# COUNCIL MEETING AGENDA

## Welcome and Introductions:

1. **Call to order; Introductions [3:00]**  
   - Presenter: Chris Rockers

2. **Remarks from ABA President [3:15]**  
   - Presenter: Hilarie Bass

   - Presenter: Kevin Shepherd

## Action Items:

4. **Approval of Minutes; Midwinter Council Meeting [3:35]**  
   - Presenter: Jeannie Frey

## Officer Reports:

5. **Officer Reports**

   5.1 **Chair [3:40]**  
      - Presenter: Chris Rockers
        - 5.1.1 Update on One ABA
        - 5.1.2 [Update on Budget Review Task Force/February Budget Report](#)
        - 5.1.3 Section Scorecard
        - 5.1.4 2018 Section Annual Meeting

   5.2 **Chair-Elect [3:50]**  
      - Presenter: Vicki Tucker
        - 5.2.1 Chief of Diversity and Inclusion
        - 5.2.2 Committee Chair Appointments
        - 5.2.3 2018-2019 Meeting Dates and Locations
5.3 Vice-Chair [4:00]  
   Pat Clendenen

5.3.1 Report on The Business Lawyer

5.3.2 2019-2020 Meeting Dates and Locations

5.4 Secretary [4:05]  
   Jeannie Frey

5.5 Content Officer [4:10]  
   Norm Powell

5.6 Delegates [4:20]

5.6.1 ABA House of Delegates Meeting, February  
   Chip Lion/Barbara Mayden/Alvin Thompson/Steve Weise

5.6.2 Proposed Report to the ABA House of Delegates  
   Re: Appointment and Use of Special Masters in Federal and State Civil Litigation
   Bill Johnston

Reports:

6. Advance V Report [4:30]  
   William Rosenberg

7. Council Committee Reports

7.1 Council Committee on Committees [4:40]  
   Neal Kling

7.2 Council Committee on Content Strategy [4:50]  
   Michael Fleming

7.3 Council Committee on Membership and Outreach [5:00]  
   Nikki Munro

   Jon Rubens

   Donald Kirk

10. Membership Committee [5:30]  
    Eddie Fitzgerald/Grace Powers

11. Marketing Board [5:35]  
    Peter Snell

12. In-House Counsel Task Force [5:40]  
    A.J. Bosco/Anne Gwal

13. Liaison from the ABA Law Student Division [5:45]  
    Cesar Escovar

14. Liaison from the ABA Young Lawyers Division [5:50]  
    Lacy Durham/Collin Cooper

15. Section Director [5:55]  
    Susan Tobias

16. Adjournment [6:00]  
    Chris Rockers
MEMORANDUM

TO: House of Delegates
Section and Committee Chairs
Presidents and Executive Directors of State and Local Bar Associations
ABA Senior Managers, Directors and Staff Liaisons

FROM: Alpha M. Brady

SUBJECT: Summary of Action of the February 1-2, 2018 Board of Governors Meeting

DATE: February 5, 2018

Attached is the Summary of Action of the February 1-2, 2018 meeting of the Board of Governors held at the Vancouver Convention Centre, British Columbia, Canada. This Summary does not constitute official Minutes of the meeting. Minutes of the meeting will be presented to the Board for approval at its meeting in June 2018.

If you have any questions with respect to the action taken, please do not hesitate to contact me.

cc: Board of Governors
1. **REPORTS OF OFFICERS AND THE EXECUTIVE DIRECTOR**

The Board received the reports of the President, President-Elect, Chair of the House of Delegates, Immediate Past President, Secretary, Treasurer and Executive Director. The minutes of the Board’s October 19-20, 2017 were approved. The minutes of the Executive Committee’s October 18, 2017, November 3, 2017 (email ballot), November 13 and 24, 2017, December 11 and 21, 2017 (email ballot) were received.

The Board received the Report of the Secretary on the Exercise of Blanket Authority.

The Board, sitting as members of the Board of the American Bar Association Fund for Justice and Education (ABA/FJE): a) approved the minutes of the October 20, 2017 meeting of the ABA/FJE Board as presented; and b) accepted the ABA/FJE restricted grants and contributions received or awarded through September 30, 2017, and not previously reported, as requested by the Association’s Financial Services Division.

The Board adopted memorial resolutions for Board member Joe B. Whisler of Kansas City, Missouri, and for former Board member Jack F. Dunbar of Oxford, Missouri.

**MATTERS FOR DIRECT BOARD ACTION**

2.1 **Discussion Regarding New Membership Model**

The Board received a report from Bob Domenz, Chief Executive Officer, Avenue; Kyle Barrett, Senior Strategist; and Rachel Klein, Director of Strategy, regarding the new Membership Model.

2.2 **Executive Session**

In executive session, the Board discussed a defalcation issue, realignment/reorganization, and executive compensation.

2.3 **House Reports**

The Board discussed but took no action regarding the following resolution:

**Resolution No. 112A:** urges that the American Bar Association approve the Revised Uniform Unclaimed Property Act, promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission),
as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2.4 Website Update from Code & Theory

The Board received a report from David DiCamillo, Director of Operations of Code & Theory; Lanya Olmstead, User Experience Design; and Kathrine Resch, Engagement Director, regarding the status of the ABA website redesign.

2.5 Reports from Committee Chairs

The Board received reports regarding the work of the Board Committees from Hon. Ramona G. See, Chair of Profession, Public Service and Diversity; Andrew J. (Josh) Markus, Chair of Member Services; and Eileen K. Gotts, Chair of Finance.

2.6 Consent Calendar

The Board adopted the Consent Calendar as set forth in items 3 through 5 of this Summary of Action relating to the reports of the Board Committees.

2.7 Report Regarding Fund for Justice and Education

The Board received a report from Tom Bolt, Board of Governors liaison to the Fund for Justice and Education, regarding the work of the Fund for Justice and Education.

2.8 Report Regarding ABA Pathway to the Profession Project

The Board received a report from Robert Gonzales, Chair, ABA Pathway to the Profession Project, regarding its three projects: National Pre-Law Project, Metrics-Driven Bias Interrupters Project, and Digital Justice Project.
WRITTEN INFORMATIONAL REPORTS

2.25 Informational Report from the Center for Innovation

The Board received a written report from the Center for Innovation regarding the work of the Center for Innovation.

3.30 Membership Report

The Board received the written report from Tracy Giles, Chair of the Standing Committee on Membership regarding ABA membership.

MEMBER SERVICES

A. MATTERS FOR REVIEW BY THE BOARD

3.1 Requests to Amend Bylaws

The Board approved the requests to amend bylaws from the following entities (except for the Tort Trial and Insurance Practice Section Article III, Section 1*):

a. Section of Antitrust Law
b. Section of International Law
c. Young Lawyers Division
d. Section of Administrative Law and Regulatory Practice
e. Tort Trial and Insurance Practice Section

* The Board did not approve an amendment to Article III, Section 1, which would permit the Annual Meeting of the Section to be held at another meeting/time/location so long as appropriate notice of the election, no less than 45 days, is given to the members of the Section.

3.2 Request from Section of International Law to Enter Into Friendship Agreements

The Board deferred approval of the request of the Section of International Law to create a template to enter into Memoranda of Understandings with a number of additional international bars, including the Lithuanian Bar Association, the Estonian Bar Association, the Latvian Bar Association, the Danish Bar Association, the Finnish Bar Association, the Swedish Bar Association, the Norway Bar Association, and the Jamaican Bar Association.
3.3 Request from President Bass to Create a Task Force to Coordinate ABA Educational Outreach in Response to the New Tax Legislation

The Board approved the request of President Bass to create a Task Force to coordinate the ABA’s educational outreach to members regarding the tax legislation signed into law on December 22, 2017, with the understanding that the Task Force will sunset at the close of the 2019 Annual Meeting.

3.4 Request from the Ethics Review Committee to Amend the Business Conduct Standards

The Board approved amendments to the Business Conduct Standards regarding complaints and investigation of members as follows: The Executive Committee is not bound by the decisions or actions of the Ethics Review Committee. The decision of the Executive Committee is final and not appealable except in the case the Executive Committee determines a more severe sanction should be imposed on the Member, in which case the Member may appeal that sanction decision to the full Board which will act only to affirm or deny that increased sanction and whose decision is final.

3.5 Request from President-Elect Carlson to Approve Board Meeting Dates for 2018-2019

The Board approved the request of President-Elect Carlson to conduct the November 8-10, 2018 meeting of the Board as a teleconference, and to hold the June 6-7, 2019 meeting at the Doubletree Hilton Missoula Edgewater Hotel in Missoula, Montana.

3.6 Request from Standing Committee on Membership to Amend the Constitution and Bylaws Regarding New Membership Model

The Board approved the request of the Standing Committee on Membership for authority to file “placeholder” Constitution and Bylaws amendments regarding the new Membership Model.

3.7 Request from President Bass to Create Working Group on Hate Speech and the Internet and to Seek Outside Funding

The Board approved the request of President Bass to Create a Working Group on Hate Speech and the Internet to address the deluge of hate speech online and to seek outside funding.
3.8  **Request from Section of Intellectual Property Law to Enter Into Cooperating Agreement with the Fédération Internationale en Propriété Intellectuelle**

The Board approved the request of the Section of Intellectual Property Law to enter into a Memorandum of Understanding with the Fédération Internationale des Conseils en Propriété Intellectuelle (FICPI) (for a three-year term from the date of signature, in 2018 until 2021), to coordinate efforts and activities with FICPI to increase member awareness and promote professional cooperation. These activities include meeting attendance and participation, program development for meetings and exchange of publications.

**PROFESSION, PUBLIC SERVICE AND DIVERSITY**

A. **MATTERS FOR REVIEW BY THE BOARD**

4.1  **Nominations**

a. **American Intellectual Property Law Education Foundation**

   i. The Board approved the request of the Section of Intellectual Property Law to continue its institutional membership in and co-sponsorship of the American Intellectual Property Law Education Foundation for five years beginning in 2018 and ending in 2023.

   ii. The Board re-elected William L. LaFuze of Houston, Texas, as the ABA representative to the American Intellectual Property Law Education Foundation for a second three-year term beginning on July 1, 2018, and expiring on June 30, 2021.

b.  **Intellectual Property Constituency**

The Board elected James Bikoff of Washington, D.C., as the ABA representative to the Intellectual Property Constituency for a three-year term beginning on July 1, 2018, and expiring on June 30, 2021.

c. **Industry Trade Advisory Committee on Services and Financial Industries**

The Board re-elected Timothy Charles Brightbill of Washington, D.C., as the ABA representative to the Industry Trade Advisory Committee on Services and Financial Industries for a two-year term expiring in February 2020, with the understanding that, because the current representative has served in this position since 2007, the Section of International Law should submit the names of new members to serve in this position.
4.2 Request from ABA Fund for Justice and Education to Approve Revised Program Support Fund and Endowment Policy

The Board deferred action on the request of the ABA Fund for Justice and Education (FJE) for the newly revised Program Support Fund and Endowment Policy which includes a more robust role for the FJE as a partner to the Board of Governors to allow review by the entities that have Program Support Funds.

4.3 Requests from Rule of Law Initiative

a. Memoranda of Understandings
   i. Ground Truth Solution

The Board approved the request of the ABA Rule of Law Initiative to enter into a Memorandum of Understanding with Ground Truth Solutions to conduct joint research and evaluation activities of ABA Rule of Law Initiative’s work providing legal protection services, subject to review and approval of the Memorandum of Understanding by the Office of the General Counsel, and a signed copy filed with the Division for Policy and Planning.

   ii. Prince Sultan University

The Board approved the request of the ABA Rule of Law Initiative to enter into a Memorandum of Understanding with Prince Sultan University, subject to review and approval of the Memorandum of Understanding by the Office of the General Counsel, and a signed copy filed with the Division for Policy and Planning.

b. Amendment to List of Approved Countries of Operation and Registration, Donors and Thematic Program Areas

The Board approved the request of the ABA Rule of Law Initiative to amend the list of Approved Countries of Operation, Registration, Donors and Thematic Program Areas to add GSMA, the industry association of mobile operators, as a donor.

4.4 Request from Center for Human Rights for Approval of Memorandum of Understanding with International Senior Lawyers Department

The Board approved the request of the Center for Human Rights to enter into a Memorandum of Understanding with the International Senior Lawyers Department to formalize the relationship between the two, subject to review and approval of the Memorandum of Understanding by the Office of the General Counsel, and a signed copy filed with the Division for Policy and Planning.
4.5 Request from Commission on Law and Aging to Enter Into Agreement Regarding Mind Your Loved Ones App

The Board approved the request of the Commission on Law and Aging to enter into an agreement regarding *Mind Your Loved Ones app*, subject to review and approval of the agreement by the Office of the General Counsel and the Executive Director.

4.6 Discussion with Standing Committee on Governmental Affairs Regarding Creation of an ABA Political Action Committee

The Board received a report from the Standing Committee on Governmental Affairs regarding the establishment of an ABA Political Action Committee.

4.7 Request to Consider and Evaluate Reinstituting the Enterprise Fund in FY2019

This request was withdrawn.

4.8 Request from ABA Center for Innovation to Enter Into Memorandum of Understanding with the Legal Services Corporation

The Board approved the request of the Center for Innovation to enter into Memorandum of Understanding with the Legal Services Corporation to match legal technology companies with local legal aid offices to provide free technology to those service providers to assist them in their work, subject to review and approval of the Memorandum of Understanding by the Office of the General Counsel and a signed copy filed with the Division for Policy and Planning.

**MATTERS OF INDEPENDENT JURISDICTION**

4.15 Requests for Co-sponsorships

The Profession, Public Service and Diversity Committee *approved* co-sponsorship requests from the following entities. No additional ABA general revenue is requested or required for the co-sponsorships at this time.

The Finance Committee *approved* 4.15a and 4.15h.

a. *Section of Antitrust Law*: to renew its co-sponsorship of the International Competition Network’s Training on Demand Project and contribute $25,000 (derived from Section funds) for FY2018-2020.

b. *Young Lawyers Division*: to co-sponsor with the University of South Carolina School of Law, the University of South Carolina Center on Professionalism, and the National Legal Mentoring consortium, a National Mentoring Conference in Columbia,
South Carolina to be held April 12 – 14, 2018, at the University of South Carolina School of Law.

c. **Rule of Law Initiative (2):**

i. to co-sponsor with the United Nations Office on Drugs and Crime trainings or workshops on alternatives to detention in Bahrain.

ii. to co-sponsor with the George Washington University Elliot School of International Affairs ROLI’s day-long conference “When People Flee: Rule of Law and Forced Migration” scheduled to take place on April 17, 2018, at the George Washington University Elliot School of International Affairs.

d. **Section of Science & Technology Law:** to co-sponsor with the Health Information and Management Systems Society the Annual Conference & Exhibition from March 5 – 9, 2018 in Las Vegas, Nevada.

e. **Commission on Homelessness and Poverty:** to co-sponsor with the California Administrative Office of the Courts a three-day national summit on Homeless Courts and the role of the criminal justice system in addressing homelessness to be held June 28-30, 2018, in San Diego, California.

f. **ABA Representatives and Observers to the United Nations:** to co-sponsor with the Medical Women's International Association and Dr. Padmini Murthy, a Senior Fellow at the Public Private Alliance Foundation, a program entitled “Sexual Violence, Funding and Technology During Armed Conflict: The Next Step.” The program will be held in New York City in conjunction with the Commission on the Status of Women 62nd Forum to be held from March 12-23, 2018.

g. **Section of Environment, Energy, and Resources:** to co-sponsor and contribute up to $7,000, (derived from Section funds), the Jeffrey G. Miller Pace National Environmental Law Moot Court Competition with Pace Law School for 2018, 2019, and 2020.

h. **Section of Public Contract Law and Forum on Construction Law:** to co-sponsor a two-hour panel workshop on Federal Regulation at the Associated General Contractors of America (AGC) upcoming Federal Contractors Conference to be held on May 1-3, 2018, in Washington, D.C. The Section will pay a $7,500 sponsorship fee for the 2-hour workshop panel spot which will be sponsored by a couple of member firms and a contractor of the Section and Forum. The $7,500 sponsorship could be waived if 15 Section and/or Forum members register for the AGC conference.
FINANCE

A. MATTERS FOR REVIEW BY THE BOARD

5.1 Request from the Section of Family Law to Make Contribution to Jean Crowe Advocacy Center

The Board approved the request from the Section of Family Law to contribute $1,000, derived from Section funds, to the Jean Crowe Advocacy Center.

5.2 Request from Standing Committee on Audit Regarding Acceptance and Approval of Audited Financial Statements

The Board received the consolidated financial statement, details of consolidation and other information for the years ended August 31, 2017 and 2016 and the Single Audit for the year ended August 31, 2017.

5.3 Revised Investment Policy

The request was withdrawn and will be considered at the June 2018 Board meeting.

5.4 Gift Awards/Modification Report (Board Acceptance)

The Board accepted the Fund for Justice and Education restricted grants and contributions received or awarded through September 30, 2017, and not previously reported, as requested by the Association’s Financial Services Division.

5.6 Request from Standing Committee on Audit for Endorsement of Bylaw Amendment

The Board supported the recommendation of the Standing Committee on Audit to amend Article 31.7 of the ABA Constitution and Bylaws at the 2018 Annual meeting to more completely and accurately reflect the Standing Committee on Audit’s duties as they have been assigned by the Board of Governors.
Introductions and General Matters

1. Call to Order; Introductions; Announcements

The Section Midwinter Meeting of the Officers, Council, and Committee Chairs of the American Bar Association’s Business Law Section (the “Section”), duly noticed, was called to order by Section Chair, Christopher Rockers, at approximately 8:30 a.m. Pacific Time. Section Secretary, Jeannie Frey, took minutes of the meeting.

Mr. Rockers asked all attendees to introduce themselves. A list of all attendees is attached as Exhibit A.

Mr. Rockers made certain general announcements pertaining to the meeting and subsequent events and activities to be held later that day and the following day. He then noted that the order of Agenda items would be changed to move up the discussion and determination of the Section’s position on reports and recommendations for the ABA House of Delegates meeting at the ABA Midyear meeting in February.

Action Items

2. Approval of Section Position on Reports and Recommendations, ABA Midyear Meeting

Mr. Rockers next asked former Section Chair Barbara Mayden, one of the Section’s four Delegates to the ABA House of Delegates, to begin the review of pending Reports and Recommendations for the 2018 ABA Midyear Meeting in Vancouver, Canada. (The other Delegates are Chip Lion, Alvin Thompson and Steve Weise). Ms. Mayden explained the process by which the ABA House of Delegates receives, debates, and votes on Reports and Recommendations and the process by which the Business Law Section evaluates them for action by the Council, Officers, and Delegates. She noted that first the Section Delegates, Ms. Tobias and the Officers review the items proposed for House of Delegates action and ask any Section Committees with expertise in any matter to review the report and make a recommendation regarding what position the Section should take. Generally, the Section can take one of three positions: Support, Oppose or take No Position. When the Section leaders vote to take no position, each of the Delegates will then “vote their conscience” after listening to the debate at the House of Delegates and determining what position they believe is in the best interests of the Section and the ABA.

Ms. Mayden further explained that resolutions submitted by the National Conference of Commissioners on Uniform State Laws (a/k/a the Uniform Law Commission), the House of Delegates simply votes “yea” or “nay”, with no opportunity for amendment.
For these resolutions, approval constitutes the position that the proposed model law is an appropriate model for interested states to adopt.

Ms. Mayden, followed by Mr. Weiss and Mr. Lion, then reviewed the various Reports and Recommendations under consideration, and the positions recommended to the Council by the Officers, Delegates, and interested Section Committees. They responded to any questions or comments from the meeting attendees on each item, after which Council members voted on what position the Section should take. It was noted that for all matters involving issues pertaining to the federal judiciary, Judge Mac McCoy and Judge Alvin Thompson [any other federal judges present?] abstained.

