MEETING OF OFFICERS, COUNCIL AND COMMITTEE CHAIRS

Thursday, September 13, 2018
7:30 – 9:30 a.m.
Manchester Ballroom AB, 5th Floor
Fairmont Austin
Austin, TX

AGENDA

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<th>Item</th>
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<td><strong>Introductions and Special Guest:</strong></td>
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<td>1. Call to order; Introductions; Announcements [7:30]</td>
<td>Chris Rockers</td>
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<td>2. Report from ABA President [7:40]</td>
<td>Bob Carlson</td>
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<td>3. <strong>Report from the ABA Board of Governors [7:50]</strong></td>
<td>Kevin Shepherd</td>
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<td><strong>Action Items:</strong></td>
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<td>4. <strong>Approval of Minutes: April 14 Council Meeting; July 24 Council Meeting; and August 5 Business Meeting [7:55]</strong></td>
<td>Jeannie Frey</td>
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<td>5. <strong>Approval of Advance Strategic Plan [8:00]</strong></td>
<td>William Rosenberg</td>
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<td>6. <strong>Approval of In-House Counsel Strategic Plan [8:10]</strong></td>
<td>AJ Bosco/Anne Gwal</td>
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<td>7. <strong>Approval of Guidelines on the Appointment and Use of Special Masters in Federal and State Civil Litigation [8:20]</strong></td>
<td>Bill Johnston</td>
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<td><strong>Reports:</strong></td>
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<td>8. Officer Reports</td>
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<td>8.1 Chair [8:25]</td>
<td>Chris Rockers</td>
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<td>8.1.1 Highlights from Section Scorecard</td>
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<td>8.1.2 <strong>Discussion of One ABA New Membership Model</strong></td>
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<td>8.2 Chair-Elect [8:35]</td>
<td>Vicki Tucker</td>
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<td>8.2.1 Chief of Diversity and Inclusion Report</td>
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8.2.2 2018-2019 Council Committee Assignments
8.2.3 Committee Chair Appointments
8.2.4 2018-2019 Meeting Dates

8.3 Vice-Chair [8:45] Pat Clendenen
  8.3.1 Report on The Business Lawyer
  8.3.2 2019-2020 Meeting Dates

8.4 Secretary [8:50] Jeannie Frey

8.5 Delegates to the ABA House of Delegates [8:55] Chip Lion/Barbara Mayden
  Alvin Thompson/Steve Weise
  8.5.1 Update from ABA House of Delegates Meeting, August 2018

8.6 Content Officer [9:00] Norm Powell

8.7 Budget Officer [written report] Linda Rusch

9. Council Committee Reports
  9.1 Council Committee on Committees [9:05] Elizabeth Stong
  9.3 Council Committee on Membership, Diversity and Inclusion [9:15] Nikki Munro

10. Leadership Development Committee [9:20] Larry Goldman/Jim Schulwolf


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 August 2-3, 2018, Board of Governors Meeting

DATE: August 13, 2018

Attached is the Summary of Action of the August 2-3, 2018, meeting of the Board of Governors held at the Hyatt Regency in Chicago, Illinois. 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 November 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 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 June 1 and June 21-22, 2018, meetings were approved. The minutes of the Executive Committee’s May 23, June 1, June 20 and July 9, 2018, meetings, were received.

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

The Board approved the continuation of entities created by the Board whose assignments were ongoing, and discontinued those that had completed their tasks.

The Board made recommendations to the House of Delegates regarding the continuation and discontinuation of special committees and commissions. The recommendations are set forth in the Board’s Transmittal Report to the House, Report No. 177A. Copies of Report No. 177A are available from the Policy and Planning Division.

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 June 22, 2018, meeting; b) accepted the ABA/FJE restricted grants and contributions received or awarded through June 30, 2018, and not previously reported, as requested by the Association’s Financial Services Division.

The Board adopted a memorial resolution for former secretary Herbert D. Sledd of Lexington, Kentucky.

MATTERS FOR DIRECT BOARD ACTION

2.1 Consideration of House Reports

The Board considered and recommended approval of Proposal 11-12. The Board also considered Resolutions 101 and 177 and recommended to the House of Delegates that they be approved as amended.

2.2 Consideration Regarding New Membership Model

The Board received a report regarding a new ABA Membership Model from Tracy A. Giles, Chair, Standing Committee on Membership; Jack L. Rives, ABA Executive Director; James Dimos, ABA Deputy Executive Director; Michael Kreisberg, ABA Chief Membership Officer; and Bob Domenz, Chief Executive Officer of Avenue. The Board approved the “bundle” of benefits as presented.
In executive session, the Board discussed and took additional action regarding the financial impact.

2.3 **ABA Retirement Funds**

The Board, sitting as members of the ABA Retirement Funds, received a report from Raymond C. Marshall, President, and Scarlett Ungurean, Executive Director, ABA Retirement Funds, regarding the work of the ABA Retirement Funds.

