AMERICAN BAR ASSOCIATION

HOUSE OF DELEGATES

ADOPTED AUGUST 12-13, 2019

RESOLUTION

RESOLVED, That the Association policies adopted in 1999 which were previously considered for archiving but retained as set forth in Attachment 1 to Report 400B dated August 2019, are archived and no longer considered to be current policy of the American Bar Association and shall not be expressed as such;

FURTHER RESOLVED, That policies which have been archived may be reactivated at the request of the original sponsoring entities.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

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

3. ERISA
   February 1999
   Health Law Section

4. Goal IX
   February 1999
   Commission on Disability Rights

13. Phase Out
    February 1999
    Section of Taxation

14. Guaranteed Payments
    February 1999
    Section of Taxation

15. Value Added Tax
    February 1999
    Section of Taxation

16. Partnership Items
    February 1999
    Section of Taxation

17. Senior Outreach Projects
    February 1999
    Young Lawyers Division

23. Specialty Certification Programs for Lawyers
    August 1999
    Standing Committee on Specialization

24. Re-Accreditation
    August 1999
    Standing Committee on Specialization
3. ERISA
February 1999
Health Law Section (Report 106-99MY106)

RESOLVED, That the American Bar Association supports enactment of federal legislation to amend the federal Employee Retirement Income Security Act (ERISA) to allow causes of action to be brought in the state and territorial courts against employer-sponsored health care plans under state and territorial health care liability laws.

4. Goal IX
February 1999
Commission on Disability Rights (Report 108-99MY108)

RESOLVED, That the American Bar Association amends the Association's Goal IX to state: To promote full and equal participation in the legal profession by minorities, women and persons with disabilities., That the American Bar Association amends the Association's Goal

13. Phase Outs
February 1999
Section of Taxation (Report 104A-99M-99MY104A)

RESOLVED that the American Bar Association recommends to the Congress that:

(i) it repeals section 68 and subsection 151 (d)(e) of the Internal Revenue Code of 1986, which phaseout itemized deductions and personal exemptions if an individual taxpayer has adjusted gross income over a given threshold, and
(ii) it replaces the revenue currently raised by subsection 151(d)(3) and section 68 with adjustments to the explicit tax rates in the tax brackets of section 1 (a)-(d) to raise the same amount of revenue, distributed in substantially the same way among tax brackets.

14. Guaranteed Payments
February 1999
Section of Taxation (Report 104B-99MY104B)

RESOLVED that the American Bar Association recommends to the Congress that it repeal section 707(c) of the Internal Revenue Code of 1986 ("Code"), which provides that, to the extent determined without regard to the income of the partnership, payments to a partner for services or for the use of capital will be treated for certain purposes as though made to a person who is not a member of the partnership
15. Value Added Tax
February 1999
Section of Taxation (Report 104C-99MY104C)

RESOLVED, That the following resolutions adopted by the ABA House of Delegates in February 1986 are rescinded:

RESOLVED, That it is the position of the American Bar Association that if the Congress of the United States should impose a value added tax of general application (Whether denominated as a Business Transfer Tax or otherwise), it should:

(i) employ the tax credit method of avoiding duplication of tax; i.e. the tax due on goods and services sold should be diminished by a credit for VAT paid on purchases; and
(ii) levy the tax at a single uniform rate, with a zero rate for exports and certain necessities, and as few exemptions as possible.

FURTHER RESOLVED, That whether the Business Transfer Tax such as S.1102 now proposed for consideration in the Congress employs the tax credit method referred to above or the subtractive method (tax levied on sales receipts less selected expenses), the Section is authorized to render technical assistance to the staffs of Congressional members and committees, and to the U.S. Treasury and Internal Revenue Service, with respect to the Business Transfer Tax and its variants.

FURTHER RESOLVED, That the Section of Taxation is authorized following consultation with such Sections as the President may specify to urge on the proper committees of Congress provisions that achieve the results stated in the first resolution above.

16. Partnership Items
February 1999
Section of Taxation (Report 104-99MY104D)

RESOLVED that the American Bar Association recommends to the Congress that it:

(i) Simplify section 702(a) of the Internal Revenue Code of 1986, by substituting a requirement that each partner shall take into account separately his distributive share of any partnership item which, if separately taken into account by any partner, would result in an income tax liability for that partner different from that which would result if that partner did not take the item into account separately; and
(ii) repeal section 702(c), which provides that, in any case where it is necessary to determine the gross income of a partner, a partner shall include his distributive share of the gross income of the partnership.

17. Senior Outreach Projects  
February 1999  
Young Lawyers Division Report (112A-99MY112A)

RESOLVED, That the American Bar Association encourages state, local, and territorial bar associations, and affiliated state, local, and territorial bar young lawyer organizations, to establish and implement Senior Outreach Projects to provide free legal services to homebound senior citizens without sufficient means to hire counsel.