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<thead>
<tr>
<th>Report</th>
<th>Sponsor &amp; Subject</th>
<th>Section Reviewing Entity(ies)</th>
<th>Position Recommended</th>
<th>Final Section Position</th>
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<tbody>
<tr>
<td>10A</td>
<td><strong>New York State Bar Association</strong>&lt;br&gt;Encourages law firms to develop initiatives to provide women lawyers with opportunities to gain trial and courtroom experience.</td>
<td>Diversity &amp; Inclusion&lt;br&gt;Business &amp; Corporate Litigation</td>
<td>Support&lt;br&gt;Support</td>
<td>Support</td>
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<td>100</td>
<td><strong>Section of Legal Education and Admissions to the Bar</strong>&lt;br&gt;Concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting amendments dated February 2018 to Standard 106 (Separate Locations and Branch Campuses) of the ABA Standards and Rules of Procedure for Approval of Law Schools.</td>
<td>Business Law Education</td>
<td>No Objection</td>
<td>No Position</td>
</tr>
</tbody>
</table>
| 101A | **Section of Intellectual Property Law**  
Section of Litigation  
Urges courts and legislative bodies to adopt rules or enact legislation to establish an evidentiary privilege applicable only to clients of patent agents who are registered with the U.S. Patent & Trademark Office (PTO) | Business & Corporate Litigation  
Intellectual Property  
Professional Responsibility | Support w/concern | No Position |
| 101B | **Section of Intellectual Property**  
Supports efforts in Congress and federal courts to allow the filing of a copyright infringement once a proper application for registration of a copyright has been delivered to the Copyright Office. | Intellectual Property | Support | No Position |
| 103A | **Standing Committee on Specialization**  
Grants accreditation to the Privacy Law program of the International Association of Privacy Professionals of Portsmouth, New Hampshire for a 5-year term as a designated specialty certification program for lawyers. | Consumer Financial Services | Oppose | Oppose |
<table>
<thead>
<tr>
<th>107</th>
<th><strong>Young Lawyers Division</strong></th>
<th>Pro Bono Business &amp; Corporate Litigation</th>
<th>No Position</th>
<th>No Position</th>
<th>No Position w/instruction for the Delegates to withdraw or make changes</th>
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<td></td>
<td>Urges federal courts to adopt pro bono panels for civil litigants guided by a uniform set of guidelines</td>
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<td>108A</td>
<td><strong>Section of Criminal Justice</strong></td>
<td>Business &amp; Corporate Litigation</td>
<td>No Position</td>
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<td><strong>Commission on Disability Rights</strong></td>
<td>White Collar Crime</td>
<td>No Position</td>
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<td>Urges legislative bodies to enact laws and adopt positions regarding the use of solitary confinement for detainees.</td>
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<td>108B</td>
<td><strong>Section of Criminal Justice</strong></td>
<td>Business &amp; Corporate Litigation</td>
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<td><strong>Urges legislatures to enact legislation creating a substantive right and procedures for individuals to challenge their convictions by demonstrating that forensic evidence used to obtain their convictions had been subsequently undermined or discredited.</strong></td>
<td>White Collar Crime</td>
<td>No Position</td>
<td>No Position</td>
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<td>108C</td>
<td><strong>Section of Criminal Justice</strong></td>
<td>Business &amp; Corporate Litigation</td>
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<td><strong>Massachusetts Bar Association</strong></td>
<td>White Collar Crime</td>
<td>No Position</td>
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<td><strong>Urges the Department of Justice to restore prosecutorial discretion in choosing the charges to pursue and to reserve</strong></td>
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<td>Section of International Law</td>
<td>Cyberspace Law</td>
<td>Support</td>
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<tr>
<td>110</td>
<td>National Conference of Commissioners on Uniform State Laws</td>
<td>Section Officers Taxation</td>
<td>Oppose</td>
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<td>Approves the Revised Uniform Unclaimed Property Act, promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.</td>
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<td>Oppose</td>
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<td>112B</td>
<td>National Conference of Commissioners on Uniform State Laws</td>
<td>Trust Indentures and Indenture Trustees</td>
<td>No Position</td>
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<td>Approves the Uniform Directed Trust Act, promulgated by the</td>
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<td>No Position</td>
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<td>National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.</td>
<td>LLCs, Partnerships and Unincorporated Entities Taxation</td>
<td>Support</td>
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<td>112E</td>
<td><strong>National Conference of Commissioners on Uniform State Laws</strong> Approves the Uniform Protected Series Act, promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.</td>
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<td>Support</td>
<td>Support</td>
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<td>112F</td>
<td><strong>National Conference of Commissioners on Uniform State Laws</strong> Approves the Uniform Regulation of Virtual-Currency Businesses Regulatory Act, promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.</td>
<td>Cyberspace Banking Law Uniform Commercial Code</td>
<td>Support</td>
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<td>115A</td>
<td><strong>Section of Family Law</strong></td>
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<td>Urges governments to adopt or preserve tax code provisions that allow alimony deductions for payors and treats alimony as taxable income to payees.</td>
<td>Taxation</td>
<td>Support</td>
<td>Support</td>
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<tr>
<th>116A</th>
<th><strong>Section of Civil Rights and Social Justice</strong></th>
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<td></td>
<td>Supports an interpretation of Title VII of the Civil Rights Act of 1964 that defines sex discrimination by covered employers on the basis of sexual orientation and gender identity.</td>
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<tr>
<th>117</th>
<th><strong>Commission on Sexual Orientation and Gender Identity</strong></th>
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<tr>
<td></td>
<td>Urges Courts to recognize that service in the United States Armed Forces should not be restricted and that individuals should not be discriminated against on the basis of sexual orientation or gender identity.</td>
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**Special Guest**

3. *Report on the ABA Center for Innovation*

Mr. Rockers introduced Judy Perry Martinez, currently the Special Advisor for the ABA Center for Innovation. Mr. Rockers noted that among other accomplishments, Ms. Martinez was formerly Vice President and Chief Compliance Officer of Northrup Grumman, as well as the former Chair of the ABA President’s Commission on the Future of Legal Services, the ABA Standing Committee on the Federal Judiciary, and the Young Lawyers Division.
Ms. Martinez noted her appreciation for the opportunity to participate in the previous day’s Advance discussions. Referencing the focus during the discussions on attracting young lawyers, she noted the importance to young lawyers of incorporating technology and innovation into the practice of law. The mission of the Center for Innovation is to catalyze innovations that achieve systemic improvements in the effectiveness, accessibility and affordability of legal information and services. The Center advances its mission through specific strategies, including analysis and dissemination of research and data about legal services delivery; fostering innovation through education; and piloting promising approaches and supporting the replication and scaling of promising innovations. The Center’s Governing Council includes individuals with notable experience in the areas of technology, legal services, legal education, the judiciary and private practice.

The Center is part think tank, part accelerator, and partly a testing ground for new ideas about how to use technology to provide effective solutions to a wide variety of legal issues and problems. The Center collaborates and coordinates collaboration with universities, law schools, governmental bodies, tech companies and other public and private sector organizations on innovation projects and fellowships. Ms. Martinez concluded by noting that the Center is continuing to grow and support innovative and effective approaches to legal services delivery, practice and access.

4. Report from the Business Law Section Liaison to the ABA Board of Governors

Mr. Rockers then recognized Kevin Shepherd, Business Law Section Liaison to the ABA Board of Governors, for an update on Board of Governors matters in which the Section has been involved or has a particular interest. Mr. Shepherd noted the critical role played by the Section, in concert with the Litigation Section, in the preparation of a resolution unanimously adopted by the Board of Governors in mid-December, relating to the treatment of pass-through entities under the then-proposed tax bill. The resolution urged Congress to treat all pass-through entities the same with respect to the ability of individual owners to deduct qualified business income from such entities up to certain income levels. Such parity of treatment of the income from pass-through entities was very important to many ABA members, since many law firms and professional services organizations are organized as pass-through entities. The ABA’s position was incorporated into the final version of the tax bill signed into law. Mr. Rockers recognized and thanked the Chair of the Taxation Committee, Roger Royse, for the extraordinary effort he and other members of the Committee made in pulling the resolution and related report together in a very short period.

Mr. Shepherd provided a brief update on the ABA’s realignment project initiated by ABA President Hilarie Bass. President Bass asked the Board of Governors to evaluate areas and entities that could be combined, eliminated or modified to achieve financial and other efficiencies. Staff recommendations to the Board on realignment opportunities are expected to be made to the Board at the ABA Midyear Meeting in Vancouver in early February. Mr. Shepherd also noted that the Board of Governors will continue its work to improve Association finances.
Mr. Shepherd encouraged anyone who had questions or comments pertaining to any matter to be considered by the Board of Governors to contact him or Lynn Barr, the other Section representative to the Board, so that such issues could be brought to the attention of the full Board of Governors.

**Action Items (continued)**

5. **Approval of Minutes: September 14, 2017 Council Meeting**

Jeannie Frey, Section Secretary, requested approval of the minutes, as amended, of the Council Meeting held on Thursday, September 14, 2017 at the Section’s Annual Meeting in Chicago, Illinois. A draft of the minutes was included in the meeting materials distributed to Section leadership prior to the Council Meeting; the draft was amended to reflect the attendance of William Kroener. *Upon motion duly made and seconded, the minutes were unanimously approved by the Council.*

6. **Approval of Blanket Authority Request**

Mr. Rockers introduced the proposal for approval of the Joint Comments on the Practice Guide to the United Nations Commission on International Trade Law Model Law on Secured Transactions. Mr. Weise provided background regarding the subject matter of this proposal. He noted that he, Hal Berman and others have been working with the United Nations Commission of International Trade Law (UNCITRAL) on a Model Secured Transactions Law for countries that don’t have a secured transactions law. In addition to the Model Law, this group previously developed a Guide to Secured Transactions, and now has a proposed Practice Guide designed for use by lawyers in countries that adopt the Model Law.

Mr. Rockers then briefly explained the blanket authority procedure. ABA Sections must use this procedure if they desire to provide comments to governmental or quasi-governmental bodies such as UNCITRAL. If the Council approves the proposed comments, the comments are shared with the other ABA Sections, Divisions and Forums for their review and comment. If no comments are received from such entities after 10 days, the Section is deemed to have authority to submit its comments, in this case to UNCITRAL, on behalf of the ABA.

*After motion duly made and seconded, the Joint Comments on the Practice Guide to the United Nations Commission on International Trade Law’s Model Law on Secured Transactions were unanimously approved.*

**Reports**

7. **Officer Reports**

7.1 **Chair**

7.1.1 **One ABA & Section Scorecard**
One ABA

Mr. Rockers began his report with a discussion of the One ABA Initiative. The intent of One ABA is to increase the Association’s long-term market share and revenues. It is designed to address the growing challenges the ABA faces from competitive, demographic and cultural shifts in the legal profession and society. The key features of One ABA as currently proposed is a dramatically simplified membership model with significantly lower membership fees based on years of practice and unlimited access to a free CLE library. With their ABA membership, members would be able to join two ABA Sections or other entities for no additional fee, with a standard charge of $50 for each additional entity a member would like to join. Eligible members would be automatically enrolled in the Young Lawyers or Senior Lawyers Division, which would not count against the two free entity memberships. Law student memberships would continue to be free.

With respect to the free CLE Library, the Sections and other ABA entities would be required to provide at least three content items to be included in the Library. The ABA would also maintain a CLE marketplace to promote all ABA and ABA Entity online CLE content (including live teleconferences, webinars, and on-demand content). Such content would generally be maintained behind a paywall for access by ABA members only, subject to Entity determinations, and with short “teaser” portions of substantive content available to non-members.

Mr. Rockers noted that Sue Tobias has been a member of an internal task force that has been working on the many details of the One ABA Initiative, and in such role has been a strong advocate for the Section’s interests. In response to questions regarding the anticipated effect of the One ABA changes on the Section, Mr. Rockers and Ms. Tobias emphasized that while the details regarding the revenue share model are still preliminary, it appears that the Section would benefit overall from the proposed changes.

The next steps are for the One ABA proposal to be considered by the Board of Governors at the Midyear Meeting in Vancouver in February and if approved in would then go to the House of Delegates for approval in August, with implementation in the 2019-2020 fiscal year.

Section Scorecard

Mr. Rockers noted some of the highlights of the Section Scorecard for Q1 of the 2017-2018 fiscal year (September through November 2017). There were 396,000 total webpage views in Q1, with 72% of those visits being on Section publication pages. The In the Know and Business Law Basics programs continue to be very popular with Section membership, with 4,619 registrants for the quarter. Mr. Rockers noted that there were 125 sets of program materials put into the Section’s Content Library, representing a significant amount of content that could be repurposed for the new Business Law Today. Sponsorship revenue for the Section Annual Meeting in Chicago totaled $233,500, while Q1 net revenue from Section publications was $190,000.
Mr. Rockers noted that the Spring meeting would be held April 12-14 at the Rosen Shingle Creek resort in Orlando. Early-Bird Registration would close on February 9.

7.2 Chair-Elect

Vicki Tucker, the Section’s Chair-Elect, reported on the meeting dates for the 2019 Section Meetings, and on Diversity and Inclusion matters.

7.2.1 2019 Section Meeting Dates

Ms. Tucker reviewed the 2019 meeting dates and locations:

2019 Midwinter Leadership Meeting
January 17-20, 2019
The Ritz-Carlton, San Juan, Puerto Rico

Ms. Tucker noted that due to storm damage in Puerto Rico, alternate locations are being considered, and advised refraining from making plan reservations.

2019 Spring Meeting
March 28-30, 2019
The Vancouver Convention Center
Vancouver, BC
Hotels: Pan Pacific, Fairmont Waterfront, Vancouver Marriott

2019 Annual Meeting
September 12-14, 2019
Marriott Marquis
Washington, D.C.

7.2.2 Chief of Diversity and Inclusion

Ms. Tucker noted that last year the Section Bylaws were revised to provide that the Chair-Elect would also serve as the Chief of Diversity and Inclusion. She observed that although the Section is very engaged in diversity and inclusion activities, appointing an Officer to this position signals the importance of diversity and inclusion to the Section, and was intended to assure that these areas stayed on the forefront of Section leader thinking.

Ms. Tucker reported that she has begun working with Chris Young, Chair of the Section’s Diversity Committee, to update the Section’s Diversity and Inclusion Plan, which was last updated in 2014. Diversity and inclusion have also been considered as she has begun to appoint successors to Committee Chairs whose terms end in September 2018. To date, of 12 appointments made, 7 are lawyers who have diversity attributes. Ms. Tucker also noted that the Section is in compliance with ABA CLE diversity requirements for all in-person CLE programming at Section in-person and stand-alone meetings, as well as for In the Know and Business Law Basics webinars.
Ms. Tucker requested that all Committee Chairs appoint an Administrative Director to the Diversity and Inclusion Committee, if they have not already done so. She also noted that each substantive Committee is asked about its progress in diversity and inclusion areas in the annual Committee reports.

7.3 Vice Chair

Vicki Tucker gave the Vice Chair report in the absence of Vice Chair Pat Clendenen.

7.3.1 Report on The Business Lawyer

Ms. Tucker reported that the Winter 2017-2018 issue of The Business Lawyer is complete, and will contain five articles and two surveys, comprising approximately 300 pages. It will be mailed and posted online in early to mid-January to approximately 31,000 subscribers.

The Spring 2018 Issue of The Business Lawyer is full, with three articles, two surveys and an abstract of the Mendes Hershman writing contest. This issue contains approximately 270 pages and will be sent to the printer by the end of March.

Ms. Tucker noted that the Editorial Board is in the process of soliciting articles, committee reports and surveys for the Summer and Fall issues. The Board is reaching out to prior authors, State judges, law school deans and others. She asked Committee to encourage their Subcommittee Chairs and Committee members to consider submitting articles, reports or surveys to this peer-reviewed journal. Ms. Tucker observed that the while the articles in TBL contain footnotes and citations, they are not intended to be pure academic works but rather materials that will benefit practicing lawyers.

Options for moving The Business Lawyer to a primarily online format are continuing to be explored. TBL is also investigating the use of a website for submission of articles and other materials.

Mr. Rockers noted that the current issue of TBL had recently been posted online, and had excellent content that can be easily downloaded to any device. He encouraged meeting participants to review the new issue.

7.3.2 2020 Section Meeting Dates

Ms. Tucker noted the following locations for the 2020 Section Spring and Annual Meetings:

2020 Spring Meeting
March 26-28, 2020
Boston Copley Marriott & Westin Copley Place
Boston, MA

2020 Section Annual Meeting
September 10-12, 2020
Sheraton Hotel & Towers and the Gleacher Center  
Chicago, IL

7.4 Secretary

Jeannie Frey, the Secretary of the Section, reported on the work of the ABA Relations Committee.

7.4.1 Report on ABA Relations Committee

Ms. Frey noted that as Section Secretary she was privileged to co-chair the ABA Relations Committee with Kathleen Hopkins. She noted that through this Committee, the Section promotes the nomination of qualified Section members to ABA standing committees, commissions and other bodies whose work is relevant to the Section. Although these positions are very competitive, the Section has been fortunate to have good representation on many of these bodies, to assure that the Section’s perspective is heard and that the Section remains informed on the work of these Association bodies. Ms. Frey thanked the Section leaders in attendance who were currently serving as a member of an ABA standing committee or other body, as well as those who have expressed an interest in serving on such an entity and going through the nomination process.

Ms. Hopkins noted that to date 14 Section leaders have expressed an interest in applying for appointment to an ABA committee or other body. Many other Section leaders will be asked to submit letters of support for Section member nominations on the ABA Presidential Appointments webpage, and will be provided with copies of the questionnaires completed by each Section nominee regarding their qualifications for the proposed position, along with the nominee’s bios. Ms. Hopkins advised that it may take several tries to be appointed. Applicants should not be discouraged if they are not appointed the first time they apply and may wish to discuss alternative ways to be involved or build their credentials to secure a future appointment.

7.5 Budget Officer

Mr. Rockers noted that Budget Officer Linda Rusch was not available to attend the meeting. He referenced the budget report materials provided in the meeting materials. He then provided an overview of the Budget Task Force being led by Ms. Rusch, together with the Task Force members consisting of himself, Ms. Tucker, Mr. Clendenen, Ms. Frey, Nikki Munro, Elizabeth Stong, Michael Fleming and Sue Tobias. The goal of the Task Force is to conduct an in-depth review of the budget to make recommendations regarding the Section’s expenses and revenues. The group has adopted a “lodestar” approach, identifying the key elements that are critical for fulfilling the Section’s purpose, and evaluating the items in each budget category with respect to how well they reflect those lodestars. Mr. Rockers noted the five Section lodestars that have been identified as essential to the Section’s mission and purposes:

- Provide a place/medium/environment/opportunities for business lawyers to advance their professional lives;
• Serve as the premier international legal association of business lawyers and judges;

• Advance the practice of business law for its membership and the legal profession;

• Provide tools, information and resources to, and a community for, business lawyers, including diverse lawyers, for professional development and to shape business laws, regulations and legal practices; and

• Provide resources that assist business lawyers in their practice and in providing service to the profession.

Mr. Rockers stated that the Task Force is tackling one segment of the budget – i.e., Leadership, Meetings, Membership, Committees, Special Projects, Publications, and Staff, on each of its calls. The Task Force is scheduled to complete its work by early May so that its recommendations can be incorporated into process for development of the FY 2019 budget.

7.6 Content Officer

Norm Powell, the Section Content Officer, gave the following report, focusing on three items: the role of Content Directors; Coordination with Advance V; and Prioritization of Objectives. He began by referencing the second scorecard sheet that had been provided for the meeting, which demonstrated through various metrics the robust nature of the Section’s content program, from both an economic and substantive value perspective. He thanked those Section leaders who have been part of the work to continue to develop and disseminate excellent content through the Section. He analogized the goal of repurposing Section content to the markets for variations of the content of a Broadway show – in which different people may want to see the show, read the book, listen to the cast recording, or partake of certain components of such content events. The Section’s goal is to provide relevant information and tools to members and others in the format(s) most useful to them.

Mr. Powell noted that a significant example of providing relevant content in a useful format is the reimagined Business Law Today, which was successfully launched in late 2017. A major focus of the Content Committee is to similarly “reimagine” the role of the Content Directors of the substantive Committees, so that they can be a key resource for the editors of the eight Practice Areas into which the new BLT is organized. Specifically, it is envisioned that the Committee Content Directors will be aware of all of the content being generated by their Committee, and facilitate use or repurposing of that content for BLT, CLE programs and webinars, podcasts and other content formats.

The Content Committee will also work to align its activities with the goals identified in the Advance V, and to prioritize goals to meet the most important objectives.
8. **Nominating Committee**

Former Section Chair William Rosenberg, as Chair of the Nominating Committee, reported on the Nominating Committee’s recommendations for Officer, House of Delegate and Council appointments positions to be effective after the 2018 Section Annual Meeting.

The Nominating Committee so composed has recommended the following slate of officers to be elected at the 2018 Section Annual Meeting:

- Patrick T. Clendenen, Chair-Elect;
- Penelope I. Christophorou, Secretary;
- Content Officer, for a three-year term, ending August 2021: Norman M. Powell;
- Section Delegate to the ABA House of Delegates for a three-year term, ending August 2021: Barbara Mayden; and
- Council Members for terms ending August 2022: Kristen D. Adams; Ted F. Claypoole; Linda Leali; Thomas J. Walsh; and Ashley C. Walter

9. **Report on Advance V**

Mr. Rosenberg then reported on the work of the Advance V, of which he is serving as Chair. He noted the importance of the work done in the prior day-and-a-half of Advance meetings at a time in which both the Section and the ABA as a whole are facing significant challenges affecting both short- and long-term sustainability. The current Advance process therefore is deviating from the prior Advances, which focused on the long-term strategic plan for the Section, by focusing now on short-term and mid-term gains. The Advance V approach is to prioritize certain market segments – including young lawyers in private practice – in an effort to make meaningful gains in those segments. While the Section will continue to address the needs of other segments, having a concentrated focus on certain segments should make it easier to achieve the short- and mid-term goals that need to be reached to help assure the Section’s long-term future.

Mr. Rosenberg noted that in looking at the prioritized market segments, the Advance is using the framework recently used by the In-House Counsel Task Force, and asking what is currently being done by the Section that is of value to that particular market segment. This framework also asks who our professional and specialty association competitors are for a market segment, and what those competitors offer. The prior days’ Advance meetings then focused on discussing how to improve or add to our existing benefits for the target market segments, as well as how to best convey the Section’s value proposition to each segment in a way that addresses the “three C’s” of cost, convenience and communications. The answers to these questions set the foundation for establishing a strategic plan with specific short-term goals, with action items corresponding to each goal. Mr. Rosenberg noted the importance of tailoring
the Section’s marketing to each target segment to communicate the benefits available from the Section in a way that distinguishes the value of Section membership compared to membership in competitor organizations.

Moving forward, the members of the Advance Steering Committee will be working with Nikki Munro and the other members of the Council Committee on Membership, Diversity and Inclusion, to gather the notes from the Table Reporters and then hone all of those insights and ideas into an implementation plan to be presented to the Council at the Spring Meeting.

Mr. Rosenberg thanked the Table Reporters for the Advance, and to the entire group for their input. He gave special thanks to Liza Nondorf and Meg Spisich, for their work as co-executive producers of the Jeopardy segments, to Sue Tobias and Mark Page for serving as the Jeopardy judges, and to Chris Rockers for his leadership. Mr. Rockers then thanked Mr. Rosenberg for all of the time, effort and creativity he has provided to the Advance process.


Mr. Rockers introduced Business Law Today’s Editor-in-Chief Jonathan Rubens to give the Business Law Today report. Mr. Rubens spoke about the organization of the new BLT website, which launched in November. A live look at the current BLT homepage was provided for the meeting participants to view as Mr. Rubens discussed. The top of the BLT homepage features a scrolling carousel of selected articles, selected by BLT staff. As individuals make repeated visits to the site, the articles featured will correspond with that individual’s preferences, based on their prior article selections.

BLT is designed to continuously add new articles to the site, based on a regular calendar. Older articles are maintained in the site archives and are available through searches. Mr. Rubens highlighted that at the end of each article is a photo and partial bio of each BLT author, which links to a full-page bio with a headshot. He encouraged potential and current BLT authors to develop the form of bio they would like to be used for BLT.

Mr. Rubens noted that the BLT site is organized around 8 Practice Areas, each of which have pre-designated topics. The goal is to have at least some content each month for each topic, with the Practice Area Editors working to reach out to the various Section Committees who cover such topics, as well as to other experts in and outside of the ABA. Mr. Rubens recommended that each Committee Chair get to know the Practice Area Editors for the Practice Areas relating to their Committees. As Mr. Powell had noted, the Content Directors of each Committee will also be expected to be aware of all of the content generated by each Committee and to facilitate having that content appear, directly or in a repurposed form, in BLT. In addition, BLT is open to content that relates to a Practice Area even though the specific topic is not one of the topics currently designated.
The new BLT site is being promoted by twice-monthly emails. There has been good click-through rate experience from those emails, as well as good overall usage rates for the site, particularly on dates corresponding to when the promotional emails were sent. Mr. Rubens noted that BLT staff is working on developing a robust set of analytics to monitor how the BLT site is being accessed, identify the top performing pages, and generate other data for use by the Practice Area Editors, Section leaders and others. The Editorial Board includes an Engagement Editor, Brandon Huffman, who will be focusing on analytics and search engine optimization. One source of data will be Google Analytics, since a significant amount of traffic to Section websites comes from Google searches.

Mr. Rubens noted the Month-in-Brief feature, which is a new feature added with the launch of the new BLT. Month-in-Briefs are very short reports of current legal developments, similar to a very short law firm alert, with three to five sentences and a link to an original source such as a new law or court opinion. The goal is to have a Month-in-Brief report each month for each topic area within all of the Practice Areas.

