIGATION ASSISTANCE PARTNERSHIP PROGRAM

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- **UNRESTRICTED ACTIVITY**
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    - 27500: TRANSFERS FROM ABA/FJE
      - 0.00 (53.60)
      - 0.00 (53.60)
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The Litigation Assistance Partnership Project will not be funded in 2008-09.

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COUNCIL AGENDA
JUNE 20-21, 2008

JACKSON LAKE LODGE
JACKSON HOLE, WY
June 3, 2008

TO: Council

FROM: Laurence Pulgram, Budget Officer

SUBJECT: 2008-09 Section of Litigation Budget

Introduction

Thank you to everyone who assisted in the development of the 2008-09 Section of Litigation’s $6,600,000+ operating budget. The budget process includes research and development of individual budgets by the responsible staff member in consultation with the leaders involved in the various projects and programs. The associate director, the chair-elect and I reviewed the individual budgets and made changes as appropriate to come to the present proposed budget. Greatest thanks to Cecilia Kukenis, who took the laboring oar as she has for so many years. I am already dreading next year without her.

The proposed 2009-09 Budget projects a deficit of $188,241. This deficit is larger than the more modest projected deficits of $92,833 in 2006-07 and $44,709 in 2007-08. However, it is important to note that in both those years we showed, and expect to show, a year-end positive balance, after accounting for certain funds not expended and certain revenues not expected. In 2006-07, as explained at the January 2008 Council Meeting, despite the projected deficit we ended up positive $1.0 million; for 2007-08, we expect to end up positive approximately $108,000 as of the midyear report. What this tells us is that (i) our budgeting is conservative, and (ii) our last two years of surplus may provide us some breathing room this year.

What follows is an explanation of the important highlights of the 2008-09 Budget. In general the deficit budgeted for 2008-2009 entails substantial investment in a number of areas that should, long term, reap greater return for the section, but that require some initial cash outlay.
Revenue

The Section earns almost 40% of its revenue from its Membership Dues. It is projected that in 2007-08 the budgeted dues revenue will not be realized in full. Based on this expectation, we have budgeted approximately $40,000 less in 2008-09.

Committee CLE Seminars are budgeted to make a profit of $88,020. This profit is in line with what we have received for the past four years and takes into account the increased expenses we expect to see due to location choices, rising travel costs and inflation. The budgets anticipate keeping the same corporate sponsor model as we have had in the past for one more year, which allows the individual seminars to solicit and receive “credit” towards profit expectations for all funds from their corporate sponsors.

The other major revenue sources, including the Book Publishing Program ($317,620 profit), Section Annual Conference ($156,525 profit), Section Sponsors ($608,000 profit), National Institutes ($50,000 profit), Transfer of Investment Income from Reserves ($418,803) and miscellaneous revenues do not deviate significantly from the previous year.

Expenses

The Administrative expenses budget has increased significantly, by a total of $357,000 (25%), primarily as a result of staffing changes approved already by the Council during the 2007-2008 year. FTE staff will increase from 16.5 to 21. The main reason for the increase is the investment in additional staff in the periodicals unit to allow all committee newsletters to be in the production model format, in which they are professionally edited and designed. In addition, the frequent editing and updating of the web portion of the new Litigation News online publication requires more staff support. The periodicals unit will hire two new editors, an additional 50% of a managing editor and 50% of an assistant. These investments are expected to be an important contributor to member retention. In addition, we will be employing a full time Sponsorship Director for the first time, an expense that should result in increased revenues for future years, though not necessarily for 2008-2009. The $357,000 increase is partially offset by reductions of $69,000 for staff positions previously budgeted into the Periodical Administration line, resulting in a net increase of $288,000 in staff costs.

The ABA Annual Meeting in Chicago is budgeted to net almost $55,000 better than was budgeted for the New York meeting. The budget reflects the lower costs for hotel expenses and venues in Chicago versus New York.

The Leadership Meetings in 2008-09 are budgeted to cost approximately $57,000 more than the budgeted leadership meetings in 2007-08. The three 2007-08 leadership meetings combined will be slightly over budget ($10,000-$12,000) due largely to higher-than-budgeted airfares for Jackson Hole. Of the $57,000 increase for 2008-09, approximately $20,000 is for reimbursable travel.
Litigation magazine costs have decreased significantly because of a change in the inside paper. This approximately $100,000 savings was used as part of the case made to Council for approving the additional costs in other areas of the periodicals program.

The newly combined quarterly print and monthly electronic Litigation News, which will replace the old Litigation Update and bi-monthly Litigation News, saves the Section $27,870 in printing expenses.

Committee Newsletters have increased by $54,000. This increase covers the design costs of the newsletters as well as additional printing and mailing costs as it is expected that some of the newsletters will print more regularly due to increased staff support.

The funding for the Litigation Assistance Partnership Project (LAPP) totaling almost $78,000 has been eliminated from the budget.

Miscellaneous Highlights

The following items are new or deserve special attention.

- The Committee and Project budget includes $15,000 for new projects that arise during the year for which committees can apply to use a portion. The budgeted fund decreases by $5,000 based on lack of use in the past two years. The hope is that with the new Ideas and Innovations Committee, the process for generating and approving ideas will be more user-friendly and result in more innovation.

- The Children’s Rights Litigation Committee reflects an increase of $19,000, largely because of ABA converted the former consultant to a contract employee and charging the Section for computer, some benefits (even though the individual works low hours), and a salary increase to account for the loss of independent contractor benefits such as the ability to write off home office expenses, etc.

- There are two additional new project and committee budgets – Access to Justice – Judicial Training ($4,800) and Publishing Summit Special Committee ($1,925).

Reserves Expenditures

The Reserves Committee met on May 23, 2008. A second meeting will be held on June 9, 2008 to continue the deliberations. A final report will be available to the Council before the meeting in Jackson Hole. Amounts below reflect amounts requested, which total $773,292. For comparison purposes, reserves expenditures for 2007-08 are expected to exceed $1 million.

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MEMORANDUM

TO: Board of Governors
FROM: Tracy A. Giles, Chair Standing Committee on Membership
        James Dimos, Deputy Executive Director
DATE: June 12, 2018
RE: Update on New Membership Model

Prior to the Board’s upcoming meeting in Denver, we wanted to provide an update on the status of the work on the New Membership Model as well as to answer some questions that have been asked.

Most of us who’ve been involved with the ABA over the years, and have given it so much of their time and energy, have come to realize that the organization must change in order to continue to survive and thrive. Although currently fiscally sound, the ABA cannot sustain forever the downward trends in membership and dues revenue. The Board of Governors recognized that significant change was needed to combat these trends. Last June the BOG directed the Standing Committee on Membership along with Senior Staff and others to proceed with exploring a new model for ABA membership, then referred to as One ABA. That work continues.

In working toward a new model, we are guided by three principles familiar to the Board. First, any change should be meaningful. We have nibbled around the edges of change for years, with little effect. Second, whatever changes we propose should be informed by the best research and data available as to what our members and potential members really want from their association. And third, we must be fiscally responsible with any proposal. In other words, even if we can show that a proposal represents much needed change and the research shows our members want it – we still have to be able to afford it. Although the ABA has strong reserves, they are not unlimited and we cannot run out of money before we turn the ship around.

The research showed that in order to succeed any new membership model needed to do three things – reduce dues to a reasonable level for most lawyers, increase the relevant content provided to those lawyers, and effectively market those changes. All three are necessary, none are free. And none of us expected them to be.

However, after a long struggle and much progress toward meaningful change that would attract and keep more members, it was adherence to the principle of affordability that caused us to write our June 5th memorandum to the Board. As more and more variable costs were filled in and our conversations with the Working Group and entities continued, by late May we felt we were faced with the reality of unlimited demands being put on strong but limited resources. And we wished to alert the Board.

The costliest component of the New Membership Model involved the desire to include two entity memberships as part of a single dues price. While we still believe that including two entity membership in ABA membership would noticeably increase the value of membership, it appears to us that the cost is more than either the Association or the entities are willing to bear currently. It would also result in
severely hampering the Association’s ability to invest in the other components of improving the member experience and meeting its other goals. So, we determined that trying to include membership in two entities as part of ABA membership is unworkable as things stand.

The primary reason that the inclusion of membership in two entities as part of Association membership increased the value proposition was access to content. In fact, our research shows that most non-members do not understand the concept of entity membership within the ABA. Rather, they believe that upon joining the Association, a member should have access to “everything.”

Of course, access to “everything” is unreasonable. It would adversely affect non-dues revenue for both the Association and its entities. Also, access to “everything” would impair entities’ abilities to differentiate themselves and provide value as part of their membership. Our challenge is finding the balance between giving all members access to enough content to increase the value of ABA membership while not giving away the shop for the sections.

As we have begun working on developing a different variation of the New Membership Model, the following are considerations:

a. By not including membership in two entities, we allow the entities to maintain their own source of dues revenue, which addresses some of the concerns that a unified dues model would not recognize the uniqueness of some of the entities’ membership. It also takes the issue of revenue sharing off the table;

b. The strong online CLE Marketplace remains an important component;

c. An aggressive paywall strategy and requirements also remain an important component; and,

d. The Association will need to consider other ways to provide members with content beyond that shared by the entities.

We have been working with Avenue to assess our options. As part of its tasks, Avenue is considering:

1. How much free CLE should the Marketplace contain;

2. How best to strike the appropriate balance between increasing access to sufficient content for all ABA members to increase the value proposition of Association membership while not unduly diminishing the value proposition of entity membership;

3. How do we fill in the gaps in content i.e. how do we provide content that members want but we are unable to make available;

4. Whether we need to adjust the proposed price points considering no longer including membership in two entities as part of ABA membership; and,

5. What are the projections on dues revenue and dues paying members for the next five years under a revised model.

Avenue has been working on these points non-stop with the goal of providing as much certainty as possible before the Denver meeting. However, some aspects may still be a work in progress and either Avenue or we will identify those aspects that are still a work in progress during the presentation.

Lastly, we want to address the request for funding for continued development of a new marketing strategy. The requested funding would provide for the completion of the strategy work, development and testing of initial messages and themes, research into brand perceptions, development of first generation collateral to communicate those messages and themes, creation of a new brand and branding strategy, and research and recommendations for new products to include in the membership
bundle. It also allows us to aggressively market in the year leading into the first year of a changed membership model. Throughout these discussions, a strong consensus has developed around the point that we need to market and communicate better. This work will be necessary for success, no matter what our membership model is, because we know neither the old strategy nor the absence of a strategy will work.

Finally, consistent with ABA policies, we will be issuing a RFP for this next phase of the work. This is not a reflection on Avenue and we have encouraged them to bid on this next phase.

c: Chairs and Staff Liaisons to Sections/Divisions/Forums and Standing and Special Committees and Commissions
June 13, 2018

TO: Chairs of Sections/Divisions/Forums
   Chairs of Standing and Special Committees and Commissions

The Board of Governors will hold an open session, Thursday, June 21, 2018 to hear and receive comments regarding the new membership model. Five-minute slots are available on a first come, first assigned basis, beginning at 1:30 p.m. (MT). In addition to the speaking time slots, entities may submit written comments for the Board's consideration.

Requests to be assigned a speaking slot should be sent to ABA Membership Model at ABA Membership Model at Americanbar.org. Entities will be notified of the assigned time slot. All written comments should be submitted to ABA Membership Model at Americanbar.org no later than 12:00 p.m. (CT) on Tuesday, June 19, 2018 to permit time to distribute the comments to the Board.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Mary L. Smith
Secretary MLS: clk

cc: Staff Liaisons to Sections/Divisions/Forums
    Staff Liaisons to Standing and Special Committees and Commissions
MEMORANDUM

To: ABA Board of Governors
From: Tracy Giles, Chair, Standing Committee on Membership
James Dimos, Deputy Executive Director
Date: June 5, 2018
Re: Update on Proposed New Membership Model

Background

Over the last eighteen months, the Association has been working on a recommendation from the Standing Committee on Membership ("SCOM") for a possible new membership model for the American Bar Association, originally named "OneABA," for implementation in Fiscal Year 2020. The new model was based on research performed by Dr. J.P. Dube’ that identified the benefits that potential members valued the most and the price that made sense to them.

The work began with a staff working group that expanded later to include active participation by members of SCOM, appointed representatives from SOC, members of the Board of Governors, and any other member or staff who asked to participate, to form what became known as the Working Group. The Working Group held telephonic meetings on a regular basis since October and a day-long in-person meeting in December. Since July 2017, ABA leadership, the Board, the House of Delegates, attendees at the SOC Fall Conference, members of the SOC Executive and class committees, and the leadership of various sections, divisions, forums, committees, and commissions received briefings, some multiple times, about the status of efforts to develop the new model. We have attached a partial list of entities that have received briefings and those with representation on the Working Group as Exhibit 1.

As part of the refinement and evaluation of the new membership model and following a well-received RFP, the ABA retained Avenue, a business strategy and marketing firm from Chicago, to test the new membership model and develop projections regarding the market adoption rate and timeline. Avenue conducted numerous focus groups, interviews, and surveys to evaluate how members and non-members would receive the new membership model. The overall market reaction suggests that the new membership model would be an improvement towards reversing our decline in dues paying members. The research indicated that potential members desired increased access to content as part of a membership in the ABA.

The research also showed that the new membership model was just a step forward and that we need to identify ways continually to deliver more value to members while being aware of the price sensitivities of lawyers. We also confirmed that the ABA needs to improve the perception of our brand as others seem more able to define the ABA, often inaccurately and to our detriment.

Avenue has provided three briefings to the Board so far, one at its October meeting explaining its approach to refining and evaluating the new membership model, a second at Midyear providing a report on its then recently completed research, and in April when Avenue provided its recommendations on pricing and projections regarding adoption. The firm also conducted a briefing in March with members of SCOM and the Working Group as well as a "Q&A" session with the SOC representatives to the Working Group. Avenue will brief the Board at the upcoming June meeting as well.
The Working Group provided a valuable forum to communicate with interested members, to discuss existing and new ideas, and to provide meaningful feedback that helped to shape a new membership model. To be as inclusive as possible, there were no limits placed on participation. While this made the Working Group valuable in so many ways, it made having conclusive votes on every item discussed impossible. The Working Group reached a collective consensus over many aspects of a new membership model, though it would be impossible to say that every participant in the Working Group agreed with every aspect of this proposal. Honestly held, competing views held in good faith existed between Working Group members on some issues and those differences remain.

At the April Board meeting, Avenue provided an extensive briefing regarding membership and revenue projections under the new membership model. The most relevant pages from that briefing are attached as Exhibit 2.

During the course of these efforts, the Board adopted various “Sense of the Board” resolutions to provide guidance and to facilitate presenting the new membership model to the House of Delegates in August. Two of those resolutions involve:

1. Making changes to the Constitution and Bylaws of the Association to conform them to the proposed new membership model (Exhibit 3); and,
2. Establishing a new dues structure (Exhibit 4).

Please note that we modified Exhibit 3, the new dues structure resolution, at the request of Policy and Governance to include some clarifying language regarding the Board’s authority to determine the benefits included in membership. **We ask that the Board adopt Exhibits 3 and 4 (as amended) as final resolutions of the Board and recommend their adoption by the House.**

At this point, though, we are not prepared to provide the Board with a recommendation regarding the “product bundle,” the benefits included as part of membership in the ABA. The reason, simply stated, is that too many want the benefits of change fully funded by general operations funds without incurring any of the cost. That just isn’t realistic. The Association has strong general operating reserves but it does not have the wherewithal to sustain the type of reductions that would result from the currently envisioned bundle. The projected declines in revenue were of such a magnitude that our reserves could not sustain them over the years necessary to reverse our membership and dues revenue declines.

As with any business, the Association must make fiscally sound decisions. This requires thoughtful analysis on the part of decision-makers. While it appears that our original model is not sustainable at this time, we suggest that SCOM and the Working Group work with our outside consultants to identify new products that can be included in the product bundle or ways to fund the current bundle as contemplated.

In the meantime, we recommend that the Board authorize some of the proposed IT improvements (for Membership, Financial, and Reporting Systems and Multi-Channel Marketing System along with the proposed marketing work identified above). We already know that no matter what we do, improvements to our systems and our marketing are necessary and that progress can be made in both while we investigate our options to increase value. In particular, we ask the Board to approve the following expenditures:

**Technology: Approve up to $1.0 million in one-time costs and $250,000 in recurring annual costs for upgrades to the following IT systems:**

- **Membership and Financial Systems**—this work involves installing features and making modifications of existing membership (Personify) and financial systems by both outside vendors and ABA IT staff that will improve functions of both systems in supporting membership;
- **Reporting Systems**—in order to monitor progress and make more data driven decisions, modifications to existing reporting systems and data structures are necessary. These modifications will be performed by ABA IT staff with no direct
costs or vendor fees. The work should be done on a 6-month implementation schedule.

- **Multi-Channel Marketing System**—to communicate more effectively with our members, the ABA needs to license a new communications platform that integrates the various channels that the Association currently uses to share its messages. Our existing channels: email, social media, and the website do not interface easily or effectively. Also, we do not have a central repository on member engagement with these various platforms that would allow us to monitor efficacy. A new platform that incorporates marketing automation will allow us to send more targeted and therefore more valuable messages to our members.

**Marketing:** For FY19, we would request a that $4 million be allocated for membership marketing, in addition to the $2 million in the existing marketing budget for the categories set out above. This amount may be adjusted as a result of the RFP process, and the full amount appropriated by the Board will be a ceiling (“not to exceed”) and will be underspent to the extent that can be wisely done, considering all factors.

Of course, another option is to do nothing. However, that is a false choice. Our internal data and market research clearly show that the ABA is on a trend line that will render it irrelevant and fiscally unviable. As a result, we believe that a new membership model is the most practical first step that the Association can take to secure its future. The Board must find a path that allows for the implementation of a new membership model while fairly allocating the responsibility to contribute to member value and the risk and reward of the new membership model across all aspects of the Association. The Association missed its opportunity in 2010 to make meaningful change and, while it must be prudent, that cannot happen again. Otherwise, the ABA and the entities that are part of it will wither on the vine.

**List of Exhibits:**

- **Exhibit 1** Partial list of entities briefed on new membership model and entities participating on Working Group
- **Exhibit 2** Relevant portions of Avenue presentation to the Board on membership and revenue projections under the new membership model
- **Exhibit 3** Sense of the Board Resolution—C&B Amendments
- **Exhibit 4** Sense of the Board Resolution—New Pricing Structure (revised)
Partial List of Briefings

1. BOG
   a. June 2017 meeting
   b. August 2017 meeting
   c. October 2017 meeting
   d. February 2018 meeting
   e. April 2018 meeting
2. HOD—February 2018
3. SOC
   a. September 2017
   b. October 2017
   c. February 2018
   d. March 2018
4. SOC Executive Committee—multiple times when invited
5. SOC Class Representatives Calls—multiple times when invited
6. SOC Representatives to the Working Group—April 2018 (session with Avenue)
7. Business Law—ABA 2018 Midyear
8. TIPS—ABA 2018 Midyear
9. Judicial Division
   a. December 2017 specially scheduled meeting in Chicago
   b. Spring 2018 Planning Meeting
10. Intellectual Property—Fall 2017 Council Meeting
11. GP, Solo, and Small Firm—October 2017 Council Call
12. Franchising—October 2017 Council Meeting
13. Civil Rights and Social Justice—Fall 2017 Council Meeting
14. SEER—Two specially scheduled calls with leadership and strategic planning chair
15. Dispute Resolution—Specially scheduled meeting in Chicago and subsequent calls
16. Family Law—December 2017 Officers’ Call
17. SCOM—multiple times
18. SCOTIS—Fall 2017 Meeting
19. SCOPO—Fall 2017 Meeting
20. SCOCLE—Fall 2017 Meeting
21. CPR—Specially scheduled call with Chair

Entities That Have Members or Staff Participating on the Working Group

A. BOG
B. Business Law
C. CPR
D. Civil Rights and Social Justice
E. Construction
F. Dispute Resolution
G. Health
H. Labor Law
I. Litigation
<table>
<thead>
<tr>
<th></th>
<th>Name</th>
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<tbody>
<tr>
<td>J</td>
<td>Judicial Division</td>
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<td>K</td>
<td>International Law</td>
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<td>L</td>
<td>Intellectual Property</td>
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<td>GP, Solo, and Small Firm</td>
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<td>SEER</td>
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<td>AA</td>
<td>SLD</td>
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Scenarios and Projections
Projections

All key assumptions are conservative

Status Quo: The scenario based on ABA current performance (i.e., nothing changes)

Total addressable market (TAM): Stays flat over next 5 years

Churn: ABA historical rates

New member acquisition: Achieve 35% of the survey projections over the course of 5 years, at rate of 10-20-30-30-10

Additional entity dues revenue: Achieve 35% of the survey projections of .4 additional entities at a price point of $50
## FY2017 through FY2019

<table>
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<tr>
<th></th>
<th>Actuals FY2017</th>
<th>Projected FY2018</th>
<th>Projected FY2019</th>
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<td>Combined Dues Revenue</td>
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<td>$66,500,000</td>
<td>$64,135,500</td>
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<tr>
<td>Dues Payers</td>
<td>194,448</td>
<td>187,000</td>
<td>181,390</td>
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FY2019 is our point of departure for running future projections.

### Notes

- Rate of base dues revenue decline: 3.4%
- Rate of entity dues revenue decline: 4.3%
- Rate of dues payer decline: 3.0%
**Scenario 1: Status Quo (Do nothing)**

<table>
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<tr>
<th>Status Quo</th>
<th>Year 1 FY2020</th>
<th>Year 2 FY2021</th>
<th>Year 3 FY2022</th>
<th>Year 4 FY2023</th>
<th>Year 5 FY2024</th>
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<tr>
<td>Combined Dues Revenue</td>
<td>$61,855,844</td>
<td>$59,657,954</td>
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<td>170,670</td>
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<td>160,583</td>
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**Notes**
- Rate of base dues revenue decline: 3.4%
- Rate of entity dues revenue decline: 4.3%
- Rate of dues payer decline: 3.0%
### Projections

#### Scenario 2: Proposed New Pricing

<table>
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<tr>
<th>Proposed</th>
<th>Year 1 FY2020</th>
<th>Year 2 FY2021</th>
<th>Year 3 FY2022</th>
<th>Year 4 FY2023</th>
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<tbody>
<tr>
<td>Combined Dues Revenue</td>
<td>$43,432,084</td>
<td>$45,909,202</td>
<td>$50,491,407</td>
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<tr>
<td>Dues Payers</td>
<td>182,786</td>
<td>203,426</td>
<td>236,798</td>
<td>267,952</td>
<td>268,812</td>
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### Notes

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<th>Note</th>
<th>Value</th>
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<tbody>
<tr>
<td>% of Historical Churn</td>
<td>100%</td>
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<tr>
<td>Acquisition % of Survey</td>
<td>35%</td>
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<tr>
<td>5-year Rate of Distribution</td>
<td>10-20-30-30-10</td>
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<tr>
<td>Price of Additional Section</td>
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### Combined Dues Revenue:

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<th>FY2020</th>
<th>FY2021</th>
<th>FY2022</th>
<th>FY2023</th>
<th>FY2024</th>
<th>Total</th>
<th>Difference</th>
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<td>Status Quo</td>
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### Dues Payers:

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<th>FY2021</th>
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<td>Proposed</td>
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<td>+32,756</td>
<td>+107,369</td>
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MEMO

To: Mary L. Smith, Secretary
American Bar Association

From: Tracy A. Giles, Chair Standing Committee on Membership
Kelly-Ann F. Clarke
Lynn Fontaine Newsome
Rana H. Salti
Eugene G. Beckham
William t. Garcia
Suzanne E. Gilbert
Rew R. Goodenow
David Joseph Scriven-Young

Date: March 9, 2018

Amendment to Article 2 of the Association’s Bylaws – Definitions and General Provisions.

As ABA members, we respectfully request that Article 2.1 of the Association’s Bylaws be amended to change the definitions of “Small Firm Practitioners” and “Solo Firm Practitioners” from 2-5 lawyers to 2-10 lawyers.

The current Bylaw reads:

§2.1 Definitions. In this Constitution, the Bylaws, and any rules of the House of Delegates the term: The designation, jurisdiction, and special tenures of standing committees are as follows:

§2.1(m) “Small Firm Practitioner” means a lawyer in private practice in a firm of 2-5 lawyers.

§2.1(o) “Solo and Small Firm Practitioners” collectively means those lawyers in private practice who are in firms of less than six lawyers.

The proposed amendments in legislative format are:

§2.1(m) ”Small Firm Practitioner” means a lawyer in private practice in a firm of 2-5 2-10 lawyers.
§2.1(o) "Solo and Small Firm Practitioners" collectively means those lawyers in private practice who are in firms of less than six ten lawyers.

The clean version of the proposed amendments is:

§2.1(m) "Small Firm Practitioner" means a lawyer in private practice in a firm of 2-10 lawyers.

§2.1(o) "Solo and Small Firm Practitioners" collectively means those lawyers in private practice who are in firms of less than ten lawyers.

Amendment to Article 3 of the Association’s Bylaws – Membership

As ABA members, we respectfully request that Article 3.4 of the Association’s Bylaws be amended to change the name of the “Associates” membership class to “Affiliated Professionals”.

The current Bylaw reads:

§3.4 Associates. Nothing in this Article prevents the establishment by bylaws of classes of associates composed of nonmembers with whom affiliation is considered to be in the interest of the Association.

The proposed amendments in legislative format is:

§3.4 Associates Affiliated Professionals. Nothing in this Article prevents the establishment by bylaws of the class of associates affiliated professionals composed of nonmembers with whom affiliation is considered to be in the interest of the Association.

The clean version of the proposed amendments is:

§3.4 Affiliated Professionals. Nothing in this Article prevents the establishment by bylaws of the class of affiliated professionals composed of nonmembers with whom affiliation is considered to be in the interest of the Association.

As ABA members, we respectfully request that a new Article 3.5 be added to the Association’s Constitution as follows:

§3.5 International Lawyer. Any person of good moral character in good standing at the bar of the legal profession of another country who is admitted to practice law but is not admitted to the bar of any state, territory, tribal nation, or possession of the United States. An international Lawyer member shall have the same rights and privileges as Member except as follows:
(a) may not participate in electing a Delegate-at-large
(b) may not participate in nominating a member of the Board or an officer of the Association, and may not serve as an officer of the Association;
(c) may not vote in Association-wide elections other than while serving as a delegate in the House; and
(d) may not sign a petition for a vote in an Association referendum.

The clean version of the proposed amendments is:

§3.5 International Lawyer. Any person of good moral character in good standing at the bar of the legal profession of another country who is admitted to practice law but is not admitted to the bar of any state, territory, tribal nation, or possession of the United States. An international Lawyer member shall have the same rights and privileges as Member except as follows:

(a) may not participate in electing a Delegate-at-large
(b) may not participate in nominating a member of the Board or an officer of the Association, and may not serve as an officer of the Association;
(c) may not vote in Association-wide elections other than while serving as a delegate in the House; and
(d) may not sign a petition for a vote in an Association referendum.

Amendment to Article 6 of the Association’s Bylaws The House of Delegates

As ABA members, we respectfully request that Article 6.6 of the Association’s Bylaws be amended to change “Non-U.S. Lawyer Associates” to “International Lawyer”.

The current Bylaw reads:

§6.6 Section Delegates. Each section shall be entitled to a minimum of two delegates. A section with more than 20,000 members and Non-U.S. Lawyer Associates, shall elect from its membership one additional delegate to the House. A section with more than 45,000 members and Non-U.S. Lawyer Associates shall elect from its membership one additional delegate. All terms shall be staggered and in each succeeding third year each position shall then be elected for a term of three Association years. The term of a Section Delegate is three Association years, beginning with the adjournment of the annual meeting during which elected. A Section Delegate elected as an officer or member of the Board of Governors ceases to be a Section Delegate at the beginning of the term as officer or governor. If a vacancy occurs, the council of the section shall select a successor for the unexpired term. This section does not apply to divisions.

The proposed amendments in legislative format is:
§6.6 Section Delegates. Each section shall be entitled to a minimum of two delegates. A section with more than 20,000 members and Non-U.S. Lawyer Associates, shall elect from its membership one additional delegate to the House. A section with more than 45,000 members and Non-U.S. Lawyer Associates, shall elect from its membership one additional delegate. All terms shall be staggered and in each succeeding third year each position shall then be elected for a term of three Association years. The term of a Section Delegate is three Association years, beginning with the adjournment of the annual meeting during which elected. A Section Delegate elected as an officer or member of the Board of Governors ceases to be a Section Delegate at the beginning of the term as officer or governor. If a vacancy occurs, the council of the section shall select a successor for the unexpired term. This section does not apply to divisions.

The clean version of the proposed amendments is:

§6.6 Section Delegates. Each section shall be entitled to a minimum of two delegates. A section with more than 20,000 members and International Lawyer members, shall elect from its membership one additional delegate to the House. A section with more than 45,000 members and International Lawyer members, shall elect from its membership one additional delegate. All terms shall be staggered and in each succeeding third year each position shall then be elected for a term of three Association years. The term of a Section Delegate is three Association years, beginning with the adjournment of the annual meeting during which elected. A Section Delegate elected as an officer or member of the Board of Governors ceases to be a Section Delegate at the beginning of the term as officer or governor. If a vacancy occurs, the council of the section shall select a successor for the unexpired term. This section does not apply to divisions.

Amendment to Article 21 of the Association’s Bylaws – Members and Associates.

As ABA members, we respectfully request that Article 21 of the Association’s Bylaws be amended to change “Associates” to “Affiliated Professionals”.

The current Bylaw reads:

Article 21 of the Association’s Bylaws – Members and Associates

The proposed amendments in legislative format is:

Article 21 of the Association’s Bylaws – Members and Associates Affiliated Professionals.
The clean version of the proposed amendments is:

Article 21 of the Association’s Bylaws – Members and Affiliated Professionals.

As ABA members, we respectfully request that the existing Article 21.3 be replaced with a new membership category “Retired Members”

The current Bylaw reads:

§21.3 Life Members. A person who has been a member and paid the equivalent of senior dues for at least 10 years may become a life member upon written notice to the Treasurer and payment of the fee for life membership prescribed by the House of Delegates. Such a member has all the privileges of membership. Life membership fees shall be invested by the Treasurer and the income from the money so invested shall be used for the general purposes of the Association.

The proposed amendments in legislative format is:

§21.3 A person who has been a member and paid the equivalent of senior dues for the last 10 years may become a life member upon written notice to the Treasurer and payment of the fee for life membership prescribed by the House of Delegates. Such a member has all the privileges of membership. Life membership fees shall be invested by the Treasurer and the income from the money so invested shall be used for the general purposes of the Association.

Retired Members. Lawyers who have voluntarily placed their law license on inactive, retired, or other such similar status indicating the intent to no longer practice law or serve as a judicial officer in all jurisdictions in which they are licensed, may retain the privileges of membership upon payment of the annual dues for Retired Members prescribed by the Board of Governors unless the lawyers have voluntarily resigned or deactivated their licenses under a criminal charge or conviction, or charge of sanction from the disciplinary authority.

The clean version of the proposed amendments is:

§21.3 Retired Members. Lawyers who have voluntarily placed their law license on inactive, retired, or other such similar status indicating the intent to no longer practice law or serve as a judicial officer in all jurisdictions in which they are licensed, may retain the privileges of membership upon payment of the annual dues for Retired Members prescribed by the Board of Governors unless the lawyers have voluntarily resigned or deactivated their licenses under a criminal charge or conviction, or charge of sanction from the disciplinary authority.
As ABA members, we respectfully request that the existing Article 21.4 be amended to allow the Board to establish the dues rate for “Sustaining Members” (category that we do not currently use).

The current Bylaw reads:

§21.4 Sustaining Members. A member may become a sustaining member upon payment of the annual dues for sustaining membership prescribed by the House of Delegates. If eligible, a sustaining member may revert to another membership classification.

The proposed amendments in legislative format is:

§21.4 Sustaining Members. A member may become a sustaining member upon payment of the annual dues for sustaining membership prescribed by the Board of Governors, which shall be in an amount greater than the highest rate adopted by the House of Delegates. If eligible, a sustaining member may revert to another membership classification.

The clean version of the proposed amendments is:

§21.4 Sustaining Members. A member may become a sustaining member upon payment of the annual dues for sustaining membership prescribed by the Board of Governors, which shall be in an amount greater than the highest rate adopted by the House of Delegates. If eligible, a sustaining member may revert to another membership classification.

As ABA members, we respectfully request that the existing Article 21.6 be amended for clarification and uniformity.

The current Bylaw reads:

§21.6 Special Members. (1) If a person who has reached age 75 and has been a member of the Association for at least 25 years so requests, that person shall retain the privileges of membership but need only pay 50% of the highest dues rate.

(2) Provided, however, that (i) if a person who reached age 70 prior to September 1, 2004, and has been a member of the Association for 25 years so requests, that person shall retain the privileges of membership but need not pay any Association dues; or (ii) if a person who has reached age 70 prior to September 1, 2006, but after August 31, 2004, and has been a member of the Association for 25 years so requests, that person shall retain the privileges of membership but need only pay 50% of the highest dues rate.

The proposed amendments in legislative format is:
§21.6 Special Members. (1) (a) If a person who has reached age 75 and has been a member of the Association for at least 25 years so requests, that person shall retain the privileges of membership but need only pay 50% of the highest dues rate an amount prescribed by the Board of Governors, which shall be in an amount less than the highest rate adopted by the House of Delegates.

