RESOLUTION

RESOLVED, That the American Bar Association reaffirms its support for an amendment to the United States Constitution to provide for participation of citizens in American territories to vote in national elections; and.

FURTHER RESOLVED, That the American Bar Association opposes, as violative of the Equal Protection Clause, the provisions of the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which permit former residents of a state who have moved to American Samoa or the Commonwealth of the Northern Marianas Islands to continue to vote in national elections in that state, while denying those same rights to those who have moved from a state to the U.S. Virgin Islands, Puerto Rico, and Guam.

Deletions struck through; additions underlined
RESOLVED, That the American Bar Association urges the United States, other nations and the United Nations to express their support and take actions in furtherance of such support for the autonomy, rule of law, judicial independence, and protection and respect for human rights in the Hong Kong Special Administrative Region (the “HKSAR”), as established by the 1984 Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong (the “Joint Declaration”) and the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (the “Basic Law”);

FURTHER RESOLVED, that the American Bar Association supports enactment by the United States of legislation, or as appropriate, implementation of policies and procedures, that:

- condemns all acts by the People’s Republic of China (“the PRC”) that violate its obligations under international and national law, including the Joint Declaration and the Basic Law;
- calls upon all nations of the world to stand with the people of Hong Kong in support of the rule of law;
- provides for targeted sanctions, freezing of assets, travel bans and similar measures against persons or entities who materially contribute to the contravention of obligations under international or national law, as well as financial institutions that conduct significant transactions with persons or entities described above;
- identifies and implements a process to give stipulates that any permanent resident of the HKSAR, with no other right of abode as provided under HKSAR law, access to seek protection through the refugee resettlement process, is eligible for asylum in the United States and is authorized to apply for asylum, where appropriate including at the U.S. Consulate General in Hong Kong and Macau, or if in or at the borders of the United States, through asylum or temporary protected status, until the United States Secretary of State certifies to the United States Congress, under the United States Hong Kong Policy Act of 1992, that the HKSAR has regained a high degree of autonomy; and
- commits resources to monitor and regularly report on the status of the autonomy, rule of law, judicial independence, and protection of and respect for human rights in the HKSAR; and

FURTHER RESOLVED, That the American Bar Association reaffirms its call upon the PRC to allow free movement of persons to and from the HKSAR and further urges the United States to use its influence to encourage the continuance and growth of democratic institutions in Hong Kong.

Deletions struck through; additions underlined
RESOLUTION

RESOLVED, That the American Bar Association Congress to enact the Emmett Till Antilynching Act or similar legislation to provide that whoever conspires with another person to violate section 245, 247, or 249 of this United States Code title 18 or section 901 of the Civil Rights Act of 1968 (42 U.S.C. 3631) shall be punished in the same manner as a completed violation of such section, except that if the maximum term of imprisonment for such completed violation is less than 10 years, the person may be imprisoned for not more than 10 years.

FURTHER RESOLVED, That the American Bar Association urges state, local, territorial, and tribal governments to enact legislation containing criminal and civil sanctions to prohibit lynching, conspiracies to lynch, attempts to lynch, or solicitations to lynch a person, no matter the form or manner in which the lynching may take place or is proposed to take place, on the basis of race, color, national origin, age, gender, sexual orientation, gender identity, religion, disability, government position, or association with any political or non-governmental organization.

Deletions struck through; additions underlined
RESOLUTION

RESOLVED, That the American Bar Association amends Rule 1.8(e) and related commentary of the ABA Model Rules of Professional Conduct as follows (insertions underlined, deletions struck through):

Model Rule 1.8: Current Clients: Specific Rules

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and

(3) a lawyer representing an indigent client pro bono, a lawyer representing an indigent client pro bono through a nonprofit legal services or public interest organization and a lawyer representing an indigent client pro bono through a law school clinical or pro bono program may provide modest gifts to the client for food, rent, transportation, medicine and other basic living expenses if financial hardship would otherwise prevent the client from instituting or maintaining the proceedings or from withstanding delays that put substantial pressure on the client to settle. The legal services must be delivered at no fee to the indigent client and the lawyer:

(i) may not promise, assure or imply the availability of such gifts prior to retention or as an inducement to continue the client-lawyer relationship after retention;

(ii) may not seek or accept reimbursement from the client, a relative of the client or anyone affiliated with the client; and

(iii) may not publicize or advertise a willingness to provide such financial assistance to gifts to prospective clients.

Financial assistance under this Rule may be provided even if the representation is eligible for fees under a fee-shifting statute.