23. Specialty Certification Programs for Lawyers  
August 1999  
Standing Committee on Specialization Report 107-99AM107

RESOLVED, That the American Bar Association amends Section 5 of the Standards for Accreditation of Specialty Certification Programs for Lawyers to extend the period of accreditation from three years to five years, as follows:

SECTIONS: ACCREDITATION PERIOD AND RE-ACCREDITATION

5.01 Initial accreditation by the Association 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 fifth year thereafter. The organization shall be granted re-accreditation upon a showing of continued compliance with these Standards.

24. Re-Accreditation  
August 1999  
Standing Committee on Specialization (Report 114-99AM114)

RESOLVED, That the American Bar Association re-accredit the following designated specialty certification programs for lawyers:

Business Bankruptcy, Consumer Bankruptcy and Creditors' Rights programs of the American Board of Certification of Alexandria, Virginia; Civil Trial Advocacy and Criminal Trial Advocacy programs of the National Board of Trial Advocacy of Boston, Massachusetts.
Pursuant to Report 400, adopted by the House of Delegates in 1996, the Association is annually required to review policies adopted by the House of Delegates that have been in existence ten years or more. See Report 400 attached as Appendix A. Those policies that are outdated, duplicative, inconsistent with current policy or no longer relevant are to be archived. The review process operates from the premise that any policy on the list will be archived unless there is a request to remove it from the archival list and retain it as current policy. Once archived, it may no longer be cited as current policy. An archived policy is not considered to be rescinded, but rather is retained by the Association for historical purposes only.

Several years ago, the Resolution and Impact Review Committee reviewed the current archiving procedure and determined that it was time to revisit policies that were originally considered for archiving but retained. To date, every policy that is at least ten years old has been considered for archiving once. In the first several years after the procedure was instituted, over 1000 policies were examined. Of those, about one-third were archived. In subsequent years, policies were examined when they became 10 years old. The vast majority of policies that were passed in the last twenty years have been retained at the request of the sponsoring entity, the Office of Governmental Affairs or a member of the House.

This year, the policies adopted in 1999 which were previously considered for archiving but retained were reviewed. The process of reviewing previously retained policies began in spring of 2012 and will continue annually. To accomplish this objective, the Division for Policy and Planning compiled an index of such policies set forth in either the ABA Policy and Procedures Handbook or the American Bar Association Legislative Issues list maintained by the Governmental Affairs Office. Some 38 policies were thus identified. Each entity, which had been the original sponsor, was sent a list of the policies it had sponsored. In cases where the original sponsoring entity was no longer in existence, the policies were sent to an appropriate successor entity. The 23 entities to which the policies were sent are listed in Appendix B.

Each entity was asked to identify which of the policies should be archived and which should be retained as current policy. In addition, each was requested to identify and include a recommended disposition for any other policies that had been generated which were not in the materials they received. Those retained as current policy through this process will be reviewed again in 10 years. Retained policies are listed in Appendix C.

Respectfully submitted,

Mary L. Smith, Secretary
American Bar Association
August 2019
The resolution was approved as amended as follows:

RESOLVED, That the American Bar Association adopts a procedure to archive policies which are 10 years old or older and which are outdated, duplicative, inconsistent or no longer relevant. Such archived policies will be retained for historical purposes but shall not be considered current policy for the Association and shall not be expressed as such.

FURTHER RESOLVED, That the archiving shall be implemented as follows:

1. All policies adopted by the House of Delegates shall be reviewed, with the exception of uniform state laws, model codes, guidelines, standards, ABA Constitution and Bylaws, and House Rules of Procedures.

2. To phase in this process, the periodic mandated review will in the first year, 1997, address policies 20 years old or older; in the second year, policies 15 years old or older; and in the third year and each year thereafter, policies 10 years old or older.

3. Prior to each Annual meeting, a list of affected policies will be compiled and circulated to the original sponsoring entities and to each member of the House identifying those policies which will be placed on the archival list.

4. At each Annual Meeting, a recommendation will be submitted to archive certain policies and the House will vote on the recommendations.

5. Those policies which are not archived will be subject to review every ten years thereafter.

6. Any policy 10 years old or older that is not contained within the ABA Policy and Procedures Handbook (The Green Book) or any Legislative Issues list published by the ABA and that has not been subject to the review set forth in these principles is considered to be archived.

7. This archival process is not intended to affect the rights of any member of the House to propose amendments or rescission of any policies as presently permitted under House rules.