(2) (b) Provided, however, that (i) if a person who reached age 70 prior to September 1, 2004, and has been a member of the Association for 25 years so requests, that person shall retain the privileges of membership but need only pay any Association dues; or (ii) if a person who has reached age 70 prior to September 1, 2006, but after August 31, 2004, and has been a member of the Association for 25 years so requests, that person shall retain the privileges of membership but need only pay 50% of the highest dues rate an amount prescribed by the Board of Governors, which shall be in an amount less than the highest rate adopted by the House of Delegates.

As ABA members, we respectfully request that the existing Article 21.7 to make changes to the “Student” definition to include the “Student Associate” category into the new “Student” category.

The current Bylaw reads:

§21.7 Student Members. Law Student and Law School Graduate Members. (a) A law student who is otherwise ineligible for Association membership may apply for law student membership under rules prescribed by the Board of Governors in consultation with the Council of the Section of Legal Education and Admissions to the Bar and the Law Student Division. Dues for law student members must be paid as prescribed by the Board of Governors.

(b) A law school graduate who is otherwise ineligible for Association membership because that person has not yet been admitted to the bar of a state, territory or possession may apply for law school graduate membership under rules prescribed by the Board of Governors in consultation with the Council of the Section of Legal Education and Admissions to the Bar and the Law Student Division. Dues for law school graduate members must be paid as prescribed by the Board of Governors.

(c) Both law student members and law school graduate members:
1. may not participate in electing a State Delegate or a Delegate-at-Large
2. may not participate in nominating a member of the Board or an officer of the Association, and may not serve as an officer of the Association;
3. may not vote in Association elections other than while serving as a delegate in the House;
4. may not sign a petition for or vote in an Association referendum; and
5. may participate in other activities of the Association as authorized by the House.

The proposed amendments in legislative format is:

§21.7 Student Members. Law Student and Law School Graduate Members. (a) A law student who is otherwise ineligible for Association membership may apply for law student membership under rules prescribed by the Board of Governors in consultation with the Council of the Section of Legal Education and Admissions to the Bar and the Law Student Division. Dues for law student members must be paid as prescribed by the Board of Governors. (b) A law school graduate who is otherwise ineligible for Association membership because that person has not yet been admitted to the bar of a state, territory or possession may apply for law school graduate membership under rules prescribed by the Board of Governors in consultation with the Council of the Section of Legal Education and Admissions to the Bar and the Law Student Division. Dues for law school graduate members must be paid as prescribed by the Board of Governors. (c) A student enrolled in college or university level educational studies and has an interest in the work of the American Bar Association.

(d) Both law student members and law school graduate All student members:
1. may not participate in electing a State Delegate or a Delegate-at-Large
2. may not participate in nominating a member of the Board or an officer of the Association, and may not serve as an officer of the Association;
3. may not vote in Association elections other than while serving as a delegate in the House;
4. may not sign a petition for or vote in an Association referendum; and
5. may participate in other activities of the Association as authorized by the House.

(e) Dues for Student Members must be paid as prescribed by the Board of Governors.
The clean version of the proposed amendments is:

§21.7 Student Members. (a) A law student who is otherwise ineligible for Association membership may apply for law student membership under rules prescribed by the Board of Governors. (b) A law school graduate who is otherwise ineligible for Association membership because that person has not yet been admitted to the bar of a state, territory or possession may apply for law school graduate membership under rules prescribed by the Board of Governors in consultation with the Council of the Section of Legal Education and Admissions to the Bar and the Law Student Division. Dues for law school graduate members must be paid as prescribed by the Board of Governors. (c) A student enrolled in college or university level educational studies and has an interest in the work of the American Bar Association.

(d) All student members:
   1. may not participate in electing a State Delegate or a Delegate-at-Large
   2. may not participate in nominating a member of the Board or an officer of the Association, and may not serve as an officer of the Association;
   3. may not vote in Association elections other than while serving as a delegate in the House;
   4. may not sign a petition for or vote in an Association referendum; and
   5. may participate in other activities of the Association as authorized by the House.

(e) Dues for Student Members must be paid as prescribed by the Board of Governors.

As ABA members, we respectfully request that the existing Article 21.8 to clarify that the Board may authorize adjustments in dues to reflect changes in the Cost of Living Index.

The current Bylaw reads:

§21.8 Scale of Dues. Except as otherwise provided, a member of the Association must pay dues in the amount prescribed by the House of Delegates and in the manner prescribed by the Board of Governors. Dues include the member’s annual subscription to the American Bar Association Journal in an amount set by the Board. In special circumstance, the Board may waive payment of a member’s dues.

The proposed amendment in legislative format is:
§21.8 Scale of Dues. (a) Except as otherwise provided, a member of the Association must pay dues in the amount prescribed by the House of Delegates and in the manner prescribed by the Board of Governors. Dues include the member’s annual subscription to the American Bar Association Journal in an amount set by the Board. In special circumstance, the Board may waive payment of a member’s dues.

(b) After the fiscal year ending August 31, 2023, the Board of Governors may modify dues in an amount not to exceed the change in the Cost of Living. A change in the Cost of Living means the product, subject to the rounding up to the nearest dollar, of (a) the annual increase in the cost of living as reported by the Bureau of Labor Statistics for the preceding December times (b) the dues for the preceding fiscal year. The House of Delegates may override any such modification by a two-third vote.

The clean version of the proposed amendments is:

§21.8 Scale of Dues. (a) Except as otherwise provided, a member of the Association must pay dues in the amount prescribed by the House of Delegates and in the manner prescribed by the Board of Governors. Dues include the member’s annual subscription to the American Bar Association Journal in an amount set by the Board. In special circumstance, the Board may waive payment of a member’s dues.

(b) After the fiscal year ending August 31, 2023, the Board of Governors may modify dues in an amount not to exceed the change in the Cost of Living. A change in the Cost of Living means the product, subject to the rounding up to the nearest dollar, of (a) the annual increase in the cost of living as reported by the Bureau of Labor Statistics for the preceding December times (b) the dues for the preceding fiscal year. The House of Delegates may override any such modification by a two-thirds vote.

As ABA members, we respectfully request that the existing Article 21.11 to amend the “Associates” membership to reflect various changes to the name, International Associates, and Student Associates.

The current Bylaw reads:

§21.11 Associates. Persons who are ineligible to be members or Law Student members of the Association may qualify as associates if they are in one of the following classifications, have never been disbarred or suspended from the practice of law in any jurisdiction, are of good moral character, and satisfy such further eligibility requirements as may be approved by the Board:
(a) General Associates. Individuals who are not admitted to practice law in any jurisdiction, but have an interest in the work of the American Bar Association.

(b) Non-U.S. Lawyer Associates. Members of the legal profession of another country who are admitted to practice law but are not admitted to the bar of any state, territory, or possession of the United States.

(c) Student Associates. Individuals enrolled in college or university level post secondary educational studies and have an interest in the work of the American Bar Association.

The privileges and dues of associates shall be prescribed by the Board. However, they have no interest in the property of the Association and they may not vote, except as authorized by the House of Delegates.

The proposed amendment in legislative format is:

§21.11 Associates. **Affiliated Professional.** Persons who are ineligible to be members of Law Student members of the Association may qualify as **an Affiliated Professional member** associates if they are **not admitted to practice law in any jurisdiction, but have an interest in the work of the American Bar Association,** in one of the following classifications, have never been disbarred or suspended from the practice of law in any jurisdiction, are of good moral character, and satisfy such further eligibility requirements as may be approved by the Board:

(a) General Associates. Individuals who are not admitted to practice law in any jurisdiction, but have an interest in the work of the American Bar Association.

(b) Non-U.S. Lawyer Associates. Members of the legal profession of another country who are admitted to practice law but are not admitted to the bar of any state, territory, or possession of the United States.

(c) Student Associates. Individuals enrolled in college or university level post secondary educational studies and have an interest in the work of the American Bar Association.

The privileges and dues of **Affiliated Professionals** shall be prescribed by the Board. However, they have no interest in the property of the Association and they may not vote, except as authorized by the House of Delegates.

The clean version of the proposed amendments is:

§21.11 **Affiliated Professional.** Persons who are ineligible to be members of Law Student members of the Association may qualify as **an Affiliated Professional member** associates if they are **not admitted to practice law in any jurisdiction, but have an interest in the work of the American Bar Association,** in one of the following classifications, have never been disbarred or suspended from the practice of law in any jurisdiction, are of good moral character, and satisfy such further eligibility requirements as may be approved by the Board:

(a) General Associates. Individuals who are not admitted to practice law in any jurisdiction, but have an interest in the work of the American Bar Association.

(b) Non-U.S. Lawyer Associates. Members of the legal profession of another country who are admitted to practice law but are not admitted to the bar of any state, territory, or possession of the United States.

(c) Student Associates. Individuals enrolled in college or university level post secondary educational studies and have an interest in the work of the American Bar Association.

The privileges and dues of **Affiliated Professionals** shall be prescribed by the Board. However, they have no interest in the property of the Association and they may not vote, except as authorized by the House of Delegates.
Amendment to Article 30 - Sections

As ABA members, we respectfully request that Article 30.5 be modified to make clear that each Section/Division/Forum has the authority to decide whether International Lawyer and Affiliated Professional members may serve on its Council or as a leader.

The current Bylaw reads:

§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 it 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 associates may serve on the Council and in the leadership of the Section of International Law, the Section of Business Law, the Section of Litigation, the Section of Antitrust Law, the Section of Environment, Energy and Resources, and the Section of Labor and Employment Law as their respective bylaws may provide, and non-U.S. lawyer associates may serve on the Council of the Law Practice Division as its bylaws may provide, and associate members may serve on the Council and in the leadership of the Section of Dispute Resolution as its bylaws may provide.

The proposed amendment in legislative format is:

§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 it 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 associates may serve on the Council and in the leadership of the Section of International Law, the Section of Business Law, the Section of Litigation, the Section of Antitrust Law, the Section of Environment, Energy and Resources, and the Section of Labor and Employment Law as their respective bylaws may provide, and non-U.S. lawyer associates may serve on the Council of the Law Practice Division as its bylaws may provide, and associate members may serve on the Council and in the leadership of the Section of Dispute Resolution as its bylaws may provide. International Lawyers and Affiliated Professionals may serve on the Council or as a section leader as its bylaws may provide.

The clean version of the proposed amendments is:

§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 it 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, International Lawyers
and Affiliated Professionals may serve on the Council or as a section leader as its bylaws may provide.

**Amendment to Article 32 of the Association’s Bylaws – Forums**

As ABA members, we respectfully request that the existing Article 32.1 be modified to make clear that each Forum has the authority to decide whether International Lawyer and Affiliated members may serve on its Council or as a leader.

The current Bylaw reads:

§32.1 Forums. (a) The House of Delegates may, by a majority vote, create a forum to carry out, in a specific field, a responsibility that is principally to educate its members in that field, is within the purposes of the Association, and is not otherwise served within the Association. The forum shall also investigate and study the matters within its responsibilities.

(b) During each Association year, a forum shall hold one or more educational meetings, open to any member of the Association.

(c) A forum is unlimited in number and indefinite in duration. Any member of the Association may be a member. Each forum shall adopt bylaws not inconsistent with the constitution and Bylaws. The bylaws become effective when approved by the House.

(d) Each forum shall have a governing committee selected in accordance with that forum’s bylaws. Non-U.S. Lawyer Associates may serve on the governing Committee of the Forum on Construction Law as its bylaws may provide.

(e) In carrying out its responsibilities under the section, a forum shall coordinate its activities with those of each section or other commit of the Association that is concerned with a matter that is also within the forum’s responsibilities.

(f) To cover its expenses, a forum may impose such dues as the Board of Governors approves.

(g) The House may discontinue or change the name of a forum. The House shall discontinue a forum if, for any Association year, its expenditures exceed the dues received and advance provision has not been made to cover the excess.

The proposed amendment in legislative format is:

§32.1 Forums. (a) The House of Delegates may, by a majority vote, create a forum to carry out, in a specific field, a responsibility that is principally to educate its members in that field, is within the purposes of the Association, and is not otherwise served within the Association. The forum shall also investigate and study the matters within its responsibilities.

(b) During each Association year, a forum shall hold one or more educational meetings, open to any member of the Association.

(c) A forum is unlimited in number and indefinite in duration. Any member of the Association may be a member. Each forum shall adopt bylaws not
inconsistent with the constitution and Bylaws. The bylaws become effective when approved by the House.

(d) Each forum shall have a governing committee selected in accordance with that forum’s bylaws. Non-U.S. Lawyer Associates International Lawyers and Affiliated Professionals may serve on the governing Committee of a Forum on Construction Law as its bylaws may provide.

(e) In carrying out its responsibilities under the section, a forum shall coordinate its activities with those of each section or other commit of the Association that is concerned with a matter that is also within the forum’s responsibilities.

(f) To cover its expenses, a forum may impose such dues as the Board of Governors approves.

(g) The House may discontinue or change the name of a forum. The House shall discontinue a forum if, for any Association year, its expenditures exceed the dues received and advance provision has not been made to cover the excess.

The clean version of the proposed amendments is:

§32.1 Forums. (a) The House of Delegates may, by a majority vote, create a forum to carry out, in a specific field, a responsibility that is principally to educate its members in that field, is within the purposes of the Association, and is not otherwise served within the Association. The forum shall also investigate and study the matters within its responsibilities.

(b) During each Association year, a forum shall hold one or more educational meetings, open to any member of the Association.

(c) A forum is unlimited in number and indefinite in duration. Any member of the Association may be a member. Each forum shall adopt bylaws not inconsistent with the constitution and Bylaws. The bylaws become effective when approved by the House.

(d) Each forum shall have a governing committee selected in accordance with that forum’s bylaws. International Lawyers and Affiliated Professionals may serve on the governing Committee of a Forum on Construction Law as its bylaws may provide.

(e) In carrying out its responsibilities under the section, a forum shall coordinate its activities with those of each section or other commit of the Association that is concerned with a matter that is also within the forum’s responsibilities.

(f) To cover its expenses, a forum may impose such dues as the Board of Governors approves.

(g) The House may discontinue or change the name of a forum. The House shall discontinue a forum if, for any Association year, its expenditures exceed the dues received and advance provision has not been made to cover the excess.
RESOLVED, That dues for lawyer members of the Association shall be in accordance with the following schedule, effective for dues commencing with FY2020 and each year thereafter:

$ 75 if admitted to the bar for less than five years
$150 if admitted to the bar five years but less than ten years
$250 if admitted to the bar ten years but less than fifteen years
$350 if admitted to the bar fifteen years but less than twenty years
$425 if admitted to the bar twenty or more years

FURTHER RESOLVED, That lawyers employed by any federal, state, local, territorial or tribal government, lawyers employed by nonprofit public interest programs, judges, solo practitioners, small firm lawyers, and retired lawyers shall pay $150 for dues effective in FY2020 and each year thereafter;

FURTHER RESOLVED, That paralegals shall pay $75 for dues effective in FY2020 and each year thereafter;

FURTHER RESOLVED, That affiliated professionals shall pay $150 for dues effective in FY2020 and each year thereafter;

FURTHER RESOLVED, That international lawyers shall pay $250 for dues effective in FY2020 and each year thereafter;

FURTHER RESOLVED, That if a lawyer licensed by a state, commonwealth, territory or tribal government qualifies for more than one dues category, the lawyer shall pay the lowest amount;

FURTHER RESOLVED, That the Board of Governors is authorized to determine those benefits to be included as part of membership in the Association.
### PRELIMINARY AGENDA

**AMERICAN BAR ASSOCIATION**  
**HOUSE OF DELEGATES**  
**2018 ANNUAL MEETING**  
**CHICAGO, ILLINOIS**

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| 11-1     | CONSTITUTIONAL AMENDMENT  
Amends §1.2 of the Association’s 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.” |
| 11-2     | CONSTITUTIONAL AMENDMENT  
Amends §6.2(a)(1) of the Association’s Constitution to provide the U.S. Virgin Islands with a State Delegate, who pursuant to the existing language of §9.2, would automatically serve as a member of the Nominating Committee. |
| 11-3     | CONSTITUTIONAL AMENDMENT  
Amends §6.7(e) of the Association’s Constitution to increase the number of Senior Lawyers Division delegates to the House of Delegates from two to four. |
| 11-4     | CONSTITUTIONAL AMENDMENT  
Amends §7.3 of the Association’s Constitution to reconcile the eligibility requirements for a young lawyer member-at-large on the ABA Board of Governors with the definition of young lawyer in the ABA Young Lawyers Division Bylaws. |
| 11-5     | BYLAWS AMENDMENT  
Amends §29.6 of the Association’s Bylaws to clearly state that the Association’s financial statements are audited and not the Treasurer’s report, and that the Association’s annual financial statements shall be submitted for examination and audit by a certified public accountant designated by the Board of Governors upon recommendation of the Audit Committee. |
| 11-6     | BYLAWS AMENDMENT  
Amends §31.7 of the Association’s Bylaws to more completely and accurately reflect the Standing Committee on Audit’s duties as they have been assigned by the Board of Governors. |
| 11-7     | BYLAWS AMENDMENT  
Amends §31.7 of the Association’s Bylaws to change the name of the Standing Committee on Client Protection to the Standing Committee on Public Protection in the Provision of Legal Services and to amend its jurisdictional statement. |

Copies of Resolutions with Reports are available upon request to the Policy and Planning Division.
11-8 BYLAWS AMENDMENT
Amends §31.7 of the Association’s Bylaws to discontinue the Standing Committee on Medical Professional Liability at the conclusion of the 2018 Annual Meeting and that its work and staffing responsibilities be subsumed by the Tort Trial and Insurance Practice Section.

11-9 BYLAWS AMENDMENT
Amends §31.7 of the Association’s Bylaws to change the name of the Standing Committee on Professional Discipline to the Standing Committee on Professional Regulation and to make concomitant amendments to its jurisdictional statement.

11-10 BYLAWS AMENDMENT
Amends §31.7 of the Association’s Bylaws to clarify the jurisdictional statement of the Standing Committee on Professionalism.

11-11 BYLAWS AMENDMENT
Amends §31.7 of the Association’s Bylaws to replace in its entirety the jurisdictional statement of the Standing Committee on Technology and Information Systems.

11-12 CONSTITUTION AND BYLAWS AMENDMENTS
Amends various Sections of the Association’s Constitution and Bylaws that may be necessary if the New Membership Model is adopted by the Board of Governors and the House of Delegates.

100A CRIMINAL JUSTICE SECTION
Urges bar associations, law schools, and other stakeholders to develop and increase curricular offerings through which law students provide pro bono representation of incarcerated individuals and those reentering society.

100B CRIMINAL JUSTICE SECTION
OREGON STATE BAR ASSOCIATION
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
ANGELA A. ALLEN-BELL
DAVID F. BIENVENU
FRANK NEUNER
JUDY PERRY MARTINEZ
Urges Louisiana and Oregon to require unanimous juries to determine guilt in felony criminal cases and reject the use of non-unanimous juries where currently allowed in felony cases.

101 STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY
Amends Model Rules 7.1 through 7.5 and their related Comments of the ABA Model Rules of Professional Conduct regarding lawyer advertising rules.

Copies of Resolutions with Reports are available upon request to the Policy and Planning Division.
102A SECTION OF FAMILY LAW
Urges governments to enact preserve tax code provisions that allow the alimony deduction for payors and treat alimony as taxable income to payees.

102B SECTION OF FAMILY LAW
SECTION OF SCIENCE AND TECHNOLOGY LAW
Adopts the ABA Model Act Governing Assisted Reproductive Technology, dated August 2018 to replace the 2008 Model Act, and urges its adoption by appropriate governmental agencies.

103 ABA WORKING GROUP TO ADVANCE WELL-BEING IN THE LEGAL PROFESSION
COMMISSION ON LAWYER ASSISTANCE PROGRAMS
Adopts the ABA Model Law Firm Policy on Impairment, dated August 2018, to provide a mechanism within law firms to identify impairment and craft proper intervention, and to prevent professional standards and the quality of work for clients from being compromised by any law firm personnel’s impairment, and urges law firms to adopt the Model Policy.

104A SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
Urges Congress to enact legislation that implements the “Law Enforcement Equipment Working Group Recommendations Pursuant to Executive Order 13688” dated May 2015.

104B SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
SECTION OF STATE AND LOCAL GOVERNMENT LAW
Urges governments to adopt and enforce stronger fair lending laws targeted against discrimination in vehicle sales market and urges Congress to amend the Equal Credit Opportunity Act to collect data on race and national origin for auto-lending transactions.

104C SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY
Supports an interpretation of Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116(a), that its prohibition on sex discrimination by covered health programs or activities includes discrimination on the basis of sexual orientation and gender identity.

104D SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
SECTION OF STATE AND LOCAL GOVERNMENT LAW
Urges governments to enact legislation providing employees with job-guaranteed paid sick days and job-guaranteed paid family and medical leave.

Copies of Resolutions with Reports are available upon request to the Policy and Planning Division.
104E SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
YOUNG LAWYERS DIVISION
Urges governments and international institutions to adopt and implement legislation and regulations to eliminate, prevent and provide remedies for gender-based violence in the workplace, including sexual harassment, based on virtue of their actual or perceived sex (including pregnancy), family responsibilities, sexual orientation, gender identity, gender expression, the intersectionality between race and sex or status as a victim of domestic or sexual violence.

105 SECTION OF DISPUTE RESOLUTION
Urges providers of domestic and international dispute resolution to expand their rosters with minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities (“diverse neutrals”), and to encourage the selection of diverse neutrals.

106A SECTION OF INTERNATIONAL LAW
CENTER FOR HUMAN RIGHTS
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION
JUDICIAL DIVISION
Reaffirms the ABA’s commitment to advance the rule of law and condemns the harassment arbitrary arrest and detention, arbitrary disbarment, denial of due process, other ill-treatment, and killings of judges, lawyers, other members of the legal profession, and their extended families throughout the world for serving in their designated capacities.

106B SECTION OF INTERNATIONAL LAW
CENTER FOR HUMAN RIGHTS
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION
JUDICIAL DIVISION
Recognizes the important role that non-lawyer human rights defenders, journalists and others play in protecting justice and the rule of law, and deplores attacks on those professions, as well as on individuals, aimed at silencing or intimidating human rights voices.

107A YOUNG LAWYERS DIVISION
Adopts a court rule promoting full and equal opportunity and participation in the legal profession and the justice system, and urges each jurisdiction to include the court rule in the Parental Leave Rule.

Copies of Resolutions with Reports are available upon request to the Policy and Planning Division.
107B  YOUNG LAWYERS DIVISION
CRIMINAL JUSTICE SECTION
COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE
STANDING COMMITTEE ON DISASTER RESPONSE AND PREPAREDNESS
STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS
Urges all emergency management agencies to provide proper training to staff and volunteers to respond to unique needs of intimate partner violence and sexual violence victims during and after a disaster.

107C  YOUNG LAWYERS DIVISION
Urges Congress to enact the Presidential Tax Transparency Act (H.R. 305) and the President-Elect Release of Tax Return Act (H.R. 1938), and supports efforts to require disclosure to appropriate authorities of recent federal income tax returns for certain candidates for the Office of President of the United States, and to incentivize certain candidates for the Office of President of the United States to disclose their recent federal income tax returns to the extent any such laws are permitted by the United States Constitution.

108A  STANDING COMMITTEE ON SPECIALIZATION
Grants reaccreditation to the Medical Professional Liability and Legal Professional Liability programs of the American Board of Professional Liability Attorneys for additional five-year terms as designated specialty certification programs for lawyers.

108B  STANDING COMMITTEE ON SPECIALIZATION
Grants accreditation to the Truck Accident Law program of the National Board of Truck Accident Attorneys, a division of The National Board of Trial Advocacy for a five-year term as a designated specialty certification program for lawyers.

109  STANDING COMMITTEE ON GUN VIOLENCE
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
CRIMINAL JUSTICE SECTION
COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE
Urges governments to reduce potential harm that individuals may inflict on themselves or others by enacting statutes, rules or regulations that allow individuals to: 1) voluntarily and confidentially submit their names into databases used for gun background checks, and 2) remove themselves from those systems.

110A  STANDING COMMITTEE ON PARALEGALS
Grants approval to four programs, grants reapproval to eighteen paralegal education programs, withdraws the approval of three programs at the requests of the institutions, and extends the term of approval to several paralegal education programs.

Copies of Resolutions with Reports are available upon request to the Policy and Planning Division.
110B STANDING COMMITTEE ON PARALEGALS
Amends the ABA Guidelines for Approval of Paralegal Education Programs, dated August 2018.

111A SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR
Concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2018 to the Rules of the ABA Standards and Rules of Procedure for Approval of Law Schools, to restructure the work of the ABA accreditation process by eliminating the Council’s Accreditation and Standards Review Committees, and having all work completed by the Council.

111B SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR
Concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2018 to the Standards of the ABA Standards and Rules of Procedure for Approval of Law Schools, to restructure the work of the ABA accreditation process by eliminating the Council’s Accreditation and Standards Review Committees, and having all work completed by the Council.

111C SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR
Concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2018 to Rules 3, 5, 10, 14, 22, 23, 24, 25, 34, 52, and 53 of the ABA Standards and Rules of Procedure for Approval of Law Schools.

111D SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR
Concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2018 to Standards 501 (Admission) and 503 (Admission Test) of the ABA Standards and Rules of Procedure for Approval of Law Schools.

111E SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR
Concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2018, to Standard 303 (Curriculum); Standard 304 (Simulation Courses, Clinics, and Field Placements); Standard 305 (Other Academic Study); Standard 306 (Distance Education); Standard 307 (Studies, Activities, and Field Placements Outside the United States); and Standard 601 (Library and Information Resources, General Provisions) of the ABA Standards and Rules of Procedure for Approval of Law Schools.

112 COMMISSION ON LAW AND AGING
SECTION OF INTERNATIONAL LAW
Supports in principle the Inter-American Convention on Protecting the Human Rights of Older Persons, and encourages the United Nations to draft a convention on the rights of older persons.

Copies of Resolutions with Reports are available upon request to the Policy and Planning Division.
113 NATIONAL CONFERENCE OF THE ADMINISTRATIVE LAW JUDICIARY
JUDICIAL DIVISION
SECTION OF ADMINISTRATIVE LAW AND REGULATORY PRACTICE
GOVERNMENT PUBLIC SECTOR LAWYERS DIVISION
COLORADO BAR ASSOCIATION
DENVER BAR ASSOCIATION
Adopts the ABA Model Code of Judicial Conduct for State Administrative Law Judges, dated August 2018, and urges governments to enact and adopt the Model Code.

114 WORKING GROUP ON BUILDING PUBLIC TRUST IN THE AMERICAN
JUSTICE SYSTEM
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS
CRIMINAL JUSTICE SECTION
SECTION OF STATE AND LOCAL GOVERNMENT LAW
COMMISSION ON YOUTH AT RISK
MASSACHUSETTS BAR ASSOCIATION
KING COUNTY BAR ASSOCIATION
WASHINGTON STATE BAR ASSOCIATION
Opposes the incarceration of individuals solely because they are unable to pay judicially imposed fines and fees, and adopts the black letter and commentary to the ABA Ten Guidelines on Court Fines and Fees, dated August 2018.

115 STANDING COMMITTEE ON GROUP AND PREPAID LEGAL SERVICES
SOLO, SMALL FIRM AND GENERAL PRACTICE DIVISION
Adopts the American Bar Association Standards for Accreditation of Legal Plans dated August 2018, to ensure that Legal Plans are providing affordable access to legal services.

116A COMMISSION ON DISABILITY RIGHTS
Amends the Air Carrier Access Act (“ACAA”), 49 U.S.C. § 41705 (1986), to establish a private right of action violations of the ACAA and to provide equitable and legal relief, including compensatory and punitive damages, as well as reasonable attorneys’ fees, reasonable expert fees, and the costs to plaintiffs who prevail in civil actions.

116B COMMISSION ON DISABILITY RIGHTS
Urges governments to: 1) enact laws and adopt policies that prohibit the use of out-of-school suspension and expulsion of pre-kindergarten through second grade students; 2) require ongoing training of teachers, administrators, and other school staff on alternatives to school exclusion; and, 3) provide sufficient funding and resources to ensure the provision of alternatives to school exclusion.

Copies of Resolutions with Reports are available upon request to the Policy and Planning Division.
116C  COMMISSION ON DISABILITY RIGHTS
Urges all courts and other appropriate government entities to interpret Titles II and III of the Americans with Disabilities Act to apply to technology, and goods and services delivered thereby, regardless of whether it exists solely in virtual space or has a nexus to a physical space.

117  SECTION OF INTELLECTUAL PROPERTY LAW
STANDING COMMITTEE ON LAW LIBRARY OF CONGRESS
Urges Congress to approve appropriations to the Library of Congress necessary to enable the United States Copyright Office to adequately staff, maintain, modernize, and enhance its services, facilities, databases, studies, and digital projects.

118  COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY
TORT TRIAL AND INSURANCE PRACTICE SECTION
Urges the federal government to recognize that service by persons who otherwise meet the standards for accession or retention, as applicable, in the United States Armed Forces should not be restricted, and transgender persons should not be discriminated against, based solely on gender identity.

119  COMMISSION ON IMMIGRATION
Adopts the 2018 ABA Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States, to replace the 2004 Standards.

177  STANDING COMMITTEE ON MEMBERSHIP
Amends the dues structure for the American Bar Association effective with FY2020 and each year thereafter.

400A  RESOLUTION WITH REPORT ON ARCHIVING
Recommends that certain Association policies that pertain to public issues and are 10 years old or older be archived.

400B  RESOLUTION WITH REPORT ON ARCHIVING
Recommends that certain Association policies that pertain to public issues that were adopted in 1998 which were previously considered for archiving but retained be archived.

Copies of Resolutions with Reports are available upon request to the Policy and Planning Division.
No resolution presented herein represents the policy of the association until it shall have been approved by the House of Delegates. Informational reports, comments and supporting data are not approved by the House in its voting and represent only the views of the Section or Committee submitting them.

AMERICAN BAR ASSOCIATION
CRIMINAL JUSTICE SECTION
REPORT TO THE HOUSE OF DELEGATES

1 RESOLVED, That the American Bar Association urges bar associations, law schools and other stakeholders to develop and increase educational initiatives, clinics, and other experiential courses through which law students provide legal assistance to pre-trial detainees, immigration detainees, and incarcerated individuals reentering society.
This Resolution urges law schools, bar associations, and other stakeholders in criminal justice reform to develop means of assisting detained and incarcerated individuals for reentry into the community. In 2004, the American Bar Association’s Justice Kennedy Commission Report called upon law schools to “establish clinics in which students may gain both understanding and experience in representing those who have committed crimes and are imprisoned as a result.”

The ABA must continue to develop ways to address this ongoing gap in access to justice for incarcerated individuals. This Resolution helps to fill that gap and its implementation will advance the Commission’s calling.

A number of rationales support this Resolution. One is that it advances justice by pushing for greater legal assistance to one of the neediest segments of society. In turn, the creation of more pro bono opportunities enhances experiential education for law students without impacting its cost. Another factor is the scarcity of knowledge about existing programs and their impacts. More research and critical study in this area are necessary and key for firms, lawyers, and law schools looking to design curricula and clinics to serve this population. Beyond, the Resolution is consistent with existing ABA policies, standards, and rules, and supports the ABA’s mission to provide pro bono public service.

Practical Skills-Training with Society’s Most Indigent, Least Educated

Legal education’s growing focus on experiential education and practice-readiness supports these proposals as sensible and just. In the course of serving a population that is massively underrepresented, law students are afforded the opportunity to practice their skills and professionalism. The development of more educational initiatives, clinics, and other experiential courses promises greater legal assistance where it is needed most.

The focus on prisoners, immigrants, and those reentering society is warranted since these groups suffer an array of disadvantages, including indigence and lack of education, skills, and training. One study found that over 70 percent of all inmates in U.S. prisons and jails cannot read above the fourth-grade level, and another study in 2006 noted that more than 80% of those charged with felonies are indigent. The situation has grown worse since the 1994 Omnibus Crime Bill, which denied Pell Grant funding to prisoners and destroyed their ability to obtain higher education while in prison. Poor literacy directly limits one’s ability to access justice, and “[m]any of those who cannot locate pro-bono counsel able and willing to represent them will simply forgo pursuing legal remedies because they are intimidated by the system. Those who consider representing themselves may feel overwhelmed at the prospect of navigating the court system and give up pursuing legitimate civil actions because of the procedural difficulty of doing

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2 Robert R. Kuehn, Pricing Clinical Legal Education, 92 DENVER U. L. REV. 1 (2014) (“A school’s curriculum can be structured to give every J.D. student a clinical experience without having to charge students more in tuition.”).
The process is even more challenging for immigrants who face language barriers and an enormous, unmet need in legal aid.6

There are racial dimensions to the problems as well, since a disproportionate number of ethnic minorities are entangled in the criminal justice system from arrests to prisoners to those reentering society. As one clinical professor notes, “There is now, and has always been, a double standard when it comes to the criminal justice in the United States. The system is stacked against you if you are a person of color or are poor, and is doubly unjust if you are both a person of color and poor.”7

When individuals exit prison to reenter society, there are insurmountable obstacles to integrating successfully. Prospects for employment are low and employers often avoid hiring individuals with a criminal record. In addition, finding housing is a major hurdle for most who cannot realistically compete on the market for housing. Beyond are a myriad of collateral consequences, including restrictions, regulations, and forfeitures of social benefits, privileges, licensure and other opportunities. The growing use of monetary sanctions also reduces prospects for successful reentry efforts by saddling felons with Legal Financial Obligations that can result in perpetual financial servitude.8 For such individuals, effective legal representation is only the remotest of possibilities.