In the coming months, BLT hopes to add additional features that were part of the overall vision for the site, but which were not feasible to implement on Day One. One of these features is to have videos on the site for each topic. These will include live interviews with Section leaders and in-person meeting presenters at Section meetings, which can be posted to the site; such videos will function as modern successors to the popular Member Spotlight segments of the previous BLT. The element that will be added to the site are Tools, which will include checklists, sample agreements, forms and similar practice tools. There is also ongoing analysis to determine how to incorporate into BLT other key content areas that don’t fit within the substantive Practice Areas, such as law practice management, professional development and diversity and inclusion content. These additional features, and current ones, are designed to help promote the Section’s Committees as well as the Section itself, and ultimately be a driver to increase Section membership.

Mr. Rubens encouraged everyone to identify topics and contents that they would like to see in BLT, and to identify and recruit authors for articles. He also reported that BLT has a new staff member, Sarah Claypoole, who is fully dedicated to support BLT.

11. Council Committee Reports

11.1 Council Committee on Committees

Committee Chair Elizabeth Stong gave the Council Committee on Committees report. At the outset, she noted the importance of the substantive Committees to the Section, since Committees are the primary vehicle through which members participate in the Section, and future Section leaders are developed. The Council Committee on Committees has been focused on reviewing the new Quick Check Committee forms launched earlier in the fiscal year. Judge Stong noted the importance to both the Committees and the Section of thoughtful and timely completion of these forms, which are designed to be filled out without significant expenditures of time. She asked that anyone who had not yet filled out the Quick Check form for their Committee, or the
full Committee Report that had been due the previous May, do so as soon as possible. Judge Stong emphasized that these reports are a useful management planning tool for Committee leaders, by providing an opportunity to review the Committee’s activities against its goals. The reports also serve as an important tool in Committee leadership transition.

Referencing remarks by other leaders earlier in the meeting, Judge Stong reiterated the importance of Committee Chair appointment of Committee members to serve on the Section’s administrative committees, including in particular Administrative Directors to the Diversity and Inclusion Committee, and as Content Directors. She also encouraged the Committee Chairs to try new initiatives and approaches, and not be afraid to fail.

11.2 Council Committee on Content Strategy

Committee Chair Michael Fleming gave the Council Committee on Content Strategy report.

Mr. Fleming noted that the role of this Council Committee is to support the approximately 6-7 administrative committees or boards that generate much of the Section’s content and content-related strategies. The Council Committee also serves as the vehicle for communicating with Section leadership regarding the extent to which the Section’s content goals are being met. The Council Committee has created a reporting form for each of the content-related Administrative Committees to complete, including identifying what progress is or is not being made by that Committee on strategic content goals previously assigned to that Committee as part of the Section’s strategic plan. The Council Committee on Content Strategy will also ask for Quick-Check type reports from these Administrative Committee prior to the Spring Meeting. Such reports will also be vehicles for feedback from the applicable Administrative Committees on whether any of the assigned goals no longer seem relevant or appropriate. The Council Committee will use the Administrative Committee reports to compile data on the status of the Section’s strategic content-related goals and share those with Section leadership.

Mr. Fleming further noted that the role of the Council Committee on Content Strategy is to help the content-related Administrative Committees and the Section as a whole in achieving strategic content goals identified in the Section’s Business Plan. This may involve asking one particular content-related Administrative Committee to take the lead on a particular content goal or opportunity. For example, the Council Committee has asked Lois Mermelstein, Chair of the Technology Committee, to assist Section staff and members in using new technologies and technology platforms, such as the Higher Logic system. As needed, the Council Committee will facilitate communication across different parts of the Section relating to strategic content goals and initiatives being spearheaded by the Content Committee or other content-related Administrative Committees.
11.3 Council Committee on Membership, Diversity and Inclusion

Committee Chair Nikki Munro gave the Council Committee on Membership, Diversity and Inclusion report.

Ms. Munro stated that the Council Committee has been diligently working on implementation steps for Membership, Diversity and Inclusion goals set forth in the most recent Business Plan adopted approximately two years ago. One notable example of the Council Committee’s work in this regard was in formation of a Marketing Board to coordinate communications with current and potential Section members, regarding the benefits of membership.

After the end of the Midwinter Meeting, the Council Committee will look at the outstanding Business Plan goals and implementation steps and review them holistically from the perspective of the Advance V framework, and prioritize the top five implementation steps that address the goals of the Advance V plan. The Council Committee will create action plans and work with the Marketing Board to develop strategies and timelines for outreach to the target market segments.

The Council Committee will also continue its focus on assuring the institutionalization of diversity and inclusion perspective and goals into all membership development, participation and retention activities.

12. Business Law Advisors Committee

Committee Chair Don Parsons gave the Business Law Advisors Committee Report. Mr. Parsons noted that he is new to his role as Chair of this Committee, and thanked former Chair Charlie McCallum for all of his work for the Committee in recent years and for assisting Mr. Parsons as he began his tenure as Chair.

Mr. Parsons noted that each year, the Section appoints three new Business Law Advisors to serve two-year terms. Each Advisor is then linked up with one or more substantive Committees, and in some cases Administrative Committees as well. The class of Business Law Advisors for the 2017 and 2018 fiscal years are Tom Baxter (associated with the Banking Law and UCC Committees); Lucy Koh (Cyberspace and Intellectual Property Committees); and Simon Lorne (Fed Regs, Securities and Professional Responsibility Committees). The class of Business Law Advisors for the 2018 and 2019 fiscal years are Michael Halloran (Banking Committee and Content Committee); Roberta Cooper Ramo (International Coordinating Committee); and Tom Sager (Corporate Compliance and Corporate Counsel Committees, and Membership, Diversity and Inclusion Committees). Mr. Parsons noted that during his tenure as General Counsel at DuPont, Mr. Sager was a major leader in the areas of diversity and inclusion.

Mr. Parsons reported that the Business Law Advisors Committee is currently considering candidates for the next group of Business Law Advisors and to date the Committee has received ten candidate suggestions. He stated that the Committee gives strong consideration to suggestions of prospective Advisors from Committees.
that have not previously had an Advisor. Diversity and inclusion criteria are also considered, along with many other factors.

### 13. Membership Committee

Committee Co-Chair Grace Powers provided the Membership Committee report. She reviewed the specific details reflecting the Section’s net Member loss numbers discussed in the Advance meetings. **As of December 2017, the Section had 44,901 members, representing a net loss from the prior year of** 5.78%. The total membership was comprised of 29,938 lawyer members, 1,806 associate members and 13,157 student members. Ms. Powers highlighted the fact that only 35.41% of all Section members are members of a substantive Committee. This relatively low number presents an opportunity to increase retention by engaging Section members through Committee membership.

Committee Chairs can help turnaround the Section’s membership numbers by appointing one of their Committee members to serve as a Membership Director. The Membership Committee will be working with the Council Committees and other Administrative Committees on ways to enhance membership, recruitment and retention, including through promoting member engagement in substantive Committees. Through its Membership Director, each Committees will have input in and access to current information about membership retention strategies being developed. Ms. Powers suggested that Committee Chairs consider appointing Young Lawyers and newer Committee member to serve as the Committee’s Membership Director to engage such Committee members and provide them with opportunities to network and learn more about the Section.

Discussion followed. Mr. Rosenberg suggested that there may be an opportunity to attract more associate members, particularly non-U.S. lawyers, at the 2019 Spring Meeting in Vancouver. Mr. Brandel noted that the net loss in membership is likely not simply a result of a decrease in that number of members, but rather an imbalance between the number of persons joining the Section as new members and those leaving the Section. The value proposition thus becomes a critical factor in retaining members. He reiterated Grace Powers’ comments on the importance of encouraging Section members to sign up for Committees, since the Committees are a primary vehicle for member engagement.

### 14. Publications Board

Publication Board Chair Pete Walsh gave the Publication Board report. Net revenue of the Publications program for Q1 was approximately $190,000, exceeding budgeted net revenue of $78,000. Mr. Walsh noted that a key factor in this result was Rick Paszkiet’s ability to significantly reduce publication expenses without affecting quality.

Three books were published in Q1: *Nonprofit Law: A Practical Guide to Legal Issues for Nonprofit Organizations; A Manual of Style for Contract Drafting, 4th ed.* (which sold 1500 copies in two months); and *Electronic Payment Systems: Law and Emerging Technologies.* Mr. Walsh noted that these books illustrate the range of Section
publications and the importance of publishing not only “classic” works and consistent best-sellers but also books on cutting-edge issues in business law. Mr. Walsh noted the list of books currently in production, and that the Section expected to publish 12 books for the current fiscal year. One of those books, *Legal Opinions in Business Transactions, 4th ed.*, had previously been published by a competing publisher, and because of the essential nature of this topic for transactional attorneys, has the potential to generate strong sales volumes.

15. *Section Director*

Section Director Sue Tobias gave the following report. She first highlighted recent Section Staff hires: Khalilah Bruton, Program Associate (supporting Law Student initiative, the Diversity Clerkships, and various Committee activities); Sarah Claypoole, Editor, BLT; Gina Dickinson, Program Specialist (supporting diversity and outreach initiatives, including the Fellows and Advisors, and like Ms. Bruton, reporting to Leslie Archer); Jason Jones, Membership and Marketing Associate; and Meg Spisich, Product Marketing Manager. Meg Spisich is an 8-year ABA employee, who previously worked in the Litigation Section. Jason Jones was an important part of the team that helped get the new BLT to the launch point. Ms. Tobias stated that the Section is now fully staffed. She thanked Mark Page, Liza Nondorf and Rick Paszkiet for their leadership and support.

Ms. Tobias reported on several recent and future activities worked on by staff. The Leadership Directory recently became available online in the portal. The next Committee Chair webinar will be on January 24. Staff is looking forward to working with Lois Mermelstein and the Technology Committee on the implementation of the Higher Logic online collaboration system. Getting the new BLT up and running took up a significant amount of staff leader time, especially for Rick, Rachel, Liza and Meg, who deserve congratulations for the successful launch. Staff has also continued to support the Council Committees, the *In the Know* and *Business Law Basics* webinars, the stand-alone Fall and Winter committee meetings, all while managing Section finances and planning the Midwinter Leadership meeting, Advance V and the Spring Meeting.

Ms. Tobias highlighted important deadlines for the Spring meeting, for programs, material, and hotel and meeting registrations. She also noted deadlines for nominations for the National Public Service and Glass Cutter awards, as well as applications for Business Law Fellows.

Ms. Tobias gave a brief summary of Section financial matters. The Section ended fiscal year 2017 with positive net revenue of over $23,000, almost $500,000 better than budget. As a result, the Section did not need to draw down the budgeted $450,000 from the Section’s contingent reserve account. For the first part of the 2018 fiscal year, the Section’s finances are tracking well to budget.

Ms. Tobias concluded by thanking the Council members and Committee Chairs for all that they do, and encouraging them to reach out to her and other members of Section staff as needed.
Mr. Rockers thanked Ms. Tobias and expressed his appreciation for the staff’s excellent work and strong support for the work of the Officers and other Section leaders, including the new BLT and Advance V. He gave special recognition to the extraordinary work of Mark Page and Nicole Nikodem in locating and implementing a new site for the Midwinter Leadership meeting on an extremely short time-frame, after it became necessary in the fall to cancel the Los Cabos, Mexico location.

Ms. Tobias thanked Mr. Rockers for all of his leadership in making the Midwinter Leadership Meeting a success.

**Other Business**

Mr. Rockers provided information regarding the afternoon and evening scheduled activities, and the following day’s Farewell brunch.

There being no other business, and upon a motion duly made and seconded, Mr. Rockers announced that the Council Meeting was adjourned.

*See attached Exhibit A for a list of Meeting Attendees.*
MEETING OF OFFICERS  
COUNCIL AND COMMITTEE CHAIRS  
Saturday January 13, 2018  
8:30 am – 12:30 pm  
Pacific Ballroom  
The Resort at Pelican Hill  
Newport Coast, CA

<table>
<thead>
<tr>
<th>NAME</th>
<th>CITY, STATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kristen Adams</td>
<td>Gulfport, FL</td>
</tr>
<tr>
<td>Warren Agin</td>
<td>Boston, MA</td>
</tr>
<tr>
<td>Cheryl Balough</td>
<td>Chicago, IL</td>
</tr>
<tr>
<td>Brenda Barrett</td>
<td>Austin, TX</td>
</tr>
<tr>
<td>Lynne Barr</td>
<td>Boston, MA</td>
</tr>
<tr>
<td>Brenda Barrett</td>
<td>Austin, TX</td>
</tr>
<tr>
<td>Leslie Berkoff</td>
<td>New York, NY</td>
</tr>
<tr>
<td>Brigida Benitez</td>
<td>Washington, DC</td>
</tr>
<tr>
<td>Leslie Berkoff</td>
<td>Garden City, NY</td>
</tr>
<tr>
<td>Cara Bradley</td>
<td>Boston, MA</td>
</tr>
<tr>
<td>Ronald Brandel</td>
<td>San Francisco, CA</td>
</tr>
<tr>
<td>Elwood Cahill</td>
<td>New Orleans, LA</td>
</tr>
<tr>
<td>Bob Carlson</td>
<td>Butte, MT</td>
</tr>
<tr>
<td>Margaret Cassidy</td>
<td>Washington, DC</td>
</tr>
<tr>
<td>Brian Castro</td>
<td>Washington, DC</td>
</tr>
<tr>
<td>Sylvia Chin</td>
<td>New York, NY</td>
</tr>
<tr>
<td>Penny Christophorou</td>
<td>New York, NY</td>
</tr>
<tr>
<td>Merritt Cole</td>
<td>Philadelphia, PA</td>
</tr>
<tr>
<td>Collin Cooper</td>
<td>Greensboro, NC</td>
</tr>
<tr>
<td>Susan Daley</td>
<td>Chicago, IL</td>
</tr>
<tr>
<td>Lacy L. Durham</td>
<td>Dallas, TX</td>
</tr>
</tbody>
</table>
MEETING OF OFFICERS
COUNCIL AND COMMITTEE CHAIRS
Saturday January 13, 2018
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<table>
<thead>
<tr>
<th>NAME</th>
<th>CITY, STATE</th>
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</thead>
<tbody>
<tr>
<td>Cesar Escovar</td>
<td>Chicago, IL</td>
</tr>
<tr>
<td>Steven Fender</td>
<td>Fort Lauderdale, FL</td>
</tr>
<tr>
<td>Jean FitzSimon</td>
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<tr>
<td>Keith Fisher</td>
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<tr>
<td>Edward Fitzgerald</td>
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<tr>
<td>Michael Fleming</td>
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<tr>
<td>Jeannie Frey</td>
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<tr>
<td>Fran Goins</td>
<td>Cleveland, OH</td>
</tr>
<tr>
<td>Jason Goitia</td>
<td>Arlington, VA</td>
</tr>
<tr>
<td>Larry Goldman</td>
<td>Newark, NJ</td>
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<tr>
<td>Holly J. Gregory</td>
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<tr>
<td>Anne Gwal</td>
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<td>Mark Hebbeln</td>
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<tr>
<td>Kathleen Hopkins</td>
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<tr>
<td>Timothy G. Hoxie</td>
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</tr>
<tr>
<td>Garth Jacobson</td>
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</tr>
<tr>
<td>Dixie Johnson</td>
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</tr>
<tr>
<td>Kevin Johnson</td>
<td>Alexandria, VA</td>
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<tr>
<td>Erik Kantz</td>
<td>Chicago, IL</td>
</tr>
<tr>
<td>Robert Keatinge</td>
<td>Denver, CO</td>
</tr>
</tbody>
</table>
MEETING OF OFFICERS
COUNCIL AND COMMITTEE CHAIRS
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<table>
<thead>
<tr>
<th>NAME</th>
<th>CITY, STATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>William Klimon</td>
<td>Washington, DC</td>
</tr>
<tr>
<td>Neal Kling</td>
<td>New Orleans, LA</td>
</tr>
<tr>
<td>Kay Kress</td>
<td>Southfield, MI</td>
</tr>
<tr>
<td>Bill F. Kroener</td>
<td>Washington, DC</td>
</tr>
<tr>
<td>Lisa Lifshitz</td>
<td>Toronto, Canada</td>
</tr>
<tr>
<td>Chip Lion</td>
<td>Palo Alto, CA</td>
</tr>
<tr>
<td>Jonathan Lipson</td>
<td>Philadelphia, PA</td>
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<tr>
<td>Phillip Long</td>
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<tr>
<td>Kimberly Lowe</td>
<td>Minneapolis, MN</td>
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<tr>
<td>Sam Maizel</td>
<td>Los Angeles, CA</td>
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<tr>
<td>Michael Malamut</td>
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<tr>
<td>Alison Manzer</td>
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<tr>
<td>Judy Perry Martinez</td>
<td>New Orleans, LA</td>
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<tr>
<td>Barbara Mayden</td>
<td>Nashville, TN</td>
</tr>
<tr>
<td>Charles McCallum</td>
<td>Healdsburg, CA</td>
</tr>
<tr>
<td>Donald McCauley</td>
<td>Framingham, MA</td>
</tr>
<tr>
<td>Kathleen McLeroy</td>
<td>Tampa, FL</td>
</tr>
<tr>
<td>Lois Mermelstein</td>
<td>Austin, TX</td>
</tr>
<tr>
<td>Meg Milroy</td>
<td>Arlington, VA</td>
</tr>
<tr>
<td>Tom Morante</td>
<td>Ft. Lauderdale, FL</td>
</tr>
</tbody>
</table>
MEETING OF OFFICERS  
COUNCIL AND COMMITTEE CHAIRS  
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<table>
<thead>
<tr>
<th>NAME</th>
<th>CITY, STATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nikki Munro</td>
<td>Baltimore, MD</td>
</tr>
<tr>
<td>Clifton Newman</td>
<td>Chicago, IL</td>
</tr>
<tr>
<td>Liza Nondorf</td>
<td>Chicago, IL</td>
</tr>
<tr>
<td>Mark Page</td>
<td>Chicago, IL</td>
</tr>
<tr>
<td>Don Parsons</td>
<td>Wilmington, DE</td>
</tr>
<tr>
<td>Rick Paszkiet</td>
<td>Chicago, IL</td>
</tr>
<tr>
<td>Maury Poscover</td>
<td>Saint Louis, MO</td>
</tr>
<tr>
<td>Norman Powell</td>
<td>Wilmington, DE</td>
</tr>
<tr>
<td>Grace Powers</td>
<td>Los Angeles, CA</td>
</tr>
<tr>
<td>Chris Rockers</td>
<td>Kansas City, MO</td>
</tr>
<tr>
<td>William Rosenberg</td>
<td>Montreal, QC Canada</td>
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<tr>
<td>Roger Royse</td>
<td>Menlo Park, CA</td>
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<tr>
<td>Jonathan Rubens</td>
<td>San Francisco, CA</td>
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<tr>
<td>Douglas M. Rutherford</td>
<td>Minneapolis, MN</td>
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<tr>
<td>Ettore Santucci</td>
<td>Boston, MA</td>
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<tr>
<td>J. Stephen Schuster</td>
<td>Marietta, GA</td>
</tr>
<tr>
<td>Jim Schulwolf</td>
<td>Hartford, CT</td>
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<tr>
<td>Kevin L. Shepherd</td>
<td>Baltimore, MD</td>
</tr>
<tr>
<td>Jeremy Smith</td>
<td>Huntsville, AL</td>
</tr>
<tr>
<td>NAME</td>
<td>CITY, STATE</td>
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<tr>
<td>--------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Andrew Smith</td>
<td>Washington, DC</td>
</tr>
<tr>
<td>Peter Snell</td>
<td>Vancouver, BC</td>
</tr>
<tr>
<td>Meg Spisich</td>
<td>Chicago, IL</td>
</tr>
<tr>
<td>Elizabeth Stong</td>
<td>Brooklyn, NY</td>
</tr>
<tr>
<td>John Stout</td>
<td>Minneapolis, MN</td>
</tr>
<tr>
<td>Alvin Thompson</td>
<td>Hartford, CT</td>
</tr>
<tr>
<td>Sue Tobias</td>
<td>Chicago, IL</td>
</tr>
<tr>
<td>Vicki Tucker</td>
<td>Richmond, VA</td>
</tr>
<tr>
<td>Peter Walsh</td>
<td>Wilmington, DE</td>
</tr>
<tr>
<td>Tom Walsh</td>
<td>Southport, CT</td>
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<tr>
<td>Ashley Walter</td>
<td>Seattle, WA</td>
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<tr>
<td>Steve Weise</td>
<td>Los Angeles, CA</td>
</tr>
<tr>
<td>Sharon Weiss</td>
<td>Santa Monica, CA</td>
</tr>
<tr>
<td>Chris Young</td>
<td>Tucson, AZ</td>
</tr>
</tbody>
</table>
Memorandum

DATE: April 2, 2018

To: ABA Business Law Section Officers and Council

From: Linda J. Rusch, Budget Officer

RE: FY 2018, Feb 2018 Budget Variance Report

Investment report
Budget Task Force

FY 2018, February 2018 Budget Variance Report

Based upon the Feb. 2018 Budget Variance Report, dues collection is tracking behind last year. Leadership expenses are over budget because of higher midwinter leadership meeting expenses. This is in addition to a 60K cancellation fee for moving the meeting from Los Cabos. On a good news note, the Meetings section of the budget shows that the Section Annual will be revenue positive. As of now, the projection is that we will show a loss of $49,306 for the year. The expenses are being monitored closely to attempt to reduce that deficit.

Investment report

As of March 29, 2018, our total investment funds are $19,968,586.50, split between six funds held by Russell Investments. (This total reflects a combination of what we call our permanent reserve and our contingency reserve. The amount we designate as a contingency reserve is merely an accounting designation used within the Business Law Section and not a separate fund.)

As with all investment accounts, the value fluctuates daily depending upon overall market performance and the particular fund performance. We benefited significantly from the equities market runup, which increased the value of our portfolio. As the market has fluctuated over the past few weeks, we have lost some value.

Once a quarter, we are given the ability to make transfers between funds within the reserve accounts and between the reserves and the money market account. An investment advisor group consisting of Donnene Damon, Karl Ege, Renie Grohl, Dennis Lehr, the current chair (Chris Rockers) and the chair elect (Vicki Tucker), the budget officer (Linda Rusch), and section director (Sue Tobias) evaluates whether we need to make adjustments between the six reserve funds based upon the Section’s investment policy and whether we need to make any transfers between the reserves and the money market account.

Below are our current allocations of these reserves as of March 29, 2018, and the investment policy target ranges.