Comment

Financial Assistance

[10] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses,
because to do so would encourage clients to pursue lawsuits that might not otherwise be
brought and because such assistance gives lawyers too great a financial stake in the
litigation. These dangers do not warrant a prohibition on a lawyer lending a client court
costs and litigation expenses, including the expenses of medical examination and the
costs of obtaining and presenting evidence, because these advances are virtually
indistinguishable from contingent fees and help ensure access to the courts. Similarly, an
exception allowing lawyers representing indigent clients to pay court costs and litigation
expenses regardless of whether these funds will be repaid is warranted.

without fee, a lawyer representing an indigent client pro bono through a nonprofit legal
services or public interest organization and a lawyer representing an indigent client pro
bono through a law school clinical or pro bono program may give the client modest gifts
if financial hardship would otherwise prevent the client from instituting or maintaining
pending or contemplated litigation or administrative proceedings or from withstanding
delays that would put substantial pressure on the client to settle. Gifts permitted under
paragraph (e)(3) include modest contributions as are reasonably necessary for food, rent,
transportation, medicine and similar basic necessities of life. If the gift may have
consequences for the client, including, e.g., for receipt of government benefits, social
services, or tax liability, the lawyer should consult with the client about these. See Rule
1.4.

[12] The paragraph (e)(3) exception is narrow. Modest gifts are A gift is allowed in specific
circumstances where it is unlikely to create conflicts of interest or invite abuse. Paragraph
(e)(3) prohibits the lawyer from (i) promising, assuring or implying the availability of
financial assistance prior to retention or as an inducement to continue the client-lawyer
relationship after retention; (ii) seeking or accepting reimbursement from the client, a
relative of the client or anyone affiliated with the client; and (iii) publicizing or advertising
a willingness to provide gifts to prospective financial assistance to clients beyond court
costs and expenses of litigation in connection with contemplated or pending litigation or
administrative proceedings.

[13] Financial assistance, including modest gifts may be provided pursuant to paragraph
(e)(3) may be provided even if the representation is eligible for fees under a fee-shifting
statute. However, paragraph (e)(3) does not permit lawyers to provide assistance in other
contemplated or pending litigation in which the lawyer may eventually recover a fee, such
as contingent-fee personal injury cases or cases in which fees may be available under a
contractual fee-shifting provision, even if the lawyer does not eventually receive a fee.

[No other changes proposed in the commentary to this Rule except renumbering
succeeding paragraphs.]

Deletions struck through; additions underline
RESOLUTION

RESOLVED, That the American Bar Association urges all federal, state, local, territorial, and tribal governments to adopt policies and contractual provisions that prohibit conducting strip searches of children and youth, except in exceptional circumstances, where the searches are permitted only:

(1) when the child or youth is in custody;
(2) when there is probable cause to believe reasonable suspicion that the child or youth possesses or has had immediate access to an implement that poses a threat of imminent bodily harm to themselves or others;
(3) after all other less intrusive methods of discovering and removing the implement have been exhausted, including the use of alternative search techniques that can be performed while the child or youth is fully clothed; and
(4) after the child or youth has been given notice, in a manner that is consistent with the child’s or youth’s primary language and developmental stage, and that takes into account accommodations for disability, that they will be searched and that they have the opportunity to reveal any implement they are carrying instead of being searched; and

FURTHER RESOLVED, That the American Bar Association urges all federal, state, local, territorial, and tribal governments to adopt policies and contractual provisions that require that, if the child or youth must be strip-searched, the search is conducted in a manner that respects the sexual orientation and gender identity of the child or youth and is the least intrusive manner possible; and

FURTHER RESOLVED, That the American Bar Association urges all federal, state, local, territorial, and tribal governments to adopt policies and contractual provisions prohibiting body cavity searches of children and youth; and

FURTHER RESOLVED, That the American Bar Association encourages court systems, lawyers, law enforcement leaders, medical professionals law schools, and bar associations to promote awareness of the harmful effects of strip searches and body cavity searches of children and youth, including trauma and re-victimization.

Deletions struck through; additions underlined
RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to enact legislation and policies to require all health care providers—including facilities, physicians, physician assistants, residents, nurses, radiologists and sonographers, therapists, laboratory technicians, midwives, and health care students—to obtain specific informed patient consent in advance for all medically unnecessary pelvic examinations.