Immigrants to this country, whether young or old, seeking asylum or work opportunities, confront a bewildering array of laws and legal procedures requiring assistance and representation. They can secure legal representation in immigration proceedings, but “at no expense to the Government”.9 High quality, affordable legal services are the most important need for this population.10 There is wide disparity in the success rate of those who have lawyers and those who proceed pro se.11

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5 Todd A. Berger & Joseph A. DeGrossa, Overcoming Legal Barriers to Reentry: A Law School-Based Approach to Providing Legal Services to the Reentry Community, 77 FED. PROBATION 3, 4 (2013)
8 See SpearIt, Shackles Beyond the Sentence: How Legal Financial Obligations Create a Permanent Underclass, 1 IMPACT 46 (2015).
11 An asylum seeker is five times more likely to win a case for asylum if they have legal counsel, according to the Public Counsel’s Immigrant’s Rights Project. Samantha Balaban, Without a Lawyer, Asylum-Seekers Struggle with Confusing Legal Processes, NPR Radio, Feb. 25, 2018, https://www.npr.org/2018/02/25/588646667/without-a-lawyer-asylum-seekers-struggle-with-confusing-legal-processes
Law schools situated in proximity to large jails, prisons, and detention facilities are best positioned to achieve the greatest legal impact. The ability to communicate with a client personally facilitates all aspects of rendering legal aid. This reality makes states like Texas, California, New York, Pennsylvania, and Florida prime locales since they have many law schools to service their state’s massive incarceration operations.

Law schools developing curricula to address these gaps are also well-positioned to help educate immigrants, detainees and ex-prisoners and their communities. Many law schools have instituted Street Law and Know Your Rights programs, which focus on providing legal education to communities. These programs offers a promising way of complementing experiential curricula by helping educate the public identify the most salient legal issues facing prisoners and immigrants.

Education programs targeting individuals returning home from prison, the individuals’ families and friends, and other stakeholders are an immense benefit to the communities that absorb the bulk of individuals returning from incarceration. These communities tend to be lower-class and under-resourced, and such public education programming pushes to ensure communities have a working knowledge of the laws and policies that impact detainees, ex-prisoners, and immigrants in the quest for successful entry into society.

**Understanding the Curricular Status Quo**

Gaps in research and scholarship hinder the current understanding of efforts to provide legal assistance to incarcerated and reentering individuals. According to a study in 2004, only thirty-three of the approximately 252 U.S. law schools operated clinics to serve approximately 2.3 million people incarcerated in immigration detention centers, jails, prisons, and other facilities. The legal services performed by these clinics are varied and include civil and constitutional conditions work, appellate criminal work, capital defense, and innocence claims. Several clinics have emerged since then, however, there are no comprehensive studies that account for these new clinics or any of the previously existing clinics no longer in operation.

A similar dearth of prison law curricula exists in doctrinal courses. Despite this scarcity, the United States of America is home to world-leading prison rates and populations. In addition, there are few books or courses that reflect the enormity of this situation. The absence of prison

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13 Taja-Nia Y. Henderson, *Teaching the Carceral Crisis: An Ethical and Pedagogical Imperative*, 13 U. Md. L.J. RACE, RELIGION, GENDER & CLASS 104 (2013) notes that in 2013 “The following law schools are among those offering clinical course programs with a specific focus on prison law and the rights of prisoners: Yale, Georgetown, University of California - Davis, William Mitchell, Northwestern, Akron, and Wisconsin. This list excludes capital punishment clinics, which are more widely available.”

law courses in law school curricula is conspicuous by its absence since the stakes are so high, as one professor notes:

To judge from this curriculum, the criminal justice process starts with the investigation of a crime and ends with a determination of guilt. But for many if not most defendants, the period from arrest to verdict (or plea) is only a preamble to an extended period under state control, whether on probation or in custody. It is during the administration of punishment that the state's criminal justice power is at its zenith, and at this point that the laws constraining the exercise of that power become most crucial. Yet it is precisely at this point that the curriculum in most law schools falls silent.15

A better understanding of the current prison law landscape is a key component for creating collaborations between practitioners and law schools. Knowledge about the scope and content of existing curricula will enable focus on geographical areas where the need is greatest. Moreover, the content of existing efforts can be shared such that successful courses might be modeled or replicated in other schools that are starting or supplementing a clinic.16 Data in this area will enable efficient implementation of supporting policy and allow laws schools and practitioners a clearer picture of the curricular terrain.

**Prisoner Litigation: A Losing Bet**

Legislative developments that significantly impede access to lawyers and courts illustrate the urgent need for legal assistance among prisoners. The 1996 Prison Litigation Reform Act (PLRA)17 stands as a major hurdle to an inmate’s ability to access courts to sue administration, guards, or other staff. An inmate’s First and Fourth Amendment rights, among others, are curtailed in comparison to the average citizen on the street, yet the PLRA has drastically curtailed prisoners’ rights litigation. The legislation has led to a steep decline in the number of court interventions in jails and prisons that, according to one researcher, has “undermined prisoners’ ability to bring, settle, and win lawsuits.”18

A sample of the PLRA’s mandates indicates how onerous a deterrent this legislation is for seeking redress in court. The law mandates that prisoners exhaust all state administrative remedies before suing for damages. Moreover, both state and federal prisoners are barred from bringing civil actions of “mental or emotional injury suffered while in custody, without a prior showing of physical injury.”19 Another provision diminishes monetary incentives by severely limiting attorneys’ fees that a plaintiff can recover: “No award of attorney’s fees in an action

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16 See e.g. Todd A. Berger & Joseph A. DeGrossa, *Overcoming Legal Barriers to Reentry: A Law School-Based Approach to Providing Legal Services to the Reentry Community*, 77 FED. PROBATION 3 (2013) (describing collaboration between Rutgers University School of Law and U.S. District Court for the District of New Jersey.). University of Baltimore School of Law, “Pretrial Justice Clinic Year-End Report,” June 2017, home.ubalt.edu/id86mp66/PTJC/PTJC_Year_End_Report_June_2017.pdf (clinic report that describes its litigation goals as a “challenge to pretrial detention practices and procedures that contribute to mass incarceration.”).


19 Dolovich, supra.
described in paragraph (1) shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of Title 18 for payment of court-appointed counsel.”

Taken wholly, the legislation results in far fewer prisoners able to access the justice system, with little financial incentive for lawyers to represent prisoners.

The PLRA produced other negative impacts, including decreased attorney representation, case filings, and plaintiff-side outcomes in conditions claims such as 1983, Eighth Amendment, ADA, RLUIPA/RFRA, and other claims. The financial caps and procedural hurdles imposed by legislation render prisoners' rights cases undesirable, and underscore the value of clinical work in this area. Despite legislation that makes prisoner lawsuits against prisons and staff a somewhat lost cause for lawyers, for law students seeking to gain skills and fulfill pro bono duties, there are different dividends – with students in experiential learning courses gaining practical lessons in state and federal substantive and procedural law.

Reaffirming Association Policy, Standards, and Rules

The rationales for this Resolution support existing ABA policy, the ABA Standards and Rules of Procedure for Approval of Law Schools, The ABA Standards on Treatment of Prisoners, and the ABA Model Rules of Professional Conduct. The values and principles that guide this Resolution are consistent with a number of views that animate the ABA as a whole.

There is clear overlap in interest between ABA policy and this resolution. A number of formal resolutions demonstrate convergence, including Resolution 201B enacted at Midyear, 2000, urged bar associations, law schools and other organizations “to develop humanitarian residential placements for elderly offenders.” As housing is a critical factor for reentry, this policy and the Resolution’s goals overlap. With over 700,000 individuals returning from prison each year, housing is a critical component of successful reentry. Enacted in August 2004, Resolution 121C (Kennedy Commission), called for “programs to encourage and train lawyers to assist prisoners in applying for pardon, restoration of legal rights and privileges, relief from other collateral sanctions, and reduction of sentence.” The market for these services is even greater, since these issues are common for prisoners. Resolution 121D (Kennedy Commission), August 2004, urges “law schools to establish reentry clinics in which students assist individuals who have been imprisoned and are seeking to reestablish themselves in the community, regain legal rights, or remove collateral disabilities.” Finally, passed at Midyear 2007, Resolution 102A urged the development of “programs that encourage and train lawyers to assist victims of domestic violence with applying for pardon, restoration of legal rights and privileges, relief from other collateral sanctions, and reduction of sentence.” This Resolution and its implementation will support these efforts.

23 Id.
24 Id.
25 Id.
The ABA’s posture toward collateral consequences and their impact on family law issues shows further overlap. Resolution 102F (Midyear 2010) calls for “initiatives that assist criminal defendants and prisoners in avoiding undue consequences of arrest and conviction on their custodial and parental rights. Such initiatives should include: (c) establishing programs to provide criminal defendants and prisoners with no cost or low cost legal assistance on family law issues, including the avoidance of foster care through kinship care and guardianship arrangements.” Such prisoners and defendants are the intended beneficiaries of this Resolution.

Recent updates to the ABA Standards and Rules of Procedure for Approval of Law Schools show other ABA interests at stake. In particular, the ABA has implemented new experiential education requirements for law schools and the rule that all law students must take at least six units in “experiential courses.” This push for greater practical experience for law students promises more opportunities to assist incarcerated and reentering individuals.

The Resolution explicitly supports The ABA Standards on Treatment of Prisoners, which affirms a prisoner’s right to access the judicial process. According to Standard 23-9.2, “Prisoners should be entitled to present any judicially cognizable issue, including: (i) challenges to the legality of their conviction, confinement, extradition, deportation, or removal; (ii) assertions of any rights protected by state or federal constitution, statute, administrative provision, treaty, or common law; (iii) civil legal problems, including those related to family law; and (iv) assertions of a defense to any action brought against them.” Providing such legal assistance is one of the main points of this Resolution and its focus on prisoners.

The Resolution aligns with ABA Model Rules of Professional Conduct. Rule 6.1 outlines pro bono obligations for licensed attorneys, asserting “every lawyer has a professional responsibility to provide legal services to those unable to pay.” The rule recommends 50 hours per year minimum for pro bono services. Although the recommendation amounts to less than one hour a week in donated time, today, more than half of all licensed attorneys fail to meet this minimum. This Resolution builds on the professional baseline that students and lawyers have a duty to provide pro bono service.

This Resolution further aligns with conduct promulgated in Rule 6.2, which sets out that a lawyer “shall not seek to avoid appointment by a tribunal to represent a person except for good

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26 Id.
27 Id.
30 Model Rules of Prof’l Conduct r. 6.1 (Am. Bar Ass’n 1980).
31 Id.
32 In a survey published in 2009, the ABA Standing Committee on Pro Bono and Public Service reported that only one-fourth of all respondents met or surpassed the minimum recommendation, https://www.americanbar.org/content/dam/aba/images/probono_public_service/ts/report2.pdf.
cause.” 33 This provision supports the notion that lawyers have special duties to accept court appointments, including indigent clients. 34 The comment to this rule punctuates the point by declaring: “All lawyers have a responsibility to assist in providing pro bono publico service. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients.” 35 This Resolution’s focus on unpopular clients, including criminal defendants, prisoners, immigrants, and ex-prisoners returning to society, sits at the core of this rule’s intent, especially since most defendants, prisoners, and individuals returning from prison are indigent, as well.

Conclusion

This Resolution supports a number of existing ABA efforts to regulate lawyers, law schools, and the profession. As such, the ABA urges law schools and law practitioners to collaborate in developing curricula that provide legal assistance to those incarcerated and those reentering society. 36 Although these groups are vastly underrepresented, there is little known about what the bar and law schools do together to address this gap in legal assistance. To be sure, the need is dire, for unlike other segments of society that face shortages of legal assistance, the stakes are at their highest when life or liberty is at stake. These issues are at the heart of this Resolution and make its passage all the more urgent.

Respectfully submitted,
Morris (Sandy) Weinberg, Jr.
Chair, Criminal Justice Section

August 2018

33 Model Rules of Prof’l Conduct r. 6.2 (Am. Bar Ass’n 1980).
34 Id.
35 Id.
GENERAL INFORMATION FORM

Submitting Entity: Criminal Justice Section

Submitted By: Morris (Sandy) Weinberg, Jr., Chair, Criminal Justice Section

1. **Summary of Resolution(s).**

   This resolution urges the ABA to encourage bar associations and law schools to increase curricular offerings to provide pro bono services to detained and incarcerated people, both citizens and immigrants.

2. **Approval by Submitting Entity.**

   This resolution was approved by the Criminal Justice Council at the Spring Meeting in Tampa, FL, in April 2018.

3. **Has this or a similar resolution been submitted to the House or Board previously?**

   No.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

   2000 MY 102B, 2004 AY 121C, 2004 AY 121D, 2007 MY 102A, and 2010 MY 102F all call for increased bar association and law school activity in the service of people in prison and those reentering society. This would update the context for the previous calls and support their implementation.37

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?**

   N/A.

6. **Status of Legislation. (If applicable)**

   N/A

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

   Encouragement of pilot and permanent programs at law schools, and at legal services programs and bar associations that utilize law students and pro bono assistance.

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8. **Cost to the Association.** (Both direct and indirect costs)

None. Educational efforts can be accomplished through regular meeting programming, and through email and website postings.

9. **Disclosure of Interest.** (If applicable)

None.

10. **Referrals.**

Concurrent with the filing of this resolution and Report with the House of Delegates, the Criminal Justice Section is sending the resolution and report to the following entities and/or interested groups:

- Commission on Veteran’s Legal Services
- Legal Aid & Indigent Defense
- Commission on Disability Rights
- Special Committee on Hispanic Legal Rights & Responsibilities
- Commission on Homelessness and Poverty
- Center for Human Rights
- Commission on Immigration
- Racial & Ethnic Diversity
- Racial & Ethnic Justice
- Commission on Youth at Risk
- Young Lawyer’s Division
- Civil Rights and Social Justice
- Government and Public Sector Lawyers
- International Law
- Federal Trial Judges
- State Trial Judges
- Law Practice Division
- Science & Technology
- Health Law
- Litigation
- Solo, Small Firm and General Practice Division
- Section of Legal Education and Admissions to the Bar
- Law Student Division
- Center for Professional Responsibility
- Standing Committee on Pro Bono and Public Service
11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)

William Ball  
Santa Clara University School of Law  
500 El Camino Real  
Santa Clara, CA 95053-0001  
T: (408) 551-7079  
E: wball@scu.edu

Matt Fogal  
157 Lincoln Way East  
Chambersburg, PA 17201  
T: (717) 261-3827  
E: mdfogal@franklincountypa.gov

Keramet Reiter  
2347 E. 3rd Street  
Long Beach, CA 90814  
T: (949) 824-9201  
E: reiterk@uci.edu

Kevin Scruggs  
Director, Criminal Justice Section  
American Bar Association  
1050 Connecticut Ave NW, 4th Floor  
Washington, DC 20036  
T: (202) 662-1503  
E: kevin.scruggs@americanbar.org

12. **Contact Name and Address Information.** (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Stephen Saltzburg  
2000 H Street, NW  
Washington, D. C. 20052  
T: 202-994-7089  
E: ssaltz@law.gwu.edu

Neal Sonnett  
2 South Biscayne Blvd., Suite 2600  
Miami, Florida 33131-1819  
T: 305-358-2000  
Cell: 305-333-5444  
E: nrslaw@sonnett.com
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges the ABA to encourage bar associations and law schools to increase curricular offerings to provide pro bono services to detained and incarcerated people, both citizens and immigrants.

2. Summary of the Issue that the Resolution Addresses

This Resolution addresses the gap in access to justice for prisoners, detainees, and immigrants, and encourages law schools and legal services programs to fill the gap through experiential opportunities for law students.

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

Additional and expanded programs at law schools and legal services programs will not only provide law students with experiential learning opportunities, but fill a pronounced legal need for a segment of society that is underserved by lawyers.

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

None Identified.
No resolution presented herein represents the policy of the association until it shall have been approved by the House of Delegates. Informational reports, comments and supporting data are not approved by the House in its voting and represent only the views of the Section or Committee submitting them.

AMERICAN BAR ASSOCIATION

CRIMINAL JUSTICE SECTION
OREGON STATE BAR
SECTION ON CIVIL RIGHTS AND SOCIAL JUSTICE
ANGELA A. ALLEN-BELL
DAVID F. BIENVENU
FRANK NEUNER
JUDY PERRY MARTINEZ

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association urges Louisiana and Oregon to require unanimous juries to determine guilt in felony criminal cases and reject the use of non-unanimous juries where currently allowed in felony cases.
REPORT

Introduction

Forty-eight states and the federal system currently afford full Sixth Amendment protections to criminal defendants. Louisiana and Oregon are outliers. They are the only two states that allow non-unanimous juries in their criminal cases.\(^1\) While the motive and means for the change from a unanimous to a non-unanimous system may have differed in Oregon and Louisiana, the range of resulting injustices are consistent in both states.\(^2\)

Under current United States Supreme Court Sixth Amendment jurisprudence, criminal cases heard in federal courts require a unanimous vote in order for a defendant to be convicted. This resolution and supporting report promotes the full incorporation of the Sixth Amendment jury trial right via the Fourteenth Amendment and thus opposes the use of non-unanimous jury trials in state, criminal cases.

Background

When the Framers adopted the trial guarantee, they did so with a unanimous jury in mind.\(^3\) The Supreme Court of the United States has consistently recognized this. In 1930, the Supreme Court was called upon to resolve the question of whether the constitution allowed a jury of eleven to rule after one of the twelve seated jurors became incapacitated and the defendant agreed to a waiver. During its discussion, the Court did not mince words in expressing its disapproval of a vote by a non-unanimous jury:

If a deficiency of one juror might be waived, there appears to be no good reason why a deficiency of eleven might not be; and it is difficult to say why, upon the same principle, the entire panel might not be dispensed

\(^1\) This article is limited to an evaluation of instances where twelve-person juries are allowed to cast a judgment with fewer than twelve individuals voting in favor of a finding of guilt in non-capital, felony, criminal cases. This article does not address civil jury practices or juries in misdemeanor or capital cases.

\(^2\) “While no agency or body in the state tracks non-unanimous convictions, a study by Oregon’s Office of Public Defense Services in 2009 offered some insight. It found that more than 40 percent of the 662 convictions it surveyed from 2007 and 2008 were non-unanimous.” Shane Dixon Kavanaugh, Campaign to Repeal Oregon’s Unusual Non-Unanimous Jury System Begins, The Oregonian, Jan. 10, 2018, available at http://www.oregonlive.com/portland/index.ssf/2018/01/campaign_to_repeal_oregons_unu.html (last visited 02/23/18).

\(^3\) “As introduced by James Madison in the House, the Amendment relating to jury trial in criminal cases would have provided that: ‘The trial of all crimes...shall be by an impartial jury of freeholders...of the vicinage, with the requisite of unanimity for conviction, of the right of challenge, and other accustomed requisites....’” Williams v. Florida, 399 U.S. 78, 94 (1970).
with, and the trial committed to the court alone. It would be a highly
dangerous innovation, in reference to criminal cases, upon the ancient
and invaluable institution of trial by jury, and the constitution and laws
establishing and securing that mode of trial, for the court to allow of any
number short of a full panel of twelve jurors, and we think it ought not
to be tolerated.4

Until its 1972 Apodaca v. Oregon ruling, the view of the Court prevailed that
a unanimous verdict was an essential element of a Sixth Amendment jury trial.5
Apodaca legalized a vote by a less-than-unanimous jury. In Apodaca, the Supreme
Court declared that as few as ten jurors did not amount to an unconstitutional
practice. Despite definite infirmities, Apodaca remains a precedent.

The Apodaca case resulted from challenges brought by two people convicted
by non-unanimous juries (11 to 1 & 10 to 2) in Oregon. Those Oregon defendants
raised Sixth and Fourteenth Amendment challenges. The Apodaca court failed to
entertain any meaningful discussion of group decision making. Instead, the court
focused its attention on the process. It devoted some of its attention to the history
of unanimity in this country and on the function of a jury, which it said was to
guard against the corrupt or overzealous prosecutor and against the compliant,
biased, or eccentric judge. The Apodaca court reasoned that a jury consisting of a
group of lay persons representative of a cross section of the community who have
the duty and the opportunity to deliberate, free from outside attempts at
intimidation was good enough to satisfy constitutional muster. In the end, the
court determined that there was no difference between a vote of ten, eleven or
twelve.

Apodaca is a plurality decision, which means that a majority agreement of
the court never existed.6 Despite this, Louisiana and Oregon courts have deemed

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5 See Apodaca v. Oregon, 406 U.S. 404 (1972); Johnson v. Louisiana, 406 U.S. 356 (1972) was decided the
same day as Apodaca and held that a conviction by a 9-3 verdict in certain noncapital cases did not violate
the due process clause for failure to satisfy the reasonable-doubt standard; see also Williams v. Florida,
399 U.S. 78 (1970) (allowed for a six member jury and held that the Sixth Amendment did not require a
vote of twelve); Ballew v. Georgia, 435 U.S. 223 (1978) (declared a five-member jury to be a violation of the
Sixth and Fourteenth Amendments).

6 Apodaca was a 4-1-4 decision. Both of the groups of four Justices determined the rule should be the same
for federal and state trials. Justice Powell differed. Justice Powell believed there to be a distinction between
state and federal standards governing the right to a jury trial. In his view, the Sixth Amendment required a
unanimous verdict, while the 14th Amendment did not incorporate that requirement. Justice Powell was
the swing vote so his position became the law. The opinion held that there was no constitutional right to a
unanimous verdict – based on the opinion of only one Justice.
Apodaca a precedent and many now refuse to consider the merits of challenges to the non-unanimous jury system.⁷

Problems with Non-Unanimous Juries:

Promotes Discrimination by Undermining Batson v. Kentucky

Louisiana and Oregon’s non-unanimous jury laws create a legal means of discriminating when it comes to jury practices. When it decided Batson v. Kentucky⁸ in 1986, the Supreme Court outlawed discrimination in jury selection by preventing prosecutors from using race as a reason not to select someone for jury service. The non-unanimous jury laws in Oregon and Louisiana allow a prosecutor to accomplish through a seated jury what the law prevents during the jury selection process. This is so because the vote of one or two of the jurors can be ignored when votes are cast, having the same effect of just excluding one or two jurors during the selection process.

Ignores research

Since that 1972 Apodaca ruling, much more is known about group thinking. While the research does not show that unanimous juries are flawless or that non-unanimous juries always fail, the research does show that unanimous verdicts are more reliable, more careful and more thorough because a rule which insists on unanimity furthers the deliberative process by requiring the minority view to be examined and, if possible, accepted or rejected by the entire jury.⁹

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⁷ When Apodaca was before the Supreme Court, the court was reviewing Oregon’s law and not Louisiana’s law. The two laws were not identical. Oregon’s law did not allow non-unanimous verdicts in cases of first degree murder (and still does not); Louisiana does (in non-capital cases).⁷ Louisiana’s law explicitly exempts capital cases; no such language appears in the text of Oregon’s law. In Louisiana, for first degree murder (that is not a capital case) and second degree murder, the sentence is an automatic term of natural life; this is not the case in Oregon (where the options span between life with or without parole, death and in excess of twenty-five years in custody).⁷ In other words, in Louisiana—but not Oregon—a person can receive a sentence of life without parole by a non-unanimous verdict. To require unanimity for capital cases but not for those resulting in life without parole undermines the insistence on unanimity where the loss of life is at issue.


Contributes to Wrongful Convictions

Louisiana is second in the rate of wrongful convictions in the nation. There is reason to believe that Louisiana’s non-unanimous jury system is a contributor. In 2017, the Innocence Project - New Orleans reported that eleven of twenty-five Louisiana exonerations resulted from trials where non-unanimous juries were used.

Promotes Racism, Oppression & Undermines Public Trust

Louisiana and Oregon both initially required unanimous juries in all felony cases, as the other 48 states do today. Both made the change to a non-unanimous system for clear and demonstrable racist purposes. In Louisiana, the law was changed after Reconstruction with the express intent of achieving a system of white supremacy. In 1803, when Louisiana became a territory, unanimous verdicts were required. From its creation until the end of Reconstruction and the withdrawal of federal troops, Louisiana required unanimous jury verdicts. Non-unanimous verdicts first were introduced in 1880, after slavery ended, when, through newly enacted codal provisions, defendants could be convicted by vote of only nine of twelve jurors. Non-unanimous verdicts made its way to the Constitution of 1898 by way of article 116 where state officials, announced: “We need a system better adapted to the peculiar conditions existing in our State.” At this convention of all white males, these words were spoken in reflection: “Our mission was...to establish the supremacy of the white race...” Louisiana citizens were not afforded the opportunity to vote to adopt the 1898 Constitution.

At the time of the 1898 Convention, 44% of the registered voters in Louisiana were African American. The change from unanimity was to: (1) obtain quick convictions that would facilitate the use of free prisoner labor (by means of Louisiana’s convict leasing system) as a replacement for the recent loss of free slave labor.

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10 In 2014, Oregon changed its status from the last state in the union without an organization dedicated to actively investigating wrongful convictions in criminal cases. Data collection is a predictable challenge of such a new organization. As of the date of this report, the Oregon Innocence Project could not yet provide data explaining how many of their sixteen exonerations resulted from the use of non-unanimous juries.


12 Official Journal, supra, at 374-375.
labor; and, (2) ensure African American jurors would not use their voting power to block convictions of other African Americans. History confirms such illicit intentions:

[The end of segregation] prompted the State to try new devices to keep the white citizens in control. The Louisiana Legislature created a committee which became known as the ‘Segregation Committee’ to seek means of accomplishing this goal. This committee helped to organize the Association of Citizens Councils, which thereafter acted in close cooperation with the legislative committee to preserve white supremacy. The legislative committee and the Citizens Councils set up programs, which parish voting registrars were required to attend, to instruct the registrars on how to promote white political control.

When the 1898 law was revisited at the 1973 Constitutional Convention, the law was changed to require the vote of at least ten of twelve. As in 1898, “efficiency” was a stated reason. Some have mistakenly concluded that this sanitized the racial history surrounding the law. In truth, race was not completely removed from the discussion at the 1973 Convention. There was a warning that “ugly, poor, illiterate and mostly minority groups” would be impacted, as well as concerns expressed about the system undermining the reasonable doubt standard. This system survived—not because it was studied and deemed to be in the best interests of justice—but, because of a process that mutes the voices of some and amplifies the voices of others. As one scholar observed: “the constitution of 1974 was written...by a wide and self-interested assortment of assessors, sheriffs, legislators, judges, lackeys and anyone who could get elected or appointed.”

13 In the post-Civil War South, “recognition of freed slaves as full humans appeared to most white southerners not as an extension of liberty but as a violation of it, and as a challenge to the legitimacy of their definition of what it was to be white.” Douglas A. Blackmon, Slavery By Another Name 41 (2008); “The notion that farms could be operated in some manner other than with groups of black laborers compelled by a landowner or his overseer to work as many as twenty hours a day was antithetical to most whites.” Id. at 26.


Oregon’s racial history is not much more pleasant than Louisiana’s. Oregon is the only non-slave state admitted to the union with an exclusionary clause prohibiting African Americans from residing or owning property there. Oregon’s law arose in the early 1930s when the “Klu Klux Klan was very popular around the state with a lot of....political power.”

Oregon’s switch to a non-unanimous jury system occurred in 1934 in direct response to a single case where it was believed that a single hold-out juror prevented a second degree murder conviction (causing a manslaughter conviction). The murdered victim was Protestant and the defendant was a Jewish man suspected of mob ties. In short, anti-immigrant and anti-Jewish sentiments underlined Oregon’s switch to a non-unanimous jury system, as introduced there by a Louisianian familiar with that state’s system.

Unlike Louisiana, Oregon’s system originated by a constitutional vote of the people. A 1933 Oregon voter pamphlet explicitly said the vote to change from a unanimous system to a non-unanimous system was “to prevent one or two...from controlling the verdict and causing disagreement.”

In a December 2016 opinion, an Oregon Circuit Court concluded that Oregon’s law discriminates against minorities after observing that “race and ethnicity was a motivating factor in the passage of...[Oregon’s non-unanimous jury law], and that the measure was intended, at least in part, to dampen the influence of racial, ethnic and religious minorities on Oregon juries.”

Contributes to Mass Incarcerations & Adversely Impact Voting Rights

Louisiana’s notorious high incarceration rate, with its disproportionate impact on communities of color, is exacerbated by the non-unanimous jury law. By its intent, the jury provision makes felony convictions easier and drives

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17 Conrad Wilson, Even When Juries Can’t Agree, Convictions Are Still Possible In Oregon, OPB.org, Dec. 12, 2016, available at http://www.opb.org/news/article/critics-challege-oregon-non-unamious-jury-law/ (last visited 02/19/18). It should be noted that the KKK was introduced in Oregon by a man who moved there from Louisiana.


20 Id. at 3-4 (2016).


not just convictions but plea bargains. In turn, this has consequences for voting rights and for the fundamental concept of representative democracy.

The Louisiana Constitution bars anyone from voting while “under an order of imprisonment for conviction of a felony.” Louisiana law defines “order of imprisonment” as a "sentence of confinement, whether or not suspended, whether or not the subject of the order has been placed on probation, with or without supervision, and whether or not the subject of the order has been paroled.” In other words, even those who never spent a day in prison are denied the right to vote while on probation—and many in Louisiana have sentences consisting solely of probation.

In September 2017, Louisiana had 39,220 probationers and 30,929 parolees, or roughly 70,000 people not incarcerated but ineligible to vote. Of those, roughly 60% of parolees and 50% of probationers were defined as African American, in a state with an African American population of approximately 31%. Louisiana’s restrictive felon re-enfranchisement laws therefore disproportionately disenfranchise African American voters.

Historical records support the assertion that the non-unanimous jury provision of the Louisiana Constitution, whether intended or not, did increase felony convictions of African American men. Because a collateral consequence is the reduction of voting power among that same population, the non-unanimous jury must be seen as part of a larger voting rights issue with racial overtones.

In Oregon, unlike Louisiana, voting rights are restored upon release from incarceration. While non-unanimous juries in Oregon increase the incarceration rate by making convictions easier, the impact on the rights of Oregonians to vote is not as severe as in Louisiana, where the franchise is more broadly denied.

23 Article I, Section 10(A).

24 See La. R.S. 18.2 (8).


26 See http://www.theadvocate.com/baton_rouge/news/courts/article_16fd0ece-32b1-11e8-8770-33eca2a325de.html. Black people make up roughly one-third of the population in Louisiana, but they comprise two-thirds of state prisoners and three-fourths of inmates serving life without parole. Louisiana leads the nation by far in these life sentences, nearly all of them the result of jury verdicts. The newspaper's analysis found that 40 percent of trial convictions came over the objections of one or two holdouts. When the defendant was black, the proportion went up to 43 percent, versus 33 percent for white defendants. In three-quarters of the 993 cases in the newspaper's database, the defendant was black.

Marginalizes Women and People of Color

Women were not included in regular jury service until recently. In Oregon, on the heels of gaining the right to vote in 1912,\(^{28}\) woman suffrage turned to focusing on exercising the rights of citizenship including the right to sit on a jury. Legislation in Oregon did not grant women the right to sit on juries until 1921.\(^{29}\) It was not until 1975 that the Supreme Court held in *Taylor v. Louisiana*\(^{30}\) that it was unlawful to exclude women as a class from jury service in Louisiana. Yet the non-unanimous jury laws in Oregon and Louisiana allow the voice and vote of a woman (or person of color) to be effectively eliminated if they disagree with the white male juror majority. This undermines the goals of diversity and equity inherent in the Sixth Amendment legal doctrine that juror diversity promotes justice.

Numerous legal scholars have reviewed the effects of race and sex on jury trials and concluded that race and sex of judges, victims, and defendants can affect trial outcomes.\(^{31}\) The process of selecting juries and the exclusion of individuals based on race, sex, and other personal characteristics also has been studied in detail.\(^{32}\) Statistics on the sex and race of jurors are not regularly reported in a consistent manner. Selecting a jury that is representative of one’s peers either by state or county population composition or registered voter lists have not yielded representative juries in terms of sex, race, age or other personal characteristics.\(^{33}\)

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33 Leslie Ellis & Shari Seidman Diamond, *Race, Diversity, and Jury Composition: Battering and Bolstering Legitimacy*, 78 CHI.-KENT L. REV. 1033 (2003); Kenneth J. Melilli, Baston in Practice: What We Have
Even when women and non-white individuals are included in the pool of potential jurors, through the jury selection process, and participate in a jury verdict, the non-unanimous jury system allows the majority one last way to silence the voice of minority representation by discounting the voice of these women and non-white jurors completely.

Results in Differing Standards Between States & The Federal Government

Louisiana and Oregon’s non-unanimous jury laws result in different Sixth Amendment standards between federal courts (which require unanimous verdicts in criminal cases), and the other forty-eight states’ criminal courts (which require unanimous verdicts) on the one hand, and the Louisiana and Oregon state courts (which allow non-unanimous juries), on the other. This makes consistency impossible and can undermine confidence in state criminal courts, make convictions easier by design, and the rights of defendants thereby less protected.