U.S. equity (Vanguard Russell 1000 and 2000 Funds) = $11,091,108.56 (55.54%)
Investment policy target =50% to 70%

Non U.S. equity (Vanguard Developed Markets and RIFL Emerging Equity) = $5,641,250.12 (28.25%)
Investment policy target=10% to 35%

Total equity=$16,732,358.68 (83.79%)
Investment policy target = 65% to 85%

Fixed income (Core Bond and Low Duration Bond) = $3,236,227.82 (16.21%)
Investment Policy target = 15% to 35%
**Budget Task Force**

In the development of the FY 2018 budget, the officers became concerned about the amount of contingent reserves to be used to balance the budget. Chris Rockers appointed a Budget Task Force to conduct an in-depth review of the budget to make recommendations to the officers regarding the section’s expenses and revenue.

The Budget Task Force is composed of the following individuals Linda Rusch (chairing) Chris Rockers, Vicki Tucker, Pat Clendenen, Jeannie Frey, Nikki Monre, Elizabeth Stong, Michael Fleming, and Sue Tobias. The Task Force held several calls from October through December 2017 and arrived at an approach to reviewing the budget we are calling the “lodestar” approach. We each identified what we considered the essential purpose of the BLS and what lodestars are critical for fulfilling that purpose as well as questions that we should ask in evaluating each item in the budget. The summary chart detailing that information is attached. As we review each item in the budget, we will keep these purposes, lodestars and questions in mind in order to formulate a recommendation regarding that budget item.

This spring (from January through early May), we have had several calls reviewing each segment of the budget (Segments: Leadership, Meetings, Membership, Committees, Special Projects, Publications, Staff). Prior to each call, Sue and I have provided the individual spending that went into that budget line item from the previous fiscal year (and provided the basis of FY 2018 budget) so as to better evaluate where each dollar is going and to come up with concrete recommendations. Our goal is to have our recommendations finalized by the middle of May so that changes can be considered as part of the development of the FY 2019 budget.
<table>
<thead>
<tr>
<th>Guiding principal/mission</th>
<th>Lodestars</th>
<th>Additional Questions</th>
</tr>
</thead>
</table>
| 1 Provide [a] place/medium/environment /opportunities for business lawyers to advance their professional lives. | • Provide for the delivery of Content – Active Members  
• Provide for the delivery of Content – All Members  
• Provide opportunities to establish professional relationships -- includes diversity and inclusion goals  
• Opportunities for member development (content generation and delivery/leadership – this is from the member’s perspective) – includes diversity and inclusion goals  
• Member Growth and Development (this is from the Section’s perspective) | |
| 2 Mission: The BLS is the premiere international legal association of Business Lawyers and Judges devoted to professional growth of its members. | • Invest in human capital over the long term: High quality staff, Fellows, Advisors, BCRs, In house counsel.  
• Ex.: Reduce the benefits to one-off non-member speaker reimbursements.  
• Invest in productive and valuable technology: TV & Radio media, podcasts, webinars, paperless, BLT.  
• Ex.: Convert TBL to paperless.  
• Invest in diversity in all its forms: personal and organizational. Government, judiciary, in house, international, private practice, small, and large firms.  
• Invest in content creation mechanisms, tools, and resources for members.  
• Invest in the member collaboration experience through premiere in person meetings and technology. | • By eliminating this expense, what short or long term losses will the BLS incur to its mission?  
• How can the cut initiative or cost be incorporated into existing BLS operations?  
• Are there latent revenue opportunities in the BLS?  
• Media: TV, Radio, Social Media?  
• Bundling sponsor products and services with membership, products, book?  
• Do we need professional consulting to advise us on revenue generation, sponsorships, media opportunities?  
• Can we offer personal services to people attending meetings for a sponsorship cost? Clothing, branding, tech etc. |
| 3 The Business Law Section exists to advance the practice of business law for its membership and for the legal profession. | -- a large, broad, and diverse membership, including a broad and diverse active membership that carries forward the work of the Section;  
-- substantive and engaging meetings and programs at which the work of the Section can take place;  
-- content at the highest level of practice as a resource and to educate its membership and the business bar, and to improve the law;  
-- opportunities, including leadership opportunities, for both established and new members to become involved in the work of the Section;  
-- engagement in the issues that face business lawyers, business courts, and the legal profession. | Top down:  
What activities (and associated expenses, of funds, staff time, and member time) are critical to this particular lodestar?  
What can we not afford to lose?  
Bottom up:  
How does this expense advance one or more of the lodestars?  
Is there a more cost-effective way to accomplish the same thing?  
Is this expense more in the nature of a necessity or a luxury to accomplish one or more of the lodestars? |
| 4 | The BLS exists to provide tools, information and resources to, and a community for, business lawyers, including diverse lawyers, for professional development and to shape business laws, regulations and legal practices. | 1. Invest in staff and technology sufficient to achieve the Section’s mission  
2. Invest effort and funds in developing the tools, information, resources and community designed to engage existing members and attract new members  
3. Invest effort and funds in activities designed to develop leaders within the Section  
4. Invest effort and funds in activities that support diversity in all of its forms  
5. Continue to engage in thoughtful strategic planning and budgeting that supports the foregoing |  

| 5 | Further the understanding and development of business law in a coherent and practical way that balances competing interests and public goods  
Foster the development of communities of interest of a diverse range of business lawyers by practice areas, years of practice, geographic areas and other relevant characteristics  
Offer tools, pathways and inspiration to promote the professional development and professional satisfaction of business lawyers throughout their careers | For each budget item  
Which lodestar(s) does it further? [may be helpful to then categorize the budget items by lodestar]  
How well does it further such lodestar(s) - on a scale of 1-10/ or 1-5, how well does this item, as currently existing, further such lodestar(s)  
What changes should or could we consider to better further the applicable lodestar(s) –  
Where are there gaps – i.e., what else could we be doing to meet the lodestars  
What resources would we need to do specific things to address gaps  
What should we stop doing, or do differently, so as to have the resources for such new programs/activities |  

| 6 | Provide resources that assist business lawyers in their practice and in providing service to the profession -up to date relevant information in business law practice areas -provide opportunities for involvement for improvement in business law - provide opportunity for service to the public in business law area --provide the infrastructure necessary to achieve the goals | How does this budget item advance the lodestars?  
What measurements can be employed to determine effectiveness of expenditure in advancing the lodestar?  
Is there a more cost effective manner to achieve the same goal? |
<table>
<thead>
<tr>
<th></th>
<th>Budget FY 17-18</th>
<th>Actual FY 16-17</th>
<th>Actual PA II FY 16-17</th>
<th>Variance FY 16-17 YTD</th>
<th>Variance FY 17-18 YTD</th>
<th>Variance FY 17-18 v YTD 16-17</th>
<th>Projection Budget 2018 August FY 18</th>
<th>Discussion of Projection/Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dues</strong></td>
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<tr>
<td>Section Dues</td>
<td>1,500,000</td>
<td>750,503</td>
<td>1,555,273</td>
<td>716,447</td>
<td>(34,056)</td>
<td>(783,553)</td>
<td>1,500,000</td>
<td>Dues revenue tracking behind last year, will monitor closely.</td>
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<td><strong>Total Dues</strong></td>
<td>1,500,000</td>
<td>750,503</td>
<td>1,555,273</td>
<td>716,447</td>
<td>(34,056)</td>
<td>(783,553)</td>
<td>1,500,000</td>
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<tr>
<td><strong>Staff</strong></td>
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</tr>
<tr>
<td>Personnel</td>
<td>(1,340,497)</td>
<td>(487,130)</td>
<td>(1,017,869)</td>
<td>(520,437)</td>
<td>(33,307)</td>
<td>820,060</td>
<td>(1,340,497)</td>
<td>Expenses over prior year due to full staffing situation this year.</td>
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<tr>
<td>Development</td>
<td>(13,000)</td>
<td>(2,450)</td>
<td>(6,322)</td>
<td>(2,079)</td>
<td>371</td>
<td>10,921</td>
<td>(13,000)</td>
<td>No material variance. Tracking to budget.</td>
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<tr>
<td>Overhead</td>
<td>(391,930)</td>
<td>(124,372)</td>
<td>(239,670)</td>
<td>(198,509)</td>
<td>(74,137)</td>
<td>193,421</td>
<td>(391,930)</td>
<td>Variance over prior year due to misposting of expenses in FY 17. Expenses tracking to budget.</td>
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<tr>
<td><strong>Total Staff</strong></td>
<td>(1,745,427)</td>
<td>(613,952)</td>
<td>(1,263,861)</td>
<td>(721,025)</td>
<td>(107,073)</td>
<td>1,024,402</td>
<td>(1,745,427)</td>
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<tr>
<td></td>
<td>Budget FY 17-18</td>
<td>Actual YTD FY 16-17</td>
<td>PA II YTD FY 16-17</td>
<td>Variance YTD 17-18 v FY 16-17</td>
<td>Projection YTD 17-18 v Budget 2018</td>
<td>Discussion of Projection/Variance</td>
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<tr>
<td><strong>Leadership</strong></td>
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<tr>
<td>Office Overhead</td>
<td>(3,500)</td>
<td>(305)</td>
<td>(609)</td>
<td>(225)</td>
<td>80</td>
<td>3,275</td>
<td>(3,500)</td>
<td>No material variance. Tracking to budget.</td>
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<tr>
<td>Travel Reimbursement</td>
<td>(50,000)</td>
<td>(24,953)</td>
<td>(41,963)</td>
<td>(14,226)</td>
<td>10,727</td>
<td>35,774</td>
<td>(50,000)</td>
<td>Variance due to the timing of posting of expenses. Tracking to budget.</td>
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<tr>
<td>Council Support</td>
<td>(20,000)</td>
<td>(12,363)</td>
<td>(19,723)</td>
<td>(21,845)</td>
<td>(9,482)</td>
<td>(1,845)</td>
<td>(20,000)</td>
<td>Variance due to the timing of posting of expenses. Some expenses incorrectly posted here that are being transferred. Tracking to budget.</td>
</tr>
<tr>
<td>Midwinter Council Meeting</td>
<td>(268,500)</td>
<td>(234,895)</td>
<td>(235,856)</td>
<td>(342,878)</td>
<td>(107,983)</td>
<td>(74,378)</td>
<td>(282,000)</td>
<td>Meeting expenses projected to be $282,878, approximately $14K over budget. The additional $60K in expenses is a result of the meeting cancellation in Los Cabos which is being transferred to a separate line of business.</td>
</tr>
<tr>
<td>Directory</td>
<td>(5,000)</td>
<td>(4,683)</td>
<td>(4,683)</td>
<td>(4,025)</td>
<td>658</td>
<td>975</td>
<td>(5,000)</td>
<td>No material variance. Tracking to budget.</td>
</tr>
<tr>
<td><strong>Total Leadership</strong></td>
<td>(347,000)</td>
<td>(277,199)</td>
<td>(302,834)</td>
<td>(383,199)</td>
<td>(106,000)</td>
<td>(36,199)</td>
<td>(360,500)</td>
<td></td>
</tr>
<tr>
<td>Meetings</td>
<td>Budget FY 17-18</td>
<td>Actual FY 16-17</td>
<td>Variance FY 17-18 v FY 16-17</td>
<td>Projection August FY18</td>
<td>Discussion of Projection/Variance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------------</td>
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<td>-----------------------------</td>
<td>------------------------</td>
<td>-----------------------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prior Meetings</td>
<td>0</td>
<td>0</td>
<td>25,186</td>
<td>0</td>
<td>No material variance. Tracking to budget.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section Annual</td>
<td>(17,575)</td>
<td>(196,790)</td>
<td>(233,867)</td>
<td>29,356</td>
<td>Meeting projected to generate a profit for the first time due to expense management and revenue from sponsorship was 50K better than budget.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spring</td>
<td>40,745</td>
<td>(61,395)</td>
<td>189,130</td>
<td>(31,149)</td>
<td>Variance due to the timing of posting of expenses. Registration numbers and sponsorship revenue are slightly behind so expenses are carefully being managed.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fall Meeting</td>
<td>0</td>
<td>(23,357)</td>
<td>(31,532)</td>
<td>(20,015)</td>
<td>No material variance. Meeting expected to lose money due to lower than budgeted registration fee revenue.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Meetings</strong></td>
<td><strong>23,170</strong></td>
<td><strong>(281,542)</strong></td>
<td><strong>(51,083)</strong></td>
<td><strong>(21,808)</strong></td>
<td><strong>52,285</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Discussion of Projection/Variance

### Educational Programming
- **Budget** 100,000
- **Actual** 64,163
- **YTD FY 16-17** 126,881
- **PA II FY 16-17** 39,315
- **YTD FY 17-18** (24,848)
- **YTD 17-18 v YTD 16-17** (60,685)
- **Variance** 100,000
- **Projection** 100,000

Variance due to the timing of posting of expenses. Tracking to budget.

### Membership
- **Budget** (200,000)
- **Actual** (36,351)
- **YTD FY 16-17** (95,692)
- **PA II FY 16-17** (5,722)
- **YTD FY 17-18** 30,629
- **YTD 17-18 v YTD 16-17** 194,278
- **Variance** (200,000)
- **Projection** (200,000)

Variance due to the timing of posting of expenses. Tracking to budget.

### The Business Lawyer
- **Budget** (440,767)
- **Actual** (212,954)
- **YTD FY 16-17** (413,351)
- **PA II FY 16-17** (225,186)
- **YTD FY 17-18** (12,232)
- **YTD 17-18 v YTD 16-17** 215,581
- **Variance** (440,767)
- **Projection** (440,767)

No material variance. Tracking to budget.

### Business Law Today
- **Budget** (200,000)
- **Actual** (10,074)
- **YTD FY 16-17** (27,925)
- **PA II FY 16-17** (258,426)
- **YTD FY 17-18** (248,352)
- **YTD 17-18 v YTD 16-17** (58,426)
- **Variance** (440,767)
- **Projection** (275,000)

Expenses projected to be over budget due to additional web development and content management consultant fees for new Business Law Today website.

### In The Know/Business Law Basics
- **Budget** (23,000)
- **Actual** (9,542)
- **YTD FY 16-17** (26,468)
- **PA II FY 16-17** (4,666)
- **YTD FY 17-18** 4,876
- **YTD 17-18 v YTD 16-17** 18,334
- **Variance** (23,000)
- **Projection** (23,000)

Variance due to the timing of posting of expenses. Tracking to budget.

### ABA Support Service Fee
- **Budget** (35,215)
- **Actual** (20,541)
- **YTD FY 16-17** (41,083)
- **PA II FY 16-17** (17,610)
- **YTD FY 17-18** 2,931
- **YTD 17-18 v YTD 16-17** 17,605
- **Variance** (35,215)
- **Projection** (35,215)

No material variance. Tracking to budget.

### General Marketing
- **Budget** (25,000)
- **Actual** (4,457)
- **YTD FY 16-17** (14,823)
- **PA II FY 16-17** (10,218)
- **YTD FY 17-18** (5,761)
- **YTD 17-18 v YTD 16-17** 14,782
- **Variance** (25,000)
- **Projection** (25,000)

Variance due to timing of posting of expenses and misposting of ABA contribution. Tracking to budget.

### Total Membership
- **Budget** (823,982)
- **Actual** (229,756)
- **YTD FY 16-17** (492,461)
- **PA II FY 16-17** (482,513)
- **YTD FY 17-18** (252,757)
- **YTD 17-18 v YTD 16-17** 341,469
- **Variance** (898,982)
- **Projection** (898,982)
## Committees

<table>
<thead>
<tr>
<th>Budget FY 17-18</th>
<th>Actual YTD FY 16-17</th>
<th>Variance YTD FY 17-18</th>
<th>Projection YTD 17-18 v Budget 2018</th>
<th>Discussion of Projection/Variance</th>
</tr>
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<tr>
<td><strong>Committees-General</strong></td>
<td>(65,200)</td>
<td>(20,236)</td>
<td>(64,552)</td>
<td>(324)</td>
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<td><strong>Travel Reimbursement</strong></td>
<td>(252,000)</td>
<td>(143,576)</td>
<td>(240,001)</td>
<td>(141,742)</td>
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<td><strong>Meetings</strong></td>
<td>13,118</td>
<td>304,080</td>
<td>(58,026)</td>
<td>54,243</td>
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<td><strong>Total Committees</strong></td>
<td>(304,082)</td>
<td>140,268</td>
<td>(362,579)</td>
<td>(87,823)</td>
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<td>Special Projects</td>
<td>Budget FY 17-18</td>
<td>Actual FY 17-18</td>
<td>YTD PA FY 16-17</td>
<td>Variance FY 17-18 v FY 16-17</td>
</tr>
<tr>
<td>------------------</td>
<td>----------------</td>
<td>----------------</td>
<td>------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>Pro Bono Project</td>
<td>(5,000)</td>
<td>(1,198)</td>
<td>(9,335)</td>
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<td>Governance Special Projects</td>
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<td>(10,000)</td>
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<tr>
<td>Business Bar Leader Conference</td>
<td>(30,000)</td>
<td>0</td>
<td>(45,498)</td>
<td>(1,324)</td>
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<tr>
<td>Judges/Business Court Reps</td>
<td>(25,000)</td>
<td>(10,631)</td>
<td>(26,202)</td>
<td>(9,950)</td>
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<td>Delaware Law Forum</td>
<td>0</td>
<td>11,081</td>
<td>13,053</td>
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<td>NCCUSL Contribution</td>
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<td>(5,000)</td>
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<td>Consumer Fellows</td>
<td>(25,000)</td>
<td>(15,112)</td>
<td>(24,290)</td>
<td>(17,297)</td>
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<td>Fund Description</td>
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<td>Actual YTD FY 16-17</td>
<td>Actual PA II FY 16-17</td>
<td>Actual YTD 17-18</td>
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<tr>
<td>----------------------------------------------------</td>
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</tr>
<tr>
<td>Fellows</td>
<td>(158,500)</td>
<td>(85,394)</td>
<td>(159,228)</td>
<td>(89,164)</td>
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<tr>
<td>Miscellaneous Diversity Outreach</td>
<td>(15,850)</td>
<td>(4,458)</td>
<td>(10,865)</td>
<td>(681)</td>
</tr>
<tr>
<td></td>
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<tr>
<td>ABA Legal Opportunity Scholarship Fund</td>
<td>(30,000)</td>
<td>0</td>
<td>(20,000)</td>
<td>0</td>
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<tr>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Diversity Clerkship</td>
<td>(72,000)</td>
<td>(10,818)</td>
<td>(58,969)</td>
<td>(10,302)</td>
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<tr>
<td>Content Distribution/Tech Dev</td>
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<td>0</td>
<td>0</td>
<td>0</td>
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<td></td>
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<tr>
<td>Member Benefit Projects (BLT)</td>
<td>0</td>
<td>(38,750)</td>
<td>(265,422)</td>
<td>0</td>
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<tr>
<td></td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Advance V</td>
<td>(34,000)</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Special Projects</strong></td>
<td><strong>(438,750)</strong></td>
<td><strong>(174,386)</strong></td>
<td><strong>(652,866)</strong></td>
<td><strong>(144,487)</strong></td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>(2,136,071)</strong></td>
<td><strong>(686,064)</strong></td>
<td><strong>(1,570,411)</strong></td>
<td><strong>(1,124,408)</strong></td>
</tr>
<tr>
<td></td>
<td>Budget FY 17-18</td>
<td>Actual YTD FY 16-17</td>
<td>PA II YTD FY 17-18</td>
<td>YTD FY 17-18</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>-----------------</td>
<td>---------------------</td>
<td>-------------------</td>
<td>--------------</td>
</tr>
<tr>
<td><strong>Publications</strong></td>
<td>670,031</td>
<td>324,728</td>
<td>681,446</td>
<td>338,147</td>
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<td></td>
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<td></td>
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<tr>
<td><strong>Commissions, Royalties, List Sales</strong></td>
<td>50,000</td>
<td>50,751</td>
<td>141,660</td>
<td>6,502</td>
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<td></td>
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<tr>
<td><strong>Total Other Operations</strong></td>
<td>720,031</td>
<td>375,479</td>
<td>823,106</td>
<td>344,649</td>
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<tr>
<td><strong>Total Operations</strong></td>
<td>(1,416,040)</td>
<td>(310,585)</td>
<td>(747,305)</td>
<td>(779,759)</td>
</tr>
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<td><strong>Investment Income from Money Market</strong></td>
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<td>0</td>
<td>13,931</td>
<td>5,105</td>
</tr>
<tr>
<td><strong>Transfer from Permanent Reserve</strong></td>
<td>806,000</td>
<td>378,209</td>
<td>756,417</td>
<td>403,000</td>
</tr>
<tr>
<td><strong>Transfer from Contingency Reserve</strong></td>
<td>609,040</td>
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<td>0</td>
<td>0</td>
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<tr>
<td><strong>Transfer from Permanent Reserve/ Member Benefit Projects (New)</strong></td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total Revenue/Expense</strong></td>
<td>0</td>
<td>67,624</td>
<td>23,043</td>
<td>(371,654)</td>
</tr>
</tbody>
</table>
MEMORANDUM

TO: Business Law Section Council

FROM: Section Delegates

SUBJECT: 2018 Midyear Meeting of the American Bar Association and Meeting of the House of Delegates

DATE: February 28, 2018

REPORT ON THE ABA MIDYEAR MEETING

The 79th Midyear Meeting of the American Bar Association (the “ABA”) was held January 31-February 5, 2018, at the Vancouver Convention Centre, in Vancouver, British Columbia. A variety of programs were sponsored by committees, sections, divisions, and affiliated organizations.

The Nominating Committee sponsored a “Coffee with the Candidates” Forum on February 4, 2018. The following candidates seeking nomination at the 2019 Midyear Meeting gave speeches to the Nominating Committee and to the members of the Association present, followed by a question/answer session: G. Nicholas Casey, Jr. of West Virginia and Patricia Lee Refo of Arizona, candidates for President-Elect for the 2019-2020 term; and Timothy W. Bouch of South Carolina and Kevin L. Shepherd of Maryland, candidates for Treasurer for the 2020-2023 term (to serve as Treasurer-Elect in 2019-2020).

THE HOUSE OF DELEGATES

The House of Delegates of the American Bar Association (the “House”) met on Monday, February 5, 2018. Deborah Enix-Ross of New York presided as Chair of the House. Both the United States National Anthem and the Canadian National Anthem were both played. The invocation for the House was delivered by Roula Allouch of Kentucky. The Chair of the House Committee on Credentials and Admissions, Hon. Adrienne Nelson of Oregon welcomed the new members of the House and moved that the signed roster be approved as the permanent roster for the meeting of the House. The motion was approved. On a point of personal privilege, Chair Enix-Ross congratulated Judge Nelson on her appointment to the Oregon Supreme Court as the first African-American judge in its 170-year history.

Chair Enix-Ross welcomed new members of the House and recognized all the lawyers who had served in the House of Delegates for more than 25 years.

Paula J. Frederick of Georgia, Chair of the Committee on Rules and Calendar, provided a report on the Final Calendar for the House. She stated that in an effort to conserve resources, all supplemental materials for the House were sent electronically.
and posted on the House’s webpage. She moved to adopt the final calendar which included the late-filed resolutions, and to approve the list of individuals who sought privileges of the floor. All motions were approved. Ms. Frederick noted the deadline for submission of Resolutions with Reports for the 2018 Annual Meeting is Tuesday, May 8, 2018, while the deadline for Informational Reports is Friday, June 1, 2018. She also noted the deadline for removing an item from the consent calendar. After the deadline had expired, Ms. Fredrick moved the items remaining on the consent calendar. The motion was approved.