2.4 **American Bar Foundation**

The Board, sitting as members of the American Bar Foundation ("ABF"), received a report from ABF Vice President David S. Houghton (President Ellen J. Flannery was unable to attend the meeting) and Ajay K. Mehrotra, Executive Director, regarding the work of the ABF.

2.5 **Report from Board Governance Committee Survey Responses**

In executive session, the Board received a report from the Board Governance Committee and noted that the recommendations would be considered by the Board at a future meeting.

2.6 **Reports from Committee Chairs**

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

2.7 **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. (5.4 was removed from the Consent Calendar and discussed by the Board. See 5.4 below.)

2.8 **Consideration/Adoption of Strategic Plan**

The Board adopted the Strategic Plan presented by William R. Bay, Chair, Strategic Planning Working Group.

2.9 **ABA CEELI, Inc.**

This item was deferred to the November 2018 meeting. It was noted that the minutes of the November 12, 2017, meeting of ABA CEELI, Inc., would be presented at the November 2018 Board meeting.
2.10 Introduction of New Board Members

The members of the incoming Board class of 2018-2021 were introduced by the outgoing Board members.

WRITTEN INFORMATIONAL REPORTS

3.30 Membership Report

The Board received a report from the Standing Committee on Membership.

MEMBER SERVICES

A. MATTERS FOR REVIEW BY THE BOARD

3.1 Request from Section of Environment, Energy, and Resources for Bylaws Amendments

The Board approved the request from the Section of Environment, Energy, and Resources to amend its Bylaws with the understanding that: Article 5.9 regarding meeting at the ABA Annual Meeting will be implemented in compliance with the ABA Constitution and Bylaws; and Article 6.1 regarding the annual business meeting of the Section would be withdrawn.

3.2 Request from American Bar Endowment for Exception to ABA Email Policy

The Board approved the request of the American Bar Endowment (ABE) for an exception to the email policy in the ABA Policy and Procedures Handbook, which would allow ABE to promote its plans to ABE’s members via the ABA’s email distribution system from September 1, 2018, to August 31, 2019. ABE’s use of the ABA’s email services will remain subject to approval of the Member Services Committee and must comply with current ABA policies and procedures on email marketing as determined by the Executive Director. ABE has no right to use ABA email address information other than via the ABA’s email distribution system. ABE will reimburse ABA for these services.

3.3 Request from President-Elect Robert M. Carlson to Create or Continue Special Advisors

The Board approved the request from President-Elect Robert M. Carlson to create 12 special advisors for 9 entities and continued 63 special advisors for 39 entities.

3.4 Request from Standing Committee on Publishing Oversight to Revise the ABA Policy and Procedures Handbook (Greenbook) Chapter 6

The Board deferred action on the request of the Standing Committee on Publishing Oversight to amend certain sections of Chapter 6 of the Policy and Procedures Handbook (aka Greenbook) to provide an opportunity for the ABA Office of General Counsel to review.
3.5 Request from President-Elect Robert M. Carlson to Amend Jurisdictional Statement of the Commission on the Future of Legal Education

The Board approved the request from President-Elect Robert M. Carlson to amend the jurisdictional statement of the Commission on the Future of Legal Education to expand the membership from 10 to 12 members.

PROFESSION, PUBLIC SERVICE AND DIVERSITY

A. MATTERS FOR REVIEW BY THE BOARD

4.1 Nominations and Request to Terminate Representative to Outside Organization

a. A-E-F-C Pension Plan Administration Committee

The Board elected Ilene Knable Gotts of New York, New York, to a three-year term on the A-E-F-C Pension Plan Administration Committee to begin at the conclusion of the 2018 Annual Meeting and expire at the conclusion of the 2021 Annual Meeting. In addition, Mr. Carlson will recommend to the A-E-F-C Pension Plan Administration Committee that Ilene Knable Gotts be elected to a one-year term as Chair of the A-E-F-C Pension Plan Administration Committee.

b. ABA Journal Board of Editors

The Board approved the request of the ABA Journal Board of Editors to elect Pervin Taleyarkhan to a three-year term to begin at the conclusion of the 2018 Annual Meeting and expire at the conclusion of the 2021 Annual Meeting.

c. Board of Elections

The Board elected The Honorable Beth Baker of Helena, Montana, Associate Justice of the Montana Supreme Court, as Chair; Penina K. Lieber of Pittsburgh, Pennsylvania, and Alan Van Etten of Honolulu, Hawaii, as members of the Board of Elections to serve one-year terms to begin at the conclusion of the 2018 Annual Meeting and expire at the conclusion of the 2019 Annual Meeting.

d. International Bar Association Council

The Board elected ABA President Hilarie Bass as the ABA representative to the International Bar Association for a three-year term to begin October 1, 2018, and expire October 1, 2021.

e. National Construction Dispute Resolution Committee

The Board re-elected Donald G. Gavin of Vienna, Virginia, for a three-year term as the ABA representative to the American Arbitration Association National Construction Dispute Resolution Committee to begin at the conclusion of the 2018 Annual Meeting and expire at the conclusion of the 2021 Annual Meeting,
with the understanding that, because the current representative has served in this position since 2012, the Section of Public Contract Law should consider new members to serve in this position.

f. Terminate ABA Representative to America Invents Act Pro Bono Advisory Council

The Board approved the request of the Section of Intellectual Property Law to remove the America Invents Act Pro Bono Advisory Council, which has ceased operations, from the list of ABA Representatives to Other Organizations.