Non-Unanimous Juries are at Odds With ABA Standards

In 1972 when Apodaca was decided, the 1968 ABA standard allowed for non-unanimous verdicts. In 1976, the ABA changed its standard to affirm that a jury verdict in criminal trials should be unanimous. In 2005, this was reiterated by the ABA in its Principles for Juries & Jury Trials. The ABA’s official position, consistent with the scientific evidence, is that non-unanimous verdicts reduce the reliability of jury determinations, silence minority viewpoints, erode confidence in the criminal justice system, and do not significantly contribute to a reduction in hung juries and retrials. Further details are set forth in the next section of this report.

Existing ABA Resolutions and/or Standards

In 1972, when Apodaca was decided, Standard 1.1 of the 1968 Criminal Justice Standards provided, in pertinent part:

1.1 Right to jury trial.

Defendants in all criminal cases should have the right to be tried by a jury of twelve whose verdict must be unanimous, except that where not barred by applicable constitutional provisions, the right to jury trial may be limited in one or more of the following ways:

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34 In Batson v. Kentucky, the Court addressed peremptory challenges based on race that systematically removed African American jurors from a petit jury. Edmonson v. Leesville Concrete Co. extended Batson’s applicability to jury selection in civil cases. See Edmonson v. Leesville Concrete Co., 500 U.S. 614 (1991). However, Batson and Edmonson have been unable to live up to the promise of their respective holdings.)
In the Commentary to the 1968 Criminal Justice Standard 1.1, the Advisory Committee reviewed current thinking on jury unanimity and “concluded that the minimum standards should recognize the propriety of less than unanimous verdicts, as now permitted in six states.” The 1968 Standards for Criminal Justice, Trial by Jury, was but one volume - volume 15 - of the seventeen volumes that comprised the ABA's Project on Standards for Criminal Justice.

In 1976, another ABA commission, the Commission on Standards of Judicial Administration, published its final draft of the Standards Relating to Trial Courts (hereinafter “1976 Judicial Standards”). Standard 2.10 stated, in pertinent part, “The verdict of the jury [in criminal cases] should be unanimous.” In the Commentary to its 1976 Judicial Standard 2.10, the Commission acknowledged that this was an enlargement of the scope of the jury trial right stated in the 1968 Criminal Justice Standard 1.1, but concluded, “If the question of jury trial in criminal cases is considered from a long range viewpoint, placing the present exigencies of the trial courts in proper perspective, these qualifications [in 1968 Standard 1.1] appear to be both unnecessary and unwarranted by our legal traditions.” The 1976 Judicial Standards were adopted at the ABA's Midyear Meeting in February 1976. In the course of their adoption, the ABA also authorized amendment to the 1968 Criminal Justice Standards to conform to the 1976 Judicial Standards, specifically affirming that, “[i]n criminal cases, the verdict of the jury should be unanimous.” Any support that the ABA's 1968 Trial Court Standards had lent to a position that permitted non-unanimous verdicts had thus ended, by 1976.

When the 1978 edition of Volume 15 of the Standards for Criminal Justice (hereinafter “1978 Criminal Justice Standards”) was published, its Introduction stated: “Incorporating the ABA Standards of Judicial Administration, this updated standard [15-1.1] has been changed by deletion of ... (1) recogni[tion] [of] the propriety of nonunanimous jury verdicts.” 1978 Criminal Justice Standards, Introduction at 15.4

Most recently, in 2004, the ABA established the American Jury Project, the result of which was the promulgation of nineteen core jury trial principles that defined the ABA's “fundamental aspirations for the management of the jury system.” Principle 4.B provides that “[a] unanimous decision should be required in all criminal cases heard by a jury.”
Conclusion

Despite plurality permission from the Supreme Court to accept the non-unanimous vote of selected jurors, forty-eight states chose to afford full Sixth Amendment protections to felony defendants. That’s not because unanimity is a neglected topic. Over the years, a number of states have considered abandoning their unanimity requirements. In every instance, after much study and deliberation, change has been rejected and a unanimous verdict system was maintained.35 The Louisiana State Bar Association has done its part by adopting policy on June 9, 2016, urging the Louisiana legislature to adopt legislation amending Article 1, Section 17 of the Louisiana Constitution, “to require all juries in criminal cases to render a unanimous verdict.” Justice dictates that Louisiana and Oregon restore Sixth Amendment rights to their residents and, in so doing, return to a unanimous jury system in non-capital, criminal cases.36 Let’s stand with our Louisiana colleagues and support our Oregon fellow members of the bar by insisting on unanimous verdicts in all felony cases rendered by the American justice system.

Respectfully submitted,

Morris (Sandy) Weinberg, Jr.
Chair, Criminal Justice Section

August 2018


36 “In a remarkable move, Oregon’s powerful district attorneys group appears to now not only side with reform advocates but wants to assume a primary role in reversing the law — which could reduce the number of convictions won by prosecutors and increase the number of hung juries.” Shane Dixon Kavanaugh, Campaign to Repeal Oregon’s Unusual Non-Unanimous Jury System Begins, The Oregonian, Jan. 10, 2018, available at http://www.oregonlive.com/portland/index.ssf/2018/01/campaign_to_repeal_oregons_unu.html (last visited 02/23/18).
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GENERAL INFORMATION FORM

Submitting Entity: Criminal Justice Section

Submitted By: Morris (Sandy) Weinberg, Jr., Chair

1. **Summary of Resolution(s).**

   The resolution urges Louisiana and Oregon to require unanimous juries to determine guilt in felony criminal cases and reject the use of non-unanimous juries where currently allowed in felony cases.

2. **Approval by Submitting Entity.** This resolution was passed by the Criminal Justice Council at the Spring Meeting in Tampa, FL, in April 2018.

3. **Has this or a similar resolution been submitted to the House or Board previously?**

   Yes. A resolution urging the use of unanimous verdicts in Federal criminal courts was enacted in August 1974. In February 1976, the House enacted the Commission on Standards of Judicial Administration's Standards Relating to Trial Courts; Standard 2.10 stated, “The verdict of the jury [in criminal cases] should be unanimous.” The 1978 Criminal Justice Standards affirmed unanimous jury verdicts. In 2004, the ABA established the American Jury Project, the result of which was the promulgation of nineteen core jury trial principles that defined the ABA’s “fundamental aspirations for the management of the jury system.” Principle 4.B provides that “[a] unanimous decision should be required in all criminal cases heard by a jury.”

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

   See response to #3, above. This resolution is consistent with long-standing ABA policy.

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?**

   Not applicable.
6. **Status of Legislation.** (If applicable)

The Louisiana legislature adopted legislation in 2018 to amend Article 1, Section 17 of the Louisiana Constitution, “to require all juries in criminal cases to render a unanimous verdict.” The proposed amendment will go before Louisiana voters on November 6, 2018.

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

This policy will be used as a basis of advocacy in those few states where a non-unanimous verdict is permitted in felony criminal cases.

8. **Cost to the Association.** (Both direct and indirect costs)

No cost to the Association.

9. **Disclosure of Interest.** (If applicable)

Not applicable

10. **Referrals.** Concurrent with the filing of this resolution and Report with the House of Delegates, the Criminal Justice Section is sending the resolution and report to the following entities and/or interested groups:

- Commission on Veteran’s Legal Services
- Legal Aid & Indigent Defense
- Commission on Disability Rights
- Special Committee on Hispanic Legal Rights & Responsibilities
- Commission on Homelessness and Poverty
- Center for Human Rights
- Commission on Immigration
- Racial & Ethnic Diversity
- Racial & Ethnic Justice
- Commission on Youth at Risk
- Young Lawyers Division
- Civil Rights and Social Justice
- Government and Public Sector Lawyers
- International Law
- Federal Trial Judges
- State Trial Judges
- Law Practice Division
- Science & Technology
- Health Law
- Litigation
- National Conference of Bar Presidents
11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Judy Perry Martinez
1100 Poydras Street, 30th Floor
New Orleans, LA 70163
T: (504) 914-7912
E: judym@spsr-law.com

Kevin Scruggs
Director, Criminal Justice Section
American Bar Association
1050 Connecticut Ave NW, 4th Floor
Washington, DC 20036
T: (202) 662-1503
E: kevin.scruggs@americanbar.org

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Stephen Saltzburg
2000 H Street, NW
Washington, D. C. 20052
T: 202-994-7089
E: ssaltz@law.gwu.edu

Neal Sonnett
2 South Biscayne Blvd., Suite 2600
Miami, Florida 33131-1819
T: 305-358-2000
Cell: 305-333-5444
E: nrslaw@sonnett.com
EXECUTIVE SUMMARY

1. Summary of the Resolution

   The resolution urges Louisiana and Oregon to require unanimous juries to determine guilt in felony criminal cases and reject the use of non-unanimous juries where currently allowed in felony cases.

2. Summary of the Issue that the Resolution Addresses

   Louisiana and Oregon currently allow felony conviction by a less than unanimous jury. The resolution would require unanimous juries for all felonies in both states, thus affording defendants accused of felonies their Sixth Amendment Right to a jury trial as applied to the states by the Fourteenth Amendment.

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

   The proposed policy continues longstanding adherence to the principle that a jury verdict should be unanimous.

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

   None.
RESOLVED, That the American Bar Association urges Congress to enact or preserve Section 215 of the Internal Revenue Code that allow the alimony deduction for payors and treats alimony as taxable income to payees and section 682 of the Internal Revenue Code regarding tax treatment of income of certain alimony trusts payable to a former spouse.

FURTHER RESOLVED, That, if the federal government does not alter the repeal of the alimony deduction and section 682 of the Internal Revenue Code that was included in the Tax Cuts and Jobs Act of 2017, the American Bar Association urges all federal, state, territorial and tribal governments to enact appropriate transition and “grandfather” rules so as to protect the reasonable expectations of taxpayers with respect to agreements and arrangements entered into prior to the effective date of said repeal, including but not limited to pre-nuptial agreements, post-nuptial agreements, trusts and similar arrangements, but only to the extent that income is not attributable to corpus added to a trust after the effective date of such repeal.
REPORT

I. INTRODUCTION AND SUMMARY

On November 2, 2017, the U.S. House Ways and Means Committee released the Tax Cuts and Jobs Act (the “2017 Tax Act”), which was the House’s proposal to overhaul the federal tax code. The House described the 2017 Tax Act as a means to “deliver much-needed tax relief to millions of families, help our workers and job creators compete and win here at home and around the world, and make the tax code simpler and fairer for all Americans.” Among the many tax deductions that the House proposed to eliminate from the federal tax code was the deduction for alimony payments. This deduction is not a deduction like others that eliminates the payment of tax on income. Rather, this deduction shifts the tax obligation to the individual who has the benefit of spending the income. In promoting the 2017 Tax Act, the Joint Committee on Taxation characterized the alimony deduction as a “divorce subsidy” which gives an advantage to divorced couples over married couples and projected that the elimination of the alimony deduction will increase tax revenues by $8.3 billion over 10 years. Even if true, this savings should not be funded at the expense of divorcing families whose financial conditions are most often changing for the worse. The Senate passed its version of the 2017 Tax Act on December 2, 2017, which did not include the elimination of the alimony deduction. Following joint conference committee meetings, the House passed the 2017 Tax Act on December 19, 2017 and the Senate passed the 2017 Tax Act on December 20, 2017. The 2017 Tax Act was signed into law on December 22, 2017 and the final version eliminated the alimony deduction which will apply to:

(1) any divorce or separation instrument (as defined in section 71(b)(2) of the Internal Revenue Code of 1986 as in effect before the date of the enactment of this Act) executed after December 31, 2018, and

(2) any divorce or separation instrument (as so defined) executed on or before such date and modified after such date if the modification expressly provides that the amendments made by this section apply to such modification.

This Resolution recommends that Congress reinstate the alimony deduction available to payors of alimony that was repealed in the 2017 Tax Act as it will make court proceedings more costly and time consuming as many states which currently use gross income to calculate alimony awards will now have to determine net income to calculate alimony awards. Further, divorcing couples would be treated negatively for income tax purposes compared to married couples. Without the alimony deduction, alimony paying spouses would pay taxes on money they do not get to spend at a higher tax rate and without many of the deductions available to married couples. As a result, the same gross income that was available during the marriage to support one household will be taxed at a higher rate leaving less net income to allocate between two households. Finally,

2 Joint Committee on Taxation, Description of the Chairman’s Mark of the “Tax Cuts and Jobs Act” (JCX-51-17) (2017).
the elimination of the alimony deduction will negatively affect couples who entered into prenuptial agreements with alimony provisions based on the assumption that the alimony deduction would be available. Because prenuptial agreements do not qualify as “divorce or separation instruments,” if the couple divorces after December 31, 2018, the party who agreed to pay alimony on the assumption that it would be tax deductible will now be required to pay the amount agreed upon without that benefit and the party receiving the alimony will receive a windfall.

The 2017 Tax Act also repealed section 682 of the Tax Code which provided rules regarding the tax treatment of income of alimony trusts payable to a former spouse. Section 682(a) provides that the donee spouse is to include the gross income actually received rather than requiring the donor spouse to include the gross income. With the repeal of section 682, parties that set up such alimony trusts prior to December 31, 2018 but who are not divorced or legally separated until after December 31, 2018 will lose the anticipated tax treatment.

II. BACKGROUND

In a divorce situation, alimony payments are often based upon one party’s need and the other party’s ability to pay or on the disparity in the parties’ incomes. It is well recognized that it is more expensive for families to support two households after a divorce. The alimony deduction has been part of the Internal Revenue Code for the last seventy-five years. It is widely utilized by divorce attorneys to settle cases in a tax smart way to both spouses and, in many states, does not involve detailed net income calculations. Under the current Tax Code, alimony and separate maintenance receipts are included in the definition of “Gross Income.” The Internal Revenue Code defines “alimony or separate maintenance payments” as follows:

(1) In general. The term “alimony or separate maintenance payment” means any payment in cash if—

(A) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument,

(B) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215,

(C) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and

(D) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse.

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With respect to such alimony or separate maintenance payments, the current Tax Code provides:

In the case of an individual, there shall be allowed as a deduction an amount equal to the alimony or separate maintenance payments paid during such individual’s taxable year.\(^6\)

The 2017 Tax Act repealed sections 61(a)(8) and 71 of the current Tax Code. The change is effective for any divorce or separation agreements or court orders entered into after December 31, 2018 and for any divorce or separation agreements or court orders entered into before December 31, 2018 that are modified after December 31, 2018. Under the 2017 Tax Act, the party paying alimony will no longer receive a deduction and the party receiving alimony will no longer have to report it as income. When the bill was introduced in the House, the House Ways and Means Committee claimed that the “intent of the proposal is to follow the rule of the Supreme Court’s holding in Gould v. Gould\(^7\), in which the Court held that such payments are not income to the recipient.”\(^8\) The Gould decision was based upon the Income Tax Act of October 3, 1913, long before the current law.

III. PURPOSE OF THE RESOLUTION

The purpose of this Resolution is to urge Congress to repeal the elimination of the alimony deduction from the 2017 Tax Act. The Resolution recommends that the legislature restore the provisions of the Tax Code in effect prior to the passage of the 2017 Tax Act with respect to the deductibility of alimony payments. Over the last seventy-five years, the ability to deduct alimony payments has made paying alimony more palatable to the higher income spouse, has enabled divorcing couples to continue to share income as they did during marriage and has done so in a manner that makes calculations easy for the parties without the expense of having attorneys, experts and the court perform complicated net income calculations.

IV. THE IMPORTANCE OF THE ALIMONY DEDUCTION

The alimony deduction has been an important tool for family law attorneys since 1942 and has provided many divorced families with the ability to easily calculate alimony agreements without the necessity of lengthy and expensive court proceedings involving experts to calculate net incomes of the parties. Allowing the higher income spouse to make payments based on gross income by shifting part of the tax liability on his/her income to the lower income spouse enables the divorcing couple to share the same income they had to support one household during the marriage in a way that results in the ability to provide for the two households. Further, unlike other tax deductions, the alimony deduction is not one that results in no revenue to the federal government. Rather, the alimony deduction shifts the tax obligation to the party who actually receives the funds. Without the alimony tax deduction, divorced spouses will be unable to continue to share the same income that was available in the household during the marriage and the higher income spouse will not be able to pay alimony at a rate that will enable the lower income spouse to support his/her own household.

\(^7\) 245 U.S. 151 (1917).
\(^8\) Committee on Ways and Means, Tax Cuts and Jobs Act, H.R. 1: Section-by-Section Summary, at 61 (2017).
Currently, in most cases, after a divorce, the spouse paying the alimony is in a considerable higher tax bracket than spouse receiving the money. The difference between these tax brackets provides a benefit to the spouse paying the alimony and an even greater benefit to the one receiving it. Essentially, the spouse receiving alimony is getting considerably more in actual dollars than the spouse paying it.\(^9\)

Thus, many family law attorneys view the elimination of the alimony tax deduction as a “divorce penalty,” not a “divorce subsidy.”

If alimony is no longer deductible, the ability of an ex-spouse to pay it may be limited, due to other fixed expenses, such as child support payments, and education expenses for children. There is only so much juice that can be squeezed from the orange.\(^10\)

Additionally, many states use gross income to determine a party’s alimony obligation because the party receiving alimony will be paying the taxes on the funds. Being able to calculate a party’s alimony obligation based on gross income is easier for the courts and results in less frequent modifications due to fluctuating tax deductions from year to year. The elimination of the alimony deduction will require many states to formulate a new methodology for determining alimony and will likely cause parties to file modification requests more frequently as their tax obligations change.

There is a concern among the family law bar that the elimination of the alimony deduction will result in fewer settlements, higher litigation costs and lower support orders for the dependent spouse as the parties will now be sharing less net income between two households. Divorcing couples will have greater tax obligations than married couples on the same amount of gross income. There is also concern that the elimination of the alimony deduction will cause some unhappy couples or couples where domestic violence or other abuses exist to remain married because they will simply be unable to afford to get divorced.

Family lawyers are also concerned that the repeal of the alimony deduction has overlooked couples who have entered into prenuptial agreements with alimony provisions on the assumption that the alimony deduction will be available. Since the IRS definition of “divorce or separation instrument” does not include a prenuptial agreement that is not in pay status, if the couple divorces after December 31, 2018, the party who agreed to pay alimony will no longer be able to deduct the payments. Rather, the party paying alimony will have to pay the agreed upon amount without being able to deduct the payments and the party receiving alimony will receive an unanticipated windfall by not having to pay taxes on the payments. This unanticipated consequence could lead to more court proceedings in seeking to modify or enforce such prenuptial agreements.

This Resolution is urging Congress to consider the detrimental effects on the family court system and divorced families by the elimination of the alimony deduction and to repeal the elimination of the alimony deduction in the Tax Cuts and Jobs Act. This Resolution also urges


\(^10\) *Id.*
Congress to repeal the elimination of Section 682 of the Internal Revenue Code as its elimination will have unintended consequences for parties who established alimony trusts prior to December 31, 2018 but who are not yet divorced or legally separated.

Respectfully submitted,

Roberta S. Batley
Chair, Family Law Section

Dated: August 2018
1. **Summary of Resolution(s).** The Resolution urges Congress to reinstate the tax deduction for alimony payments in the Tax Cuts and Jobs Act of 2017 (H.R. 1).

2. **Approval by Submitting Entity.** The ABA Section of Family Law approved submission of this Resolution on June 4, 2018.

3. **Has this or a similar resolution been submitted to the House or Board previously?** Yes, it was submitted for the Midyear 2018 Meeting of the House of Delegates, but was withdrawn prior to February 5.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?** There is no ABA policy on this subject so no existing policy would be adversely affected by this Resolution. This resolution strives to give divorcing individuals the same treatment afforded to others and is in harmony with other ABA policy designed to ensure equal protection.

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?** Not Applicable.

6. **Status of Legislation.** The Tax Act of 2017 was signed into law on December 22, 2017.

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.** Submission to the Congress.

8. **Cost to the Association.** (Both direct and indirect costs). None.

9. **Disclosure of Interest.** (If applicable). Not Applicable.

10. **Referrals.**

    Section of Taxation  
    Real Property, Trust and Estate Law Section  
    Business Law Section  
    Litigation Section  
    Dispute Resolution Section  
    Solo, Small Firm and General Practice Division  
    Young Lawyers Division  
    Senior Lawyers Division
11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address).

Anita M. Ventrelli, Esq.
Schiller, DuCanto & Fleck LLP
200 N. LaSalle Street, 30th Floor
Chicago, IL  60601-1019
312-609-5509
AVentrelli@sdflaw.com

Scott Friedman, Esq.
Friedman & Mirman Co., L.P.A.
1320 Dublin Rd.
Columbus, OH 43215
614-221-0090
SFriedman@friedmanmirman.com

Mary T. Vidas, Esq.
Blank Rome LLP
130 N. 18th Street
Philadelphia, PA  19103-6998
215-569-5639
vidas@blankrome.com

Michelle Piscopo, Esq.
Blank Rome LLP
130 N. 18th Street
Philadelphia, PA  19103-6998
215-569-5392
piscopo@blankrome.com

12. **Contact Name and Address Information.** (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Anita M. Ventrelli, Esq.
Schiller, DuCanto & Fleck LLP
200 N. LaSalle Street, 30th Floor
Chicago, IL  60601-1019
312-282-5509
AVentrelli@sdflaw.com
Scott Friedman, Esq.
Friedman & Mirman Co., L.P.A.
1320 Dublin Rd.
Columbus, OH 43215
614-935-5877
SFriedman@friedmanmirman.com

Mary T. Vidas, Esq.
Blank Rome LLP
130 N. 18th Street
Philadelphia, PA 19103-6998
267-357-6610
vidas@blankrome.com

Michelle Piscopo, Esq.
Blank Rome LLP
130 N. 18th Street
Philadelphia, PA 19103-6998
215-569-5392
piscopo@blankrome.com
EXECUTIVE SUMMARY

1. Summary of the Resolution
   The Resolution urges Congress to remove the elimination of the tax deduction for alimony payments in the proposed Tax Cuts and Jobs Act of 2017 (H.R. 1).

2. Summary of the Issue that the Resolution Addresses
   On November 2, 2017, the US House Ways and Means Committee released the Tax Cuts and Jobs Act, which is the House’s proposal to overhaul the federal tax code. Among the many tax deductions that the House proposes to eliminate from the federal tax code is the deduction for alimony payments. Alimony is often relied upon to provide ongoing financial support to the lower income spouse following a divorce. The alimony deduction enables divorced families to be able to support two households on the same income that married couples use to support one household by shifting the income to the spouse in a lower tax bracket. Without the alimony deduction, there will be a larger portion of the income going to the government and a smaller portion of the income to be allocated between two households. There is significant concern about the family law bar that the elimination of the alimony deduction from the new tax code will have a chilling effect on divorce settlements; will result in lower alimony awards; and will have a negative effect on divorced families. The 2017 Tax Act also eliminated section 682 of the tax code that allowed a donee spouse to report the income received from an alimony trust rather than the donor spouse.

3. Please Explain How the Proposed Policy Position will address the issue
   This Resolution recommends that Congress not eliminate the alimony deduction as part of the Tax Cuts and Jobs Act as it may have a negative effect on divorce settlements. It further recommends that Congress not eliminate Section 682 of the Internal Revenue Code with respect to the taxability of alimony trusts.

4. Summary of Minority Views
   None.
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RESOLVED, That the American Bar Association urges providers of domestic and international dispute resolution to expand their rosters with minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities ("diverse neutrals") and to encourage the selection of diverse neutrals; and

FURTHER RESOLVED, That the American Bar Association urges all users of domestic and international legal and neutral services to select and use diverse neutrals.
The American Bar Association has set forth four Goals of equal weight and importance to supporting the ABA Mission. Goal III, adopted in 2008, is to “eliminate bias and enhance diversity,”1 and is derived from and expanded on former Goal IX, which, as amended, was “to promote the full and equal participation in the profession by minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities.” Goal III (and former Goal IX) recognizes that clients and the public are better served when organizations are diverse and inclusive at every level.2 Goal III also recognizes the well-established business case for diversity and inclusion, and demonstrates that clients, the legal profession and society are best served when lawyers reflect the broader community in which they serve.3

It is well established that, despite significant efforts, the legal profession as a whole lags behind other professions regarding diversity and inclusion. As of 2012, African Americans and Hispanics comprised 16.5% of accountants and auditors, 18.9% of financial managers, 12.3% of physicians and surgeons, but only 8.4% of attorneys.4 Women, members of racial and ethnic groups, members of LGBTQ groups, and attorneys with

1 Goal III: Eliminate Bias and Enhance Diversity. Objectives:
   1. Promote full and equal participation in the association, our profession, and the justice system by all persons.

2 Of course, definitions of diversity differ around the world and include categories such as religious diversity, age diversity, regional diversity, cultural diversity, and geographic diversity, as well as categories of underrepresented groups on a country-by-country basis. See White & Case, 2018 International Arbitration Survey at 16-18. Without prejudice to any potentially positive impact on diversity and inclusion, this resolution seeks only to address diversity as set forth in Goal III, as amplified by former Goal IX.


4 Raising the Bar: An analysis of African American and Hispanic/Latino diversity in the legal profession, Microsoft Study, (2013). For an event broader view of diversity in many professions, see Demographic Summary, Elizabeth Chamblis, ILLP Review (2014) at 13 (“Aggregate minority representation [defined as African American, Asian American, Hispanic and Native American] among lawyers is significantly lower than minority representation in most other management and professional jobs. Based on Department of Labor statistics, minority representation among lawyers was 14.4% in 2013, compared to 27.8% among accountants and auditors, 38.2% among software developers, 24.3% among architects and engineers, 31.8% among physicians and surgeons, and 25.8% within the professional labor force as a whole.”) See also The Diversity Crisis: What is Wrong with This Picture?, American Lawyer, May 29, 2014.
disabilities continue to be underrepresented in the legal profession. Data as a whole show some progress over time—as of December 2016, minorities represented 16% of law firm associates, partners and counsel and 35% of all law firm attorneys were female. However, data at more senior levels of the profession and for certain diverse groups present a bleaker picture. In the words of the 2017 Vault/MCCA Law Firm Diversity Report, even as firms have become more diverse and minority representation is at an all-time high, “the demographic shifts are both incremental and uneven” and “composition of the partnership ranks highlights the slow rate of change”:

Even though one in four law firm associates is a person of color, more than 90 percent of equity partners are white. Among women, the figures are especially stark: women of color represent 13 percent of associates but less than 3 percent of equity partners.”

In support of implementing Goal III to eliminate bias and enhance diversity, in August 2016 the House of Delegates of the American Bar Association adopted Resolution 113 urging that “all providers of legal services, including law firms and corporations expand and create opportunities at all levels of responsibility for diverse attorneys,” and further urging “clients to assist in the facilitation of opportunities for diverse attorneys, and to direct a greater percentage of the legal services they purchase, both currently and in the future, to diverse attorneys.”

Summary

This Resolution addresses elimination of bias and enhancing diversity in Dispute Resolution—a segment of “legal” services that has been described as “arguably the least diverse corner of the profession.” As set forth below, the available data show that diversity within Dispute Resolution significantly lags the legal profession as a whole. Despite significant efforts on the part of institutional providers of dispute resolution services to increase the diversity of their rosters, see n. 11 infra, diverse neutrals remain underrepresented (the “roster issue”). The roster issue is compounded by the fact that qualified diverse neutrals are less likely to be selected due to the network-based and confidential nature of the profession, which in combination, results in selection of neutrals taking place in relative obscurity, enabling implicit bias to play a greater role in selection (the “selection problem”). This lack of transparency also undermines potential efforts to address the selection problem. By leaving recommendations and referrals largely in the hands of outside counsel and established neutrals, it reduces the role that clients can play in addressing the problem by including Dispute Resolution in their larger efforts to improve diversity in the legal profession. In addition, the lack of transparency reduces

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6 Id. See Debra Cassens Weiss, Law lags other professions in minority hiring; which group is most dramatically underrepresented?, ABA Journal, December 11, 2013.
7 See Daniella Isaacson, Diversity in Big Law Means More Than Gender, Law.com, June 17, 2017 (“It is no secret that Big Law remains painfully stagnant.”)
8 Unlike other “legal” services, dispute resolution services are provided by both lawyers and non-lawyers.
9 Ben Hancock, ADR Business Wakes Up to Glaring Deficit in Diversity, Law 360 (2016) at 4.
public awareness of lack of diversity in Dispute Resolution, and thus also reduces the incentive of stakeholders such as outside counsel, institutional service providers and established neutrals to take proactive steps without client pressure. By raising awareness of the lack of diversity in Dispute Resolution, the proposed resolution will encourage all stakeholders to take action.

I. Data demonstrate that diversity within Dispute Resolution is significantly below that of the legal profession as a whole.

It is to be expected that diversity and inclusion issues faced by the legal profession as a whole would be largely reflected in subsets of the profession. Unfortunately, for the Dispute Resolution community of diverse mediators, arbitrators, and other dispute resolution practitioners (collectively, “diverse neutrals”), “ADR has been a stubborn enclave of homogeneity”\(^\text{10}\) and simply achieving the “incremental and uneven” advances achieved by the legal profession as a whole would be a great leap forward.\(^\text{11}\) Despite significant efforts by organizations and individuals within the Dispute Resolution community to address the lack of diversity,\(^\text{12}\) the Dispute Resolution profession lags significantly behind the legal profession as a whole.

A. Representation of diverse groups on the rosters of dispute resolution providers is significantly lower than representation of diverse groups in the legal profession as a whole.

Due to the confidentiality and privacy issues that are integral to most dispute resolution processes, data on the diversity of neutrals within Dispute Resolution are scarce. In fact, yearly statistics of the type collected for the legal profession as a whole are almost non-

\(^\text{10}\) Id.
\(^\text{12}\) For over a decade, certain Dispute Resolution institutions and diverse neutrals, cognizant of the diversity issues, have worked to improve diversity in the profession. For example, in 2006, the International Institute of Conflict Prevention and Resolution (the “CPR Institute”) convened the National Task Force on Diversity in ADR and, in 2007, the Diversity Task Force, created an ADR Diversity Survey to assist corporations in holding their law firms accountable for improving diversity in Dispute Resolution. In 2013, CPR created a “Diversity Matters Pledge,” allowing companies and individuals to recognize the value of diversity and inclusion not only in their workforce, but also providers of services including arbitration and mediation. The American Arbitration Association established its Leon Higginbotham Fellowship in the early 2000’s to train and promote diverse neutrals, and requires its case managers to create neutral candidate lists for parties that are at least 20% diverse. See also nn. 14, 22 and 32, infra.
The data that can be found consistently reveal that representation of women and members of racial and ethnic groups on rosters of neutrals is below that of the legal profession as a whole.

As of 2015, FINRA became the only dispute resolution service provider that gathers and publishes comprehensive demographic data regarding its roster on a year-over-year basis. FINRA has made a strong commitment to enhancing diversity on its roster. However, FINRA itself describes this process as “incremental,” in part because in 2015, its roster as a whole, based on responses by FINRA neutrals to an outside survey, was 75% male and 86% Caucasian. Less comprehensive data from other dispute resolution service providers show lower levels of diversity. JAMS, a nationwide provider of dispute resolution services, reports on its website that 22% of the neutrals on its roster are women and 9% are persons of color. The American Arbitration Association, another major ADR provider, reported that women and minorities comprised 25% of its roster in 2017. In a 2012 survey, the National Arbitration and Mediation (NAM), another nationwide ADR provider, found that its roster was 16% female and 14% nonwhite. In 2016, the New York-based CPR Institute reported that its roster of more than 550 neutrals worldwide was approximately 15% female and 14% nonwhite.

Viewed in the context of the Vault/MCCA Law Firm Diversity Survey, the roster data available from FINRA, JAMS, AAA, NAM and CPR indicate that gender and racial/ethnic diversity of institutional providers of dispute resolution services is likely to be less than one-half that of law firms.

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13 See, e.g., Andrea Schneider, The Business of ADR—And Lack of Diversity, indisputably.org, October 5, 2016 (“Statistics are hard to come by and most ADR organizations are reluctant to provide data on their panels.)

14 As a result of FINRA’s efforts to increase the diversity of its roster, the FINRA survey results show that of the new arbitrators who joined the roster in 2016, 26% were members of racial and ethnic minorities (29% in 2015) and 33% were women (26% in 2015). Our Commitment to Achieving Arbitrator and Mediator Diversity at FINRA https://www.finra.org/arbitration-and-mediation/diversity-and-finra-arbitrator-recruitment.

15 Id.

16 https://www.jamsadr.com/diversity/.

17 AAA 2017 B2B Dispute Resolution Infographic.

18 Hancock at 12.

19 Id.

20 Vault/MCCA Survey data indicate that 2.5% of law firm attorneys are openly gay, lesbian, bisexual or transgender. Roster data for members of LGBTQ groups within Dispute Resolution is unavailable. According to the Vault/MCCA Survey, reliable data for attorneys with disabilities in the legal profession as a whole is unavailable and that is also the case for Dispute Resolution. See Benjamin G. Davis, Diversity in International Arbitration, Dispute Resolution Magazine (Winter 2014) (“there are an infinitesimal number of American lawyers with disabilities or American LGBTQ lawyers in international arbitration”). https://www.mcca.com/wp-content/uploads/2017/12/2017-Vault-MCCA-Law-Firm-Diversity-Survey-Report.pdf.