Deceased members of the House were named by Mary L. Smith of Illinois, Secretary of the Association, and remembered by a moment of silence.

For more details of the House meeting, see the following two-part report of the House session. The first part of the report provides a synopsis of the speeches and reports made to the House. The second part provides a summary of the action on the resolutions presented to the House.

I. SPEECHES AND REPORTS MADE TO THE HOUSE OF DELEGATES

Statement by the Chair of the House of Delegates

Deborah Enix-Ross of New York, Chair of the House of Delegates, discussed the procedures for addressing the business and calendar of the House and reminded members that the House Rules of Procedure could be found on page 49 of the Association’s Constitution and Bylaws. She recognized and thanked members of the various House Committees. Chair Enix-Ross also recognized the Committee on Rules and Calendar, chaired by Paula J. Frederick of Georgia and comprised of members Laura V. Farber of California, Suzanne E. Gilbert of Florida, Rew R. Goodenow of Nevada and Amit D. Ranade of Washington, and Committee staff members, Alpha M. Brady and Rochelle E. Evans. She introduced the Tellers Committee and reviewed procedures for speaking. Chair Enix-Ross announced that key speeches and debates would be publicized and that the ABA Communications and Media Relations Division would be providing updates and reporting on the proceedings of the House via Twitter @ABAesq.

Chair Enix-Ross announced that at the 2018 Annual Meeting, the House will elect one member to the Committee on Scope and Correlation of Work (“Scope”). The position will be for a five-year term. She encouraged those interested in the position to contact members of the Scope Nominating Committee and to submit an application by March 16, 2018.

She noted that the appointments process for President-Elect Robert M. Carlson of Montana is underway. The deadline for submission of applications is February 23, 2018.

Chair Enix-Ross recognized the Fund for Justice and Education (“FJE”) as the ABA’s charitable arm and urged member support of FJE. She also recognized the importance of the ABA Legal Opportunity Scholarship Fund, which is an FJE project.
Chair Enix-Ross spoke in support of Law Day 2018. This year’s theme “Separation of Powers: Framework for Freedom”, enables us to reflect on the separation of powers as fundamental to our constitutional purpose and to consider how our governmental system is working for ourselves and our posterity. Postcards were distributed to members of the House with the theme and website address. Chair Enix-Ross encouraged state and local bar associations across the country to participate in Law Day activities and hopes that all members of the House will encourage this important participation. Chair Enix-Ross announced that ABA Day will be held from April 10-12, 2018, in Washington D.C. In addition, she announced that the Judicial Division’s Judicial Outreach Network Committee is hosting its second annual National Judicial Outreach Week March 4-10, 2018.

Statement by the ABA Secretary

Mary L. Smith of Illinois, Secretary of the Association, moved approval of the House of Delegates Summary of Action from the 2017 Annual Meeting, which was approved by the House. On behalf of the Board of Governors, Secretary Smith presented House Report Numbers 177, 177A and 177B, the Board’s Informational, Transmittal and Legislative Priorities reports.

Statement by the ABA President

ABA President Hilarie Bass of Florida reported on her visits around the world noting both people’s admiration and questions regarding the U.S. public discourse, the lack of bi-partisanship in our government, and the survivability of our democracy. She cited the power of the ABA and the legal profession it represents and the fact that governments and bar associations around the world and throughout the U.S. look to the ABA for our substantive expertise. Our citizens rely on and expect the legal profession to responsibly protect our democratic principles. The leaders of the ABA will not stand by when others challenge the legal principles upon which our democracy is based.

Started in August, the ABA’s Legal Fact Check works to set the record straight on legal principles in the public discourse. Through this new tool the ABA has become a reliable, nonpartisan source of information clarifying the law and legal principles.

The ABA has not hesitated to speak out in a non-partisan way about issues, policies and actions that threaten to undermine our constitutional principles and our association’s goals. The ABA spoke out in support of the Department of Justice, urged Congress to move ahead with immigration and criminal justice reform, lobbied for full funding for the State Department and programs which support the rule of law around the world, advocated for the legal profession to be treated fairly in tax reform, defended judges who were criticized for not supporting the views of the executive branch, and supported special counsel Mueller’s investigation to prevent it being undermined by other branches of government. President Bass thanked the ABA’s Governmental Affairs Office for its work in these areas.

Regarding the ABA’s work in defending and protecting the judiciary, nothing is more important than our peer review of judicial nominees. The ABA has been focused on
providing thorough, non-partisan evaluations of the competence, integrity and temperament of judicial nominees. President Bass thanked the committee for its work.

The ABA also is examining the trajectory of the careers of women in the legal profession. As part of this work, in August the House will receive some specific recommendations. It was noted that women are leaving the legal profession at the height of their careers and a hostile work environment continues to be a factor.

The ABA has long spoken out on issues facing children and this year the focus is on street youth. In the fall, ABA leadership joined over 100 NGO’s in Brazil to develop the UN’s General Comment on the rights of street children that led to the House resolution on this topic. President Bass thanked the volunteers and staff who worked on this important global issue.

The ABA also plays an important role in law school accreditation. Currently, the ABA is bringing legal leaders together to discuss the best system for educating law students in today’s world. We must address the lack of alignment between what we teach, what our licensing exams expect law students to know and the skills that employers look for. The Commission on the Future of Legal Education is working to develop a consensus on this issue.

The ABA also has been a leader in the area of criminal justice reform. This year we are moving forward with the work of Task Force on Building Trust in the Justice System focusing on addressing the criminalization of poverty in the United States. Court fees and fines have created a new generation of debtor prisons. The assessment of bail for petty offenses without the consideration of the person’s ability to pay has led to the long-term incarceration of the poor. This can no longer be ignored or condoned.

The ABA has been active in the area of immigration reform including, among other efforts, the representation of unaccompanied minors, support of the Deferred Action for Childhood Arrivals (DACA), and efforts to limit ICE (Immigration and Customs Enforcement) enforcement in courthouses. We must continue to fight for these ideals and for those without a voice.

The power of the ABA in upholding the rule of law and maintaining our esteemed reputation at home and around the world can only be as strong as our organization itself. This organization needs to evolve and adapt. We cannot continue to thrive without change. The House will soon receive recommendations meant to ensure the future of this Association, but will also mean that the Association will look different. We must listen to the needs of our members and non-members alike and think beyond how changes will affect us and instead think about how they will insure the continuation of this association and its work.

Remarks by the President of the Conference of Chief Justices

The Honorable Maureen O’Connor, Chief Justice of Supreme Court of Ohio, and President of the Conference of Chief Justices (CCJ), addressed the House recognizing the strong alliance between the ABA and the state courts. She noted that attorneys play
an essential role in the judicial system and that the Conference appreciates this work, acknowledging that when the justice system is strong, we all benefit.

The National Conference for State Courts released their annual survey on the state of the state courts. The survey showed that 71% of respondents had confidence in their courts. However, there is still work to be done; 6 out 10 people feel state court judges are out of touch with the communities that they serve and access to justice in rural areas continues to be a challenge. In addition, 78% of respondents viewed the opioid epidemic as a critical problem in their communities. In response, the Conference of Chief Justices and the Conference of Court Administrators have formed a task force to help address this issue. The task force will identify what works in terms of medical treatment, community coordination, policies, practices, education and training as well as identifying resources to support these efforts in our diverse communities.

The Conference also has a desire to reform the courts’ fines, fees and bail system. Nonviolent offenders often spend days or weeks in jail before their case comes before a court because they cannot post bail, but no one should be sent to jail solely because they are poor. The same issue arises with fines and fees. The task force is working to drive change in this area and develop solutions to help address this issue. The CCJ has adopted principles around fines, fees and bail and these will be brought to the ABA House of Delegates for review and hopefully endorsement.

Other work of the CCJ include the following: The CCJ has committed to training on the prevention of work place sexual harassment in the judicial branch and the establishment of procedures to recognize and respond to issues raised by employees no matter what their role. The CCJ will also serve as a clearinghouse for best practices. The CCJ has reauthorized $12M for CASA (court appointed special advocates) and noted that the juvenile courts rely on this valuable service. The CCJ also authorized the interstate compact for placement of children for kinship care. The opioid crisis has increased the number of child placement cases and placement with kin should be able to take place even if the kin are in another state. This compact needs to be ratified by 35 states and only 12 have ratified so far. Judge O’Connor urged that if your state has not ratified the compact then please contact your legislators to get this done. Recently, a new ICE policy on courthouse arrests was released. This was the result of a working group between representatives of CCJ, Homeland Security and ICE. This was an important effort and the resulting document can be viewed on the homeland security website.

In closing Judge O’Connor commended the ABA’s long-standing commitment to assisting in the selection of our judiciary. A non-political, non-partisan review process must continue to ensure a qualified and independent judiciary.

**Statement by the ABA Treasurer**

The Treasurer, Michelle A. Behnke of Wisconsin addressed the House stressing the importance of the ABA’s financials, as they enable all the important work that the ABA wants to accomplish.
1) Summary of 2017 audited financials – The consolidated operating revenue was $207.5M and operating expenses were $215.2M which leaves an operating deficit of $7.7M. The ABA had strong investment returns of $15.5M. In addition, our pension fund (which is very interest rate sensitive) enjoyed an uptick because of an increase in interest rates. In the end this resulted in a $17.1M increase in net assets. However, in the long term we cannot rely on investment income and changes in interest rates to offset our operating losses.

2) Update on FY2018 – Looking at revenue from general operations, sections and gifts and grants, we are trending negative. Senior management has reviewed these numbers and believes we will end the year $3.3M below budget on revenue. In terms of expense, the ABA is at $65.4M which is $1.6M below budget. Over the past several years, the ABA has not been able to meet revenue goals, but we have been able to control expenses. That said, the ABA has already made significant cuts to the budget for this year, so we have limited abilities to meet goals by cutting on the expense side. As of the first four months of this year, the ABA has a $4.6M deficit. The balance sheet shows total assets increased because of solid investment returns. Currently our net assets are $56M from general operations and $108.7M from entities.

3) Challenges we face in 2019 budget – Over the past several years, the ABA has experienced a steady decline in dues revenue resulting in large draws from reserves to cover expenses. In response to this, the Board adjusted our spending policy to slow the rate at which we can draw on our reserves to support operations. This means that we have to build a budget on a smaller number. While many believe that the ABA cannot cut its way to success, it also cannot ignore expenses. The ABA needs to consider bold steps to reverse the decreases in revenue it has been experiencing in order to strengthen the Association as a whole.

Statement by the ABA Executive Director

Jack L. Rives of Illinois, Executive Director of the American Bar Association, reported on the work of the ABA. He noted that the Association was founded almost 140 years ago by 70 lawyers, and now has over 400,000 members. While this seems impressive to many people, there are actually 1.3 million lawyers in the United States. That raises some questions -- why does the ABA not have dramatically more members? And why have we not proven that it’s worthwhile to join our national professional Association to more lawyers?

Mr. Rives stressed the need to increase the number of dues-paying members in the Association. At the end of Fiscal Year 2017 (August 31), the Association had 412,499 members -- 70 percent are attorneys and more than one in four are law students. For almost 30 years, we’ve had about 350,000 lawyer members while during the same time, the overall US lawyer population rose to about 1.3 million. This trend is not likely to reverse, in part because law school classes are not as large as in the recent past. In 2010, the first-year students were at a record high number, more than 53,000. Four years later, the figure was down to just over 37,000, and it’s remained there since.

The essential problem is retention. Every year for the past ten, we have recruited
an average of 87,200 new members. During that same period, we’ve been losing almost 93,000. Over that 10-year period, we averaged losing 5,600 members annually. This also impacts our dues revenues, which the ABA depends on for 60 percent of its (general operations) budgeted revenue. In 2007, we collected just over $70 million in general operations dues. At the end of FY 2017, we had $57 million in general operations dues -- $13 million less. If we extend the current trend lines out through FY 2027, we would have less than $40 million at that point.

The ABA currently has 157 different dues rates. In return for their dues, members receive the ABA Journal, free CLE, help with ethics issues, and various discounts on products and programs. Of course, the ABA also provides services only a national professional Association can, such as advocacy for the profession, advancing Rule of Law programs around the world, vetting federal judicial nominees, accrediting law schools, and establishing ethics standards for the profession. Clearly the Association offers great value, but we have failed to effectively communicate that.

It’s past time for bold action -- the ABA must begin to recruit and retain more dues-paying members. This starts with improving -- and demonstrating -- the ABA’s value proposition. In 2017, the ABA brought back Professor J.P. Dube, an economics professor and pricing expert, to conduct detailed research examining the value proposition. He had done a previous study for the ABA in 2009 that calculated lawyers’ willingness to pay dues. Based on the data he received in 2009, he recommended two things: bundling ABA benefits and lowering dues. Following a similar study last year, Professor Dube came to those same conclusions and recommendations. As a follow-up to his study, the ABA retained a marketing firm, Avenue, in 2017. Their research and conclusions substantially align with Professor Dube’s.

To improve and highlight the ABA’s value proposition, staff and volunteer leaders have been working intensively on a new membership model. The model would bundle benefits, such as membership in two entities included with membership, along with access to a new CLE library. Most online content would be behind a paywall, available at no additional cost to our members. The ABA is also looking to simplify the Association’s dues structure, perhaps having only three or four dues categories.

What will happen to dues revenue under the new membership model? We do not have a crystal ball, but the goal is to attract more dues-paying members and to recruit and retain sufficient numbers so we can ultimately increase our dues revenues. The status quo is absolutely unacceptable; we must achieve substantial gains in our lawyer membership and market share. When we do that, we will increase our dues and non-dues revenues. If the ABA wants to reverse recent trends, it’s time to act now. As Dr. Martin Luther King said in his “I Have a Dream” speech “… this is no time to take the tranquilizing drug of gradualism.”

What if we’re wrong and the new membership model does not produce many more dues-paying members? At the very least, the ABA will have improved our value proposition and will provide members much more for their dues. And that will help with retention.
If we’re right and the new membership model meets expectations, we will have made meaningful progress. But that cannot be the last step. We’ll need to continue to focus on the ABA’s value proposition, market it effectively, and to showcase the overall value of membership in the ABA.

We are the voice of the legal profession. The ABA provides the critical foundation for many great things our profession does. We help lawyers and serve our profession as no other group can. If we expect to be as viable and effective 140 years from now, now is the time for bold action.

**Report of the Nominating Committee**

The Nominating Committee met on Sunday, February 4, 2018. On behalf of the Committee, Honorable James S. Hill of North Dakota, Chair of the Steering Committee of the Nominating Committee, reported on the following nominations for the terms indicated:

**Officers of the Association**

President-Elect for 2019-2020 Term  
Judy Perry Martinez of Louisiana

Chair of the House of Delegates for 2018-2020 Term  
William R. Bay of Missouri

**Members of the Board of Governors for the 2018-2021 Term**

District Members  
District 3: Lynn Fontaine Newsome of New Jersey  
District 5: Charles “Buzz” English, Jr. of Kentucky  
District 9: Susan M. Holden of Minnesota  
District 14: Andrew J. Demetriou of California  
District 15: Mark H. Alcott of New York  
District 16: David W. Clark of Mississippi  
District 17: Rew R. Goodenow of Nevada

Section Members-at-Large  
Section of Administrative Law  
H. Russell Frisby, Jr. of the District of Columbia

Civil Rights and Social Justice  
Stephen Wermiel of the District of Columbia

Section of Health Law  
Howard T. Wall, III of Tennessee

Goal III Minority Member-at-Large  
Michele Wong Krause of Texas
Remarks by ABA President-Elect Nominee

President-Elect Nominee Judy Perry Martinez of Louisiana expressed her commitment to the ABA’s mission, goals and policies. Her 34 years of service in the ABA has been possible in great part because of the support of her husband, her law firm and her prior employer whom she thanked along with the ABA leaders and staff who mentored her as a young lawyer.

The world is changing and with it organizations are facing increasing expectations from their members. The ABA is no exception. The ABA is driving hard to reduce the impact of shrinking dues revenue and declining membership, but we must continue to do more. The ABA must reexamine its business model, drive greater operational efficiencies and rethink governance to ensure a strong and vibrant future despite the pain now. The ABA has the opportunity to be stronger and nimbler to better serve its members. The ABA can innovate and embrace technology to attract future generations and to equip and empower lawyers to be their best. Serving our members is the means by which the ABA will survive and thrive and continue to be the voice of the legal profession. The ABA must use that voice to trumpet the values of our democracy and to continue to stand up for the rule of law. The ABA will build alliance with others who share our vision, but the ABA will lead by restoring confidence and trust in our justice system. The ABA is at a turning point in our country. When we stand to support and defend the constitution, the independence of the judiciary, the free press and to ensure the law makes possible the dreams of all people, the ABA is at its best. The ABA will continue to serve its members, defend liberty and achieve justice.

II. RESOLUTIONS VOTED ON BY THE HOUSE

A brief summary of the action taken on resolutions brought before the House follows. The resolution numbers are noted in brackets.

CIVIL RIGHTS AND SOCIAL JUSTICE

[116A] On behalf of the Section of Civil Rights and Social Justice, Walter H. White of the United Kingdom moved Resolution 116A supporting an interpretation of Title VII of the Civil Rights Act of 1964 that defines sex discrimination by covered employers to include discrimination on the basis of sexual orientation and gender identity. The resolution was adopted.

[116B] On behalf of the Section of Civil Rights and Social Justice, Estelle H. Rogers of California moved Resolution 116B urging Congress to enact legislation overruling
On behalf of the Aids Coordinating Council, Robert N. Weiner of Washington D.C. moved Resolution 300 urging governments and relevant private entities to recognize that transmission of the human immunodeficiency virus (HIV), which causes Acquired Immune Deficiency Syndrome (AIDS), is driven by certain “social determinants of health” that law can address, including, among others, poverty, stigma, discrimination, and racism; housing, food, and transportation insecurity; over-criminalization of HIV non-disclosure; and misinformation about HIV transmission risk. The resolution was adopted.

On behalf of the Commission on Women in the Profession, Stephanie A. Scharf of Illinois moved Resolution 302 urging all employers and specifically all employers in the legal profession to adopt and enforce policies and procedures prohibiting harassment and retaliation based on gender, gender identity, and sexual orientation. Mark I. Schickman of California moved an amendment to the resolution. Estelle H. Rogers of California spoke in opposition to the amendment. The amendment passed. Palmer Gene Vance of Kentucky, Wendy Shiba of California, and Myles Lynk of Arizona spoke in favor of the resolution as amended. The resolution was adopted as amended.

On behalf of the New York State Bar Association, Sharon Stern Gerstman of New York moved Resolution 10A encouraging law firms to develop initiatives to provide women lawyers with opportunities to gain trial and courtroom experience. The resolution was adopted.

On behalf of the Criminal Justice Section, Stephen A. Saltzburg of Washington D.C. moved Resolution 108A urging legislative bodies and governmental agencies to enact laws and adopt policies regarding the use of solitary confinement for detainees. Eric Y. Drogin of Massachusetts, Robert T. Gonzales of Maryland, and Hon. Bernice B. Donald of Tennessee spoke in support of the resolution. The resolution was adopted.

On behalf of the Criminal Justice Section, Kevin Curtin of Massachusetts moved revised Resolution 108B urging legislatures to enact legislation creating a substantive right and procedures for individuals to challenge their convictions by demonstrating that forensic evidence or testimony used to obtain their convictions has subsequently been undermined or discredited. Robert L. Weinberg of Washington D.C. spoke in support of the resolution. The resolution was adopted as revised.

On behalf of the Criminal Justice Section, Stephen A. Saltzburg of Washington D.C. moved revised Resolution 108C urging the Department of Justice to restore
prosecutorial discretion in choosing the charges s/he wishes to pursue and reserve mandatory minimum sentencing to only the most serious drug traffickers and prohibit its use to secure plea agreements. The resolution was adopted as revised.


[108E] On behalf of the Criminal Justice Section, Hon. Cara Lee Neville of Minnesota moved revised Resolution 108E urging Congress to enact legislation protecting the Deferred Action for Childhood Arrivals (DACA) recipients and other undocumented immigrants who were brought to the United States as children and who meet age, residency, educational and other qualifications as set forth by the U.S. Citizenship and Immigration Service (“DREAMers”). Rene Morency of Missouri, John C. Yang of Washington D.C. and Gabrielle M. Buckley of Illinois spoke in support of the resolution. The resolution was adopted as revised.

DEATH PENALTY/DUE PROCESS

[111] On behalf of the Death Penalty Due Process Review Project, Walter H. White of the United Kingdom moved Resolution 111 urging each death penalty jurisdiction not to execute or sentence to death anyone who was 21 years old or younger at the time of the offense. Robert Weinberg of Washington D.C. moved to amend the resolution. Michael H. Byowitz of New York, James R. Silkenat of New York, Robert N. Weiner, of Washington D.C. and Walter H. White of United Kingdom spoke in opposition to the amendment. The amendment was not adopted. The Resolution was adopted.

DISABILITY RIGHTS

[104] On behalf of the Commission on Disability Rights, Secretary Mary L. Smith of Illinois moved and Robert T. Gonzales of Maryland presented Resolution 104 urging Congress and the Social Security Administration (SSA) to strengthen the safeguards and protections for all individuals receiving benefits via the representative payee program. The resolution was adopted.

DOMESTIC AND SEXUAL VIOLENCE

[106] On behalf of the Commission on Domestic and Sexual Violence, Mark I. Schickman of California moved Resolution 106 urging Congress and the President to re-authorize, raise the appropriation level of, and fully fund the Legal Assistance for Victims Grant Program of the Violence Against Women Act, 34 U.S. Code § 20121. The resolution was adopted.

FAMILY LAW
[115A] On behalf of the Section of Family Law, Anita M. Ventrelli of Illinois withdrew Resolution 115A urging governments to adopt or preserve tax code provisions that allow alimony deduction for payors and treats alimony as taxable income to payees.

[115B] On behalf of the Section of Family Law, Anita M. Ventrelli of Illinois withdrew Resolution 115B adopting the ABA Model Act Governing Assisted Reproductive Technology dated February 2018 to replace the Model Act that was adopted in 2008, and urging adoption by appropriate governmental agencies.


**HOMELESSNESS AND POVERTY**

[113] On behalf of the Commission on Homelessness and Poverty, Craig H. Baab of Alabama moved Resolution 113 supporting the development of integrated, systemic approaches within administrative, civil and criminal court contexts to address the special needs of youth and young adults experiencing homelessness. William H. Hoch of Oklahoma spoke in support of the resolution. The resolution was adopted.