Deletions struck through; additions underlined
RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, tribal, and territorial governments to enact legislation that requires law enforcement agencies to keep records of all instances in which lethal force is used or a claim is made that non-lethal force is excessive, by maintaining the known or reasonably available demographic data of all persons against whom lethal force is used, including but not limited to race, color, national origin, age, gender, sexual orientation or gender identity, religion, the presence of mental or physical disability, whether the person was fleeing at the time, whether the individual possessed a weapon (including the type of weapon), and whether a body camera was used;

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, tribal and territorial governments to enact legislation to provide, when a person’s death occurs in the custody of or during an encounter with a law enforcement officer acting in the officer’s official capacity, a mechanism to ensure fair and independent evaluation, referral to an independent entity for an investigation, and, as appropriate, prosecution by an independent entity; FURTHER RESOLVED, That the American Bar Association urges federal, state, local, tribal and territorial governments to enact legislation requiring the appointment of a fully independent special investigator and a fully independent special prosecutor whenever a person’s death occurs in the custody of or during an encounter with a police or other law enforcement officer acting in the officer’s official capacity;

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, tribal, and territorial governments to enact or amend, as necessary, laws to provide that the reasonableness of police use of force should be judged on the basis of objective necessity legislation that requires a police officer who is charged with a crime resulting from the excessive or lethal use of force and who claims self-defense or defense of others to prove that the use of force was objectively necessary;

FURTHER RESOLVED, that the American Bar Association urges Congress to fund a nationally respected entity independent of law enforcement to develop and keep current a national data base that records disciplinary actions against and complaints of excessive force by law enforcement officers, including action by any government or tribal entity revoking a law enforcement officer’s certificate or license, and to require all law enforcement agencies receiving federal funds to record and report to that entity all said disciplinary actions and complaints;

FURTHER RESOLVED, that the American Bar Association urges all federal, state, local, tribal, and territorial governments to enact legislation that (a) prohibits the use of chokeholds, any other carotid restraint or any induced method of asphyxiating laws enforcement officers, (b) eliminates no-knock warrants in drug cases, (c) eliminates rules and procedures (such as New York State’s Section 50-A) which prevent disclosure of
citizen complaints or disciplinary actions against law enforcement officers, and (d) expresses the duty of every law enforcement officer to act to prevent and stop the use of excessive force or improper use of lethal force by another law enforcement officer; and

FURTHER RESOLVED, that the American Bar Association supports the “Justice in Policing Act”, H.R.7120, and similar federal, state, local, tribal, and territorial legislation whose purpose is “to hold police accountable, change the culture of law enforcement and build trust between law enforcement and our communities.”

Deletions struck through; additions underlined
RESOLVED, That the American Bar Association urges federal, state, local, territorial and tribal governments to:

a) adopt and enforce fair lending laws and other federal, state and local laws targeting unfair or deceptive acts or practices to address discrimination in vehicle sales and financing markets;

b) adopt laws and policies that promote the adoption of an enhanced nondiscrimination compliance system for dealer compensation for arranging and/or originating a vehicle finance contract by offering a safe harbor against pricing discrimination claims for dealers that faithfully implement the NADA/NAMAD/AIADA Fair Credit Compliance Policy and Program; loan or a flat percentage fee for dealer compensation; and

c) adopt legislation requiring that the purchase of any voluntary vehicle protection product may not be made a condition of the sale or lease of the vehicle, and that there is clear and conspicuous disclosure of pricing of voluntary protection products by dealers through reasonable means, such as a pricing sheet, menu, and/or website, before a consumer purchases a vehicle; the timely notice and disclosure of pricing of add-on products by dealers on each vehicle through reasonable means, such as a pricing sheet and/or website prominently displayed and available at its location, before a consumer negotiates to purchase a vehicle;

FURTHER RESOLVED, That the American Bar Association urges Congress to amend the Equal Credit Opportunity Act, 15 U.S.C 1691, to require documentation and collection of the applicant’s race, gender and national origin for vehicle credit transactions, through applicant voluntary self-identification using disaggregated racial and ethnic categories, made available through a Demographic Information Addendum, or some equivalent measurement;

FURTHER RESOLVED, That the American Bar Association encourages state, local, territorial and tribal bar associations to work with consumer, dealer and creditor representatives to offer educational programming and materials to lawyers and consumers to help them understand and navigate purchases and financing of vehicles and understand consumers’ legal rights with respect to such purchases and loans.
RESOLUTION

RESOLVED, That the American Bar Association urges that, in all states, territories and tribes, the highest courts or legislative bodies charged with the administration of justice, admission to the bar, or regulation of the legal profession, require that lawyers, judges, commissioners, referees, probation officers, and court personnel whose job requires interacting with the public—receive periodic training regarding implicit biases that address, at minimum, the following subjects: sex, race, color, religion, ancestry, national origin, ethnic group identification, age, disability, medical condition, genetic information, marital status, sexual orientation, gender expression and gender identity; and

FURTHER RESOLVED, That the American Bar Association urges that, in all states, territories, and tribes, the highest courts or legislative bodies, or agencies and boards that license and regulate the medical profession or social service professions, require that medical professionals and social service professionals who work with the public receive periodic training regarding implicit biases that address, at minimum, the following subjects: sex, race, color, religion, ancestry, national origin, ethnic group identification, age, disability, medical condition, genetic information, marital status, sexual orientation, gender expression and gender identity.