21 It has been suggested that Dispute Resolution suffers from a “chronological lag” and “reflects a legal industry not as it looks today, but as it appeared a decade or more ago.” See Hancock at 6. However, law school and law firm diversity data show greater diversity than that seen in Dispute Resolution for decades. Data from the ABA Commission on Women in the Profession shows, for example, that women have comprised close to 50% of JDs awarded for well over a decade.
B. Qualified diverse neutrals are less likely to be selected.

The challenges faced by diverse neutrals go beyond significant underrepresentation on rosters. Available data demonstrate that, even when they succeed in being added to rosters, qualified women and members of racial and ethnic groups are selected to serve as neutrals at levels below their representation in the profession. For example, in its 2015 Key Statistics, the AAA reported that 26% of arbitration cases had a diverse arbitrator.\(^{22}\) Low as that number is, if you look behind the aggregate numbers to the distribution of cases for which diverse neutrals are selected, the problem is actually worse:

[A]vailable statistics mask the true extent of the problem. Even if providers have a diverse roster of people to choose from, what matters is who ultimately wins the work from attorneys and clients. Many sources agreed that, within the realm of business disputes, there is a small pool of ‘repeat players’ who are predominantly white and male.\(^{23}\)

In July 2017, a report by the Commercial & Federal Litigation Section of the New York State Bar Association noted, in particular, the low rate of selection of female neutrals for high-value cases:

It should come as no surprise that much has been written about the lack of diversity among ADR neutrals, especially for high-value cases. As a 2017 article examining gender differences in dispute resolution practice put it, ‘the more high-stakes the case, the lower the odds that a woman would be involved.’ [Citation omitted.] Data from a 2014 ABA Dispute Resolution Section survey indicated that for cases with between one and ten million dollars at issue, 82% of neutrals and 89% of arbitrators were men. [Citation omitted.] Another survey estimated that women


\(^{22}\) Berwin Leighton Paisner, *Diversity in International Arbitration: Are We Getting There?* (Feb. 2017). Data from the international arbitration arena supports this conclusion as well. International Chamber of Commerce (“ICC”) statistics for 2015 indicate that women represented 10% of all appointments and confirmations. ICC data on arbitral appointments for 2016 shows that, as of November 2016, only 20% of arbitrators appointed were women. London Court of International Arbitration (“LCIA”) statistics show that, in 2015, the number of female candidates selected by the LCIA was 28.2% (compared to 19.8% in 2014). Statistics from the Chartered Institute of Arbitrators indicate that, of the 222 arbitrators qualified to be on the panel from which presidential appointments are made, only 16 (7%) are women. As the overwhelming number of men appointed are Caucasian, there are few statistics on minority ethnic and racial representation on international tribunals. http://www.blplaw.com/media/download/FINAL-Arbitration_Survey_Report.pdf. In recognition of the under-representation of women on international arbitral tribunals, members of the international arbitration community drew up an “Equal representation in Arbitration” pledge (“the Pledge”) to take action. The Pledge seeks to increase, on an equal opportunity basis, the number of women appointed as arbitrators in order to achieve a fair representation as soon practically possible, with the ultimate goal of full parity. This Pledge has been signed by the Section on Dispute Resolution, as well as the Section of International Law and the Section of Litigation. http://www.arbitrationpledge.com/about-the-pledge.

\(^{23}\) Hancock at 8.
arbitrators were involved in just 4% of cases involving one billion dollars or more.”
[Citation omitted.]24

The 2014 survey by the ABA’s Section on Dispute Resolution is particularly revealing. Data from that survey show an inverse relationship between the amount of money in dispute and the proportion of women selected as a neutral.25 The survey also shows that selection rates for male neutrals are exceptionally high (and, conversely, low for female neutrals) for corporate and commercial matters (82% male) and class actions (79% male).26 In contrast, only 42% of neutrals involved in cases that were primarily nonmonetary were male.27

This selection problem has at least two major ripple effects. First, it exacerbates the roster issue because it is difficult to increase the diversity of rosters when potential recruits are aware that they are less likely to be selected, particularly for the higher paying cases. It simply may not be economically rational to invest in the requisite training and developing the experience to become a neutral in the face of reduced opportunity to build an economically viable practice. Second, low levels of diversity in neutral selection “show the profession falling significantly short of federal courts,”28 which can call into question the legitimacy of the private justice process:

Neutrals in both arbitration and mediation serve a role that is often a substitute for (and sometimes annexed to) the judicial process. Therefore, it becomes an issue of fairness that the decision-makers or facilitators should be representative of the individuals, institutions and communities that come before them. 29

25 See Gina Viola Brown and Andrea Kupfer Schneider, Gender Differences in Dispute Resolution Practice, Report on the ABA Section of Dispute Resolution Practice Survey, (January 31, 2014), at Chart 17.
26 Hancock at 5 (“Diversity is especially paltry in high-stakes disputes where neutrals can command rates topping $25,000 a day.”)
27 Brown and Schneider at 14-16.
28 Hancock at 7; See also Laura Kaster, Why and How Corporations Must Act Now to Improve ADR Diversity, Corporate Disputes (January-March 2015) (“[S]tate and federal courts, which are still struggling to improve, have close to 30 percent women (although fewer minority) judges.”)
29 David H. Burt and Laura A. Kaster, Why Bringing Diversity to ADR Is a Necessity, ACC Docket (October 2013) at 41. See also ADR Conversations – Increased Diversity in ADR Essential to Keep Up With Evolving Global Marketplace, JAMS Dispute Resolution Alert Winter 2012, at 4 (“When a dispute is resolved in the court system, the jury and the judge available to resolve the dispute are diverse. The private justice system that provides mediation and arbitration services must be just as, if not more, diverse if it is to maintain credibility.”); see also Volpe at 122 (“Studies show that individuals involved in dispute resolution processes feel more comfortable when they share some aspect of their identity with those guiding the process.”) See also What Works in District Court Day of Trial Mediation: Effectiveness of Various Mediation Strategies on Short- and Long- Term Outcomes, Maryland Judiciary Administrative Office of the Courts, Court Operations. (2016). What Works in District Court Day of Trial Mediation: Effectiveness of Various Mediation Strategies on Short- and Long-Term Outcomes. Annapolis, MD: Author (“Having at least one ADR practitioner in the session who matches the race of the responding participant was positively associated with participants reporting that they listened and understood each other in the ADR session and jointly controlled the outcome and an increase in a sense of self-efficacy (ability to talk and make a difference) and an increase in the sense that the court cares from before to
For these reasons, the individual and societal impacts of the low level of diversity in Dispute Resolution cannot be remedied by addressing the roster issue alone. Simply put, despite the underrepresentation of diverse neutrals on provider rosters, qualified diverse neutrals are practicing today and can be easily identified. To improve diversity in Dispute Resolution, it is essential to create an environment in which we can address the drivers behind the low levels of selection of diverse neutrals.

II. A network-based culture, reinforced by implicit bias and cloaked in confidentiality, reduces selection of diverse neutrals.

Commentators have identified two issues in particular that appear to be primary drivers of low levels of selection of diverse neutrals for cases. First, the practical reality is that Dispute Resolution is largely a network-based profession in that: (1) many neutrals are chosen or at least vetted through the networks of equity law firm partners, and (2) established neutrals are often asked to make referrals to other neutrals. In both cases, the networks are largely white and male, and the recommendations and referrals subject to implicit bias. Second, the confidentiality and privacy that are integral elements of most dispute resolution processes reduce public awareness of the scope of the problem, most notably awareness on the part of the stakeholders in the best position to bring about change—clients.

after the ADR session. Here it is important to note that participants were never asked about their opinion on the role of race or the ADR practitioner's race. Participants were asked their race, ADR practitioners were asked their race, and based on these answers, a variable was created identifying if there was a match. This was included in the analysis and was found to be significant in these two areas, even after holding constant for other factors in the case, including ADR practitioner strategies.


31 The Women in Dispute Resolution Committee of the ABA Dispute Resolution Section has published a directory of its members for the past several years. See WIDR Member Directory of ADR Practitioners. https://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/widr_directory2017.authcheckdam.pdf. Similarly, the Diversity Committee publishes the Minorities in Dispute Resolution Directory. https://www.americanbar.org/content/dam/aba/uncategorized/dispute_resolution/MIDR-Directory.authcheckdam.pdf. The College of Commercial Arbitrators, one of the premier arbitration organizations in the US, which selects Fellows through a thorough application process, has invited a significant number of female Fellows into its rank. A list of all Fellows can be found on its website.

32 Theodore K. Cheng, The Case for Bringing Diversity to the Selection of ADR Neutrals, NYSBA New York Dispute Resolution Lawyer (Summer 2016) at 19 (In the case of private ADR providers, we are facing “a double-screen problem: a neutral must generally first be appointed to a roster or list, and then either outside counsel or in-house counsel must select the neutral from that list.”)
A. The network-based culture broadens the impact of implicit bias.

Neutral appointment and selection processes vary by dispute resolution providers, and are often customized by the parties. Regardless of the formal process applicable to a dispute, however, neutrals are predominantly hired based on the consent of the parties. Thus, they are often informally vetted and selected through a classic informal “old boy network” through which colleagues consult one another for recommendations:

Companies largely continue to outsource both the drafting of dispute resolution clauses and the actual neutral selection to outside counsel, abdicating these fundamental strategic decisions to others. Far too much reliance is placed on established networks, word-of-mouth, and the recommendations of the same ‘usual suspects,’ leading to a reluctance to try out someone new and an attendant loss of opportunity to broaden the company’s roster of preferred neutrals.33

It is natural and indeed common for people to recommend and select those with whom they are most familiar. However, it has been suggested that “[t]his dynamic, flows at least partly from a sense among attorneys that retired judges and veteran litigators, a largely older, white and male cohort, are the most palatable figures to clients when pursuing a dispute outside of the courtroom.”34 Unfortunately, this tendency is reinforced by implicit biases to which we are all subject and that often lead even well-meaning individuals to pass over those who are “different.”35 The network-based culture and implicit bias, operating in tandem, are key drivers of the low levels of diverse neutrals actually selected for better-paying commercial matters—levels that are much lower than diversity in Dispute Resolution, as well as diversity in the legal profession as a whole.36

33 Cheng at 19. See Gender Diversity in Arbitrator Selection, Deborah Rothman, Dispute Resolution Magazine, (Spring 2012) at 24 ("Even when women manage to get recruited to the arbitration panels of major ADR providers, they are not as likely to be selected as their male counterparts. When they receive a strike list of ten potential arbitrators, the law firm drill is to circulate an internal memo to get feedback on the names on the list.") See also 2018 International Arbitration Survey at 20 (survey responses show “how important it is for parties and their in-house or external counsel to be part of a sophisticated network of peers so that all relevant information is potentially just a few phone calls away.”

34 See Implicit Bias and the Legal Profession’s ‘Diversity Crisis’: A Call for Self Reflection, Nicole Negowetti, Nevada Law Journal, 432, at 436-442 and 447-451, 2015. See also Debra Cassens Weiss, Partners in study gave legal memo a lower rating when told the author wasn’t white, ABA Journal (April 21, 2014) (Leadership consulting firm Nextion conducted an experiment to demonstrate implicit bias in evaluation of legal work by recruiting partners from a large number of firms to review a legal memo in a “writing analysis survey.” All of the partners were given the same memo, in which Nextion inserted errors. Half of the reviewers were told that the memo was written by a white man named Thomas Meyer and half were told that it was written by a black man named Thomas Meyer. The reviewers gave the memo supposedly written by the white Thomas Meyer an average rating of 4.1 out of 5, and generally praised his work. Reviewers gave the memo written by the black Thomas Myer an average rating of 3.2 out of 5, and criticized the memo as average at best and needing a lot of work.)

35 Hancock at 10.

36 While implicit bias is an issue for all diverse groups, it has been suggested that the risk of implicit bias increases at lower levels of representation. See Isaacson at 1 ("Take minorities, for instance. As seen in the graph below, the threat of implicit bias for minority groups is even higher than it is for women, due to their lack of representation.")
B. Confidentiality and lack of transparency inhibit effective solutions to the lack of diversity in Dispute Resolution.

The effects of a network-based culture and implicit bias are compounded by the confidentiality and privacy that are important elements of mediation, arbitration and other dispute resolution processes. Confidentiality (often cited as the reason for the lack of data) inherently reduces public awareness of the low level of diversity and inclusion in Dispute Resolution, and thus, public pressure for change. But the problem extends beyond lack of public awareness. The tendency of companies to outsource neutral selection to outside counsel creates a functional lack of transparency to clients regarding diversity issues in Dispute Resolution. That lack of transparency, in turn, undermines the ability of clients to act as agents of change. Consequently, clients often fail to focus on enhancing opportunities for diverse neutrals as part of their broader and influential efforts to enhance diversity in the legal profession. This is particularly harmful because inside counsel have a special ability to require greater diversity—for example, through the use of tools such as Outside Counsel Guidelines.\textsuperscript{37} Greater client focus and willingness to require change are essential to driving the changes necessary to improving diversity in Dispute Resolution:

Achieving real progress will not only require continued attention from providers in terms of recruiting and supporting women and minority mediators and arbitrators, but also clients who are willing to ask questions that perhaps they haven’t in the past. This includes questions from corporate counsel to their law firms and from outside counsel to ADR providers. It will take willingness for clients to go beyond using the same people from the same short list. It will take ensuring that there is a sufficient pipeline of women and minorities that know what it takes to prepare for a career as a successful mediator or arbitrator.\textsuperscript{38}

\textsuperscript{37} \textit{ADR Conversations – Increased Diversity in ADR Essential to Keep Up With Evolving Global Marketplace}, JAMS Dispute Resolution Alert (Winter 2012), at 4 (“As legal departments enter into professional relationships with law firms and other legal vendors, they include diversity as a criterion for engagement, and the policy should be extended to requiring consideration and selection of mediators and arbitrators with diverse backgrounds”); see also Mark Smalls, \textit{A Fresh Look at Diversity in ADR}, Law360 (December 13, 2012) (“One need only look at the pressure that various corporate clients put on their outside counsel in recent years regarding hiring, promotion and case assignments to see how paying attention to diversity can lead to securing (or losing) business.”)

\textsuperscript{38} Smalls at 2.
Conclusion

To enhance diversity and inclusion in Dispute Resolution, it is essential to shine a spotlight on the low level of diverse representation on neutral rosters and the special challenges created by the combination of the network-based culture within the profession, implicit bias, and the confidentiality that tends to obscure the degree to which Dispute Resolution lags behind the legal profession as a whole. By explicitly linking ABA Goal III to Dispute Resolution, this Resolution provides precisely the spotlight needed to encourage active engagement on the part of all stakeholders with the ability to move the needle to increase representation of diverse neutrals on rosters, and to enhance their likelihood of success in the selection process.

Respectfully Submitted,

[Signature]

Section Chair, Ben Davis
Dispute Resolution Section
August, 2018
GENERAL INFORMATION FORM

Submitting Entity: Section of Dispute Resolution
Submitted By: Benjamin G. Davis, Chair of the Section of Dispute Resolution

1. Summary of Resolution: The resolution urges (a) providers of domestic and international dispute resolution to expand their rosters with diverse and to encourage the selection of diverse neutrals; and (b) users of domestic and international legal and neutral services to select and use diverse neutrals.

2. Approval by Submitting Entity: This Resolution and Report was formally approved by a vote of the Section of Dispute Resolution Council during its meeting in Washington, D. C. on February 9, 2018.

3. Has this or a similar resolution been submitted to the House or the Board Previously? This specific resolution has not been previously submitted. In 2016, however, the HOD adopted a resolution for the ABA to urge (a) all providers of legal services, including corporations and law firms, to expand and create opportunities at all levels of responsibilities for diverse attorneys; and (b) clients to assist in the facilitation of opportunities for diverse attorneys, and to direct a greater percentage of the legal services they purchase, both currently and in the future, to diverse attorneys. In addition, in 1986, the HOD adopted a resolution for the ABA to “take concrete actions with regard to the hiring, recruitment, promotion and advancement of minority lawyers.” The instant resolution is the logical progression of the 1986 and 2016 resolutions passed by the HOD and is necessary to further advance diversity and inclusion in Dispute Resolution.

4. What Existing Association policies are relevant to this Resolution and how would they be affected by its adoption? The relevant policies are referenced in the Background section of this Report: specifically, Goal II, “improving our profession,” and Goal III, “eliminate bias and enhance diversity.” Adopted in 2008, Goal III objectives are to: “1. Promote full and equal participation in the association, our profession and the justice system by all persons. 2. Eliminate bias in the legal profession and the justice system.” The Section of Dispute Resolution’s proposed policy resolution supports ABA Goals II and III.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A

6. Status of Legislation. (If applicable) N/A
7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Dispute Resolution Section is developing tools for systematic collection of data addressing the issues set forth in the Report in order to provide a foundation to identify, develop, and implement more effective approaches to enhancing diversity. In addition, the Section intends to seek opportunities to collaborate with both the Commission on the Status of Women in the Profession and the Commission on Racial and Ethnic Diversity to better assure that diversity in Dispute resolution is an integral element of efforts to enhance diversity in the legal profession as a whole.

8. Cost to Association. (Both direct and indirect costs)

None.

9. Disclosure of Interest. (If applicable) N/A

10. Referrals.
All SDFs and All Commissions
National Bar Association
Hispanic National Bar Association
National Asian Pacific Bar Association
National Native American Bar Association

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Benjamin G. Davis
Chair, ABA Section of Dispute Resolution
University of Toledo College of Law
2801 W. Bancroft Street
Toledo, Ohio 43606
Tel.: 419-530-5117
Ben.Davis@UToledo.Edu

Linda Warren Seely, Esq.
Director, Section of Dispute Resolution
American Bar Association
1050 Connecticut Ave., N.W., Suite 400
Washington, D.C. 20036
Direct Office Number: 202-662-1685
Mobile Number: 731-217-8013
Linda.Seely@americanbar.org
12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Benjamin G. Davis  
Chair, ABA Section of Dispute Resolution  
University of Toledo College of Law  
2801 W. Bancroft Street  
Toledo, Ohio 43606  
Tel.: 419-530-5117  
Ben.Davis@UToldeo.Edu

Pamela Enslen  
Warner Norcross & Judd LLP  
401 E. Michigan Ave., Ste. 200  
Kalamazoo, MI 49007-5842  
Tel: 269-276-8112  
Penslen@wnj.com

James Alfini  
South Texas College of Law Houston  
Rm 636T  
1303 San Jacinto St.  
Houston, TX  77002-7000  
Tel: 713-927-0584  
jalfini@hcl.edu
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution focuses on expanding representation of diverse neutrals on the rosters of providers of domestic and international dispute resolution and encourages users of domestic and international dispute resolution legal and neutral services to promote and support the selection thereof. The Resolution is a continuation of the policies adopted previously by the American Bar Association addressing the need for diversity in the selection and use of diverse individuals in the provision of professional dispute neutral services in Resolution 113 and in furtherance of Goal III.

2. Summary of the Issue that the Resolution Addresses

This Resolution encourages and supports the selection of diverse dispute neutrals.

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

This proposed policy position addresses the issue through the encouragement and support of hiring diverse dispute neutrals by lawyers, law firms, and dispute resolution service providers.

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

The Section of Dispute Resolution is unaware of any minority views or opposition, either internal or external, to this proposed policy.
No resolution presented herein represents the policy of the association until it shall have been approved by the House of Delegates. Informational reports, comments and supporting data are not approved by the House in its voting and represent only the views of the Section or Committee submitting them.

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON SPECIALIZATION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association reaccredit for an additional five-year term the following designated specialty certification programs for lawyers:

1. The Legal Professional Liability program of the American Board of Professional Liability Attorneys, of Atlanta, Georgia; and
2. The Medical Professional Liability program of the American Board of Professional Liability Attorneys, of Atlanta, Georgia.
Background

The Standing Committee on Specialization makes this recommendation within the framework of three previous resolutions passed by the House of Delegates. At the 1993 Midyear Meeting, the House adopted Standards for Accreditation of Specialty Certification Programs For Lawyers and delegated to the Standing Committee on Specialization the task of evaluating programs sponsored by organizations that apply to the ABA for accreditation.

The adoption of the accreditation standards in February 1993 followed an August 1992 House resolution requesting that the Association develop standards for accrediting private organizations that certify lawyers as specialists and that the Association establish and maintain a mechanism to accredit such organizations that meet those standards. The 1992 resolution affirmed that a national accreditation mechanism administered by the Association according to uniform standards would be an efficient and effective means of dealing with a multiplicity of organizations that are offering, or planning to offer, certification programs.

At the 1999 Annual Meeting, the House extended the initial period of accreditation from three to five years. In addition, the House lengthened the period of reaccreditation from every third year to every fifth year.

Standards - Summary of Key Provisions

The Standards for Accreditation of Specialty Certification Programs for Lawyers are organized into eight sections. Sections 1 through 3 deal with purpose, definitions and authority; Section 4 sets out the specific requirements that an organization must meet in order to be accredited; Sections 5 and 6 deal with re-accreditation and revocation of accreditation; Section 7 provides authority to the Standing Committee on Specialization to implement the Standards; and Section 8 deals with amendment procedures.

Sections 1 and 2 – Policy Statement and Definitions:  Section 1 says:

This document establishes standards by which the American Bar Association will accredit specialty certification programs for lawyers in particular fields of law. The Standards require that an accredited organization demonstrate that lawyers certified by it possess an enhanced level of skill and expertise as well as substantial involvement in the specialty area of certification, and that accredited organizations foster professional development. The Standards are designed to enable the Association to evaluate thoroughly the objectives, standards and procedures of Applicants and to facilitate public access to appropriate legal services.

Section 2 defines certain terms used recurringly throughout the Standards.

Section 3 - Authority:  This section declares that the House of Delegates has the sole authority to grant or deny each application for accreditation and reaccreditation.
Section 4 - Accreditation Requirements: The purposes of the certifying organization must include the identification of lawyers possessing an enhanced level of skill and expertise, and the development and improvement of the professional competence of lawyers. Such organization's organizational, financial resources, as well as the experience, background and education of key personnel, must be adequate to carry out its certification program on a continuing basis in a manner consistent with the Standards.

A majority of those persons reviewing applications for certification of lawyers as specialists in a particular area of law must be lawyers who have substantial involvement in the specialty area. An organization's certification requirements must be applied uniformly and without discrimination.

The Standards require that each specialty area in which certification is offered must be described in terms which are understandable to the potential users of such legal services and which will not lead to confusion with other specialty areas. Each specialty certification program sponsored by a certifying organization must be evaluated separately with the Specialization Committee retaining authority to approve, modify or reject any proposed specialty definition.

A lawyer certified as a specialist must show substantial involvement in the specialty area during the three-year period immediately preceding application to the certifying organization, devoting to the specialty no less than 25 percent of the total practice of a lawyer engaged in a normal full-time practice.

The Standards also require a minimum of five favorable references, a written examination, a minimum of 36 hours of continuing legal education in the specialty area in the three-year period preceding the lawyer's application, and that the lawyer be admitted to practice in good standing in one or more jurisdictions.

A certifying organization must establish and maintain an appeal procedure that provides lawyers who are denied certification an opportunity for review of the decision by an impartial decision-maker. The Standards require that certified lawyers apply for recertification within a period no longer than five years and that certifying organizations are required to maintain a procedure for revocation of certification. Certifying organizations must also require lawyers to report their disbarment or suspension from the practice of law in any jurisdiction.

Sections 5 and 6 - Accreditation Period, Reaccreditation and Revocation: The period of accreditation is five years. Prior to the end of the accreditation period, accredited organizations are required to apply for reaccreditation, which may be granted upon a showing of continued compliance with the Standards. Accreditation may be revoked if an applicant organization ceases to exist or ceases to operate its certification program in compliance with the Standards.

Sections 7 and 8 - Authority to Implement and Amendment: The Standards give the Specialization Committee authority to interpret the Standards, adopt rules, procedures and a fee schedule, consider and evaluate applications, make recommendations to the House of Delegates as to the approval of applications, and recommend the revocation of accreditation. The Standards became
Applicant for Reaccreditation

Applicant Organization: American Board of Professional Liability Attorneys

Specialty Areas: Legal Professional Liability
Medical Professional Liability

The American Board of Professional Liability Attorneys (ABPLA) is a non-profit organization located in Atlanta, Georgia and was incorporated in 1977.

The purpose of the American Board of Professional Liability Attorneys is assist consumers and other lawyers in identifying qualified, competent and experienced professional liability specialists and to establish a program of training directed toward these specialties among newly admitted attorneys who evince the initiative, desire and necessary drive to complete a prescribed course of supervised training and postgraduate education in preparation for eligibility for the examination leading to certification by the American Board of Professional Liability Attorneys.

Reaccreditation and Evaluation Procedures

In evaluating the programs recommended for reaccreditation, the Specialization Committee followed the procedures it adopted on March 2, 1993, as amended on April 24, 1993, June 27, 1995, January 5, 1996, July 8, 1999, July 21, 2001, November 1, 2002, and November, 2006. A copy of relevant portions of the "Standards" and "Governing Rules" used by the Specialization Committee in evaluating applications for reaccreditation are attached to this report in the Appendix.

The organization filed an application for reaccreditation with the Specialization Committee in the fall of 2017. The application was accompanied by payment of a reaccreditation fee for the specialty certification program for which the applicant sought reaccreditation.

To insure that each of the programs continues to comply with ABA Standards, the Specialization Committee requires that the following documents accompany applications for reaccreditation:

i. Current versions of the applicant's governing documents, including articles of incorporation, bylaws, and resolutions of the governing bodies of the applicant or any parent organization, which resolutions relate to the standards, procedures, guidelines or practices of the applicant's certification programs;

ii. Biographical summaries of members of the governing board, senior staff and members of advisory panels, certification committees, examination boards and like entities involved with the certification process, including specific information concerning
the degree of involvement in the specialty area of persons who review and pass upon applications for certification;

iii. All materials furnished to lawyers seeking certification, including application forms, booklets or pamphlets describing the certification program, peer reference forms, rules and procedures, evaluation guides and any other information furnished to the public or the media regarding the certification process;

iv. A copy of the last examination given to applicants for specialty certification, along with a description of how the exam was developed, conducted and reviewed; a description of the grading standards; and the names of persons responsible for determining pass/fail standards. The examinations were made available, on a confidential basis, for review by a person appointed by the Specialization Committee an Examination Reviewer.

The Accreditation Review Panels, recruited from and appointed by the Specialization Committee, consisted of a chair and two other members, as well as the appointed Examination Reviewer. Applicants were provided notice, in writing, of the names and affiliations of the members of the Accreditation Review Panel and the examination reviewer. The reaccreditation procedures provide certifying organizations the opportunity to object for cause to the appointment of examination reviewer. The names and brief biographies of Accreditation Review Panel members and their designated Examination Reviewers are listed below:

Accreditation Review Panelists

Barbara Howard, Chair - Medical Professional Liability Program – (Cincinnati OH) Ms. Howard is the current appointed Chair of the ABA Standing Committee on Specialization, and served as the Chair of the Reaccreditation Review panel for the Medical Professional Liability program. Ms. Howard is the founder and owner of the law firm Barbara J. Howard Co., L.P.A. She is certified by the Ohio State Bar Association as a Family Relations Law Specialist.

Shontrai Irving, Chair – Legal Professional Liability Program – (Gary IN) Mr. Irving is the immediate past appointed Chair of the ABA Standing Committee on Specialization, and remains a current member of the Specialization Committee. He served as the Chair of the Reaccreditation Review panel for the Legal Professional Liability program. Mr. Irving is professor of business law in the undergraduate business program at Purdue University Northwest in Gary, Indiana.

James Wren, Member, Medical Professional Liability Program (Waco TX) Mr. Wren is currently a member of the Standing Committee on Specialization. He is Professor of Law at the Baylor University School of Law in Waco, Texas. He is certified in Civil Trial Advocacy by the National Board of Trial Advocacy and in Civil Trial Law and Personal Injury Trial Law by the Texas Board of Legal Specialization. He served on the Medical Professional Liability reaccreditation application review panel.
Steven Lesser, Member, Legal Professional Liability Program (Fort Lauderdale FL) Mr. Lesser is a member of the Standing Committee on Specialization. He is a partner in the firm of Becker & Poliakoff in Fort Lauderdale, Florida, and is certified in Construction Law by the Florida State Bar. He served on the Legal Professional Liability reaccreditation application review panel.

Meg Hyatt – Member, both Legal Professional Liability and Medical Professional Liability Program (Tucson AZ) is the Executive Director of the National Elder Law Foundation, an organization that sponsors and administers the Elder Law specialist certification program, an ABA-accredited program. Ms. Hyatt served on both the Medical Professional Liability and Legal Professional Liability reaccreditation application review panels.

**Examination Reviewers**

Eugene Schiltz (Chicago IL) Mr. Schiltz is a founding partner at Crotty & Schiltz L.L.C. in Chicago. He has been practicing as a litigator in courts throughout the country for over thirty years. His practice concentrates on complex business litigation, with an emphasis on legal and accountant malpractice, commercial fraud, breach of fiduciary duty, breach of contract, and related commercial torts. Mr. Schiltz argued and prevailed before the Illinois Appellate Court in the leading Illinois case on accountant privity issues, *Chestnut Corporation v. Prestine, Brinati, Gamer, et al.* Mr. Schiltz has also worked on several other major class action, consumer fraud and accountant and legal malpractice lawsuits, including the Kansas Public Employee Retirement System litigation and the Reliance Acceptance Group litigation. With respect to the prosecution of the claims in the KPERS litigation, Mr. Schiltz acted as a chief of staff and was integrally involved in all aspects of the case, including developing litigation strategies and case theories.

Mr. Schiltz served as the examination reviewer for the Legal Professional Liability certification program.

Colin O’Neil (Waco TX) Mr. O’Neil is a partner in the firm of Fulbright Winniford P.C. in Waco, Texas. He has tried over 120 lawsuits during that time, which have ranged from complex medical malpractice suits and personal injury claims to business disputes. His practice areas include civil litigation, defense litigation, personal injury and medical malpractice. He teaches the Health Care Litigation course at Baylor University School of Law.

Mr. O’Neil served as the examination reviewer for the Medical Professional Liability certification program.

In addition to reviewing the applicant’s reaccreditation application materials, members of the Accreditation Review Panel considered the information on the reaccreditation evaluation forms and comments provided by the examination reviewer who evaluated the written examinations on
a confidential basis. Based upon this review, the Accreditation Review Panel concluded that the applicant’s programs continue to comply with the ABA Standards.

The procedures authorize the Specialization Committee, in making a final recommendation regarding reaccreditation of the program, to consider the final reports of the Accreditation Review Panels, the application and supporting documents originally submitted by the certifying organizations and any further materials which the organization submits for consideration.

The Specialization Committee formally considered the final report of the Accreditation Review Panel at its teleconference meeting on May 1, 2018, and determined that the Legal Professional Liability and Medical Professional Liability programs of the American Board of Professional Liability Attorneys’ certification program each continue to comply with the requirements of the ABA Standards for Accreditation of Specialty Certification Programs for Lawyers. The Standing Committee therefore recommends to the House of Delegates that the programs be granted reaccreditation for a five year period.

Respectfully submitted,

Barbara J. Howard, Chair
Standing Committee on Specialization
August 2018
APPENDIX

(Excerpted provisions of the Standards for Accreditation of Specialty Certification Programs For Lawyers and Governing Rules of the ABA Standing Committee on Specialization)

AMERICAN BAR ASSOCIATION ACCREDITATION OF SPECIALTY CERTIFICATION PROGRAMS FOR LAWYERS

STANDARDS

SECTION 1: POLICY STATEMENT

1.01 This document establishes standards by which the American Bar Association will accredit specialty certification programs for lawyers in particular fields of law. The Standards require that an accredited organization demonstrate that lawyers certified by it possess an enhanced level of skill and expertise as well as substantial involvement in the specialty area of certification, and that accredited organizations foster professional development. The Standards are designed to enable the Association to evaluate thoroughly the objectives, standards and procedures of Applicants and to facilitate public access to appropriate legal services.

SECTION 2: DEFINITIONS

2.01 As used in these Standards:

(A) "Applicant" means a certifying organization which applies to the American Bar Association for accreditation or re-accreditation under these Standards.

(B) "Association" means the American Bar Association.

(C) "Certifying Organization" means an organization, bar association, group, or other entity which certifies or intends to certify lawyers as specialists, including the Association or subdivision thereof.

(D) "Standards" means the American Bar Association Standards For Accreditation Of Specialty Certification Programs For Lawyers.

(E) "Standing Committee" means the Standing Committee on Specialization of the Association.

SECTION 3: AUTHORITY

3.01 The authority to grant and withdraw accreditation and to grant re-accreditation is vested in the Association.
3.02 Accreditation under these Standards of any Certifying Organization by the Association is not intended to, and shall not be interpreted to, preempt nor usurp the authority of states to regulate the practice of law, the certification of lawyers as specialists or the approval of organizations which certify lawyers as specialists.

SECTION 4: REQUIREMENTS FOR ACCREDITATION OF CERTIFYING ORGANIZATIONS

In order to obtain accreditation by the Association for a specialty certification program, an Applicant must demonstrate that the program operates in accordance with the following standards:

4.01 Purpose of Organization -- The Applicant shall demonstrate that the organization is dedicated to the identification of lawyers who possess an enhanced level of skill and expertise, and to the development and improvement of the professional competence of lawyers.