[301] On behalf of the Commission on Homelessness and Poverty, Craig H. Baab of Alabama moved Resolution 301 endorsing General Comment No. 21 on Children in Street Situations which was issued in June 2017 by the United Nations Committee on the Rights of the Child, and urging U.S. and international governments, the legal community, and the private sector to utilize General Comment No. 21 to develop comprehensive, long-term strategies to realize the rights of children living in street situations. Angela C. Vigil of Florida spoke in support of the resolution. The resolution was adopted.

**INTELLECTUAL PROPERTY LAW**

[101A] On behalf of the Section of Intellectual Property Law, Joseph M. Potenza of Washington D.C. moved revised Resolution 101A urging federal courts, Congress and the U.S. Patent & Trademark Office (USPTO) to adopt rules or enact legislation to establish an evidentiary privilege applicable only to clients of patent agents who are registered with the USPTO. Eric Cooperstein of Minnesota spoke in opposition to the resolution. Scott F. Partridge of Texas, Mark K. Dickson of California, Lucian T. Pera of Tennessee, and George Jordan of Texas spoke in support of the resolution. The resolution was adopted as revised.

[101B] On Behalf of the Section of Intellectual Property Law, William L. LaFuze of Texas moved Resolution 101B supporting efforts in Congress and federal courts to allow the filing of a copyright infringement once a proper application for registration of a copyright has been delivered to the Copyright Office. The resolution was adopted.

**INTERNATIONAL LAW**
[110] On behalf of the Section of International Law, Glenn P. Hendrix of Georgia moved Resolution 110 adopting the *Model Provisions on Electronic Commerce for International Trade Agreements*, dated February 2018, and recommending the Model Provisions as a template for international trade agreements. The resolution was adopted.

**LAW LIBRARY OF CONGRESS**

[109] On behalf of the Standing Committee on the Law Library of Congress, Sheila S. Hollis of Washington D.C. moved Resolution 109 urging Congress to approve appropriations necessary to enable the Library of Congress to adequately staff, maintain, modernize, and enhance its services, collections, facilities, digital projects and outreach efforts. Tom Bolt of the Virgin Islands spoke in support of the resolution. The resolution was adopted.

**LEGAL AID**

[114] On behalf of the Standing Committee on Legal Aid and Indigent Defendants, Hon. Lora J. Livingston of Texas moved Resolution 114 urging 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. James Williams of Washington spoke in favor of the resolution. The resolution was adopted.

**LEGAL EDUCATION**

[100] On behalf of the Section of Legal Education and Admissions to the Bar, Solomon Oliver, Jr. of Ohio moved Resolution 100 concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting amendments dated February 2018 to Standard 106 (Separate Locations and Branch Campuses) of the *ABA Standards and Rules of Procedure for Approval of Law Schools*. E. Fitzgerald Parnell of North Carolina spoke in favor of the resolution. The resolution was adopted.

**PARALEGAL EDUCATION**

[102] The House approved by consent Resolution 102 as submitted by the Standing Committee on Paralegals, granting approval to two programs, granting reapproval to thirteen programs, withdrawing the approval of five programs at the request of the institutions, and extend the term of approval to several paralegal education programs.

**PRO BONO**

[107] On behalf of the Young Lawyers Division, Andrew Schpak of Oregon withdrew Resolution 107 urging federal courts to adopt pro bono panels for civil litigants guided by a uniform set of guidelines.

**SEXUAL ORIENTATION AND GENDER IDENTITY**
On behalf of the Commission on Sexual Orientation and Gender Identity, Mark Johnson Roberts of Oregon withdrew Resolution 117 urging courts to recognize that service in the United States Armed Forces should not be restricted and that individuals should not be discriminated against on the basis of sexual orientation or gender identity.

**SPECIALIZATION**

On behalf of the Standing Committee on Specialization, Barbara J. Howard of Ohio moved Resolution 103A granting accreditation to the Privacy Law program of the International Association of Privacy Professionals of Portsmouth, New Hampshire for a 5-year term as a designated specialty certification program for lawyers. Steven O. Weise of California, Barbara Mendel Mayden of Tennessee, William D. Johnston of Delaware, and Lynne B. Barr of Massachusetts spoke in opposition to the resolution. Rita Heimes of New Hampshire, Lucian T. Pera of Tennessee, Michael E. Burke of Washington D.C., Cynthia E. Orr of Texas, Josh H. Camson of Pennsylvania, and Barry C. Hawkins of Connecticut spoke in support of the resolution. The resolution was adopted.

The House approved by consent Resolution 103B as submitted by the Standing Committee on Specialization, granting reaccreditation to the Elder Law program of the National Elder Law Foundation of Tucson, Arizona for a five-year term and extending accreditation to the Medical Malpractice and Legal Malpractice programs of the American Board of Professional Liability Attorneys until August 2018.

**UNIFORM ACTS**

Chair Enix-Ross provided background on the National Conference of Commissioners on Uniform State Laws and its relationship with the American Bar Association. On behalf of the National Conference of Commissioners on Uniform State Laws, Carl Lisman of Vermont moved Resolution 112A approving the Revised Uniform Unclaimed Property Act, promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein. Barbara Mendel Mayden of Tennessee, Richard Lipton of Illinois and Paul L. Lion of California spoke in opposition to the resolution. Walter H. White of the United Kingdom and Peter F. Langrock of Vermont spoke in favor of the resolution. Frank X. Neuner, Jr of Louisiana moved to postpone indefinitely. Carl Lisman of Vermont and Tom Bolt of the Virgin Island spoke against the motion. Lucian T. Pera of Tennessee and William D. Johnston of Delaware spoke in support of the motion. The resolution was postponed indefinitely by a vote of 229 to 154.

The House approved by consent Resolution 112B as submitted by the National Conference of Commissioners on Uniform State Laws, approving the Uniform Directed Trust Act, promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

The House approved by consent Resolution 112C as submitted by the National Conference of Commissioners on Uniform State Laws, approving the Uniform
Guardianship, Conservatorship, and Other Protective Arrangements Act, promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[112D] The House approved by consent Resolution 112D as submitted by the National Conference of Commissioners on Uniform State Laws, approving the Uniform Parentage Act (2017), promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[112E] The House approved by consent Resolution 112E as submitted by the National Conference of Commissioners on Uniform State Laws, approving the Uniform Protected Series Act, promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[112F] The House approved by consent Resolution 112F as submitted by the National Conference of Commissioners on Uniform State Laws, approving the Uniform Regulation of Virtual-Currency Businesses Act, promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

WELL-BEING IN THE LEGAL PROFESSION

[105] On behalf of the ABA Working Group to Advance Well-Being in the Legal Profession, Terry L. Harrell of Indiana moved Resolution 105 urging stakeholders, where appropriate, to consider the recommendations set out in the report, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, by the National Task Force on Lawyer Well-Being. Josh H. Camson of Pennsylvania spoke in support of the resolution. The resolution was adopted.

Closing Business

At the conclusion of the meeting of the House of Delegates on Monday, February 5, 2018, Chair Enix-Ross recognized Suzanne E. Gilbert of Florida who moved a resolution of appreciation for the Special Advisors and the Canadian Bar Association acknowledging their efforts in hosting the meeting. The resolution was approved.

Chair Enix-Ross recognized the Illinois delegation to invite and welcome the members of the House of Delegates to the 2018 Chicago Annual Meeting.

Chair Enix-Ross recognized Paula J. Frederick of Georgia who then moved the House adjourn sine die. The motion was adopted.
American Bar Association

Proposed to the American Bar Association House of Delegates by The Judicial Division/Standing Committee on the American Judicial System/Business Law Section/Litigation Section/Dispute Resolution Section/Intellectual Property Law Section/Tort Trial & Insurance Practice Section/Antitrust Section

____________________, 2018

RESOLVED, That the American Bar Association adopts the black letter on the Appointment and Use of Special Masters in Federal and State Civil Litigation, dated __________, 2018, to inform judges, counsel, and parties of the wide variety of contexts in which special masters can appropriately be used; to propose structures and systems to implement existing law governing utilization of special masters in a more flexible and consistent manner; to stimulate interest in the subject of special masters among stakeholders in the judicial process; and to facilitate the broader use of special masters and optimize their contributions to the effective administration of justice.

Guidelines for the Appointment and Use of Special Masters

(1) The possible use of a special master should be considered as a part of routine case management in every complex litigation and in such other cases in which there is a reason to believe that a special master will serve a useful function. Courts, counsel and parties should consider the use of a special master both at the outset of the litigation and at any subsequent point where circumstances warrant.

(2) In considering the possible use of a special master, courts, counsel and parties should be cognizant of the range of functions that a special master might be called on to perform and roles that a special master might serve.

(3) In determining whether a case merits appointment of a special master, courts should consider the expected benefit of using the special master, including reduction of the litigants’ costs, in relation to the anticipated cost of the special master’s services, ensuring that the Court always remains the final decision maker, and ensuring that qualified candidates are identified and appointed.

(4) Among the functions that a court and the parties should consider are:

   a. Discovery oversight and management, including e-discovery, privilege reviews, resolution of discovery disputes, and application of confidentiality provisions. Discovery dispute resolution includes efforts to reach voluntary resolutions with the parties and adjudication of discovery disputes.

   b. Coordination of cases in multiple jurisdictions or between state and federal courts.

   c. Facilitating resolution of disputes between co-parties and/or their counsel in multi-plaintiff and/or multi-defendant settings.

   d. Pretrial case management (preparing reports and recommendations on other non-discovery motions suitable for special master consideration, including motions concerning expert’s qualifications and the
admissibility of opinion testimony. Pretrial management could also include sequencing the disposition of issues in a manner designed to facilitate resolution without the master—actually becoming involved in the dispute resolution process.

e. Providing advice and assistance to the courts requiring technical expertise or experience, including managing patent claim construction disputes in patent infringement litigation.

e.f. Auditing/Accounting (e.g., facilitating review of complex accounting information or damages models).

f.g. Serving as a firewall that allows the benefit of neutral involvement while avoiding exchanges of information or ex parte contacts between the judge and stakeholders in a way that might otherwise be perceived as unfair.

g.h. Monitoring (in particular, monitoring implementation of court orders or consent decrees).

h.i. Class addressing class action administration (conduct certification hearings, address tolling and related issues and “local controversy” issues under Class Action Fairness Act).

i.j. Trial administration (in certain jurisdictions, special masters may oversee the trial of the matter, where the parties consent).

j.k. Settlement administration (e.g., follow on hearings or determinations and allocation and distribution of settlement funds).

k.l. Allocation and distribution of a judgment (e.g., sale of property and distribution to heirs and lien holders).

l.m. Claims administration.

m.n. Receivership (a special master who is in the position of acting as a receiver has the unique ability to immediately bring the power of the court to a receivership).

n.o. Real property inspections (e.g., an oil refinery where it is important to maintain respect for the rights and interests of the property owner while permitting a reasonable inspection with respect to an issue in dispute).

Depending upon the function(s) the special master is performing, the special master may serve in different types of roles, including:

- Case Management
- Adjudicative
- Facilitative
- Advisory
- Informatory

1 “Informatory” refers to a situation in which a special master is used to provide information to the court. For example, a special master could provide an independent analysis of potential damages in a case or could analyze voluminous books and records and prepare a report as to
Service as a liaison

(3) — In determining whether a case merits appointment of a special master, courts should give due consideration to the expected benefit of using the special master, including reduction of the litigants’ costs, in relation to the anticipated cost of the special master’s services.

(4)(5) Special masters should be chosen with due regard for the parties’ preferences and in a manner that helps to ensure the special master’s competence and legitimacy.

(5)(6) The referral order appointing the special master should describe specifically the scope of the engagement, including, but not limited to, the special master’s duties and powers, the roles the special master may serve, the rates and manner in which the special master will be compensated, and the nature of the permitted contact with the court and the parties that will be permissible. Any changes to the scope of the referral should be made by a modification to the referral order.

(6)(7) Courts should develop local rules and practices for the selection, training and evaluation of special masters.

(7)(8) Courts and the bar should develop educational programs to increase awareness of the role of special masters and to promote the acquisition and dissemination of information concerning the effectiveness of special masters.

(8)(9) Legislatures and courts should make whatever modifications to laws, rules or practices that are necessary to effectuate these ends.

Commentary

Introduction

The American Bar Association ("ABA") has long advanced the use of dispute resolution tools to support the effective administration of justice in state and federal courts. Thirty years ago, the ABA was a leading voice in favor of various forms of alternative dispute resolution ("ADR"). Today, there is an underutilized dispute resolution tool known as a special master.

2 “Service as a liaison” refers to situations in which a special master is being used as go-between to provide useful information to the court. Parties have used this process, for example, as a means by which court-appointed and private mediators can, with the parties’ consent, obtain or convey information without having direct contact with the Court.
resolution tool that could aid in the “just, speedy and inexpensive” resolution of cases: appointment of special masters.

In 2016, the Lawyers Conference of the ABA Judicial Division formed a Committee on Special Masters to examine and make proposals concerning the use of special masters and to engage in research and conduct educational programs concerning special masters.3 The Committee concluded that one of the difficulties faced by both courts and practitioners is the lack of standardization in the appointment and use of special masters.4

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3 Currently, 49 states have rules or statutes that provide for the appointment of court adjuncts to assist courts in the administration of justice. See Jokela, Lynn and Herr, David F. (2005) “Special Masters in State Court Complex Litigation: An Available and Underused Case Management Tool,” William and MaryMitchell Law Review, Vol. 31: Iss. 3, Article 16. “In fact, Illinois is the only state that does not have any mechanism governing appointment of special masters.” Id. Courts have also recognized their inherent power to appoint special masters to assist the courts in the management and administration of their dockets. See id. at 1302 n. 18.

4 Indeed, even the name for these judicial adjuncts is a source of confusion. This Black Letter uses the term employed by Rule 53 of the Federal Rules of Civil Procedure: special master. The term “special master” refers to any adjunct appointed by a court to serve any case-management function determined by the Court to be necessary and appropriate. The term applies to persons appointed by any court to serve any of a wide variety of functions, regardless of whether statute, rules or practice have described these persons with other titles, such as “master,” “discovery master,” “settlement master,” “trial master,” “referee,” “monitor,” “technical advisor,” “auditor,” “administrator,” or any other person appointed by a court to manage or supervise some aspect of a case. The title used to specify the role a court adjunct will perform will define, to a certain extent, what the adjunct can do and how the adjunct will perform the designated task. The various states have different rules and different titles for what would be a Rule 53 master at the federal level. Even among states whose rules mirror the Federal Rules, different titles are used to describe the court adjunct’s office. For example, a Rule 53 adjunct in Maine is referred to as a “referee.” See Maine R. Civ. P. 53. States that use the pre-2003 version of the Federal Rules often refer to a “master” as “any person, however designated, who is appointed by the court to hear evidence in connection with any action and report facts,” suggesting more of a trial function than a pretrial role. See Mass. R. Civ. P. 53. See also 2006 Kan. Code sec. 60-253, “Trial by masters,” which declares that “As used in this chapter the word ‘master’ includes a referee, an auditor, a commissioner and an examiner.” Hence, courts and parties need to be mindful of the rules that attach based upon the title used to describe a special master or court adjunct.
To address this lack of standardization and to urge the greater utilization of this tool by courts as a valuable means of enhancing their efficiency, the Committee brought together stakeholders from diverse segments of the ABA seeking to reach consensus concerning best practices in the use of special masters. In pursuing this initiative, the Committee also contacted and involved other conferences within the Judicial Division and other Sections of the ABA to form a Working Group.

The Working Group was formed in the fall of 2017 and included representatives of the National Conference of Federal Trial Judges, the National Conference of State Trial Judges, the ABA Standing Committee on the American Judicial System, and the ABA’s Litigation, Business Law, Dispute Resolution, Intellectual Property, Tort Trial and Insurance Practice and Antitrust Sections. The membership included current and former federal and state judges, ADR professionals and academics, and litigators who represent plaintiffs, defendants, or both in numerous fields.5

The Working Group also contacted and obtained information from other interested and knowledgeable agencies, organizations, and individuals, including the Federal Judicial Center, the National Center for State Courts, the academic community, professional groups, including the Academy of Court Appointed Masters (“ACAM”), individual judges, litigators, and in-house counsel. The Group has also benefitted from discussions among judges and stakeholders organized by the Emory Law School Institute for Complex Litigation and Mass Claims, which has worked with the Federal Judicial Center to explore ways of improving the administration of Multi-District and Class Action Litigation.

5 The members of the Working Group are: [insert]
Based upon the work of the Committee, the ABA, consistent with the best practices described below, encourages courts to make greater and more systematic use of special masters to assist courts in managing civil litigation. This Black Letter, approved by the ABA House of Delegates, offers the view of the Association concerning the use, selection, administration, and evaluation of special masters.

**Discussion and Rationale for the Black Letter**

Courts and parties have long recognized the need to confront the costs and inefficiency of civil litigation. Since 1938, Rule 1 of the Federal Rules of Civil Procedure has declared (in a principle echoed in many state rules) that the purpose of the Rules is “a just, speedy, and inexpensive determination of every action and proceeding.” Since December 1, 2015, the Rules have declared that they are to be “employed by the court and the parties to secure” to secure that end. Indeed, virtually every amendment to the Federal Rules over the past thirty-seven years has been intended, at least in part, to confront concerns that civil litigation has become too expensive and inefficient.\(^6\)

Yet, the problems of cost and inefficiency persist. All too often, modifications to

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\(^6\) See, e.g., Fed. R. Civ. P. 26 Advisory Committee Note: “There has been widespread criticism of abuse of discovery”; 1983: the “first element of the standard, Rule 26(b)(1)(i), is designed to minimize redundancy in discovery and encourage attorneys to be sensitive to the comparative costs of different methods of securing information”; Rule 26(g) “provides a deterrent to both excessive discovery and evasion”; 1993: “A major purpose of the revision is to accelerate the exchange of basic information about the case and to eliminate the paper work involved in requesting such information, and the rule should be applied in a manner to achieve those objectives”; 2006: Rule 26(b)(2) is amended to address issues raised by difficulties in locating, retrieving, and providing discovery of some electronically stored information and to regulate discovery from sources “that are accessible only by incurring substantial burdens or costs.” 2015: Amendments that, among other things, expressly limit discovery to be “proportional to the needs of the case”; clarify when sanctions are appropriate for failure to preserve e-discovery; and specify that the rules not only be “construed,” but also “administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”
procedural rules intended to make the litigation process more efficient merely change the subject of the dispute: numerical limitations on interrogatories, for example, lead to conflict over how to count interrogatories and subparts.\(^7\) Limits on other forms of discovery lead to multiple motions for exceptions to the rules. Unfortunately, however, rules are sometimes ignored by parties who recognize that courts are often too overburdened to enforce them.

Aggressive judicial case management is only possible where adequate resources are available to implement strategies designed to minimize the likelihood of unnecessary disputes, to facilitate the resolution of disputes that do arise, and to focus the issues, the parties, and the case on a just outcome.\(^8\) Such case management can be provided by the introduction appointment of a special master who oversees and manages the process rather than one who is largely limited to reacting to the filing of motions and the scheduling of hearings. Succinctly put, the one thing that special masters have to offer the process that courts frequently lack -- is time.\(^9\)

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\(^7\) See Merrill Hirsh, James M. Rhodes and Karl Bayer, “Special Masters: A Different Answer to a Perennial Problem,” JUDGES JOURNAL, v. 55, No. 2 at 28 (Spring 2016).


\(^9\) Special masters are also used in criminal cases (for example, to consider Brady obligations, or to make on-site determinations concerning privilege during the execution of search warrants) and in non-judicial contexts (for example, special masters have been appointed by legislation, such as the appointment to administer the September 11 Victims Compensation Fund; by private entities to administer settlement funds designed to compensate injured parties in mass disasters, such as the BP Deep Water Horizon fund; and by government agencies to investigate and make recommendations, as with the special master appointed to investigate the student loan crisis). In addition, many agencies and private entities use ombudsmen to serve numerous functions, including avoiding and resolving disputes and facilitating communication among stakeholders. These types of appointments illustrate the utility and flexibility of neutrals as an administrative
Courts at all levels face three particularly significant obstacles to effective case management. First, courts often lack sufficient resources to manage certain cases—particularly complex commercial cases. Courts have limited resources, and those resources are not self-modifying in lock-step with need, cannot expand to meet increased demand. In the federal system and in some state courts, magistrate judges are available as adjuncts; in others they are not. In some courts, a few complex cases, or a single, particularly large and complex case, can strain a docket.

If courts were to dedicate the time and attention that exceptionally resource-consuming cases demand, other cases on the court’s docket would inevitably suffer from inattention. To develop unique and case-specific solutions, a judicial officer must be intimately familiar with the issues, the parties, and the procedural posture of a case. Special masters can offer the time and attention such familiarity requires and assist the parties in preparing a case efficiently for resolution by the court.

Second, some judicial functions benefit from specialized expertise. This is particularly true in federal multidistrict litigation (MDL), which accounted for thirty-six percent (36%) of the federal case load in 2014. Managing those cases oftentimes requires a large and diverse set of skills (e.g., managing discovery, facilitating settlement, and remedial tool. A thorough discussion of appointments outside the civil litigation context, however, is beyond the scope of this Black Letter.

10 The addition of federal magistrates has not kept pace with the growth of the magistrates’ workload. “In 1990, there were 470 [federal] magistrate judges, and they terminated a total of about 4,600 consent cases. In 2012, there were 570 magistrate judges who terminated a total of over 15,000 consent cases. That’s just 100 more magistrates, yet over three times as many consent terminations.” David R. Cohen, “The Judge, the Special Master and You,” Litigation, Summer 2014.

11 CITATION. If 70,328 prisoner and social security cases are excluded from the calculation, MDL cases make up 45.6 percent of the federal caseload.
addressing issues related to expert qualifications and opinions, resolving internecine disputes among plaintiff and/or defense counsel, allocating settlement funds or awards, evaluating fee petitions, or providing other needed expertise).

To perform functions the law requires of them, judges in MDLs and other large, complex cases can be called upon to have facility in almost any field of human endeavor, become familiar with many fields, including, for example, science, medicine, accounting, management information systems, business, economics, engineering, epidemiology, operations management, statistics, cybersecurity, sociology, and psychology. Because judges cannot be experts in every field that may be relevant to dispute resolution, a system that provides for judicial utilization of special-master expertise in relevant fields would improve the quality of justice delivered by the courts.

Third, the judicial role limits the involvement judges can have in the process. Judges are not always free, for example, to facilitate informal resolutions, if the process requires ex parte meetings with parties or proposing resolutions of issues on which the court may eventually need to rule. 12

Federal Rule 16(c)(2)(H), Fed. R. Civ. P. and many state rules provide that “[a]t any pretrial conference, the court may consider and take appropriate action on…referring matters to a magistrate judge or a master….” As noted above, 13 however, it is relatively rare for courts to make use of this provision, especially when compared to

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12 Similarly, as a general proposition, a special master performing adjudicative functions should not serve as a mediator in the dispute. In the discovery context, however, as the parties sort through discovery issues with the special master acting as an adjudicator, opportunities may arise for the parties and the master to discuss and explore together solutions to discovery issues.