FURTHER RESOLVED, That an approved Uniform Act promulgated by the National Conference of Commissioners on Uniform State Law (NCCUSL) shall be placed on the archival list only when such an Act has been removed from the active list of the NCCUSL.
The entities below reviewed and recommended disposition of the policies contained in the report:

**Standing Committees**
- Election Law
- Environmental Law
- Professional Discipline
- Specialization

**Sections and Divisions**
- Administrative Law and Regulatory Practice
- Civil Rights and Social Justice
- Criminal Justice Section
- Dispute Resolution
- Family Law
- Health Law Section
- International Law
- Judicial Division
- Law Student Division
- Litigation
- Public Contract Law
- Public Sector Lawyers Division
- Taxation
- Young Lawyers Division

**Commissions**
- Disability Rights
- Immigration
- Law and Aging

**State, Local and Territorial Bar Associations**
- The Florida Bar
- Bar Association of San Francisco
1. Campaign Contributions  
   February 1999 - Standing Committee on Election Law Report 118

2. District Court  
   February 1999 - Standing Committee on Federal Judicial Improvements

5. Amends ABA Model Rules for Lawyer Discipline Enforcement  
   February 1999 - Standing Committee on Professional Discipline

6. Independent Counsel  
   February 1999 - Criminal Justice Section

7. Black Letter Amendments  
   February 1999 - Criminal Justice Section

8. Health Care Due Process Protocol  
   February 1999 - Section of Dispute Resolution

9. Right to Privacy of Health Care Information  
   February 1999 - Section of Individual Rights and Responsibilities

10. Adoption  
    February 1999 - Section of Individual Rights and Responsibilities

11. U.S trade Agencies  
    February 1999 - Section of International Law

12. Principles for Resolving Controversies in Public Procurements  
    February 1999 - Section of Public Contract Law

18. National Voter Registration Act  
    August 1999 - Standing Committee on Election Law

19. Brownfields Program  
    August 1999 - Standing Committee on Environmental Law

20. Ninth Circuit Court of Appeals  
    August 1999 - Judicial Division

21. Judicial Branch  
    August 1999 - Judicial Division
22. Foreign Farm Workers  
August 1999 - Commission on Immigration

25. Legal Obligations  
August 1999 - Section of Administrative Law and Regulatory Practice

26. Risk Assessments  
August 1999 - Section of Administrative Law and Regulatory Practice

27. Creation of Federal Crimes  
August 1999 - Criminal Justice Section

28. Correctional Facilities  
August 1999 - Criminal Justice Section

29. Interrogation  
August 1999 - Criminal Justice Section

30. Judicial Immunity  
August 1999 - Section of Family Law

31. Professional Associations  
August 1999 - Government and Public Sector Lawyers Division

32. Standards for the Education of the Administrative Judiciary  
August 1999 - Law Student Division

33. Black Letter Standards  
August 1999 - Section of Litigation

34. Risk Allocation  
August 1999 - Section of Public Contract Law

35. Model Rules of Professional Conduct  
August 1999 - The Florida Bar

36. Traffic Stops  
August 1999 - Bar Association of San Francisco

37. Community Economic Development  
August 1999 - Law and Aging

38. Ecosystems  
February 2008 - Section of Environmental Law
1. **Summary of Resolution:**

In an ongoing effort to bring the Association's policies up to date, this resolution consists of the review of policies adopted in 1999 which were previously considered for archiving but retained. A policy that is archived is not rescinded. It is retained for historical purposes, but cannot be expressed as a current position of the ABA. The Secretary recommends that the policies set forth in Attachment 1 of the resolution be archived.

2. **Approval by Submitting Entity:**

The policies that have been placed on the archival list were reviewed by the entities that originally submitted them. In cases in which the submitting entity is now defunct, a successor entity was given the policy to review. They were originally approved by either the Board of Governors or the House of Delegates on the dates they were adopted.

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

Although the Association has from time to time culled its records, the policies on the archival list have not been subject to review. They were originally approved by either the Board of Governors or the House of Delegates on the dates they were adopted.

4. **What existing Association policies are relevant to this resolution and how would they be affected?**

The archiving of any policy would have no effect on existing policies.

5. **What urgency exists which requires action at this meeting of the House?**

Resolution 400 mandates the review of policies 10 years old or older.

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 Policy and Procedures Handbook will be updated to reflect those policies that have been archived.

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

None.

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

N/A

10. **Referrals.**

The policies identified in the Resolution with Report have been circulated to 23 entities as noted in Appendix B, and also will be sent to the Government Affairs Office.

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

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

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EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution archives Association policies adopted in 1999 which were previously considered for archiving but retained. A policy that is archived is not rescinded. It is retained for historical purposes, but cannot be expressed as a current position of the ABA.

2. Summary of the Issue Which the Resolution Addresses

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

3. An Explanation of How the Proposed Policy will Address the Issue

The archiving project will allow the Association to pursue primary objectives by focusing on current matters. It will prevent an outdated ABA policy from being cited in an attempt to refute Association witnesses testifying on more recent policy positions.

4. A Summary of Any Minority Views or Opposition Which Have Been Identified

None at this time.