4.02 Organizational Capabilities -- The Applicant shall demonstrate that it possesses the organizational and financial resources to carry out its certification program on a continuing basis, and that key personnel have by experience, education and professional background the ability to direct and carry out such programs in a manner consistent with these Standards.

4.03 Decision Makers -- A majority of the body within an Applicant organization reviewing applications for certification of lawyers as specialists in a particular area of law shall consist of lawyers who have substantial involvement in the specialty area.

4.04 Uniform Applicability of Certification Requirements and Nondiscrimination

(A) The Applicant's requirements for certifying lawyers shall not be arbitrary and shall be clearly understood and easily applied. The organization may only certify those lawyers who have demonstrably met each standard. The requirements shall be uniform in all jurisdictions in which the Applicant certifies lawyers, except to the extent state or local law or regulation imposes a higher requirement.

(B) Membership in any organization or completion of educational programs offered by any specific organization shall not be required for certification, except that this paragraph shall not apply to requirements relating to the practice of law which are set out in statutes, rules and regulations promulgated by the government of the United States, by the government of any state or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.

(C) Applicants shall not discriminate against any lawyers seeking certification on the basis of race, religion, gender, sexual orientation, disability, or age. This paragraph does not prohibit an Applicant from imposing reasonable experience requirements on lawyers seeking certification or re-certification.
4.05 **Definition and Number of Specialties** -- An Applicant shall specifically define the specialty area or areas in which it proposes to certify lawyers as specialists.

(A) Each specialty area in which certification is offered must be an area in which significant numbers of lawyers regularly practice. Specialty areas shall be named and described in terms which are understandable to the potential users of such legal services, and in terms which will not lead to confusion with other specialty areas.

(B) An Applicant may seek accreditation to certify lawyers in more than one specialty area, but in such event, the organization shall be evaluated separately with respect to each specialty program.

(C) An Applicant shall propose to the Standing Committee a specific definition of each specialty area in which it seeks accreditation to certify lawyers as specialists. The Standing Committee shall approve, modify or reject any proposed definition and shall promptly notify the Applicant of its actions.

4.06 **Certification Requirements** -- An Applicant shall require for certification of lawyers as specialists, as a minimum, the following:

(A) **Substantial Involvement** -- Substantial involvement in the specialty area throughout the three-year period immediately preceding application to the certifying organization. Substantial involvement is measured by the type and number of cases or matters handled and the amount of time spent practicing in the specialty area, and require that the time spent in practicing the specialty be no less than twenty-five percent (25%) of the total practice of a lawyer engaged in a normal full-time practice.

(B) **Peer Review** -- A minimum of five references, a majority of which are from attorneys or judges who are knowledgeable regarding the practice area and are familiar with the competence of the lawyer, and none of which are from persons related to or engaged in legal practice with the lawyer.

1. **Type of References** -- The certification requirements shall allow lawyers seeking certification to list persons to whom reference forms could be sent, but shall also provide that the Applicant organization send out all reference forms. In addition, the organization may seek and consider reference forms from persons of the organization's own choosing.

2. **Content of Reference Forms** -- The reference forms shall inquire into the respondent's areas of practice, the respondent's familiarity with both the specialty area and with the lawyer seeking certification, and the length of time that the respondent has been practicing law and has known the applicant. The form shall inquire about the qualifications of the lawyer seeking certification in various aspects of the practice and, as appropriate, the lawyer's dealings with judges and opposing counsel.
(C) **Written Examination** -- An evaluation of the lawyer's knowledge of the substantive and procedural law in the specialty area, determined by written examination of suitable length and complexity. The examination shall include professional responsibility and ethics as it relates to the particular specialty.

(D) **Educational Experience** -- A minimum of 36 hours of participation in continuing legal education in the specialty area in the three-year period preceding the lawyer's application for certification. This requirement may be met through any of the following means:

1. Attending programs of continuing legal education or courses offered by Association accredited law schools in the specialty area;

2. Teaching courses or seminars in the specialty area;

3. Participating as panelist, speaker or workshop leader at educational or professional conferences covering the specialty area; or

4. Writing published books or articles concerning the specialty area.

(E) **Good Standing** -- A lawyer seeking certification is admitted to practice and is a member in good standing in one or more states or territories of the United States or the District of Columbia.

4.07 **Impartial Review** -- The Applicant shall maintain a formal policy providing lawyers who are denied certification an opportunity for review by an impartial decision maker.

4.08 **Requirements for Re-Certification** -- The period of certification shall be set by the Applicant, but shall be no longer than five years, after which time lawyers who have been certified must apply for re-certification. Re-certification shall require similar evidence of competence as that required for initial certification in substantial involvement, peer review, educational experience and evidence of good standing.

4.09 **Revocation of Certification** -- The Applicant shall maintain a procedure for revocation of certification. The procedures shall require a certified lawyer to report his or her disbarment or suspension from the practice of law in any jurisdiction to the certifying organization.

SECTION 5: ACCREDITATION PERIOD AND RE-ACCREDITATION

5.01 Initial accreditation by the Association of any Applicant shall be granted for five years.

5.02 To retain Association accreditation, a certifying organization shall be required to apply for re-accreditation prior to the end of the fifth year of its initial accreditation period and every five years thereafter. The organization shall be granted re-accreditation upon a showing of continued compliance with these Standards.
SECTION 6: REVOCATION OF ACCREDITATION

6.01 A certifying organization's accreditation by the Association may be revoked upon a determination that the organization has ceased to exist, or has ceased to operate its certification program in compliance with these Standards.

SECTION 7: AUTHORITY TO IMPLEMENT STANDARDS

7.01 Consistent with these Standards, the Standing Committee shall have the authority to:

(A) Interpret these Standards;

(B) Adopt rules and procedures for implementing these Standards, and amend such rules and procedures as necessary;

(C) Adopt an appropriate fee schedule to administer these Standards;

(D) Consider applications by any certifying organization for accreditation or re-accreditation under these Standards, evaluate those requests in accordance with the Standards and recommend approval by the Association of such requests when it deems the organization has met the requirements as set forth in these Standards; and

(E) Recommend the revocation of accreditation in accordance with the provisions of Section 6.01 of these Standards.

SECTION 8: ADOPTION AND AMENDMENT

8.01 These Standards become effective upon their adoption by the House of Delegates of the Association.

8.02 The power to approve an amendment to these Standards is vested in the House of Delegates; however, the House will not act on any amendment until it has first received and considered the advice and recommendations of the Standing Committee.
1. **Summary of Resolution**

   The recommendation requests that the American Bar Association grant reaccreditation to the Medical Professional Liability and Legal Professional Liability programs of the American Board of Professional Liability Attorneys. These programs have been reviewed under procedures adopted by the Standing Committee on Specialization in accordance with the Standards for such programs adopted and authorized by the House of Delegates in February 1993.

2. **Approval by Submitting Entity**

   At its teleconference meeting on May 1, 2018, the Standing Committee on Specialization voted unanimously that it submit this recommendation to the House of Delegates for consideration at the 2018 Annual Meeting.

3. **Has this or a similar recommendation been submitted to the House of Board previously?**

   Yes. These specialty certification programs were accredited by the House of Delegates at the 1995 Mid-Year Meeting, and reaccredited at the 1998, 2003, 2008, and 2013 Midyear. A resolution extending the period of these programs’ accreditation period for six months was presented and approved at the 2018 Midyear Meeting, lest the 5-year accreditation period lapse pending the Specialization Committee’s review of the application.

4. **What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?**

   The ABA Standards for Accreditation of Specialty Certification Programs for Lawyers. At its August 1992 meeting the House of Delegates passed a resolution calling for the Association to establish standards for accrediting private organizations that certify lawyers as specialists and to establish and maintain a mechanism to accredit such organizations that meet those standards. In February 1993, the House of Delegates adopted the ABA Standards for Accreditation of Specialty Certification Programs for Lawyers, and delegated to the Standing Committee the task of evaluating organizations that apply to the Association for accreditation.

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?**

   This is not a late report.
6. **Status of Legislation**

Not applicable

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates**

Implementation will be self-executing if the program is reaccredited by the House of Delegates.

8. **Cost to the Association**

There are no unreimbursed costs associated with the reaccreditation of specialty certification programs as proposed in the recommendation. The costs associated with the reaccreditation process are defrayed by fees charged to the organizations seeking reaccreditation.

Expenses are kept to a minimum by utilizing volunteers to serve as members of the Accreditation Review Panels, which evaluate the applications for reaccreditation. Staff members who provide services to the Standing Committee act as program advisors and administrators. Activities requiring in-person meetings are conducted at regularly scheduled and funded meetings of the Standing Committee on Specialization. Other functions needed for the evaluation process are conducted by mail, fax and telephone conference call. Costs associated with these functions, as well as those incurred in the printing of materials, are reimbursed out of the aforementioned fees.

9. **Disclosure of Interest**

None.

10. **Referrals**

The Resolution was referred, prior to its submission to the House of Delegates, for consideration by the councils of the Sections on Litigation and Tort and Insurance Practice.

11. **Contact Person (Prior to the Meeting)**

Barbara J. Howard  
Chair, Standing Committee on Specialization  
The Barbara J. Howard Law Firm  
120 East 4th St., Suite 960  
Cincinnati, Ohio 45202  
Phone: (513) 421-7300  
Email: Bhoward@barbarajhoward.com

Martin Whittaker  
Staff Counsel, Standing Committee on Specialization  
321 North Clark Street  
Chicago, IL 60654  
Phone: 312-988-5309  
email: Martin.Whittaker@Americanbar.org
12. **Contact Person (Who will present the Report to the House)**

   Barbara J. Howard  
   Chair, Standing Committee  
   on Specialization  
   The Barbara Howard Law Firm  
   120 East 4th St., Suite 960  
   Cincinnati, Ohio 45202  
   Phone: (513) 421-7300  
   Email: Bhoward@barbarajhoward.com
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association grant reaccreditation to the Medical Professional Liability program and the Legal Professional Liability program of the American Board of Professional Liability Attorneys.

2. Summary of the Issue the Resolution Addresses

To respond to a need to regulate lawyer specialist certifying organizations, the House of Delegates adopted standards for accreditation of specialty certification programs for lawyers, and delegated to the Standing Committee the task of evaluating organizations that apply to the ABA for accreditation and reaccreditation. This Resolution acquits the Standing Committee’s obligation to periodically review programs that the House of Delegates has accredited and recommend their further reaccreditation or revocation of accreditation.

3. Explanation of How Proposed Policy Position Will Address Issue

The recommendation addresses the issue by implementing previous House resolutions calling on the ABA to evaluate specialty certification organizations that apply for accreditation and reaccreditation.

4. Summary of Minority Views or Opposition

The Standing Committee on Specialization approved the proposed recommendation unanimously. No opposition has been identified.
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RESOLVED, That the American Bar Association supports in principle the Inter-American Convention on Protecting the Human Rights of Older Persons and encourages the United Nations, operating through its Open-Ended Working Group on Ageing or similar process, to draft a convention on the rights of older persons, considering the Organization of American States Convention as an instructive precedent.
REPORT

On June 15, 2015, the General Assembly of the Organization of American States (OAS) approved the Inter-American Convention on Protecting the Human Rights of Older Persons during its General Assembly. It is the first international human rights convention focused on the rights of older persons. The purpose of the Convention is stated in Article 1: “to promote, protect and ensure the recognition and the full enjoyment and exercise, on an equal basis, of all human rights and fundamental freedoms of older persons, in order to contribute to their full inclusion, integration, and participation in society.” As of March 2018, the convention has been signed and ratified by the governments of Argentina, Bolivia, Chile, Costa Rica and Uruguay. Brazil has signed the convention but not yet ratified it.


This resolution recognizes the historic nature of the convention, supports its purpose in principle, and calls on the United Nations to use it as a springboard to the creation of a U.N. Convention on the Rights of Older Persons, an option that has been under consideration by the U.N. Open-ended Working Group on Ageing since 2010. The ABA has participated in the meetings of the Working Group through an appointed liaison since the House of Delegates adopted the following resolution in August 2011:

That the American Bar Association urges the United States Department of State and the United Nations and its member states to support the ongoing processes at the United Nations and the Organization of American States to strengthen protection of the rights of older persons, including the efforts and consultations towards an international and regional human rights instrument on the rights of older persons.

The debate in the U.N. Working Group among member states has been characterized by stark differences in views over the need for a convention, although the participating non-governmental organizations have been uniformly in support of a convention. This resolution goes one step further than the 2011 resolution above by expressly calling on the U.N. to begin the process of drafting a convention on the rights of older persons, considering the OAS convention as a useful precedent on which to build and revise as needed.

We know from experience that a rights treaty is not a magic bullet, but it will serve as a very important tool to bring about a better future for older people. The rationale for the convention rests on a recognition that, while all existing conventions addressing human rights and fundamental freedoms apply to older persons, they lack specificity and coherence in addressing the special circumstances of older persons as a group; and in their enforcement, they have consistently been inadequate in protecting the human rights deficiencies experienced by older persons.
A U.S. State Department official expressed the United State’s position on the OAS convention, or on any other convention on the rights of older persons, in the following response to a query on August 11, 2016:

[T]he U.S. has consistently opposed the negotiation of new legally binding instruments on the rights of older persons. The U.S. recognizes the importance of using the OAS and the UN to address the challenges older persons face in this hemisphere and throughout the world, including the enjoyment of their human rights. However, the U.S. does not believe that a regional convention is necessary to ensure that the human rights of older persons are protected. Rather than promoting a new instrument, the U.S. believes resources of the OAS and its member states should be used to identify practical steps that governments in the Americas might adopt to combat discrimination against older persons, including best practices in the form of national legislation and enhanced implementation of existing international human rights treaties. In doing so, such efforts should be aimed at addressing immediately and in practical ways the challenges faced by older persons.¹

While the U.S. has not been a supporter of a convention up to this point, international thinking and activities concerning the aging of the planet’s population suggest considerable momentum toward a need to recognize the special circumstances of older persons in a rights-based instrument.

**Current Landscape of Human Rights and Aging**

The demographics are daunting. Worldwide, persons age 60 years and older numbered 607 million in the year 2000, or 9 percent of the world population. By 2015 the number rose to 901 million people, or over 12% of the population. By 2050, the global population of older persons is projected to reach nearly 2.1 billion, or 21.5% of the global population. Moreover, the number of people aged 80 years or over, the “oldest-old” persons, is growing even faster. In 2000, there were 71 million people aged 80 or over worldwide. By 2050, that number is projected to increase to 434 million, a more than six-fold increase in its size in 2000.² The growth rate is not uniform everywhere. Two thirds of the world’s older persons live in the developing regions and their numbers are growing faster there than in the developed regions. Gender differences are also important. In 2015, women accounted for 54 per cent of the global population aged 60 years or over and 61 per cent of those aged 80 years or over in 2015. Older women are especially vulnerable to multiple discrimination, based on age, gender, race, and other characteristics.

Older persons in large and growing numbers suffer unique human rights shortcomings around the world. They too often struggle on the margins of society because of discriminatory views on aging. We may not see this as frequently in the United States, but we do see it. Conditions vary widely worldwide and abuses are too common. Older men and women are often denied access

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¹ Email communication from Judith Heumann, Special Advisor for International Disability Rights. U.S. Department of State, August 11, 2016, to Charles Sabatino, ABA Commission on Law and Aging.
to services, jobs, pensions and other financial supports, and adequate health and long-term care, including person-centered end-of-life care. Older individuals are unduly vulnerable to abuse, neglect, and poverty. While there are a good number of existing human rights instruments and mechanisms that, in theory, offer potential to protect the rights of older persons, this potential is seriously diluted by the lack of specificity, depth, comprehensiveness, and consistency.

The above is not meant to suggest that international law completely ignores rights protection for older persons. The UN's first rights document after WWII, the non-binding Universal Declaration of Human Rights, contains this in Article 25, paragraph 1:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.3 (Emphasis added)

Only three of nine legally binding UN rights instruments make even brief reference to the circumstances of older people: the Migrant Workers Convention; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); and the Convention on the Rights of Persons with Disabilities (CRPD). However, only the Migrant Workers Convention prohibits discrimination on the basis of age, a provision which obviously excludes those who are not migrant workers.4 CEDAW provides for the equal right of women to social security in old age, and it offers some protection against sexist inheritance practices.5 The CRPD requires states to provide services to prevent and minimize further disabilities among older people and to provide “age appropriate” or “age sensitive” measures for persons with disabilities.6

Nevertheless, human rights law is largely silent on important topics such as:

- Rights within community-based and long-term care settings, both for the caregiver and for the person receiving care.
- Legal planning mechanisms for older age.
- The abolition of mandatory retirement ages.
- Legal capacity and equality before the law for older women and men under guardianship or diagnosed with dementia.
- The right to access to health care, which in existing human rights instruments, fails to address nursing homes and other institutional isolation and rights to home and community-based care.
- End-of-life rights, including access to palliative care.
- Elder abuse and exploitation in its many forms across cultures, including violence as a result of witchcraft accusations in some cultures.

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4 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 7; CRPD Article 25 (b) Article 28 (2) (b) Article 13, Article 16.

5 CEDAW, Article 11.1 (e).

6 CRPD Article 25 (b) Article 28 (2) (b) Article 13, Article 16.
• Property rights in old age, the loss of which especially impact older women.
• Rights to economic security in the face of worldwide population aging.
• Existing human rights law only offers limited protection against the negative impact of the actions of the private sector and individuals within families.

International human rights standards for identified vulnerable populations (women, children, refugees, persons with disabilities) have gained increasing recognition in contemporary society. However, older persons as a group have not been a high priority beneficiary of this attention. In response to this perceived shortcoming, a growing advocacy effort among both non-governmental and governmental organizations has sought to bring about a convention drafting and approval process directly addressing the human rights of older persons. This effort produced the first regional international convention on human rights and aging, approved by the Organization of American States.

Other related efforts demonstrate a growing worldwide awareness of a need to hone in on the human rights of older persons. The United Nations Open-Ended Working Group on Ageing has met at least annually since 2010 and continues its deliberations. See http://social.un.org/ageing-working-group.

In addition, the U.N. Human Rights Council announced, in May, 2014, the appointment of an Independent Expert “on the full enjoyment of the human rights of all older persons.” During her initial 3-year term, the Independent Expert was specifically tasked with assessing how existing international human rights instruments have been implemented in relation to older people’s rights, identifying both good practices and implementation gaps. Along with other specified duties, the Independent Expert produced a comprehensive report on her findings and recommendations in July of 2016.

The African Union has been active, since 2009, considering a draft Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa. The draft Protocol received the full support of the African Commission on Human and Peoples’ Rights and was adopted during the 26th African Union Summit which took place in January 2016. It is open to ratification by Member States of the African Union. See www.achpr.org/mechanisms/older-disabled.

The European states have also begun to focus on the human rights of older persons in recent years. In February 2014, the Council of Europe adopted the first European instrument dealing specifically with the full spectrum of human rights of older persons, -- Recommendation CM/Rec(2014)2 of the Committee of Ministers recommends a range of measures to be taken by Member States in order to combat discrimination based on old age and covers the major rights challenges facing older persons: non-discrimination; autonomy and participation; protection from violence and abuse; social protection and employment; care; and administration of justice. See https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c649f.

The European Union has no special instrument addressing older persons, although the EU Charter of Fundamental Rights does contain one sentence on the rights of the elderly: “The
Union recognizes and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

The United Nations and its instrumentalities have issued some 17 documents on aging since 1948, including declarations, principles, resolutions, plans of action, and proclamations. However, none of these rises to the level of a binding treaty. Most provisions affecting older persons that are recognized in treaties and other instruments protect economic, social and cultural rights. These types of treaties identify standards for progressive implementation. Such categorization tends to imply that these rights are programmatic aspirations - in contrast with civil and political rights, which are of immediate application. In other words, they are “soft law” -- they lack sanctions for non-compliance or infringements. Though it applies only to the Americas, the Inter-American Convention on Protecting the Human Rights of Older Persons is the first international convention providing mandatory rights recognition and protection for older persons.

It is noteworthy that the comprehensive report of the U.N. Independent Expert to the Human Rights Council, favorably highlights the OAS convention as a model practice, stating:

The Convention is an example of good practice that could inspire other regions, as it allows States to strengthen cohesion and normative action and to clarify States’ obligations with regard to the rights of older persons.

The need for an international convention on the rights of older persons has been recognized for some time. In a 2003 analysis, Professors Diego Rodriguez-Pinzon and Claudia Martin of the Academy on Human Rights and Humanitarian Law at the American University provided a detailed overview of the different types of international human rights and the various international regional systems of protection that relate to varying extents to older persons. These authors concluded that older persons are the only group in need of the special protection (unlike women, children, persons with disabilities, etc.) that do not have an international instrument to protect their rights; the current international instruments are not providing adequate answer to their needs. Thus, they recommended that any future action or plan for the elderly should consider creation of a legal instrument and supervising body for the rights of older persons. The Inter-American Convention fulfills that recommendation.

The Inter-American Convention

The Inter-American Convention on Protecting the Human Rights of Older Persons provides a comprehensive statement of broadly defined human rights as specifically applied to older persons, especially in connection with respect to circumstances unique to or disproportionately affecting older persons. For example, the convention defines key terms not addressed in other

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7 EU Charter of Fundamental Rights, Article 25.  
treaties, such as age discrimination in old age, multiple discrimination, palliative care, active and healthy aging, and long-term care services. Starting with a set of general principles, the convention then sets forth 27 specific protected rights. Quite different views have been expressed within the ABA about the appropriateness or breadth of certain rights and their practical implications, as well as certain of the enforcement provisions, but there is unanimity in support for the explicit recognition of the rights of older persons in a binding international instrument. Moreover, the ABA did not play any role in influencing the OAS drafting process. In the United Nations process, the input of the ABA and other non-governmental organizations has been welcomed.

The driving principal of the Inter-American Convention is embraced by this resolution. That principle calls for a fundamental change in the social paradigm of aging. Older persons must be seen as legitimate, productive, and important rights holders in an aging world, rather than perceived as merely a vulnerable and no-longer-productive group that makes unwarranted claims on public resources. The Preamble of the Inter-American Convention espouses:

the need to address matters of old age and ageing from a human-rights perspective that recognizes the valuable current and potential contributions of older persons to the common good, to cultural identity, to the diversity of their communities, to human, social, and economic development, and to the eradication of poverty.

A rights-based perspective is the missing element in several decades of U.N. activities on aging. In 1982, the First World Assembly on Ageing adopted the International Plan of Action on Ageing. The “Vienna Plan” was the first international instrument on aging that aimed to provide a roadmap to strengthen the capacities of governments and civil society to deal effectively with the aging of populations. Building on gaps in that plan, the General Assembly adopted the U.N. Principles on Older Persons in 1991. These principles specifically promoted the rights of older persons but without any authority to enforce them. In 2002, the Second World Conference on Ageing in Madrid adopted the “Madrid International Plan of Action on Aging” or MIPAA to strengthen efforts toward goals not met by the prior two instruments. MIPAA called for the promotion and protection of all human rights and fundamental freedoms, including the right to development, the need to include aging in global agendas, and the need to combat discrimination based on age.

The U.N. Commission for Social Development evaluated MIPAA after ten years and then 20 years. Its 20-year review found that the goals of the Plan overall have not been met. Among the Commission’s findings:

- Implementation continued to be weak. Gaps between policy and practice and the mobilization and/or building of sufficient human and financial capacities remained a major constraint. Ten years after its adoption, the Madrid Plan of Action had made only limited headway in national development plans. The mainstreaming of ageing issues saw little progress by any yardstick….

- Recommendations for action proposed in the strategic implementation framework through 2012 had only limited impact on the situation of older persons. Awareness of the
Madrid Plan of Action and the current living conditions of older persons remained low in many developing countries….

- The second review and appraisal highlighted several major challenges faced by older persons that were common to all or most regions and that undermined the social, economic and cultural participation of the aged, namely, income security, access to age-appropriate health-care services, access to labour markets and social protection, protection from abuse and violence and age discrimination. 10

The flaw in relying only on aspirational road maps and identifying best practices is that they have no teeth. They lack a rights-based mandate and enforceability mechanism.

This conclusion is reinforced by the findings of the U.N. High Commissioner for Human Rights whose office did an analysis of the normative standards in international human rights laws in 2012 and concluded:

The analysis supports the view that there is a demonstrable inadequacy of protection arising from normative gaps, as well as fragmentation and a lack of coherence and specificity of standards as they relate to the experience of older persons. 11

**Rationale for ABA Action and Existing ABA Policy**

The ABA has the ability and the stature to play a key role in shaping U.S. policy with respect to human rights and international conventions. The ABA brings to the table the legal expertise and a long history of human rights values that adds recognized credibility in helping to shape positions taken by the Administration. The ABA can serve in a leadership role to advocate for the first ever binding treaty that articulates with specificity human rights principles as they apply to the aging members of our aging society.

The ABA has supported other conventions in recent years such as the Convention on the Rights of Persons with Disabilities (2010), the Convention on the Rights of the Child (1991), and the Convention on the Elimination of All forms of Discrimination against Women (1996), all of which have been signed but not ratified by the United States. On the subject of international aging, the ABA adopted the 2011 resolution quoted at the beginning of this report.

ABA policy has consistently been supportive of the creation of a regional and international human rights instrument on aging. The ABA has also acted on that goal by appointing a liaison to the U.N. Open-Ended Working Group on Aging in 2012.12 The present resolution builds upon the momentum created by the OAS convention and can be used by the ABA as a springboard and precedent to energize efforts to move the United Nations toward the goal of drafting a U.N. convention on the rights of older persons.

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12 The current ABA Liaison to the U.N. Open-Ended Working Group on Ageing is Prof. William Mock.
Conclusion

The proposed policy acknowledges the human rights milestone represented by the OAS convention and enables the ABA to speak out clearly in support of the rights of older persons and to encourage the U.N. to move forward toward the drafting of U.N. convention, recognizing the OAS convention as a useful precedent. As a prominent advocate for international human rights and the rule of law, the ABA shoulders an especially important leadership role to advocate for and guide the drafting of a binding treaty that articulates with specificity human rights principles as they apply to the aging members of our aging society.

Respectfully submitted,

Hon. Patricia Banks, Chair  
Commission on Law and Aging  
August 2018

Steven M. Richman, Chair  
Section of International Law  
August 2018
GENERAL INFORMATION FORM

Submitting Entity: Commission on Law and Aging and the Section of International Law

Submitted By: Hon. Patricia Banks, Chair, Commission on Law and Aging, and Steven M. Richman, Chair, Section on International Law

1. Summary of Resolution(s).

This resolution supports in principle the Inter-American Convention on Protecting the Human Rights of Older Persons adopted by the Organization of American States on June 15, 2015, and encourages the United Nations to move forward toward drafting a United Nations convention on the rights of older persons, using the convention as an instructive precedent.

The purpose of the Convention is to promote, protect, and ensure the recognition and the full enjoyment and exercise, on an equal basis, of all human rights and fundamental freedoms of older persons in the Americas in order to contribute to their full inclusion, integration and participation in society. The United Nations has no specialized convention on the rights of older persons, but it does have an Open-Ended Working Group on Ageing that, among other things, is considering the need for such a convention.

2. Approval by Submitting Entity.

Approved by Commission on Law and Aging on April 20, 2018; and by the Section of International Law in April 25, 2018.

3. Has this or a similar resolution been submitted to the House or Board previously?

Yes, a somewhat related resolution sponsored by the Commission on Law and Aging that expressly called on the US to sign and ratify the OAS Convention was before the House of Delegates in August, 2017; but the resolution was voluntarily withdrawn to permit further dialogue on the contents of the resolution with the Section of International Law.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

On the subject of international rights of older persons, the ABA adopted a resolution in August, 2011, to support emergent efforts to strengthen the protection of the rights of older persons, including consideration of an international convention. The resolution stated:

That the American Bar Association urges the United States Department of State and the United Nations and its member states to support the ongoing processes at the United Nations and the Organization of American States to strengthen protection of the rights of older persons, including the efforts and consultations towards an international and regional human rights instrument on the rights of older persons.
Thus, ABA policy clearly points toward the creation of a regional and/or international human rights instrument on aging. The ABA has also supported other specialized conventions in recent years, such as the Convention on the Rights of Persons with Disability (2010), the Convention on the Rights of the Child (1991), and the Convention on the Elimination of All forms of Discrimination against Women (1996), all of which have been signed but not ratified by the United States.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A


As of March 2018, the OAS Convention had been signed and ratified by the governments of Argentina, Bolivia, Chile, Costa Rica and Uruguay. Brazil has signed the convention but not yet ratified it.

The U.N. Open-Ended Working Group on Ageing is scheduled to convene its 9th meeting in July, 2018, during which the drafting of a similar U.N. convention will continue to be urged by several States and most non-governmental organizations participating. However, the Working Group has made no formal decision or recommendation on the drafting of such a convention.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The policy will allow further consultations with the State Department to urge its consideration of the convention and will enable collaboration with other non-governmental organizations in advocacy for the convention, as well as in the drafting of a convention if and when the U.N. decides to proceed with that course.

8. Cost to the Association. (Both direct and indirect costs)

None

9. Disclosure of Interest. (If applicable)

None

10. Referrals.

- Center for Human Rights
- Civil Rights and Social Justice
- Commission on Disability Rights
- Commission on Domestic and Sexual Violence
- Commission on Hispanic Legal Rights and Responsibilities
- Commission on Homelessness and Poverty
- Government and Public Sector Lawyers Division
- National Legal Aid & Defender Association
- Rule of Law Initiative
- Section of Administrative Law and Regulatory Practice
11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)
Charlie Sabatino, Director
ABA Commission on Law and Aging
1050 Connecticut Ave., NW, Ste. 400
Washington, DC 20036
202-662-8686 (office)
charles.sabatrino@americanbar.org

12. **Contact Name and Address Information.** (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)
Hon. Patricia Banks, Chair
Commission on Law and Aging
312-968-0016
p0017b@sbcglobal.net
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution, submitted jointly by the Commission on Law and Aging and the Section on International Law, supports in principle the Inter-American Convention on Protecting the Human Rights of Older Persons adopted by the Organization of American States on June 15, 2105, and encourages the United Nations to move forward toward drafting a United Nations convention on the rights of older persons, using the convention as an instructive precedent.

2. Summary of the Issue that the Resolution Addresses

Older persons in large and growing numbers suffer unique human rights shortcomings around the world. They too often struggle on the margins of society because of discriminatory views on aging. We may not see this as frequently in the United States, but we do see it. Conditions vary widely worldwide and abuses are too common. Older men and women are often denied access to services, jobs, pensions and other financial supports, and adequate health and long-term care, including person-centered end-of-life care. Older individuals are unduly vulnerable to abuse, neglect, and poverty. While there are a good number of more general human rights instruments and mechanisms that, in theory, offer potential to protect the rights of older persons, this potential is seriously diluted by the lack of specificity, depth, comprehensiveness, and consistency.

The purpose of the OAS Convention is to promote, protect, and ensure the recognition and the full enjoyment and exercise, on an equal basis, of all human rights and fundamental freedoms of older persons in the Americas in order to contribute to their full inclusion, integration and participation in society. The United Nations has no specialized convention on the rights of older persons, but it does have an Open-Ended Working Group on Ageing that, among other things, is considering the need for such a convention.

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

The resolution recognizes the historic nature of the Inter-American Convention on Protecting the Human Rights of Older Persons as an important precedent. It supports the convention in principle and not in all its specifics, because there are a variety of views within the ABA about the appropriateness or breadth of certain rights in the convention and their practical implications, as well as certain of the enforcement provisions. But, there is unanimity in support for the explicit recognition of the rights of older persons in a binding international instrument. The resolution can be used by the ABA as a springboard and precedent to energize efforts to move the United Nations toward the goal of drafting a U.N. convention on the rights of older persons. A U.N. convention, if undertaken, can provide a comprehensive statement on how existing broadly defined human rights specifically apply to older persons, especially in connection with respect to
circumstances unique to or disproportionately affecting older persons, such as discrimination based on age; multiple discrimination; palliative care; long-term care services and supports; a right to life and dignity in old age; a right to independence and autonomy; a right to participation and community integration; and a right to safety and a life free of violence of any kind.

4. **Summary of Minority Views**

None as of this writing.
RESOLVED, That the American Bar Association opposes the incarceration of individuals merely because they are unable to pay judicially imposed fines and fees, and

FURTHER RESOLVED, That the American Bar Association adopts the black letter and commentary to the Ten Guidelines on Court Fines and Fees dated August 2018; and

FURTHER RESOLVED, That the American Bar Association urges all federal, state, local, territorial, and tribal legislative, judicial and other government bodies to apply the Ten Guidelines on Court Fines and Fees to ensure due process and access to counsel in the imposition and collection of fines and fees, and to ensure that individuals are not sanctioned because they are unable to pay judicially imposed fines and fees.
GUIDELINE 1: Limits to Fees

If a state or local legislature or a court imposes fees in connection with a conviction for a criminal offense or civil infraction, those fees must be related to the justice system and the services provided to the individual. The amount imposed, if any, should never be greater than an individual’s ability to pay or more than the actual cost of the service provided. No law or rule should limit or prohibit a judge’s ability to waive or reduce any fee, and a full waiver of fees should be readily accessible to people for whom payment would cause a substantial hardship.