FURTHER RESOLVED, That the American Bar Association urges jurisdictions requiring implicit bias training to collect and assess data to evaluate the effectiveness of the training in reducing implicit bias and implement other appropriate strategies for reducing implicit bias.

Deletions struck through; additions underlined
RESOLUTION

RESOLVED, That the American Bar Association urges the work of federal, state, local, territorial, and tribal governments, courts and the members of federal, state, local territorial and tribal bars for their thoughtful and innovative approaches to administer the justice system and protect the interests of litigants during the COVID-19 pandemic;

FURTHER RESOLVED, That the American Bar Association urges that mandatory use a considered and measured approach in adopting and utilizing of virtual or remote court proceedings established as a result of the COVID-19 pandemic, prioritizing use of such procedures for be limited to essential proceedings and those cases defined as preliminary proceedings that have the potential to result in the detention or release of an individual from custody and other critical civil proceedings such as temporary orders of protection, interim child custody or child welfare orders or other temporary injunctions or orders concerning the safety or placement of an individual, as well as hearings on petitions necessary to protect constitutional rights;

FURTHER RESOLVED, That the American Bar Association urges regular review of any decision to detain an individual pending a final proceeding made during a period of mandatory use of virtual or remote court proceedings;

FURTHER RESOLVED, That the American Bar Association urges that any authorization of mandatory use of virtual and remote court proceedings during the COVID-19 pandemic include a self-executing expiration provision to take effect within a designated period of time that is as short as possible and in which litigants no event longer than the duration of the declaration of emergency issued in the jurisdiction;

FURTHER RESOLVED, That the American Bar Association urges that use of virtual or remote court proceedings beyond essential proceedings be permitted when litigants have provided informed consent to the use of virtual or remote processes such procedures, including being offered either a safe, as determined by independent medical experts, in-person proceeding or a delay until such a safe, in-person proceeding can be held;

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments that no person consenting to form appropriate committees, including representatives the use of all constituencies involved in virtual or affected by the type of remote court or proceedings be required to sign a blanket waiver of rights or waive the right to have the procedure or outcome of the proceeding under consideration be subject to establish appellate or post-conviction review;
FURTHER RESOLVED, That the American Bar Association urges the formation of committees to conduct evidence-based reviews of the use of virtual or remote court proceedings and make recommendations for procedures, revisions of procedures and best practices to ensure that they are guaranteeing all applicable constitutional rights and ensure that attorneys can comply with their professional ethical obligations. Such committees should include representatives of all constituencies involved in or affected by the type of court or proceeding under consideration;

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to ensure that all virtual or remote court proceedings guarantee equal access and meet standards of fundamental fairness and due process. Such proceedings must be tailored to the needs of participants and take into account the type of case and proceeding to be conducted, the participants involved, and whether participants are likely to be represented by counsel. To do this, jurisdictions should by:

1. Considering the ability of all participants to access and fully participate in the proceedings, including:
   a. Ensuring that participation options for virtual or remote court proceedings are free for participants and observers;
   b. Providing options concerning participation and permitting participants to select the means of participation best suited to them without prejudice;
   c. Allowing participants to alter their chosen means of participation for each proceeding;
   d. Providing necessary support for those who, for financial, technological, language access, disability, or other reasons, may not be able to fully participate without assistance;
   e. Ensuring that methods of participation reduce, to the fullest extent possible, any prejudice that might result from the circumstances of participation;
   f. Providing contingencies for possible technological or access problems during the proceeding;
   g. Guaranteeing that participants are not obligated or pressured or obligated to waive constitutional rights;

2. Providing training on applicable procedures, including training on possible areas of technological bias;

3. Providing additional funding to assist courts, legal aid and social service providers to expand and improve access to virtual and remote court proceedings, particularly for those who may require financial, technological, language access, or other specialized assistance;

4. Protecting full attorney-client relationships, including permitting access for private consultation both before and during court proceedings
and guaranteeing the confidentiality of such communications, as well as;

and

(2)(5) Enabling and encouraging access to other litigation assistance programs and self-help programs previously available;

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to provide that advance notice be provided to the public of all virtual or remote proceedings and ensure that full and meaningful public access to virtual such proceedings be guaranteed, while also protecting the privacy of those proceedings legally exempted from public access; and

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to reintroduce in-person court options as soon as safely feasible as determined by public health officials; and

that virtual and remote court procedures be studied for purposes of developing best practices and determining possible biases, and that, if such studies suggest prejudicial effects or disparate

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to study the impacts of virtual or remote court procedures and take on particular litigants or case outcomes, steps should be taken to halt, alter, or revise virtual or remote court procedures if such study suggests prejudicial effect or disparate impact on case outcomes.