13 See supra nn.5-6 and accompanying text.
the use made of settlement procedures described in Rule 16(c)(2)(I).\footnote{Rule 16(c)(2)(I) provides as follow: “At any pretrial conference, the court may consider and take appropriate action on... settling the case and using specialized procedures to assist in resolving the dispute when authorized by statute or local rule.”} Few courts have adopted systems or structures that require consideration of the appointment of a special master (as they do with a mediator) when they are preparing a scheduling order for the litigants.\footnote{There are some exceptions. In November 2010, for example, the Western District of Pennsylvania’s Alternative Dispute Resolution Implementation Committee approved the establishment of an E-Discovery Special Masters Pilot Program. In February and March 2011, the Committee accepted special master applications and implemented a mandatory orientation program for selected individuals. Thereafter, the court published a roster of approved special masters who could be appointed at the discretion of the presiding judge. CITE. See also \{Delaware\} \{Seventh Circuit\}, \textit{infra} n. 28.}

Although they can offer considerable assistance in case administration, the appointment of special masters has historically been viewed as an extraordinary measure to be employed only on rare occasions.\footnote{See, e.g., 2003 Advisory Committee Notes to Fed. R. Civ. P. 53 (noting, even as it revised the rule “extensively to reflect changing practices in using masters” for a broader array of functions that “[t]he core of the original [1938] Rule 53 remains, including its prescription that appointment of a master must be the exception not the rule”); Manual for Complex Litigation 4th, §10.14 at 14 (2004) (“Referral of pretrial management to a special master (not a magistrate judge) is not advisable for several reasons. Rule 53(a)(1) permits referrals for trial proceedings only in nonjury cases involving “some exceptional conditions” or in an accounting or difficult computation of damages. Because pretrial management calls for the exercise of judicial authority, its exercise by someone other than a district or magistrate judge is particularly inappropriate. The additional expense imposed on parties also militates strongly against such appointment. Appointment of a special master (or of an expert under Federal Rule of Evidence 706) for limited purposes requiring special expertise may sometimes be appropriate (e.g., when a complex program for settlement needs to be devised)”\). These concerns are discussed in more detail, \textit{infra} n. __.} The reluctance to appoint special masters may be explained by judicial concerns regarding delegation of judicial authority and the costs visited upon the parties by an appointment will incur. Neither justifies the practice of employing special masters only on a rare and ad hoc basis occasions.
Concern over delegating authority is jurisprudential, not constitutional. The Supreme Court has long used special masters in original jurisdiction cases and has vested in those individuals extraordinarily broad powers, including the responsibility to conduct trials on the merits. If the use of special masters were an improper delegation of judicial power, courts would be barred from using them.¹⁷

Concern about delegating authority is easily addressed in two ways. First, the concern should apply only to situations where the special master is being asked to perform an adjudicative role. Second, unless the parties agree otherwise, a special master’s “adjudication” is merely a report and recommendation made to the court or is subject to appeal that can be appealed to the appointing trial court, as a matter of right. The ultimate decision-making authority continues to reside with the court. [1]

Concerns regarding costs actually animate the recommendations in this Black Letter to make greater use of special masters. Although no scientific study has empirically established that special masters reduce the cost of litigation, the available anecdotal evidence strongly suggests that judicious use of special masters saves money for litigants.¹⁸ Effective special masters reduce costs by dealing with

¹⁷ CITE
As the U.S. Supreme Court explained in Wellness International Network v. Sharif, 575 U.S. ___ (2015), “The entitlement to an Article III adjudicator is ‘a personal right’ and thus ordinarily ‘subject to waiver.’ Article III also serves a structural purpose, ‘barring congressional attempts “to transfer jurisdiction [to non-Article III tribunals] for the purpose of emasculating” constitutional courts and thereby prevent[ing] “the encroachment or aggrandizement of one branch at the expense of the other.” But allowing Article I adjudicators to decide claims submitted to them by consent does not offend the separation of powers so long as Article III courts retain supervisory authority over the process.” Id. at ___ (citations omitted).

¹⁸ See supra n. __.
issues before they evolve into disputes and by swiftly and efficiently disposing of disputes that do arise. Special masters can also inculcate a culture of compliance with litigation rules by signaling to the parties early and often that multiplying the litigation will not derail the process and will be punished if repeatedly attempted.

Special masters may be particularly helpful in assisting the parties to implement the December 2015 Amendments to the Federal Rules of Civil Procedure. Those amendments were designed to make litigation more efficient by, among other things, requiring discovery be “proportional to the needs of the case”\(^1\) and requiring objections to “state whether any responsive materials are being withheld on the basis of that objection.”\(^2\) Having a special master work with the parties to apply these requirements as they conduct discovery promote cooperation and efficiency.

Hence, in all appropriate cases, the court should assess whether appointment of a special master will contribute to a fair and efficient outcome. Special masters can make those contributions by:

- Enabling faster resolution of disputes
- Leading to more efficient and less costly case administration
- Relieving burdens on limited judicial resources
- Allowing for specialized expertise in any field that serves to assist judicial administration
- Introducing diverse and case-specific dispute resolution structures and techniques that are applied to resolve both large and small issues
- Allowing for creative and adaptable problem solving
- Serving in roles that judges are not, or may not be, in a position to perform
- Facilitating the development of a diverse and experienced pool of neutrals by introducing an expanded universe of practitioners to work as neutrals
- Enabling courts to monitor implementation of orders and decrees more effectively

highlight the need for the courts to adopt additional advantage of adopting policies suggested herein is that the expanded use of special masters will generate more data that can be studied and used to improve structures and systems for using special masters and other court adjuncts. Clearly, courts should always evaluate the costs and benefits of any appointment, but these concerns regarding cost do not justify rejecting the suggestion of an appointment idea of appointing a special master out-of-hand. Research strongly suggests that the appointment of special masters typically reduces the cost of the litigation through aggressive and efficient case management.\(^2\)\(^3\)\(^4\)

It is unclear whether the failure to use masters arises from hostility toward the concept or the unfamiliarity born of self-perpetuating under-utilization—or both. Indeed, the use of (or even consideration of using) special masters is so rare that the very idea is alien to many judges and parties. Other barriers to use include:

- A general lack of awareness among courts, counsel and parties about special masters and the ways in which they can be used,
- A concern among parties and their counsel of losing control of the litigation,
- A lack in many courts of structures and procedures for vetting, selecting, employing, and evaluating special masters (either as a matter of court administration or as a practice of individual judges).

Regardless of the reason, the failure (or refusal) of courts to consider the use of special masters in appropriate cases may disserve the goal of securing “a just, speedy, and inexpensive determination” in such cases.

The reluctance to use special masters has also led to appointments being typically made without systems or structures to support selection, appointment or utilization of masters and, frequently, after cases have already experienced management problems.

Although research indicates that courts and parties are generally satisfied with their experiences with special masters, the \textit{ad hoc} nature of appointments can lead to inconsistency in results and exacerbate perceptions that undercut the legitimacy of appointees. The idea that special masters should be rarely used has also limited the amount of experience and information available upon which to assess the use of special masters. Neither court decisions, nor the literature, have extensively examined, for example, the qualifications special masters should possess, how those qualifications should vary based upon the role the special master is performing, what the best practices for special masters are, and what ethical rules govern the conduct of special masters. Adopting a routine and regularized process of considering the appointment of special masters will enhance the effective use, as well as the effectiveness, of special masters.

While no scientific study has confirmed that the use of special masters saves the parties money, that is the near-universal conclusion of those who have accumulated and studied anecdotal evidence. In all appropriate cases, the assessment should be made as to whether appointment of a special master will contribute to a fair and efficient outcome.

\underline{22} CITE. 
Cite to Barbabra Meirerhofer’s work.

\underline{23} See supra n. ___
Special masters can make these contributions by:

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- Allowing for creative and adaptable problem solving
- Serving in roles that judges are not, or may not be, in a position to perform
- Facilitating the development of a diverse and experienced pool of neutrals by introducing an expanded universe of practitioners to work as neutrals
- Enabling courts to monitor implementation of orders and decrees more effectively

Comments on Specific Recommendations

(1) The possible use of a special master should be considered as a part of routine case management in every complex litigation and in such other cases in which there is a reason to believe that a special master will serve a useful function. Courts, counsel and parties should consider the use of a special master both at the outset of the litigation and at any subsequent point where circumstances warrant.

Because courts do not typically consider the appointment of a special master at the outset of cases (even in categories of cases that are most likely to benefit from the appointment) special masters are most frequently appointed after case management issues have already developed. Although special masters can be of use in these situations, this process prevents courts and stakeholders from obtaining what is perhaps the more significant benefit from the use of special masters – proactive, aggressive case management that often eliminates the need for dispute resolution or deters dispute creation.

Although the appropriate techniques may vary from case to case, a special master could, for example, address discovery issues before discovery responses are even due to
prevent disputes before they even arise. While conferences that deal with discovery issues before costly motion practice begins are useful, intervention ahead of the service of responses would be even more efficient and could serve to reduce conflicts among counsel and costs to the parties.

By recommending consideration of a special master at the outset of the case, this Black Letter does not intend to dismiss the possibility that later events might require reconsideration of making such an appointment. Complex litigation is not always predictable, and courts should always be open to the possibility of employing case management tools as needed.

(2) In considering the possible use of a special master, courts, counsel and parties should be cognizant of the range of functions that a special master might be called on to perform and roles that a special master might serve.

The suggestions offered here on how special masters might be used to assist in civil litigation are meant to be illustrative, not exhaustive or comprehensive. Indeed, it is not possible to list here every conceivable use for special masters. Parties are encouraged to consider creative approaches to integrating special masters into case management for the benefit of all participants.

Although the function a special master performs can affect, or in some instances determine, the role a special master will play in a given matter, in many circumstances there are different ways to perform a function. For example, a special master charged with assisting in resolving discovery disputes could be appointed (a) to fill an adjudicative role to issue orders or reports and recommendations on pending motions; (b) or in a
facilitative role to assist the parties in working through discovery needs and obligations without motion practice; \(^{24}\)(c) in , or both.

Special masters can also address motions dealing with the admissibility of opinion testimony based upon the qualifications of a proposed expert or on the soundness of the opinion expressed or the methodology employed in reaching it. Masters can also have an advisory role to advise either function, providing information and guidance to the court or the parties in areas that require technical expertise; or (d) in.

Special masters can also serve an informational role, for example, by assessing the “informatory” role. This refers to a situation and circumstances in which a special master is used to provide information to the court to assist it. For example, a special master could (i) conduct a privilege review, as Judge Eldon E. Fallon did in decision-making when he appointed American University law professor Paul R. Rice to be a special master to review approximately 3,000 documents (exceeding 500,000 pages) claimed to be privileged by Merck & Co. (Vioxx Products Liability Litigation, MDL 1657, E. D. La.); or (ii) provide an independent analysis of potential damages in a case or could analyze voluminous books and records and prepare a report as to their content for use by the court or at trial. These situations are different from the court appointing a court’s expert in a number of ways. Perhaps one of the most significant is that the special master has an adjudicative function when conducting privilege reviews. Additionally, the parties are not entitled to depose a special master.

\(^{24}\)As a general proposition, a special master performing adjudicative functions should not serve as a mediator in the dispute. In the discovery context, however, as the parties sort through discovery issues with the special master acting as an adjudicator, opportunities may arise for the parties and the master to discuss and explore together solutions to discovery issues.
In essence, special masters can be an “all-purpose” tool, a resource that can be applied to the specific problem or issue a particular case presents. The order of appointment should describe the issues the master is to deal with and the powers afforded the master to do so. The only practical limit that should constrain their use would be a calculation in each case as to whether the appointment of a master would impose a cost that outweighs the benefit.

(3) In determining whether a case merits appointment of a special master, courts should give due consideration to the expected benefit of using the special master, including reduction of the litigants’ costs, in relation to the anticipated cost of the special master’s services.

The way to protect parties from the concern that special masters create costs is a requirement that the appointment of a special master justify the cost. In most instances, that is a financial assessment. Cases involving large sums of money present the most obvious situation for using special masters. The potential for disputes is often a function of the amount of money at stake, the number of parties involved, the number of issues and their factual or legal complexity, the number of lawyers representing the parties, and the level of contentiousness between or among the parties or counsel. In many, if not most, of these cases, the cost of procedural skirmishes vastly outstrips the costs of paying a special master to assist in administering the case in a manner that deters or avoids disputes or quickly disposes of them when the arise.

The benefits of a special master cannot always be measured monetarily. The value of special masters to courts and stakeholders in our judicial system lies in the extraordinary flexibility their use offers to import resources, expertise, and processes that

25 See supra n. _
can be flexibly adapted to the needs of each case. In some cases, particularly those involving non-financial interests, using a special master may be justified if the individual playing this role adds a resource, expertise, or process that enhances the effective administration of justice. Determining whether that value outweighs the cost requires a case-by-case assessment.

(4) Special masters should be chosen with due regard for the parties’ preferences and in a manner that helps to ensure the special master’s competence and legitimacy.

The choice of who is to serve as a special master, like the issue of what function and role the special master is to perform, requires careful consideration. Courts need to ensure that the selection and use of special masters is fair.

Courts should afford the parties an opportunity to identify an acceptable special master candidate before the court makes an appointment. 26 The courts should always give serious consideration to any candidate identified by the parties, although the court should also always vet diverse candidates to ensure that they have the time and qualifications to discharge their special master duties. Involving the parties in the selection process should minimize the parties’ perception that a candidate was forced upon them by the court and should eliminate any possible concern of bias.

(5) The referral order appointing the special master should describe specifically the scope of the engagement, including, but not limited to, the special master’s duties and powers, the roles the special master may serve, the rates and manner in which the special master will be compensated, and the nature of contact with the court and the parties that will be permissible. Any changes to the scope of the referral should be made by a modification to the referral order.

26 See Fed. R. Civ. P. 53(b)(1) (“Before appointing a master, the court must give the parties notice and an opportunity to be heard. Any party may suggest candidates for appointment”).
Federal Rule 53(b)(2), Fed. R. Civ. P., and similar state rules prescribe elements that should be contained in an order of referral to a special master. Under this Rule, “[t]he appointing order must direct the master to proceed with all reasonable diligence and must state:

- the master's duties, including any investigation or enforcement duties, and any limits on the master’s authority under Rule 53(c);
- the circumstances, if any, in which the master may communicate ex parte with the court or a party;
- the nature of the materials to be preserved and filed as the record of the master's activities;
- the time limits, method of filing the record, other procedures, and standards for reviewing the master’s orders, findings, and recommendations; and
- the basis, terms, and procedure for fixing the master's compensation under Rule 53(g).

Although these are the minimum requirements in the federal system and in states that adopt the terms of the federal rule, a court should consider including other elements in the Order. The Academy of Court Appointed Masters’ (“ACAM”) web site offers many samples of appointment order suitable for a wide array of different types of appointments.27

- [insert discussion from model orders on ACAM’s website and other examples]

(6) Courts should develop local rules and practices for the selection, training and evaluation of special masters.

Few courts have adopted a system for the selection, vetting, or training of special masters. As a consequence, court decisions and the literature have not extensively

27 http://courtappointedmasters.org/model-appointment-orders The ACAM web site also includes a Bench Book that discusses the many roles a special master can play and exploring ethical issues and practical concerns related to the appointment and use of special masters.
examined the qualifications special masters should possess or how these qualifications should vary depending upon the role the special master is performing.\textsuperscript{28}

Depending on the appointing court’s circumstances, local custom, and the collective and individual preferences of judges in the jurisdiction, courts may wish to consider and adapt the following processes:

- Develop a list of the types and roles special masters will be expected to perform.
- Adopt and notify the bar of the considerations that will affect decisions on selection of special masters.
- Sponsor interactive discussion events on the use of special masters to support efficient and productive case administration, and on legal, methodological, and logistical issues related to judicial adjuncts.
- In cases where the parties or the judge are considering appointment of a special master, adopt a method for attorneys (or other professionals in a needed field of expertise) to apply confidentially for ensure confidentiality during the appointment process.
- Develop a public (or, if the court prefers, an internal) database/list of qualified, screened individuals who meet basic criteria for consideration as special masters. Such criteria should be based on a written application and a vetting process that recognizes the functions the special master must be capable of performing, and ensures that the spectrum (from novice candidates to experienced special masters) may be included. No public record would be kept of a decision not to accept an individual for the database/list.
- After the decision to implement a program is made, assign administrative responsibility for implementation to a person or group of persons responsible for administering the program.
- Consider whether a program administrator might assist judges and/or parties in identifying potential matches for the judicial adjunct needs of a specific case. Make the program administrator responsible for establishing and administering a

\textsuperscript{28} See supra n.15, the Western District of Pennsylvania E-Discovery Special Masters Pilot Program is an exception that provides helpful guidance on how to approach the problem of developing rules. The United States District Court for the District of Delaware currently has a standing order, effective, December 4, 2014, recognizing the Court’s inherent authority to appoint special masters to help effectively manage the prompt disposition of cases and specifying that special masters will serve 4-year terms at the pleasure of the Judges of the Court. http://www.ded.uscourts.gov/sites/default/files/forms/SpecialMastersOrder2014.pdf Under the Standing Order, the Court provides notice of intent to the Bar when it is considering appointing new Panel members, allowing bar members interested in joining the panel to submit letters, identifying rates, and a curriculum vitae. See also https://www.discoverypilot.com/ (Seventh Circuit ediscovery pilot program incorporating neutral mediation).
system to ensure the quality of the services provided (e.g., regular requests for feedback, monitoring, and disciplinary process).

While exploring the different systems and structures for appointing and training special masters is beyond the scope of this Black Letter, some suggestions include: (i) inviting applicants to submit themselves for consideration; (ii) creating and implementing qualifications criteria; (iii) establishing a roster of approved and diverse masters; (iv) establishing a performance review component; and (v) adopting training programs for masters.

The development of rosters of special master candidates could serve several positive functions. Among other things, developing rosters could lead to a formal process for vetting, qualifying and training candidates both to help ensure the quality of work performed and to enhance the perception of legitimacy of the choice among stakeholders.

The vetting process could also recognize and assist in implementing existing ABA guidance on increasing diversity among those who serve as special masters. See American Bar Association Resolution adopted by the House of Delegates, February 6, 2017 (urging the Supreme Court of the United States to consider racial, ethnic, disability, sexual orientation, gender identity, and gender diversity in the selection process for appointment of amicus curiae, special masters, and other counsel).

Whether in designing a roster system or in making individual selections, some factors the Court should consider are:

- Developing a diverse pool of attorneys and others, who qualify for appointment as masters
- Ensuring that the process is properly adjusted to the functions and roles special masters perform
- Ensuring that the process properly assesses the talents and experience that the prospective special master brings to the particular case
- Determining whether subject matter expertise is necessary
• Ensuring the ability of the prospective master to be fair and impartial and to engage with the parties and others with courtesy and civility.29

(7) Courts and the bar should develop educational programs to increase awareness of the role of special masters and to promote the acquisition and dissemination of information concerning the effectiveness of special masters.

Given the infrequent appointment of special masters, it is not uncommon for practitioners to inform the court that they have never before worked with a special master. Indeed, commentators have noted the need for basic guidance on what a special master can do and how that might affect the litigation.30

Promulgating local rules and procedures to systematize the consideration and use of special masters would serve an important public information function. When parties are aware that courts intend to make more effective use of special masters, they will be more likely to inform themselves about the selection process, potential candidates, and the role the special masters will play in the process. It is also important that the legal community develop educational programs on the use of special masters that are available to both the bench and bar.

Courts can also perform a quality control function by evaluating the work product produced by the special master. Courts will obviously do this when reviewing orders and recommendations and reports that are challenged by the parties, but even when such challenges are not made, conducting reviews of the work of the special master will assist the court in providing for quality control in the use of special masters.

29 Illustratively, the appointment process should contain a mechanism to ensure that the candidate has no conflicts of interest with the parties or issues that the special master would have to address.

Courts should also develop other mechanisms for monitoring the performance of special masters. For example, an appointing court could require that the master make periodic reports concerning the progress of the case. These reports could identify issues that have been addressed or resolved by the master, the procedural posture of the case, and when the case will be trial ready. Courts should also identify mechanisms that allow the parties to provide feedback and, if applicable, raise concerns regarding their experience with and the performance of the special master.

No process is perfect, and there will be special master appointments that do not move the parties toward a “just, speedy, and inexpensive” disposition of the case. Monitoring performance of the special master and satisfaction of the stakeholders will allow courts to identify problem referrals. Where the problem is the special master – for whatever reason – the court can replace the special master with a more suitable candidate. If the problem is that the assigned tasks are too much for a single special master to handle, the court might consider dividing tasks among multiple special masters. If the process is not effective in a given case, the court could consider vacating the appointment.

At the conclusion of the case, it should be a regular practice for participants to complete a brief confidential survey concerning the work of the special master as a means of learning lessons to be applied in the future. This information will provide, for the first time, a source of data researchers can use to assess the use of special masters and make recommendations for improvement.
(8) **Legislatures and courts should make whatever modifications to laws, rules or practices that are necessary to effectuate these ends.**

Federal Rule 53, Fed. R. Civ. P., and many state rules, and, independently, the inherent powers of the courts, appear to be sufficiently flexible to allow for more effective use of special masters. However, depending on the jurisdiction, rule or statutory changes may be necessary or desirable.

Where the rules of civil procedure permit, courts should consider whether it is appropriate to adopt local procedures calling for more extensive, flexible, and systematic use of special masters – including, for example, maintaining rosters of special master candidates and publishing procedures for vetting, selection, appointment, and evaluation of special masters. Rule-making bodies should also consider whether particular aspects of existing rules, including terms used, should be modified to promote uniformity and the effective use of special master.

The ABA is available to assist courts in implementing these recommendations.
Business Law Section Membership Highlights
March 2018

Section Membership

Counts

- As of March 2018, Business Law Section (BLS) membership stands at 43,726; down 4% compared to March 2017. The Business Law Section is the largest Section in the ABA as of March 2018.
  - BLS lawyer membership is down 4.3%, associate membership is down 4.7%, and student membership is down 3%
- ABA membership is up 3.5%.
  - ABA lawyer membership is down .9%, associate membership is down .6%, and student membership is up 16.6%
- See attached “Monthly Membership Count Report” for ABA and Section trends since March 2014.

Recruitment

- In March, email communications were sent out with an aim to recruit members to BLS, using Section content as a driver.

Committee Membership

Counts

- As of March 2018, 15,236 members were in a substantive committee, down year-over-year by 4%.
- See attached “Monthly Substantive Committee Membership Count Report” for full committee counts.

In The Know

The March In The Know program, “Insider’s Insights from the Deal Points Study”, was presented by the Mergers and Acquisitions Committee. This program had 929 registrants.