COMMENTARY:

Many state and local legislatures have enacted mandatory surcharges and assessments, which seek to fund programs or services imposed when individual who is sentenced. Courts in many states have also imposed a broad range of “user fees” on criminal defendants, ranging from supervision fees to drug testing fees. Some fees are unrelated to the justice system or to the service provided. These surcharges, assessments, court costs, and user fees—collectively

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1 For example, Michigan requires judges to impose on people convicted of traffic and misdemeanor offenses a minimum state assessment in addition to any fines and costs. Hon. Elizabeth Hines, View from the Michigan Bench, National Center for State Courts 36, http://www.ncsc.org/~/media/Microsites/Files/Trends%202017/View-from-Michigan-Bench-Trends-2017.ashx. The minimum assessment in Michigan misdemeanor cases is $125. Id. See also id. 36 & n.2 (“When James W. pleads guilty to ‘Driving Without a Valid Operator’s License on His Person,’ it is unlikely anyone is aware that a portion of the fines and costs he is ordered to pay may be used to support libraries, the Crime Victims’ Rights Fund, retirement plans for judges, or, in one state, construction of a new law school.”).


3 For example, the vast majority of revenue collected from mandatory driver’s license reinstatement fees in Arkansas goes to the Arkansas State Police. Ark. Code Ann. § 27-16-808. In California, California, a $4 fee is imposed for
known as “fees”—have proliferated to the point where they can eclipse the fines imposed in low-level offenses. Many states even impose “collection fees,” payable to private debt collection firms for the cost of collecting other fees, and well as fines. All such fees imposed in connection with a conviction or criminal offense or civil infraction should be eliminated because the justice system serves the entire public and should be entirely and sufficiently funded by general government revenue.

If imposed at all, fees should be commensurate with the service they cover, and consistent with the financial circumstances of the individual ordered to pay, so that the fees do not result in substantial hardship to the individual or his/her dependents. A judge should always be permitted to waive or reduce any fee if an individual is unable to pay. Fees that are legislatively mandated should be revised to permit such waiver or reduction based on inability to pay.

When an individual is unable to pay, courts should not impose fees, including fees for counsel, diversion programs, probation, payment plans, community service, or any other alternative to the payment of money. An individual’s ability to pay should be considered at each stage of proceedings, including at the time the fees are imposed and before imposition of any sanction for nonpayment of fees, such as probation revocation, issuance of an arrest warrant for nonpayment, and incarceration. The consideration of a person’s ability to pay at each stage of proceedings is critical to avoiding what are effectively “poverty penalties,” e.g., late fees, payment plan fees, and interest imposed when individuals are unable to pay fines and fees.

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4 Profiting from Probation at 14.
5 Criminal Justice Debt at 17.
6 The National Task Force on Fines, Fees and Bail Practices was established by the Conference of Chief Justices and the Conference of State Court Administrators. In December 2017, the Task Force issued its “Principles on Fines, Fees, and Bail Practices” (the “National Task Force Principles” or “NTF Principles”) which are available at http://www.ncsc.org/~media/Files/PDF/Topics/Fines%20and%20Fees/Principles-Fines-Fees.ashx. Principle 1.5 states, “Courts should be entirely and sufficiently funded from general governmental revenue sources to enable them to fulfill their mandate. Core court functions should generally not be supported by revenues generated from court-ordered fines, fees, or surcharges.”

7 NTF Principle 1.6 states that fees should only be used for a narrow scope of “administration of justice” purposes and that “in no case should the amount of such a fee or surcharge exceed the actual cost of providing the service.” See also The Criminalization of Poverty, at 53.

8 See Amer. Bar Ass’n, Resolution 110 (2004 AM), ABA Guidelines on Contribution Fees for Costs of Counsel in Criminal Cases, Guideline 2 (“An accused person should not be ordered to pay a contribution fee that the person is financially unable to afford.”).
GUIDELINE 2: Limits to Fines

Fines used as a form of punishment for criminal offenses or civil infractions should not result in substantial and undue hardship to individuals or their families. No law or rule should limit or prohibit a judge’s ability to waive or reduce any fine, and a full waiver of fines should be readily accessible to people for whom payment would cause a substantial hardship.

COMMENTARY:

Fines should be calibrated to reflect the financial circumstances of the individual ordered to pay, so that the fines do not result in substantial and undue hardship to the individual or his/her dependents.

An individual’s ability to pay should be considered at each stage of proceedings, including at the time fines are imposed and before any sanction for nonpayment, such as probation revocation, issuance of an arrest warrant for nonpayment, or incarceration.

GUIDELINE 3: Prohibition against Incarceration and Other Disproportionate Sanctions, Including Driver’s License Suspensions.

A person’s inability to pay a fine, fee or restitution should never result in incarceration or other disproportionate sanctions.

9 Amer. Bar Ass’n, Standards for Criminal Justice: Sentencing, Standard 18.3.16 (d) (“The legislature should provide that sentencing courts, in imposing fines, are required to take into account the documented financial circumstances and responsibilities of an offender.”). NTF Principle 2.3 states, “States should have statewide policies that set standards and provide for processes courts must follow when doing the following: assessing a person’s ability to pay; granting a waiver or reduction of payment amounts; authorizing the use of a payment plan; and using alternatives to payment or incarceration.” NTF Principle 6.2 urges that state law and court rules “provide for judicial discretion in the imposition of legal financial obligations.”

10 See Amer. Bar Ass’n, Resolution 111B (2016 AM), cmt. at 13 (urging the abolition of user-funded probation systems supervised by for-profit companies based on a detailed explanation of the Supreme Court’s decision in Bearden v. Georgia, 461 U.S. 660, 672 (1983), and the problem of debtors’ prisons—the unlawful incarceration of people too poor to pay court fines and fees); Council of Economic Advisers Issue Brief, Fines, Fees, and Bail: Payments in the Criminal Justice System That Disproportionately Impact the Poor (Dec. 2015) (“CEA Brief”), at 5-6.

11 Amer. Bar Ass’n, Standards for Criminal Justice: Sentencing, Standard 18.3.22(e) (“Non-payment of assessed costs should not be considered a sentence violation.”)

12 Amer. Bar Ass’n, Resolution of the House of Delegates 111B cmt. (Aug. 2016) (commentary on Bearden and debtors’ prisons); Amer. Bar Ass’n, Resolution of the House of Delegates 112C (Aug. 2017) (urging governments to “prohibit a judicial officer from imposing a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant’s inability to pay”). The reasoning underlying Resolution 112C’s principle
COMMENTARY:

Despite the popular belief that “debtors’ prisons” have been abolished in the United States, people are still incarcerated because they cannot pay court fines and fees, including contribution fees for appointed counsel. In many states, people are incarcerated because they owe fines and fees and are unable to pay. Such incarceration has been documented in at least thirteen states since 2010. As the Brennan Center has explained, there are four “paths” to debtors’ prison: (1) many courts may revoke or withhold probation or parole upon an individual’s failure to pay; (2) some states authorize incarceration as a penalty for failure to pay, such as through civil contempt; (3) some courts force defendants to “choose” to serve prison time rather than paying a

against pretrial incarceration for inability to pay also applies to any stage of court proceedings that could lead to incarceration for inability to pay. NTF Principle 6.3 states that courts should make an ability-to-pay determination before ordering incarceration or probation revocation for failure to pay. Principle 4.3 states that courts should make an ability-to-pay determination before ordering license suspension for failure to pay.

13 The ABA opposes incarceration for inability to pay contribution fees for appointed counsel. E.g., Amer. Bar Ass’n, Resolution 110 (2004 AM), ABA Guidelines on Contribution Fees for Costs of Counsel in Criminal Cases, Guideline 4 (“Failure to pay a contribution fee should not result in imprisonment or the denial of counsel at any stage of proceedings.”).

court-imposed debt; and (4) many states authorize law enforcement officials to arrest individuals for failure to pay and to hold them while they await an ability-to-pay hearing.\footnote{\textit{Criminal Justice Debt} at 20-26. \textit{See also Profiting from Probation} at 51-52. This “harsh reality” of people being incarcerated for failure to pay impossible-to-pay fees and fines “harks back to the days after the Civil War, when former slaves and their descendants were arrested for minor violations, slapped with heavy fines, and then imprisoned until they could pay their debts. The only means to pay off their debts was through labor on plantations and farms. . . . Today, many inmates work in prison, typically earning far less than the minimum wage.” Alexander, \textit{The New Jim Crow}, at 157.}

In the seminal 1983 \textit{Bearden} decision, the U.S. Supreme Court ruled that courts may not incarcerate an individual for nonpayment of a fine or restitution without first holding a hearing on the individual’s ability to pay and making a finding that the failure to pay was “willful.”\footnote{\textit{Bearden}, 461 U.S. at 667-69.} ABA policy reflects this principle.\footnote{Amer. Bar Ass’n, Resolution 111B (2016 AM), cmt. (commentary on \textit{Bearden} and debtors’ prisons). \textit{See also} Amer. Bar Ass’n, Resolution 112C (2017 MY) (urging governments to “prohibit a judicial officer from imposing a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant’s inability to pay”). The rationale for Resolution 112C’s principle against pretrial incarceration for inability to pay also applies to any stage of court proceedings that could lead to incarceration for inability to pay. \textit{See also} Amer. Bar Ass’n, \textit{Standards for Criminal Justice: Sentencing} 18-3.22 (Sentencing courts should consider an individual’s ability to pay before determining whether to assess fines or fees and how much to assess).} The \textit{Bearden} case followed a line of cases in which the Supreme Court had attempted to make clear that individuals who are unable to pay a fine or fee should not be incarcerated for failure to pay.\footnote{\textit{See}, e.g., \textit{Williams v. Illinois}, 399 U.S. 235 (1970) (holding that an Illinois law requiring that an individual who was unable to pay criminal fines “work off” those fines at a rate of $5 per day violated the Equal Protection Clause because the statute “works an invidious discrimination solely because he is unable to pay the fine”); \textit{Tate v. Short}, 401 U.S. 395 (1971) (“Imprisonment in such a case [of an ‘indigent defendant without the means to pay his fine’] is not imposed to further any penal objective of the State. It is imposed to augment the State’s revenues but obviously does not serve that purpose [either]; the defendant cannot pay because he is indigent.”).} Unfortunately, the problem persists almost a half-century later.

Fines and fees that are not income-adjusted (\textit{i.e.}, are not set at an amount the person reasonably can pay) are regressive and have a disproportionate, adverse impact on low-income people and people of color.\footnote{Studies show that the imposition and enforcement of fines and fees disproportionately and regessively affect low-income individuals and families. \textit{See}, e.g., \textit{CEA Brief}, at 5-8. For example, in many jurisdictions Black people disproportionately experience license suspensions for nonpayment of fines and fees, due in part to racial disparities in wealth and poverty. \textit{See} \textit{Back on the Road California, Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California}, at 27 (2016) (hereinafter “Stopped, Fined, Arrested”), \url{http://ebclc.org/wp-content/uploads/2016/04/Stopped_Fined_BOTRCA.pdf}. \textit{Arrested BOTRCA.pdf}. These racial disparities in license suspension in turn contribute to racial disparities in conviction for driving on a suspended license, making Black people in these states disproportionately vulnerable to the resulting steep financial penalties. \textit{See Legal Aid Justice Center, Driven by Dollars: a State-by-State Analysis of Driver’s License Suspension Laws for Failure to Pay Court Debt} (2017), \url{https://www.justice4all.org/wp-}}
sanctions, including driver’s license suspension, should never be imposed for a person’s inability to pay a fine or fee.\textsuperscript{20} The same principle applies with full force to restitution and forfeiture. Although restitution and forfeiture are beyond the scope of these Guidelines, at minimum it is clear that a person who is unable to pay any court-imposed financial obligation—including restitution or forfeiture—must not be incarcerated or subjected to other disproportionate sanction for failure to pay.

Just as a person’s ability to pay should be considered in imposing a fine or fee in the first place, and must be considered when imposing incarceration for failure to pay, the same principles apply to other disproportionate sanctions short of incarceration. A disproportionate sanction for nonpayment of court fines and fees includes any sanction with a substantial adverse impact on the life of the individual.

A common sanction used by courts in the vast majority of states for failure to pay a fine is the suspension of a driver’s license, often imposed without a hearing. People who are prohibited from driving often lose their ability to work or attend to other important aspects of their lives.\textsuperscript{21} Suspending a driver’s license can lead to a cycle of re-incarceration, because many such individuals find themselves in the untenable position of either driving with a suspended license or losing their jobs, and because driving on a suspended license is itself an offense that may be

\textsuperscript{20} NTF Principle 4.3 states that, “Courts should not initiate license suspension procedures until an ability to pay hearing is held and a determination has been made on the record that nonpayment was willful. . . . Judges should have discretion to modify the amount of fines and fees imposed based on an offender’s income and ability to pay.” \textit{See also} Robinson v. Purkey, No. 3:17-cv-1263, 2017 WL 4418134, at *8 (M.D. Tenn. Oct. 5, 2017) (“No person . . . can be threatened or coerced into doing the impossible, and no person can be threatened or coerced into paying money that she does not have and cannot get.”).

\textsuperscript{21} \textit{See} Fowler v. Johnson, No. 17-11441, 2017 WL 6540926, at *2 (E.D. Mich. Dec. 17, 2017) (finding that “the loss of a driver’s license, particularly in a state like Michigan lacking an efficient and extensive public transportation system, hinders a person’s ability to travel and earn a living” and preliminarily enjoining Michigan’s system for suspending driver’s licenses upon non-payment of traffic tickets).
sanctioned with incarceration.\textsuperscript{22} Suspending a driver’s license for nonpayment is therefore out of proportion to the purpose of ensuring payment and destructive to that end.\textsuperscript{23}

Nothing in this Guideline is intended to preclude a court from issuing an arrest warrant to secure the court appearance of a defendant who failed to appear if the court determines that the defendant received actual notice of the hearing. Courts should endeavor to ensure that any defendants arrested on failure-to-appear warrants are expeditiously brought before a judicial officer. In such circumstances, no person should be jailed without a hearing on ability to pay; in no event should bail or the bond amount on the warrant be set purposely to correspond with the amount of any fines and fees owed.

**GUIDELINE 4: Mandatory Ability-To-Pay Hearings**

*Before a court imposes a sanction on an individual for nonpayment of fines, fees, or restitution, the court must first hold an “ability-to-pay” hearing, find willful failure to pay a fine or fee the individual can afford, and consider alternatives to incarceration.*

**COMMENTARY:**

As set forth in Guideline 3, if a person is unable to pay a fine or fee, he or she should not be incarcerated or subjected to any other disproportionate sanction, including suspension of a driver’s license. There must also be procedures to ensure protection of that right, including a hearing where a court determines whether an individual is able, or unable, to pay the fine or fee at issue. In other words, at minimum the procedures set forth in *Bearden* must precede any incarceration or imposition of any other sanction for nonpayment of a fine or fee.\textsuperscript{24} These

\textsuperscript{22} See Department of Justice “Dear Colleague” Letter (March 14, 2016), [https://www.courts.wa.gov/subsite/mjc/docs/DOJDearColleague.pdf](https://www.courts.wa.gov/subsite/mjc/docs/DOJDearColleague.pdf) (“Department of Justice Guidance”), at 6 (“In many jurisdictions, courts are also authorized—and in some cases required—to initiate the suspension of a defendant’s driver’s license to compel the payment of outstanding court debts. If a defendant’s driver’s license is suspended because of failure to pay a fine, such a suspension may be unlawful if the defendant was deprived of his due process right to establish inability to pay.”). See also Criminal Justice Debt at 24-25 (explaining the consequences of driver’s license suspensions).

\textsuperscript{23} In *Robinson*, a federal court in Tennessee ordered the restoration of driver’s licenses for individuals’ whose licenses had been suspended for nonpayment finding that a license suspension is “not merely out of proportion to the underlying purpose of ensuring payment, but affirmatively destructive of that end.” 2017 WL 4418134, at *7. The court held that “taking an individual’s driver’s license away to try to make her more likely to pay a fine is not using a shotgun to do the job of a rifle: it is using a shotgun to treat a broken arm. There is no rational basis for that.” *Id.* at *9.

\textsuperscript{24} See *Bearden*, 461 U.S. at 667-69 (incarceration for failure to pay a fine and restitution); *Turner v. Rogers*, 564 U.S. 431, 449 (2011) (incarceration for failure to pay child support); *Robinson*, 2017 WL 4418134, at *8-9 (driver’s license suspension). See also Department of Justice Guidance at 3 (“Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination and establishing that the failure to
procedures must apply whenever a sanction is being sought for nonpayment of a fine or fee, including in connection with deferred sentencing, implementation of a suspended incarceration sentence, or extension or revocation of probation, parole, or other form of supervision.

Courts must also provide adequate and meaningful notice of an ability-to-pay hearing to people alleged to have failed to pay, including notice of the hearing date, time and location, the subject matter to be addressed, and advisement of all applicable rights, including any right to counsel.25

GUIDEINE 5: Prohibition against Deprivation of Other Fundamental Rights

Failure to pay court fines and fees should never result in the deprivation of fundamental rights, including the right to vote.26

COMMENTARY:

Payment of court fines and fees should never be tied to a person’s ability to exercise fundamental rights, which include the right to vote and the right to the care, custody, and control of one’s children.27 Yet, in certain states, the exercise of these fundamental rights is conditioned on the payment of court fines and fees by statute or through court practice.

25 In connection with the NTF Principles, the National Task Force on Fines, Fees and Bail Practices also published a “Bench Card for Judges” entitled Lawful Collection of Legal Financial Obligations, available at http://www.ncsc.org/~/media/Images/Topics/Fines%20Fees/BenchCard_FINAL_Feb2_2017.ashx. The Bench Card explains the importance of affording “Adequate Notice of the Hearing to Determine Ability to Pay,” and recognizes that such notice “shall include” notice of: the hearing date and time; the total amount due; that the court will evaluate the person’s ability to pay at the hearing; that the person should bring any documentation or information the court should consider in determining ability to pay; that incarceration may result only if alternative measures are not adequate to meet the state’s interests in punishment and deterrence or the court funds that the person had the ability to pay and willfully refused; the right to counsel; and that a person unable to pay can request payment alternatives, including, but not limited to, community service and/or reduction in the amount owed. See also Department of Justice Guidance at 5 (“Courts should ensure that citations and summonses adequately inform individuals of the precise charges against them, the amount owed or other possible penalties, the date of their court hearing, the availability of alternate means of payment, the rules and procedures of court, their rights as a litigant, or whether in-person appearance is required at all. Gaps in this vital information can make it difficult, if not impossible, for defendants to fairly and expeditiously resolve their cases.”).

26 The term “fundamental right” as used in this principle does not include freedom from incarceration, which is addressed in Guidelines 3 and 4.

27 See Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886) (referring to “the political franchise of voting” as “a fundamental political right, because [it is] preservative of all rights”); Reynolds v. Sims, 377 U.S. 533, 561-562 (1964) (“Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously
For example, court fines and fees can effectively serve as a poll tax because certain states, including Georgia, require payment of all outstanding court fines and fees before a person convicted of a felony can regain his or her ability to vote. In other states, reported nonpayment or willful nonpayment of fines and fees can lead to a revocation of voting rights. And researchers have found that in states where people are prohibited from voting “while incarcerated or under other forms of criminal justice supervision,” people can suffer from voting restrictions as a result of “additional sanctions associated with or triggered by nonpayment,” such as violation of conditions of supervision and revocation of probation. Although not required by state statute, there are also troubling reports that parents have been denied contact with their children until they have made payment on outstanding court fees—a deprivation of their fundamental right to make decisions concerning the care, custody, and control of their children.

The deprivation of fundamental rights, such as the right to vote, or to the care, custody, and control of one’s children, should never result from inability to pay or even a willful failure to pay by a person with means. No government interest in collecting court fines and fees, or in achieving punishment and deterrence through such collection, warrants the deprivation of such fundamental rights.

GUIDELINE 6: Alternatives to Incarceration, Substantial Sanctions, and Monetary Penalties

29 Id. (“In Washington, failure to make three payments in a twelve-month period can lead to a revocation of voting rights. The court can also revoke voting rights if they determine that a person has willfully failed to comply with the terms of payment.”).
30 Id. (“In Missouri, Illinois, and New York, nonpayment of legal financial obligations can be considered a violation of conditions of supervision which can potentially lead to an extension of supervision or revocation of probation and parole. In Minnesota, probation can be extended for up to five years for unpaid restitution and probation can be revoked for failure to pay for mandatory conditions of probation.”).
31 In 2017, a Youth Court Judge in Mississippi entered an order prohibiting a mother from having contact with her four-month-old baby until she paid her court fees in full, and was reported to have taken similar action with respect to other parents. The University of Mississippi School of Law, MacArthur Justice Center Initiated Demands that Led to Mississippi Youth Court Judge Resigning (Oct. 26, 2017), https://law.olemiss.edu/macarthur-justice-center-initiated-demands-that-led-to-mississippi-youth-court-judge-resigning.
For people who are unable to pay fines or fees, courts must consider alternatives to incarceration and to disproportionate sanctions, and any alternatives imposed must be reasonable and proportionate to the offense.

COMMENTARY:

Fines seek to punish and deter—goals that can often be served fully by alternatives to incarceration and disproportionate sanctions like driver’s license suspension. Reasonable alternatives include: an extension of time to pay; reduction in the amount owed; and waiver of the amount owed. Frequently, the most reasonable alternative to full payment of a fine that a person cannot afford is reduction of the fine to an amount that an individual can pay.

As addressed above, fees seek to recoup court costs, generate revenue for programs through surcharges or assessments, or cover the cost of services related to the justice system. Fees should only be imposed if, among other things, the individual is able to pay. If a person who has been required to pay a fee subsequently cannot afford to pay, the fee should be waived entirely or reduced to an amount the person can pay.

Judges must have the authority to waive any or all fines and fees if the person has no ability to pay. Any non-monetary alternatives to payment of a fine, such as community service, treatment, or other social services, should be developed in line with the individual’s circumstances. Participation in these alternatives should never be conditioned on the waiver of due process rights, such as the right to a hearing or to counsel. Nor should additional fees be imposed as a condition of participating in the alternative ordered.

32 Bearden, 461 U.S. at 672.

33 NTF Principle 6.5 provides:

Courts should not charge fees or impose any penalty for an individual’s participation in community service programs or other alternative sanctions. Courts should consider an individual’s financial situation, mental and physical health, transportation needs, and other factors such as school attendance and caregiving and employment responsibilities, when deciding whether and what type of alternative sanctions are appropriate.

34 Bearden, 461 U.S. at 667-69; Report on the Future of Legal Services in the United States, ABA Commission on the Future of Legal Services (2016), http://abafuturesreport.com, at 62 (endorsing the principle that courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees). See also Amer. Bar Ass’n, Resolution 102C (2010 MY) (recommending local, state, territorial and federal governments to undertake a comprehensive review of the misdemeanor provisions of their criminal codes, and, where appropriate, to allow the imposition of civil fines or nonmonetary civil remedies instead of criminal sanctions).

35 NTF Principle 6.8 provides that courts should never charge interest on payment plans.
Any non-monetary alternatives should be reasonable and proportional in light of the individual’s financial, mental, and physical capacity, any impact on the individual’s dependents, and any other limitations, such as access to transportation, school, and responsibilities for caregiving and employment. Non-monetary alternatives should also be proportional to the offense and not force individuals who cannot pay to provide free services beyond what is proportional.

GUIDELINE 7:   Ability-to-Pay Standard

Ability-to-pay standards should be clear and consistent and should, at a minimum, require consideration of at least the following factors: receipt of needs-based or means-tested public assistance; income relative to an identified percentage of the Federal Poverty Guidelines; homelessness, health or mental health issues; financial obligations and dependents; eligibility for a public defender or civil legal services; lack of access to transportation; current or recent incarceration; other fines and fees owed to courts; any special circumstances that bear on a person’s ability to pay; and whether payment would result in manifest hardship to the person or dependents.

COMMENTARY:

Courts should apply a clear and consistent standard to determine an individual’s ability to pay court fines and fees.36

All court actors, including judges, prosecutors, probation officers, and defenders, should be trained in the standards used in their jurisdiction to determine ability to pay and the constitutional protections for people who cannot afford to pay court-ordered financial obligations.

GUIDELINE 8:   Right to Counsel

An individual who is unable to afford counsel must be provided counsel, without cost, at any proceeding, including ability-to-pay hearings, where actual or eventual incarceration could be a consequence of nonpayment of fines and/or fees. Waiver of counsel must not be permitted unless the waiver is knowing, voluntary and intelligent, and the individual first has been

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36 The National Task Force’s “Bench Card” (http://www.ncsc.org/~/media/Images/Topics/Fines%20Fees/BenchCard_FINAL_Feb2_2017.ashx), a step-by-step guide for state and local judges to use to protect the rights of people who cannot afford to pay court fines and fees, includes a set of factors judges should consider when making an ability-to-pay determination.
offered a meaningful opportunity to confer with counsel capable of explaining the implications of pleading guilty, including collateral consequences.

COMMENTARY:

No indigent person should be incarcerated without being offered the assistance of court-appointed counsel to ensure that due process standards are met and that all potential defenses are considered. Such counsel should be provided in all proceedings “regardless of their denomination as felonies, misdemeanors, or otherwise.” Moreover, counsel should be offered whenever eventual incarceration is a possible result regardless of whether the proceeding at issue is denominated “criminal” or “civil”. The cost to the court of providing counsel is not a legitimate justification for the failure to provide counsel when it is required by law.

It is longstanding ABA policy that, “[n]o waiver of counsel be accepted unless the accused has at least once conferred with a lawyer.” This ensures that an individual who intends to waive counsel has a full understanding of the assistance that counsel can provide. Judges have the

37 Amer. Bar Ass’n, Resolution 114 (MY 2018), https://www.americanbar.org/news/reporter_resources/midyear-meeting-2018/house-of-delegates-resolutions/114.html (urging federal, state, local, territorial and tribal governments “to provide legal counsel as a matter of right at public expense to low-income persons in all proceedings that may result in a loss of physical liberty, regardless of whether the proceedings are: a) criminal or civil; or b) initiated or prosecuted by a government entity.”). See also Amer. Bar Ass’n, ABA Basic Principles for a Right to Counsel in Civil Legal Proceedings (2010), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_105_revised_final_aug_2010.authcheckdam.pdf; Amer. Bar Ass’n, Standards for Criminal Justice: Providing Defense Services 5-5.1 (3d ed. 1992), https://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_defsvcs_blk.html.

38 See Amer. Bar Ass’n, Standards for Criminal Justice: Providing Defense Services 5-5.2 cmt. (3d ed. 1992), https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/providing_defense_services.authcheckdam.pdf, at 65 (“[T]he line between criminal and civil proceedings which give rise to a constitutional right to counsel has become increasingly blurred. Thus, protected liberty interests have extended due process concepts to justify the provision of counsel for indigent litigants in ‘quasi-criminal’ matters[.]”); Amer. Bar Ass’n, Resolution 114 (MY 2018) at 6 (reiterating that commentary about the blurring between criminal and civil proceedings).

39 NTF Principle 4.4 states that indigent defendants should be provided with court-appointed counsel at no charge.


41 Id. cmt., https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/providing_defense_services.authcheckdam.pdf, at 105 (“An accused who expresses a desire to proceed without counsel may sometimes fail to understand fully the assistance a lawyer can provide. Accordingly, this standard recommends that '[n]o waiver should be accepted unless the accused has at least once conferred with a lawyer.’ Some courts have recognized that counsel may be assigned by the court for this limited purpose. Such a practice helps to counter the argument that any waiver of counsel by a layperson must be the result of insufficient information or knowledge.”).
primary responsibility for ensuring that counsel is appointed, that individuals receive effective assistance of counsel, and that any waivers of counsel are knowing and voluntary. Judges should never encourage unrepresented persons who qualify for public defense services to waive counsel. "An accused should not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed before a judge and a thorough inquiry into the accused’s comprehension of the offer and capacity to make the choice intelligently and understandingly has been made." Accordingly, prosecutors should not seek waivers of the right to counsel from unrepresented accused persons. Only after the defendant has properly waived counsel may a prosecuting attorney “engage in plea discussions with the defendant,” and “where feasible, a record of such discussions should be made and preserved.”

GUIDELINE 9: Transparency

Information concerning fines and fees, including financial and demographic data, should be publicly available.

42 Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (“[W]e think the matter, for the most part, should be left to the good sense and discretion of the trial courts with the admonition that if the right to counsel guaranteed by the Constitution is to serve its purpose, defendants cannot be left to the mercies of incompetent counsel, and that judges should strive to maintain proper standards of performance by attorneys who are representing defendants in criminal cases in their courts.”)

43 Id., See also Johnson v. Zerbst, 304 U.S. 458, 465 (1947) (“The constitutional right of an accused to be represented by counsel invokes, of itself, the protection of a trial court, in which the accused whose life or liberty is at stake is without counsel. This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused. While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court[].”)

44 See Model Code of Judicial Conduct, Rule 2.6 (providing that a judge must “accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law,” and should not “act in a manner that coerces any party into settlement”).

45 See Amer. Bar Ass’n, Standards for Criminal Justice: Providing Defense Services 5-8.2. See also id. (“A waiver of counsel should not be accepted unless it is in writing and of record.”).

46 Amer. Bar Ass’n, Standards for Criminal Justice: Prosecution Function 3-5.1(e) (“The prosecutor should not approach or invoke with an accused unless a voluntary waiver of counsel has been entered or the accused’s counsel consents.”). See also Model Rules of Professional Conduct, Rule 3.8(c) (Prosecutors shall not “seek to obtain from an unrepresented accused a waiver of important pretrial rights.”); id. Rule 3.8(b) (Prosecutors “shall make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel”); id. Rule 4.1 (providing that officers of the court should not fail to disclose material facts when dealing with persons other than clients).

47 Amer. Bar Ass’n, Standards for Criminal Justice: Prosecution Function 3-4.1(b) (4th ed. 2015), https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition.html (“A prosecutor should not use illegal or unethical means to obtain evidence or information, or employ, instruct, or encourage others to do so.”).
COMMENTARY:

Courts should track and timely\(^{48}\) make available to the public data documenting: a) court revenue and expenditures, including the aggregate amount of fines and any fees imposed, the aggregate amount of fines and any fees collected, and the aggregate cost of collecting fines and fees; b) the amount of fines and fees imposed, waived, and collected in each case; c) any cost to the court of administering non-monetary alternatives to payment, including community service and treatment programs;\(^ {49}\) and d) demographic data regarding people ordered to pay fines and fees.\(^ {50}\) The need for transparency is especially compelling with respect to private probation companies.\(^ {51}\)

GUIDELINE 10: Collection Practices

Any entities authorized to collect fines, fees, or restitution, whether public or private, should abide by these Guidelines and must not directly or indirectly attempt to thwart these Guidelines in order to collect money; nor should they ever be delegated authority that is properly exercised by a judicial officer, such as the authority to adjudicate whether a person should be incarcerated for failure to pay. Any contracts with collection companies should clearly forbid intimidation, prohibit charging interest or fees, mandate rigorous accounting, outlaw reselling, and otherwise avoid incentivizing harmful behavior. Contracts should include some mechanism for monitoring compliance with these prohibitions.

COMMENTARY:

Many jurisdictions have awarded contracts to private companies to collect fines and fees, for diversion programs, or to supervise probation. Others have created a public agency or office

\(^{48}\) “Timely” means as soon as feasible after the information is collected.

\(^{49}\) The cost to the court of administering any non-monetary alternative to payment should never be imposed on the defendant or respondent.

\(^{50}\) See National Center for State Courts, *Principles for Judicial Administration* 11 (2012) (requiring transparency and accountability through the use of performance measures and evaluation at all levels of the court system). See also Amer. Bar Ass’n, Resolution 302 (MY 2011) (urging state and local governments to identify and engage in best practices for court funding to insure protection of their citizens, efficient use of court resources, and financial accountability). NTF Principle 3.2 provides that “[a]ll courts should demonstrate transparency and accountability in the collection of fines, fees, costs, surcharges, assessments, and restitution, through the collection and reporting of financial data and the dates of all case dispositions to the state’s court of last resort or administrative office of the courts.”

\(^{51}\) *Profiting from Probation*, at 18 (“A good place for state governments to start would be to require basic transparency about the revenues probation companies extract from probationers. No state does this now.”).
responsible for collections of fines and fees. Often these entities, and especially those that are “for-profit” companies, have an interest in maximizing collections, and thus face inherent conflicts of interest when charging fees for diversion or probation, seeking to collect fines and fees, and informing probationers of their right to counsel in probation revocation hearings concerning charges of probation violation due to nonpayment of fines and fees.\footnote{Department of Justice Guidance at 8; Profiting from Probation at 42-44.} Often these entities have imposed additional fees when people cannot immediately pay fines and fees, have misinformed indigent people facing incarceration for nonpayment of their right to counsel in such proceedings, and have failed to help courts identify people whose debts should be waived, reduced, or converted to carefully thought-out non-monetary alternatives.\footnote{See Rodríguez v. Providence Community Corrections, 155 F. Supp. 3d 758, 771 (M.D. Tenn. Dec. 17, 2017) (finding that a for-profit collection company’s failure to inquire into ability to pay before stacking fees, effectively revoking probation, raised due process and equal protection concerns).}

The integrity of the criminal justice system depends on eliminating such conflicts of interest. These conflicts thwart the fair and neutral provision of justice that is integral to due process and must be the hallmark of our justice system.\footnote{See Amer. Bar Ass’n, Resolution 111B (2016 AM) and Report (condemning the use of for-profit companies for user-funded probation with reasoning that supports the principle against the use of for-profit companies to collect court fines and fees).} Therefore, courts and state and local governments ensure that all entities that collect fines and fees or administer diversion or probation, including for-profit companies, abide by these Guidelines.

Courts should only forward for collection those cases in which an individual has been found to have willfully failed to pay following a court hearing in adherence to these Guidelines. Any contracts with collection companies should clearly forbid intimidation, prohibit charging interest or fees, mandate rigorous accounting, outlaw reselling, and otherwise avoid incentivizing harmful behavior. Contracts should also include some mechanism for monitoring compliance with these prohibitions.
In July 2016, in the face of increasing racial tensions, retaliatory violence against police officers, and a growing sense of public distrust in our nation’s justice system, the ABA created the Task Force on Building Public Trust in the American Justice System. The Task Force wrote a Report, adopted by the ABA Board of Governors in February 2017, that calls on the ABA and state and local bar entities to: (1) Encourage the adoption of best practices for reforming the criminal justice system; (2) Build consensus about needed reforms and work to carry them out; and (3) Educate the public about how the criminal justice system works. In August, 2017, incoming ABA President Hilarie Bass appointed a Working Group to continue the work of the Task Force. The Working Group chose to focus in on one particular issue causing distrust of the justice system – the imposition and enforcement of excessive fines and fees. The Working Group chose to focus first on this topic because it adversely impacts millions of Americans and has contributed significantly to negative public perceptions of the justice system.

Every day in the United States, courts impose myriad financial obligations on individuals who have been charged with criminal offenses or civil infractions. These include fines imposed as part or all of the punishment levied against them for low-level offenses, such as traffic tickets or civil ordinance violations, as well as misdemeanors and felonies. They also include fees, which, are not imposed to punish or deter offenses but to raise revenue or fund services. Some fees are legislatively-mandated assessments or charges to recoup court costs, while others are “user fees” assessed to help fund the justice system, including costs associated with probation, public defenders, diversion programs, and court costs, as well as other essential government services. They also include orders of forfeiture and restitution, which are not the focus of these

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56 The term “fines” includes monetary penalties imposed by a court as punishment for a criminal offense or civil infraction. For purposes of these Guidelines, restitution and forfeiture are not included in the definition of “fines and fees.”

57 The term “fees” includes fees, court costs, state and local assessments, and surcharges imposed when a person is convicted of criminal offenses and civil infractions. The term, as used in these Guidelines, does not include civil filing fees.
Guidelines, although several of the principles underlying these Guidelines apply to forfeiture and restitution as well.  

The imposition and enforcement of these fines and fees disproportionately harm the millions of Americans who cannot afford to pay them, entrenching poverty, exacerbating racial and ethnic disparities, diminishing trust in our justice system and trapping people in cycles of punishment simply because they are poor. In communities around the country, millions of people are incarcerated, subjected to the suspension of driver’s and occupational licenses, or prohibited from voting simply because they cannot afford to pay fines or fees imposed by courts. Even children are incarcerated for failure to pay fines or fees, even though children almost by definition lack a personal ability to pay such fines or fees.

An estimated 10 million Americans owe more than $50 billion resulting from their involvement in the criminal justice system. Some are sentenced solely to the payment of fines and fees. Others have been sentenced to prison terms in addition to any fines and fees imposed. According to the most recently available numbers, approximately two-thirds of people in prison have been assessed court fines and fees. This remarkable statistic persists even though people sent to prison often have little prospect of earning enough money to pay their debt: 65 percent of prisoners do not have a high school diploma, and 15 to 27 percent of people leaving prison or jail expect to go to a homeless shelter upon release and as many as 60 percent remain unemployed a year after release.

Studies show that the imposition and enforcement of fines and fees disproportionately and regressively affect low-income individuals and families. Communities of color are particularly devastated for reasons that include the longstanding racial and ethnic wealth gap, higher rates

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58 For example, as noted below with respect to Guideline 3, a person who is unable to pay an order of restitution should not be incarcerated for failure to pay.
63 A 2013 Pew Research Center study of federal data found that the median wealth of white households was 13 times the median wealth of Black households, and 10 times the median wealth of Latino households. See Rakesh Kochhar & Richard Fry, Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession, Pew Research Center (Dec. 12, 2014), http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession.
of poverty and unemployment, and the over-policing of communities of color, for reasons that include racial and ethnic profiling. For example, in many jurisdictions Black people disproportionately experience license suspensions for nonpayment of fines and fees, due in part to racial disparities in wealth and poverty.66 These racial disparities in license suspension in turn contribute to racial disparities in conviction for driving on a suspended license, making Black people in these states disproportionately vulnerable to the resulting steep financial penalties.67 Such racial disparities in the adverse impact of the imposition and enforcement of court fines and fees also contribute to tension between law enforcement and courts on the one hand and the communities of color they serve on the other, as documented in a devastating 2015 report by the U.S. Department of Justice.68

The application of fines and fees is not limited to adults in the criminal justice system. Frequently fines and fees are imposed on juveniles and their families in connection with the

64 In 2014, the Pew Research Center found that Black and Latino people were, on average, at least twice as likely to be poor than were white people in the United States. On Views of Race and Inequality, Blacks and Whites Are Worlds Apart, Pew Research Center (June 27, 2016), http://www.pewsocialtrends.org/2016/06/27/1-demographic-trends-and-economic-well-being.

65 Racial and ethnic profiling—the targeting of people of color for police stops, frisks, and searches without reasonable suspicion of criminal activity and based on perceived race or ethnicity—is well documented in jurisdictions across the country. For example, in 2013, a federal court ruled that the New York City Police Department was liable for a pattern and practice of racial and ethnic profiling in police stops of Black and Latino people. Floyd v. City of New York, 959 F. Supp. 2d 540, 665 (S.D.N.Y. 2013) (finding the City of New York liable for “targeting young black and Hispanic men for stops based on the alleged criminal conduct of other young black or Hispanic men” in violation of the Fourteenth Amendment Equal Protection Clause). See also Melendres v. Arpaio, 989 F. Supp. 2d 822, 899-05 (D. Ariz. 2013) (finding sheriff’s office liable for policies and practices of profiling Latino motorists for police stops). Whether due to racial and ethnic profiling or other factors, well-documented racial disparities in justice-system involvement render communities of color more vulnerable to the adverse impact of the imposition and collection court fines and fees. For example, a 2013 report found that across the United States, Black people are 3.73 times as likely to be arrested for marijuana possession even though marijuana use is roughly equal among Black and white people as documented by the U.S. Department of Health & Human Services Substance Abuse and Mental Health Services Administration. See American Civil Liberties Union Foundation, The War on Marijuana in Black and White 17, 31, 49-50 (2013), https://www aclu.org/report/report-war-marijuana-black-and-white (analyzing 2010 data from the Federal Bureau of Investigation and U.S. Census, and the 2014 National Survey on Drug Use and Health finding that an estimated 15.7% of Black people and 13.7% of white people had used marijuana at some point in the past year).


young person’s involvement with the juvenile justice system. A recent report on Alameda County, California, showed that total fees to families for juvenile involvement added up to approximately $2000 for an average case.

Bedrock constitutional principles of due process and equal protection of the law apply when courts impose and collect fines and fees. More than thirty years ago, the U.S. Supreme Court ruled in *Bearden v. Georgia*, 461 U.S. 660 (1983), that it is unconstitutional to incarcerate people solely for their inability to pay fines or restitution. For decades, the Court has warned that the justice system must not treat those with money more favorably than those without. Yet these practices endure.

The effect is that poor people are punished because of their poverty, in violation of basic constitutional principles guaranteeing fairness and equal treatment of rich and poor in the justice system. This harms us all. When people are jailed, or their driver’s licenses are suspended, because they cannot afford to pay court fines or fees, they face heightened barriers to employment and education, disrupting families and undermining community stability. Similarly, requiring fees to access diversion or treatment programs, such as “drug courts,” creates a two-tiered system of justice—one for the rich and one for the poor. These effects detract from public trust in our justice system, including our law enforcement officials and our courts.

Although fines are an appropriate sanction in certain circumstances, these Guidelines seek to ensure that no one is subjected to disproportionate sanctions, including incarceration, simply because they do not have the money to pay an otherwise appropriate fine or fee.

An important objective of the Guidelines is to eliminate any and all financial incentives in the criminal justice system to impose fines or fees. The justice system serves the entire public and should be entirely and sufficiently funded by general government revenue. The total funding for any given court or court system should not be directly affected by the imposition or collection of fines or fees (as defined for purposes of the Guidelines). This core principle was adopted by the National Task Force on Fines, Fees and Bail Practices, established by the Conference of Chief

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Justices and the Conference of State Court Administrators. In December 2017, the Task Force issued its “Principles on Fines, Fees, and Bail Practices” (the “National Task Force Principles” or “NTF Principles”), which were endorsed in 2018 by the Access, Fairness and Public Trust Committee of the Conference of Chief Justices. Principle 1.5 of the NTF Principles states, “Courts should be entirely and sufficiently funded from general governmental revenue sources to enable them to fulfill their mandate. Core court functions should generally not be supported by revenues generated from court-ordered fines, fees, or surcharges.”

“Requiring users to pay for judicial services is, in many ways, anathema to public access to the courts.” All components of the justice system, including courts, prosecutors, public defenders, pre-trial services, and probation, should be sufficiently funded from public revenue sources and not reliant on fees, costs, surcharges, or assessments levied against criminal defendants or people sanctioned for civil infractions. As a Louisiana federal court held in December 2017, where judges in a given jurisdiction are responsible for both (a) “managing fines and fees revenue” that fund court operations, and (b) “determining whether criminal defendants are able to pay those same fines and fees,” such judges face an impermissible “institutional incentive to find that criminal defendants are able to pay fines and fees.”


73 Cf. Cain v. City of New Orleans, No. 15-4479, 2017 WL 6372836 (E.D. La. Dec. 13, 2017). The NTF Principles echo this position. Principle 1.5 states, “A judge’s decision to impose a legal financial obligation should be unrelated to the use of revenue generated from the imposition of such obligations. Revenue generated from the imposition of a legal financial obligation should not be used for salaries or benefits of judicial branch officials or operations, including judges, prosecutors, defense attorneys, or court staff, nor should such funds be used to evaluate the performance of judges or other court officials.” See also Tumey v. State of Ohio, 273 U.S. 510, 532 (1927) (holding that due process was violated where a court’s revenue, and the judge’s salary, depended in part on the imposition and collection of court fines and fees).
The justice system should not be used as a revenue source for government services.\(^76\) State and local governments should not depend on fines and fees imposed in the justice system for general revenue or to fund particular services inside or outside the criminal justice system.\(^77\) "When courts are pressured to act, in essence, as collection arms of the state, their traditional independence suffers."\(^78\)

In addition, a number of ABA policies include guidelines designed to protect the right to counsel and to ensure that the poor do not disproportionately suffer because of their indigence. These existing ABA guidelines apply to the collection and imposition of court fines and fees as well.

The current resolution and Guidelines build on ABA policies, the NTF principles, and existing law to create straightforward, coherent, and focused guidelines that can assist courts, administrators, legislators, and advocates seeking to remedy harms presented by the imposition and collection of fines and fees in the justice system. The Guidelines are also intended to be readily accessible and useful for members of the public, including non-lawyers. In this way, the Guidelines serve the original three goals set out in the Task Force report: (1) to encourage the adoption of best practices; (2) establish consensus around needed reform; and (3) educate the public. The Guidelines will thus help in building public trust in the American justice system.

Respectfully submitted,

\(^76\) Amer. Bar Ass’n, Standards for Criminal Justice: Sentencing, Standard 18.2.2 (ii) ("Economic sanctions include fines, monetary awards payable to victims, and mandatory community service. The legislature should not authorize imposition of economic sanctions for the purpose of producing revenue."). See Amer. Bar Ass’n Resolution 117A (2008) (citing ABA resolution #10A (2004), adopting Report of the American Bar Foundation Commission on State Court Funding (2004)).

\(^77\) See id. The history behind court-imposed fees and fines—and incarceration for failure to pay—is closely tied to practices that arose during Reconstruction. As Professors Harris, Evans and Beckett have explained, monetary sanctions were commonplace in the South, “where their imposition was the foundation of the convict lease system that existed from emancipation through the 1940s.” Drawing Blood from Stones, 15 Am. J. Sociology at 1758. “Charged with fees and fines several times their annual earnings, many southern prisoners were leased by justice officials to corporations who paid their legal debt in exchange for inmates’ labor in coal and steel mines as well as on railroads, quarries, and farm plantations. Collected fees and fines were used to pay judges’ and sheriffs’ salaries. Monetary sanctions were thus integral to systems of criminal justice, debt bondage, and racial domination in the American South for decades.” Id. (citations omitted). See also Michelle Alexander, The New Jim Crow (2012), at 31 (“[During Reconstruction] vagrancy laws and other laws defining activities such as ‘mischief’ and ‘insulting gestures’ as crimes were enforced vigorously against blacks. The aggressive enforcement of these criminal offenses opened up an enormous market for convict leasing, in which prisoners were contracted out as laborers to the highest private bidder. Douglas Blackmon, in [Slavery by Another Name: The Re-enslavement of Black People in America from the Civil War to World War II (2008)], describes how tens of thousands of African Americans were arbitrarily arrested during this period, many of them hit with court costs and fines, which had to be worked off in order to secure their release.”).

\(^78\) Criminal Justice Debt at 2. See also id. at 30; Katherine Beckett & Alexes Harris, On cash and conviction: Monetary sanctions as misguided policy, 10 Criminology & Public Policy 505, 511 (2011) ("On cash and conviction “") ("[I]f the state compels penal targets to use (often expensive and ineffective) state ‘services,’ then the government is obligated to pay for them. Indeed, this fiscal obligation is an important check on government power.”).
GENERAL INFORMATION FORM

Submitting Entity: Working Group on Building Public Trust in the American Justice System

Submitted By: Robert Weiner, Chair

1. **Summary of Resolution(s).** This resolution urges federal, state, local, territorial, and tribal legislative, judicial and other government bodies to promulgate law and policy consistent with and otherwise adhere to, the proposed guidelines for the imposition and collection of court fines and fees.

2. **Approval by Submitting Entity.** This resolution was passed by the Working Group on Building Public Trust in the American Justice System on May 2, 2018. Co-sponsorship approved by the Standing Committee on Legal Aid and Indigent Defendants on April 8, 2018, by the Criminal Justice Section on April 8, 2018, by the Section on Civil Rights and Social Justice on April 20, 2018, by the Section of State and Local Government Law on April 22, 2018, by the Massachusetts Bar Association on .and by the King County Bar Association on May 7, 2018.

3. Has this or a similar resolution been submitted to the House or Board previously?

   No.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

   - ABA Resolution 110 (2004 AM), adopting *ABA Guidelines on Contribution Fees for Costs of Counsel in Criminal Cases*
   - ABA Resolution 102C (2010 MY)
   - ABA Resolution 302 (2011 MY)
   - ABA Resolution 111B (2016 AM)
   - ABA Resolution 112C (2017 MY)
   - ABA Resolution 114 (MY 2018)
   - *ABA Standards for Criminal Justice: Sentencing*, Standards 18.2.2 (ii), 18.3.16 (d) & 18.3.22(e)
   - *ABA Basic Principles for a Right to Counsel in Civil Legal Proceedings* (2010)
   - *ABA Standards for Criminal Justice: Providing Defense Services* 5-5.1 & 5-5.2 (1992)

   None of these policies would be affected by the adoption of this resolution.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

   N/A
6. **Status of Legislation.** (If applicable)
   N/A

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**
   This policy will enable the ABA and relevant ABA committees to provide guidance to courts, legislatures, and advocates on the ground working to expose and end practices leading to modern-day debtors’ prisons, through *amici curiae* in appropriate cases, for example.

8. **Cost to the Association.** (Both direct and indirect costs)
   None.

9. **Disclosure of Interest.** (If applicable)
   N/A

10. **Referrals.**
    At the same time this policy resolution is submitted to the ABA Policy Office for inclusion in the 2018 Annual Agenda Book for the House of Delegates, it is being circulated to the chairs and staff directors of the following ABA entities:

    Judicial Division
    Section of State and Local Government Law
    Government and Public Sector Lawyers Division
    Litigation
    Young Lawyer’s Division
    Section on Civil Rights and Social Justice
    Law Practice Division
    Litigation Section
    Solo, Small Firm and General Practice Division
    Ethics and Professional Responsibility
    Commission on Veteran’s Legal Services
    Standing Committee on Public Education
    Commission on Disability Rights
    Commission on Hispanic Legal Rights & Responsibilities
    Commission on Homelessness and Poverty
    Center for Human Rights
    Commission on Immigration
    Coalition on Racial & Ethnic Justice
    Commission on Youth at Risk

11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)

    Robert Weiner
12. **Contact Name and Address Information.** (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

[TBD]
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   This resolution urges federal, state, local, territorial, and tribal legislative, judicial and other government bodies to promulgate law and policy consistent with, and otherwise to adhere to, the proposed *Ten Guidelines on Court Fines and Fees*.

2. **Summary of the Issue that the Resolution Addresses**
   This resolution is intended to principally address the fundamental unfairness created when people are subjected to disproportionate sanctions, including imprisonment, simply because they do not have the ability to pay a fine or fee for a criminal offense or civil infraction.

3. **Please Explain How the Proposed Policy Position will Address the Issue**
   A policy position from the ABA will provide much needed leadership and guidance to federal, state, local, territorial, and tribal legislative, judicial and other government bodies, and to advocates before those bodies, on how to lawfully impose and enforce court fines and fees and how to address ongoing constitutional violations.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**
   None known.
Dear Council,

Attached are two new items for the Delegates’ Report.

We look forward to our call next week:

MONDAY, JUNE 18, 2018
12:30 P.M. – 1:30 P.M. EASTERN
DIAL-IN: (866) 646-6488, CONFERENCE CODE: 940-210-0922#

Please review the Council Agenda Book before the conference call.

Thank you.

Sincerely,

Kristie Bailey
Office Administrator | Section of Litigation

American Bar Association | 321 North Clark Street | Chicago, IL  60654
T: 312.988.5689 | F: 312.988.6234
kristie.bailey@americanbar.org | www.americanbar.org
AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON GROUP AND PREPAID LEGAL SERVICES
SOLO, SMALL FIRM AND GENERAL PRACTICE DIVISION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association adopts the American Bar
2 Association Standards for Accreditation of Legal Plans dated August 2018.
SECTION 1: POLICY STATEMENT

1.01 This document establishes standards by which the American Bar Association will accredit a group, entity or organization as a Legal Plan. The Standards require that an accredited Legal Plan demonstrates that it provides affordable access to legal services; and that if those services are provided through a Legal Plan attorney, the Legal Plan demonstrates that Legal Plan attorney is required to have the requisite training and qualifications to participate in the Legal Plan. These Standards are designed to enable the Association to evaluate thoroughly the objectives, standards and procedures of Applicants and to facilitate public access to Legal Plan services. They are also intended to foster vigorous, effective and competent representation of clients covered by Legal Plans.

SECTION 2: DEFINITIONS

2.01 As used in these Standards:

(A) "Legal Plan" is any group, entity or organization, which charges a fee for document preparation, consultation services or legal representation to members of the Legal Plan. This includes phone consultation to assist a client in preparation of documents and/or the referral of clients to attorneys where the attorneys receive a fee or provide a free consultation.

(B) "Applicant" means a Legal Plan organization which applies to the American Bar Association for accreditation or re-accreditation under these Standards.

(C) "Association" means the American Bar Association.

(D) "Legal Plan Attorney" means an attorney who is part of that Legal Plan and provides services to Legal Plan members under the Legal Plan.

(E) "Standards" means the American Bar Association Standards for Accreditation of Legal Plans.

(F) "Legal Plan Standards Committee" means the Standing Committee on Accreditation of Legal Plans and Standing Committee on Group and Prepaid Legal Services, which will include a minimum of two (2) members of the Group Legal Services Association and one (1) member of the Standing Committee on Group and Prepaid Legal Services, who will review applications for accreditation and re-accreditation.

SECTION 3: AUTHORITY
3.01 The authority to grant and withdraw accreditation and to grant reaccreditation is vested in the Association.

3.02 Accreditation under these Standards of any Legal Plan by the Association is not intended to, and shall not be interpreted to, preempt nor usurp the authority of states to regulate the practice of law.

SECTION 4: REQUIREMENTS FOR ACCREDITATION OF LEGAL PLANS

In order to obtain accreditation by the Association, an Applicant must demonstrate that the Legal Plan operates in accordance with the following standards:

4.01 Purpose of Legal Plans – The Applicant shall demonstrate that the Legal Plan is dedicated to providing affordable access to quality legal services.

4.02 Legal Plan Attorneys – For those offerings under the Legal Plan provided by Legal Plan Attorneys, the Legal Plan shall have in place an application and screening process for all potential Legal Plan Attorneys. The Legal Plan shall establish minimum requirements for those attorneys and capture those requirements in a contract signed by the attorney agreeing to such requirements.

The minimum requirements are as follows:

(A) The Legal Plan Attorney shall be validly licensed with applicable state entities governing the licensure of attorneys in the applicable jurisdictions;

(B) The Legal Plan Attorney shall in good standing with the State Bar and actively disclose any past or present disciplinary matters to the Legal Plan;

(C) The Legal Plan Attorney shall be engaged in the practice of law;

(D) The Legal Plan Attorney shall, even if practicing virtually, have access to a physical location suitable to meet and respond to Legal Plan member needs and in compliance with any applicable state ethical rules, except where a legal plan which otherwise meets the requirements of these guidelines additionally retains an attorney whose practice includes only telephone access services.

(E) The Legal Plan Attorney shall have a minimum of two (2) years in practice/related experience OR have a Senior Mentor (defined as having ten (10) or more years in practice). A clerkship with a criminal or civil judge equates to the requisite experience;
The Legal Plan Attorney shall be familiar with the Legal Plan under which they provide services and complete any required Legal Plan specific training, which includes customer service standards required by the Legal Plan;

The Legal Plan Attorney shall maintain a professional malpractice/liability policy and provide to the Legal Plan proof of such coverage on an annual basis;

The Legal Plan Attorney shall accept the Legal Plan’s fee schedule.

The Legal Plan Attorney shall agree to monitor, maintain and update their information or profile with the Legal Plan which is used to display to Legal Plan members.

The Legal Plan shall conduct annual certification reviews of Legal Plan Attorneys.

An Applicant shall submit an affidavit and supporting documents to the Standing Committee on Group and Prepaid Legal Services certifying that they require their Legal Plan Attorneys to meet the requirements above.

**4.03 Legal Plan Services** - A Legal Plan shall include in its Plan an offering some form of in-office, in-person services with a Legal Plan Attorney. A Legal Plan shall also include in its offering both paid-in-full and discounted legal services for its members for the core practice areas which include at a minimum, but are not limited to: Wills/Estate Planning, Traffic matters, Family Law, Civil Matters, Administrative Matters, Financial Matters, and Real Estate Matters. Though a Legal Plan may include the above in its online or telephonic legal services, the plan shall not be limited to those offerings.

**4.04 Other Services** - If legal services are provided, by someone other than an attorney, to a member through a Legal Plan, that person shall be supervised by someone who is licensed to provide such services in that jurisdiction.

**4.05 Member Complaints** – The Legal Plan shall have in place a formal process by which to receive and address client complaints.

**4.06 Attorney Issues** – The Legal Plan shall have in place a formal process by which to address Legal Plan Attorney issues, including termination from the Legal Plan, if appropriate.

**4.07 Organizational Capabilities** – the Applicant shall demonstrate that it possesses the organizational and financial resources to provide the
benefits under the Legal Plan on a continuing basis and that it adheres to any applicable state or federal requirements.

4.08 **Nondiscrimination** – The Applicant shall not discriminate against any lawyers seeking to become Legal Plan Attorneys on the basis of race, religion, gender, sexual orientation, disability, or age. This paragraph does not prohibit an Applicant from imposing reasonable experience requirements on attorneys seeking to become Legal Plan Attorneys.

**SECTION 5: ACCREDITATION PERIOD AND RE-ACCREDITATION**

5.01 Initial accreditation by the Association of any Applicant shall be granted for two years.

5.02 The Standing Committee for Group and Prepaid Legal Services shall issue a certificate of accreditation if their review shows that the Legal Plan’s rules, policies, and procedures meet the Standards.

5.03 To retain Association accreditation, a Legal Plan shall be required to apply for re-accreditation prior to the end of the second year of its initial accreditation period and every two years thereafter. The Legal Plan shall be granted re-accreditation upon a showing of continued compliance with these Standards.

**SECTION 6: REVOCATION OF ACCREDITATION**

6.01 A Legal Plan’s accreditation by the Association may be revoked upon a determination that the Legal Plan has ceased to exist, or has ceased to operate in compliance with these Standards.

**SECTION 7: AUTHORITY TO IMPLEMENT STANDARDS**

7.01 Consistent with these Standards, the Standing Committee for Group and Prepaid Legal Services shall:

(A) Interpret these Standards;

(B) Adopt rules and procedures for implementing these Standards, and amend such rules and procedures as necessary;

(C) Adopt an appropriate fee schedule to administer these Standards;

(D) Consider applications by any Legal Plan for accreditation or re-accreditation under these Standards, evaluate those requests in accordance with the Standards and recommend approval by the Association of such requests when it deems the Legal Plan has met the requirements as set forth in these Standards; and
(E) Recommend the revocation of accreditation in accordance with
the provisions of Section 6.01 of these Standards.

SECTION 8: ADOPTION AND AMENDMENT

8.01 These Standards become effective upon their adoption by the
House of Delegates of the Association.

8.02 The power to approve an amendment to these Standards is vested
in the House of Delegates; however, the House will not act on any
amendment until it has first received and considered the advice and
recommendations of the Legal Plans Standards Committee.
The purpose of this Resolution is to ensure that, at a minimum Legal Plans are providing affordable access to legal services in furtherance of bridging the access to justice gap for all Americans. As Legal Plans currently help citizens of moderate to modest means—a group not currently addressed by legal aid organizations, it is imperative the Legal Plans demonstrate they adhere to minimum standards set by the American Bar Association. This adherence will not only ensure affordable access of legal services to this important population but also help foster vigorous, effective and competent representation of clients covered by Legal Plans.

The key components of the Standards are defined in Section 2.

Section 3 the Standards grants the American Bar Association with the authority to grant, reject or withdrawal accreditation or re-accreditation.

Section 4 of the Standards states the minimum standards by which the Legal Plan must adhere to be accredited by the American Bar Association, including:

1. The Legal plan is dedicated to providing affordable access to quality legal services;
2. If a Legal Plan attorney is involved, that attorney must apply to the Legal Plan, meet minimum requirements to become a member of the Legal Plan attorney network, and be reviewed every year to ensure continued compliance with these minimum requirements;
3. The Legal Plan must offer, at a minimum, certain components to its plan to ensure affordable access for the most utilized legal issues;
4. If the Legal Plan provides legal services by someone other than an attorney, that person must be supervised by an attorney;
5. The Legal Plan must have a formal complaint process;
6. The Legal Plan must have a formal process by which to address issues and complaints raised about the attorney;
7. The Legal Plan must demonstrate that it adheres to any state or federal regulations that are applicable to its business and that it has financial security to ensure it can provide affordable access to its members; and
8. The Legal Plan must not discriminate in any way against any attorneys applying to become members of the Legal Plan’s attorney network.

Section 5 of the Standards states that accreditation will be granted for a period of two years and that a Legal Plan must reapply before the end of that second year for re-accreditation.
Section 6 of the Standards grants the American Bar Association that right to revoke any accreditation upon substantiated information that the Legal Plan is no longer meeting the requirements set forth in these Standards.

Section 7 of the Standards defines that the Standing Committee on Group and Prepaid Legal Services will act on behalf of the American Bar Association to do the following:

1. Interpret the Standards;
2. Create procedures for implementing the Standards (including administrative processes such as how to apply, where applications and reviews are house, and so on);
3. Create a fee for the application for accreditation and re-accreditation. The fee will be used to support the administrative function described in number 2 above;
4. Review applications for accreditation and re-accreditation and approve or deny such applications; and
5. Withdraw or revoke a Legal Plan’s accreditation if they are no longer in compliance with these Standards.

Section 8 of the Standards grants the American Bar Association’s House of Delegates the authority to amend these Standards.

Respectfully submitted,

Keri Coleman Norris
Chair, Standing Committee on Group and Prepaid Legal Services
GENERAL INFORMATION FORM

Submitting Entity: The Standing Committee on Group and Prepaid Legal Services (the Standing Committee).

Submitted By: Keri Coleman Norris, Chair of the Standing Committee

1. **Summary of Resolution(s).** The purpose for this Resolution is to set Standards to ensure Legal Plans at a minimum, are providing affordable access to legal services in furtherance of bridging the access to justice gap for all Americans.

2. **Approval by Submitting Entity.** Approved by the Standing Committee on Group and Prepaid Legal Services on October 27, 2017.

3. **Has this or a similar resolution been submitted to the House or Board previously?** The Standing Committee is not aware of any similar resolution.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?** There are currently no policies regarding legal plans that will be affected by the adoption of this Resolution.

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?** n/a

6. **Status of Legislation.** (If applicable) n/a

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.** If this Resolution is adopted, the following steps will be taken to implement the Standards.
   a. Processes (including regarding the application and other administrative tasks) will be developed and implemented by the Standing Committee;
   b. Notification to all Legal Plans will be written and sent;
   c. News article will be written and released for information to general public and those developing Legal Plans; and
   d. Applications will be reviewed by the Legal Plans Standards Committee and notifications will be sent out to applicants regarding their status.

   e. **Cost to the Association.** (Both direct and indirect costs) This Resolution anticipates a low staff cost which should be offset by the application fees by
the plans seeking approval.
1. to help with the development of the application;
2. to act as receiver of the applications and any other information provided to
the Standing Committee;
3. to set calendar for the Standing Committee to meet to review applications
and information; and
4. to help write and distribute the notification to Legal Plans and the news
article to the public.
It is anticipated the fees paid by the applicants will help offset the costs
identified above.

8. Disclosure of Interest. (If applicable) None

9. Referrals.

10. Contact Name and Address Information. (Prior to the meeting. Please
include name, address, telephone number and e-mail address) Keri
Coleman Norris, Chair of the Standing Committee, LegalShield, 1 Prepaid
Way, Ada, OK 74820, 580-421-7900, kerinorriss@legalshieldcorp.com.

11. Contact Name and Address Information. (Who will present the Resolution
with Report to the House? Stephen D. Williams, Standing Committee
Member, 50 Main Street, Flemington, New Jersey 08822; 908-284-0074;
steve@sdwilliamslaw.com or cnjatty@aol.com.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The purpose for this Resolution is to ensure Legal Plans at a minimum, are providing affordable access to legal services in furtherance of bridging the access to justice gap for all Americans. As Legal Plans currently help moderate to modest means citizens – a group not currently addressed by legal aid organizations, it is imperative the Legal Plans demonstrate they adhere to minimum standards set by the American Bar Association. This adherence will not only ensure affordable access of legal services to this important population but also help foster vigorous, effective and competent representation of clients covered by Legal Plans.

2. Summary of the Issue that the Resolution Addresses

This Resolution was developed to ensure as access to justice efforts are increased to help bridge the gap, that the Legal Plan Industry be recognized as a legitimate, affordable solution for a large group of citizens whose needs are not yet really being addressed – the moderate to modest to higher income consumers. It is imperative that we ensure minimum standards are being met by entities providing services under Legal Plans to meet this goal. The Legal Plan industry has been working collectively over the last years to help provide solutions for affordable legal services, and wants to continue to be viable in this effort to bridge the gap.

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

The issue is Legal Plans need to provide a credible, affordable solution to citizens. This Resolution helps guide them to providing such a solution and to become a credible, effective Plan that will help those consumers whose needs are not being met elsewhere.

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

We are not aware of any other views at this time.
I apologize if this is a duplicate, but in endeavoring to send this to Barb, I could not find the underlying email that I thought I had sent to Koji and Gene, so am re-sending. Thanks.

The Commission on Women is considering a late filed report and resolution to the August HOD proposing voluntary annual reporting of gender disparities in wages by category of Attorney’s within law firms. This would be a take off from the UK legislation, but different in so far as it would apply to partners and would be voluntary, unlike the mandatory UK model. The thought would be to ask law firms to voluntary collect this information on an annual basis; the disparities would be disclosed in percentages, Rather than dollar amounts. Moreover, the analysis of the gender disparity in attorney compensation would be by category: one to fourth year associates, 4th to 8th year associates, partners and equity partners. It would be up to the law firm whether or not to disclose this information either internally or externally. The purpose behind seeking this level of transparency is that most law firms argue that the 20 to 30% disparity in wages reflected in every report ever done happens at other firms, not their own. The hope is that forcing transparency will motivate law firms to do some self examination of their own actual numbers and to respond accordingly. Of course, if clients begin to insist on the disclosure of this information to them, one can only assume the change will come much faster. I personally believe this type of resolution could be transformative and finally put an end to the gender disparity in law firm wages.

The reason for this email is that, because of other items on the commission’s plate for August, the commission wants to ensure that it has a broad base of support and possible co-sponsorship for this report and resolution before going through the exercise of filing it on a late basis. Please let me know your preliminary thoughts about the likelihood that your section would agree to support and/or cosponsor such a resolution. Please don’t hesitate to reach out if you have any additional questions. Thank you for your consideration of this issue.

Sent from my iPad