Upcoming program schedule:

Program marketing includes two emails, prominent placement on the website, and social media posts. More information about In The Know can be found at www.ambar.org/intheknow.

**Business Law Basics**

The March Business Law Basics program, “Governance Issues of Distressed Companies”, was presented by the Corporate Governance Committee. This program had 593 registrants.

Upcoming program schedule:


Program marketing includes two emails, prominent placement on the website, and social media posts. More information about Business Law Basics can be found at www.ambar.org/basics.
## Membership Count

<table>
<thead>
<tr>
<th></th>
<th>Mar-14</th>
<th>Mar-15</th>
<th>Mar-16</th>
<th>Mar-17</th>
<th>Mar-18</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>American Bar Association</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyer</td>
<td>278,083</td>
<td>318,703</td>
<td>282,952</td>
<td>275,390</td>
<td>273,648</td>
</tr>
<tr>
<td>Associate</td>
<td>12,555</td>
<td>14,767</td>
<td>14,754</td>
<td>14,796</td>
<td>14,730</td>
</tr>
<tr>
<td>Subtotal</td>
<td>290,638</td>
<td>333,470</td>
<td>297,706</td>
<td>290,186</td>
<td>288,378</td>
</tr>
<tr>
<td>Year-Over-Year Change</td>
<td>1.92%</td>
<td>14.74%</td>
<td>-10.72%</td>
<td>-12.98%</td>
<td>-3.13%</td>
</tr>
<tr>
<td>Student Associate</td>
<td>1,214</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Student</td>
<td>32,434</td>
<td>33,675</td>
<td>69,483</td>
<td>96,089</td>
<td>112,265</td>
</tr>
<tr>
<td><strong>TOTAL ABA</strong></td>
<td>324,286</td>
<td>367,145</td>
<td>367,189</td>
<td>386,275</td>
<td>400,643</td>
</tr>
<tr>
<td><strong>TOTAL Year-Over-Year Change</strong></td>
<td>1.58%</td>
<td>13.22%</td>
<td>0.01%</td>
<td>5.21%</td>
<td>3.72%</td>
</tr>
</tbody>
</table>

|                        |        |        |        |        |        |
| **Business Law Section** |        |        |        |        |        |
| Lawyer                 | 36,478 | 36,982 | 32,807 | 29,976 | 28,674 |
| Associate              | 1,609  | 1,852  | 1,855  | 1,751  | 1,668  |
| Subtotal               | 38,087 | 38,834 | 34,662 | 31,727 | 30,342 |
| Year-Over-Year Change  | 1.92%  | 1.96%  | -10.74%| -18.30%| -4.37% |
| Student Associate      | 114    | 0      | 0      | 0      | 0      |
| Student                | 10,548 | 9,341  | 12,844 | 13,800 | 13,384 |
| **TOTAL BLS**          | 48,749 | 48,175 | 47,506 | 45,527 | 43,726 |
| **TOTAL Year-Over-Year Change** | 0.24% | -1.18% | -1.39% | -5.50% | -3.96% |

* Data Source: ABA Membership Reports/'Personify ABA Membership Advantage' Report

Proprietary ABA Information: Confidential
<table>
<thead>
<tr>
<th>Substantive Committees</th>
<th>March 2018</th>
<th>March 2017</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annuity Law</td>
<td>241</td>
<td>265</td>
<td>-9.06%</td>
</tr>
<tr>
<td>Corporate Social Responsibility Law</td>
<td>505</td>
<td>514</td>
<td>-1.75%</td>
</tr>
<tr>
<td>Bankruptcy Law</td>
<td>1,790</td>
<td>1,851</td>
<td>-3.30%</td>
</tr>
<tr>
<td>Business and Corporate Litigation</td>
<td>1,434</td>
<td>1,483</td>
<td>-3.30%</td>
</tr>
<tr>
<td>Business Financing</td>
<td>601</td>
<td>600</td>
<td>-0.17%</td>
</tr>
<tr>
<td>Business Law Education</td>
<td>241</td>
<td>253</td>
<td>-4.74%</td>
</tr>
<tr>
<td>Captive Insurance</td>
<td>233</td>
<td>254</td>
<td>-8.27%</td>
</tr>
<tr>
<td>Career and Practice Development</td>
<td>157</td>
<td>152</td>
<td>-3.29%</td>
</tr>
<tr>
<td>Commercial Finance</td>
<td>1,655</td>
<td>1,693</td>
<td>-2.24%</td>
</tr>
<tr>
<td>Community Economic Development</td>
<td>160</td>
<td>154</td>
<td>-3.90%</td>
</tr>
<tr>
<td>Consumer Bankruptcy</td>
<td>167</td>
<td>189</td>
<td>-11.64%</td>
</tr>
<tr>
<td>Consumer Financial Services</td>
<td>1,260</td>
<td>1,332</td>
<td>-5.41%</td>
</tr>
<tr>
<td>Corporate Compliance</td>
<td>666</td>
<td>726</td>
<td>-8.26%</td>
</tr>
<tr>
<td>Corporate Counsel</td>
<td>1,376</td>
<td>1,462</td>
<td>-5.88%</td>
</tr>
<tr>
<td>Corporate Documents and Process</td>
<td>837</td>
<td>868</td>
<td>-3.57%</td>
</tr>
<tr>
<td>Corporate Governance</td>
<td>2,223</td>
<td>2,269</td>
<td>-2.03%</td>
</tr>
<tr>
<td>Corporate Laws</td>
<td>121</td>
<td>52</td>
<td>132.69%</td>
</tr>
<tr>
<td>Corporate Social Responsibility Law</td>
<td>116</td>
<td>112</td>
<td>3.57%</td>
</tr>
<tr>
<td>Credit Unions</td>
<td>210</td>
<td>215</td>
<td>-2.33%</td>
</tr>
<tr>
<td>Cyberspace Law</td>
<td>1,147</td>
<td>1,200</td>
<td>-4.42%</td>
</tr>
<tr>
<td>Derivatives and Futures Law</td>
<td>412</td>
<td>417</td>
<td>-1.20%</td>
</tr>
<tr>
<td>Director and Officer Liability</td>
<td>394</td>
<td>366</td>
<td>7.65%</td>
</tr>
<tr>
<td>Dispute Resolution</td>
<td>276</td>
<td>295</td>
<td>-6.44%</td>
</tr>
<tr>
<td>Employment Benefits and Executive Compensation</td>
<td>298</td>
<td>329</td>
<td>-9.42%</td>
</tr>
<tr>
<td>Energy Business</td>
<td>172</td>
<td>190</td>
<td>-9.47%</td>
</tr>
<tr>
<td>Environmental</td>
<td>208</td>
<td>236</td>
<td>-11.86%</td>
</tr>
<tr>
<td>Federal Regulation of Securities</td>
<td>1,985</td>
<td>2,092</td>
<td>-5.11%</td>
</tr>
<tr>
<td>Gaming Law</td>
<td>125</td>
<td>133</td>
<td>-6.02%</td>
</tr>
<tr>
<td>Government Affairs Practice</td>
<td>314</td>
<td>160</td>
<td>2.63%</td>
</tr>
<tr>
<td>Health Law and Life Sciences</td>
<td>274</td>
<td>298</td>
<td>-8.05%</td>
</tr>
<tr>
<td>Institutional Investors</td>
<td>223</td>
<td>225</td>
<td>-0.89%</td>
</tr>
<tr>
<td>Intellectual Property</td>
<td>388</td>
<td>434</td>
<td>-10.60%</td>
</tr>
<tr>
<td>International Business Law</td>
<td>710</td>
<td>755</td>
<td>-5.96%</td>
</tr>
<tr>
<td>Law and Accounting</td>
<td>279</td>
<td>290</td>
<td>-3.79%</td>
</tr>
<tr>
<td>Legal Opinions</td>
<td>1,279</td>
<td>1,322</td>
<td>-3.25%</td>
</tr>
<tr>
<td>LLCs, Partnerships, Unincorporated Entities</td>
<td>1,675</td>
<td>1,704</td>
<td>-1.70%</td>
</tr>
<tr>
<td>Mergers and Acquisitions</td>
<td>4,147</td>
<td>4,087</td>
<td>-1.47%</td>
</tr>
<tr>
<td>Middle Market and Small Business</td>
<td>1,183</td>
<td>1,202</td>
<td>-1.58%</td>
</tr>
<tr>
<td>Nonprofit Organizations</td>
<td>782</td>
<td>750</td>
<td>-4.27%</td>
</tr>
<tr>
<td>Private Equity and Venture Capital</td>
<td>1,730</td>
<td>1,748</td>
<td>-1.03%</td>
</tr>
<tr>
<td>Professional Responsibility</td>
<td>330</td>
<td>310</td>
<td>-6.45%</td>
</tr>
<tr>
<td>Project Finance and Development</td>
<td>289</td>
<td>282</td>
<td>2.48%</td>
</tr>
<tr>
<td>Securities and Structured Finance</td>
<td>479</td>
<td>498</td>
<td>-3.82%</td>
</tr>
<tr>
<td>Small Business Regulation of Securities</td>
<td>480</td>
<td>503</td>
<td>-4.57%</td>
</tr>
<tr>
<td>Taxation</td>
<td>597</td>
<td>628</td>
<td>-4.94%</td>
</tr>
<tr>
<td>Trust Indentures and Trustees</td>
<td>301</td>
<td>309</td>
<td>-2.59%</td>
</tr>
<tr>
<td>Uniform Commercial Code</td>
<td>1,364</td>
<td>1,446</td>
<td>-5.67%</td>
</tr>
<tr>
<td>White-Collar Crime</td>
<td>300</td>
<td>286</td>
<td>-4.90%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>37,271</td>
<td>38,296</td>
<td><strong>-2.68%</strong></td>
</tr>
</tbody>
</table>

Month: March  
Year: 2018  
FY2018 Monthly Substantive Committee Membership Count Report
### Business Law Section

#### Substantive Committee Membership Count: Performance

<table>
<thead>
<tr>
<th></th>
<th>March 2018</th>
<th>March 2017</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Lawyer</td>
<td>Associate</td>
<td>Student</td>
</tr>
<tr>
<td>Business Law Section Members</td>
<td>28,674</td>
<td>1,668</td>
<td>13,384</td>
</tr>
<tr>
<td>Section Members in a Substantive Cmt</td>
<td>13,387</td>
<td>946</td>
<td>903</td>
</tr>
<tr>
<td>% of Section Members in a Substantive Cmt</td>
<td>46.69%</td>
<td>56.71%</td>
<td>6.75%</td>
</tr>
<tr>
<td>Average Substantive Cmts per Member</td>
<td>2.78</td>
<td>2.97</td>
<td>5.41</td>
</tr>
</tbody>
</table>

Proprietary ABA Information Confidential
Objective

The American Bar Association Business Law Section (the Section) recognizes the importance of its in-house counsel members and seeks to increase, retain and actively engage the membership of in-house counsel within the Section. This In-House Counsel Task Force Strategic Plan ("IHCTF Plan") illustrates what the Section already offers to its in-house counsel members, how to improve on those offerings and what additional incentive might be offered to effectuate the objective.

Business Law Section Mission Statement

The mission of the Business Law Section is to serve its members, the profession, and the public by providing educational resources to its members, assisting members in serving their clients ethically and competently, and furthering the development and improvement of business law.

To accomplish its mission, the Section will 1) provide services which its members value, 2) enhance professional collegiality, 3) encourage diversity and inclusion in the Section by fostering a welcoming environment and promoting full and equal participation by all lawyers, 4) address needs of younger lawyers and law students, and 5) operate in a fiscally responsible manner.

Assumptions

This IHCTF Plan is not meant to limit any ideas or suggestions beyond the plan and therefore, the IHCTF Plan may change as the needs of Section evolve and change. The IHCTF welcomes your feedback and ideas. The IHCTF will provide a mechanism for the regular assessment of the effectiveness of the plan and regular updates.

Goals:

1. Develop a communication plan for in-house Section members and potential Section members regarding existing Section membership benefits;
2. Provide a financial incentive or discount towards registration for in-house counsel;
3. Develop relevant content and provide easy to use search function on Section Website; and
4. Ensure that the Section provides an active forum for in-house counsel members.
## STRATEGIC GOAL
Develop a communication plan for in-house Section members and potential Section members regarding existing Section membership benefits

### IMPLEMENTATION STEP
Communicate relevant content to current Section members within Section publications, webinars and newsletters including:
- Business Law Today
- The Business Lawyer
- In the Know
- Business Law Basics
- Program Recordings – best and relevant programs should be promoted after the meeting
- Non-CLE webinars
  
  Messaging to include both past and upcoming information of interest to In-House Counsel Section members.

<table>
<thead>
<tr>
<th>By Whom</th>
<th>By When</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Law Today Editorial Board (Jeannie Frey)</td>
<td>Quarterly Communication; February 1; May 1; July 15; November 1</td>
</tr>
<tr>
<td>Content Committee (Norm Powell)</td>
<td></td>
</tr>
<tr>
<td>Content Officer (Norm Powell)</td>
<td></td>
</tr>
<tr>
<td>Section Staff</td>
<td></td>
</tr>
<tr>
<td>In-House Counsel Task Force</td>
<td></td>
</tr>
</tbody>
</table>

Send letter from Section Chair to corporate department heads outlining business law section membership benefits
- Include all business law section members benefits and benefit guide
- Include information on corporate law department group membership
- Track effectiveness of this through new member counts from each company

<table>
<thead>
<tr>
<th>By Whom</th>
<th>By When</th>
</tr>
</thead>
<tbody>
<tr>
<td>In-House Counsel Task Force</td>
<td>Annually, July 15</td>
</tr>
<tr>
<td>Membership Committee (Grace Powers and Eddie Fitzgerald)</td>
<td></td>
</tr>
<tr>
<td>Marketing Board (Peter Snell)</td>
<td></td>
</tr>
<tr>
<td>Staff to research department heads</td>
<td></td>
</tr>
<tr>
<td>Section Staff</td>
<td></td>
</tr>
</tbody>
</table>

Promote the Section’s practice-specific committees and encourage membership in same
- Send Letter to in-house counsel not in a committee

<table>
<thead>
<tr>
<th>By Whom</th>
<th>By When</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council Committee on Committees (Elizabeth Stong)</td>
<td>Annually; June 15</td>
</tr>
<tr>
<td>Section Staff</td>
<td></td>
</tr>
</tbody>
</table>

Send letter to in-house counsel Section members and potential Section members of the Business Law Section that outlines the benefits of meeting attendance

<table>
<thead>
<tr>
<th>By Whom</th>
<th>By When</th>
</tr>
</thead>
<tbody>
<tr>
<td>In-House Counsel Task Force (IHCTF)</td>
<td>January 18 (prior to Spring Meeting); June 1 (prior to Annual Meeting)</td>
</tr>
<tr>
<td>Programs Committee (Kevin Johnson and Allison Manzer)</td>
<td></td>
</tr>
<tr>
<td>Marketing Board (Peter Snell)</td>
<td></td>
</tr>
<tr>
<td>Membership Committee (Grace Powers and Eddie Fitzgerald)</td>
<td></td>
</tr>
<tr>
<td>Section Staff</td>
<td></td>
</tr>
</tbody>
</table>

Ask committee chairs to send a tailored message to in-house members of their committees or meeting registrants.
- Email invitations from committee chairs encouraging in-house meeting attendance, or to registered in-house attorneys to attend committee meetings of committees they are a member of, could be useful.

<table>
<thead>
<tr>
<th>By Whom</th>
<th>By When</th>
</tr>
</thead>
<tbody>
<tr>
<td>Committee chairs</td>
<td>January 18 (prior to Spring Meeting); June 1 (prior to Annual Meeting)</td>
</tr>
<tr>
<td>In-house Counsel Task Force</td>
<td></td>
</tr>
<tr>
<td>Marketing Board (Peter Snell)</td>
<td></td>
</tr>
<tr>
<td>Membership Committee (Grace</td>
<td></td>
</tr>
<tr>
<td>Implementation Step</td>
<td>By Whom</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| Use Section social media channels to communicate member benefits to in-house counsel (Facebook, Instagram, Twitter, LinkedIn) | • Corporate Counsel Committee (Philip Long and Meg Milroy)  
• Content Committee (Norm Powell)  
• Section Staff | Monthly, as relevant content becomes available                                               |

**STRATEGIC GOAL II: Develop new relevant content to in-house counsel**

<table>
<thead>
<tr>
<th>Implementation Step</th>
<th>By Whom</th>
<th>By When</th>
</tr>
</thead>
</table>
| Provide access to and develop relevant content (CLE and non-CLE) tailored to in-house counsel members (distance learning and in-person) | • Business Law Today Editorial Board (Jeannie Frey)  
• Content Committee (Norm Powell)  
• In-House Counsel Task Force | One piece of content identified or developed each month                                      |
| Continue to improve website content searchability                                   | • Content Committee (Norm Powell)                                                             | Ongoing                                      |
| Create or update Model forms or agreement templates and make available for Section members or provide discounts to services that provide model forms | • Corporate Counsel Committee (Philip Long and Meg Milroy)  
• Content Committee (Norm Powell)  
• In-House Counsel Task Force | Ongoing                                      |
| Encourage in-house counsel presence in Business Law Today                            | • Business Law Today Editorial Board (Jeannie Frey)                                          | May 2018                                     |
| • Add a dedicated in-house counsel column                                            |                                                                                               |                                              |
| • Highlight articles on law department management that GCs and in-house leadership would find particularly useful, such as regarding practical skills development (e.g. negotiations, leadership, project management, personal marketing) |                                                                                               |                                              |
| • Solicit more in-house authors to contribute to BLT articles and content             |                                                                                               |                                              |
| Creation of podcast series tailored to in-house counsel                              | • Corporate Counsel Committee (Philip Long and Meg Milroy)  
• Content Committee (Norm Powell)  
• In-House Counsel Task Force | Starting in July 2018                                                                        |
### STRATEGIC GOAL III: Provide a financial incentive or discount for in-house counsel involvement in the Section

<table>
<thead>
<tr>
<th>IMPLEMENTATION STEP</th>
<th>BY WHOM</th>
<th>BY WHEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide a percentage discount or lower flat cost to in-house counsel to register for in-person meetings; the survey determined cost was a likely barrier to attending in-person meetings</td>
<td>Loyalty Program Task Force</td>
<td>TBD</td>
</tr>
<tr>
<td>Determine the percentage discount after review of other similar bar association offers or other sections within the ABA</td>
<td>Loyalty Program Task Force</td>
<td>TBD</td>
</tr>
<tr>
<td>Provide hometown discount for local in-house attorneys, follow-up with an additional discount for the second meeting to offset travel costs</td>
<td>Loyalty Program Task Force</td>
<td>TBD</td>
</tr>
<tr>
<td>Regularly explore additional financial incentives and value to make the ABA Business Law Section competitive with other bar organizations</td>
<td>In-House Counsel Task Force</td>
<td>Once per year</td>
</tr>
<tr>
<td>Provide discounts to in-house participating as speakers</td>
<td>Loyalty Program Task Force</td>
<td>TBD</td>
</tr>
</tbody>
</table>

### STRATEGIC GOAL IV: Ensure that the Section provides an active forum for in-house counsel members and regularly solicits feedback from in-house counsel members regarding Section offerings to in-house counsel.

<table>
<thead>
<tr>
<th>IMPLEMENTATION STEP</th>
<th>BY WHOM</th>
<th>BY WHEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Create forum for in-house counsel members by tailoring an event/reception at the Annual, Spring and Fall meetings for in-house counsel Section members</td>
<td>In-House Counsel Task Force, Corporate Counsel Committee (Philip Long and Meg Milroy), Membership Committee (Grace Powers and Eddie Fitzgerald)</td>
<td>Spring Meeting 2018; Annual Meeting 2018; Fall Meeting 2019</td>
</tr>
</tbody>
</table>
| Ask Law Firms to “Ask an In-House Counsel” to Attend/Join.  
- Ask a law firm attorney to extend an invite to an in-house counsel to attend a Section meeting, committee meeting, or program, at a slight discount (paid by the in-house department) | In-House Counsel Task Force, Corporate Counsel Committee (Philip Long and Meg Milroy), Meeting Loyalty Group | TBD |
<p>| Increase in-house counsel members serving in leadership positions (including committee chairs, vice-chairs, subcommittee chairs, officers and council members) and track and measure growth | Leadership Development Committee (Larry Goldman and Jim Schulwolf) | Ongoing |</p>
<table>
<thead>
<tr>
<th>Task</th>
<th>Participants</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increase the number of in-house counsel members and non-members on CLE and non-CLE panels including in-person programs and webinars</td>
<td>Programs Committee (Kevin Johnson and Allison Manzer) Council Committee on Committees (Elizabeth Stong)</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Encourage in-house counsel members to publish in Section publications</td>
<td>Publications Board (Pete Walsh) Content Committee (Norm Powell) Business Law Today Editorial Board (Jeannie Frey) The Business Lawyer Editorial Board (Vicki Tucker) Membership Committee (In the Know and Business Law Basics- Jeffrey Rubin and Jim Schulwolf)</td>
<td>Ongoing</td>
</tr>
</tbody>
</table>

**PLAN ASSESSMENT AND UPDATE:** It is essential for proper implementation to regularly review the In-House Counsel Task Force Strategic Plan to measure the plan effectiveness and adjust the plan as necessary. In order to achieve this, the following steps are to be taken.

<table>
<thead>
<tr>
<th>Task</th>
<th>Participants</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Review Business Law Section in-house counsel membership numbers</td>
<td>Section Staff In House Counsel Task Force Corporate Counsel Committee (Philip Long and Meg Milroy)</td>
<td>Twice per year: January and September</td>
</tr>
<tr>
<td>Review Business Law Section in-house counsel meeting attendance numbers for Spring, Annual and Fall Meetings</td>
<td>Numbers Provided by ABA Staff In House Counsel Task Force Corporate Counsel Committee</td>
<td>After each meeting</td>
</tr>
<tr>
<td>Activity</td>
<td>Responsible Parties</td>
<td>Frequency/Methods</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------</td>
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<tr>
<td>Review Business Law Section leadership in-house counsel numbers</td>
<td>(Philip Long and Meg Milroy)</td>
<td>Twice per year: January and September</td>
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<td></td>
<td>• Numbers Provided by ABA Staff</td>
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<td></td>
<td>• In House Counsel Task Force</td>
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<td>• Corporate Counsel Committee (Philip Long and Meg Milroy)</td>
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<tr>
<td>Periodically survey in-house counsel as a follow-up to implementation of</td>
<td>In House Counsel Task Force</td>
<td>After one year of implementation of plan</td>
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<tr>
<td>this plan</td>
<td>• Corporate Counsel Committee (Philip Long and Meg Milroy)</td>
<td></td>
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<tr>
<td>Formally review and revise strategic plan</td>
<td>In House Counsel Task Force</td>
<td>September each year</td>
</tr>
</tbody>
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