4.2 Awards

a. The Board approved the request of the Section of Intellectual Property Law to revise the qualifications for the Jan Jancin Award. The revised language adds a diversity component and provides more detail to the criteria.

b. The Board approved the request of the Section of Antitrust Law to establish the Consumer Protection Law Student Essay Project which the Section’s Council approved funding for at its Spring Meeting on April 20, 2018.

c. The Board approved the request of the Health Law Section to create a new award entitled ABA Health Law Section Emerging Young Lawyers in Healthcare that honors ABA Health Law Section young lawyer members who exemplify a broad range of achievement, vision, leadership, and legal and community service in health law.

d. The Board approved the request of the Section of Environment, Energy, and Resources (Section) to co-sponsor the National Congress of American Indians’ Tribal Climate Action Youth Leadership Project writing competition and for the Section to provide financial support for the 2018, 2019, and 2020 calendar years to be paid from Section funds.

4.3 Request from Working Group to Advance Well-Being in the Legal Profession to Initiate Substance Use Disorder and Mental Health Campaign, Including a Pledge for Legal Employers

The Board approved the request of the ABA Working Group to Advance Well-Being in the Legal Profession to begin a substance use disorder and mental health campaign within the legal profession to raise awareness and facilitate a reduction in the incidence of problematic substance use and mental health disorders. The Board also approved the use of a pledge to be used with participating legal employers.

4.4 Requests from President-Elect Robert M. Carlson to Amend Jurisdictional Statements

a. ABA Rule of Law Initiative

The Board amended the jurisdictional statement of the Rule of Law Initiative Council to discontinue the voting director for the CEELI Institute and increase the number of at-large members from 12 to 13.
b. **Center for Innovation Governing Council**

The Board approved the request of President-Elect Robert M. Carlson to amend the jurisdictional statement of the Center for Innovation Governing Council to allow for one additional person to serve, bringing the total number of members to 15.

4.5 **Requests from ABA Rule of Law Initiative**

a. **Updated List of Approved Countries of Operation, Donors and Thematic Program Areas**

The Board approved the request of the ABA Rule of Law Initiative to receive a subgrant from Civic Initiatives, a Serbia-based organization established in 1996, to support civil society in monitoring how effective civil society is at advocating for their positions, and how advocacy strategies could be improved.

b. **Memoranda of Understanding with Partner Organizations**

(i) **Ministry of Justice of the Republic of Uzbekistan**

The Board approved the request of the ABA Rule of Law Initiative to enter into a Memorandum of Understanding (MOU) with the Ministry of Justice of the Republic of Uzbekistan, subject to review and approval of the MOU by the Office of the General Counsel, and a signed copy filed with the Division for Policy and Planning.

(ii) **Libya**

The Board approved the request of the ABA Rule of Law Initiative to enter into a Memorandum of Understanding (MOU) with the Libya Young Lawyers' Association, subject to review and approval of the MOU by the Office of the General Counsel, and a signed copy filed with the Division for Policy and Planning.

4.6 **Requests from Fund for Justice and Education to Create Program Support Funds**

a. **Migrant Children and Family Initiative**

The Board approved the request of the Fund for Justice and Education to create the Migrant Children and Family Initiative Program Support Fund, to seek outside funding for this work, and if deemed appropriate, to distribute funds to outside organizations to advance the objectives of the initiative.

b. **Standing Committee on Gun Violence**

The Board approved the request of the Fund for Justice and Education to establish a Program Support Fund for the Standing Committee on Gun Violence and to seek outside funding for this work.
4.7 Request for Continuation of the Veterans Legal Services Initiative

The Board did not take action on the request for continuation of the Veterans Legal Services Initiative and its Program Support Fund as the item was withdrawn. The Board supported the August 2, 2018, memorandum from ABA Executive Director Jack L. Rives, with the understanding that this is a staff function.

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.

a. Section of Antitrust Law
   i. to co-sponsor certain Section “Committee Programs” with specific outside entities in the 2018-2019 Association year.
   ii. to co-sponsor with any ABA-accredited law school the Section’s presentation of “Why Antitrust/Why Consumer Protection Law?” program during the 2018-2019 ABA fiscal year.

b. Section of Science & Technology Law
   to co-sponsor Section committee programs with certain outside entities.

c. Public Education Division
   to co-sponsor the 2020 Women’s Vote Centennial Initiative by being listed as a coalition partner.

FINANCE

A. MATTERS FOR REVIEW BY THE BOARD

5.1 Requests to Make Contributions to Outside Organizations

a. Section of Family Law

   The Board approved the request of the Family Law Section (Section) to contribute up to $1,000 to Tucson’s Primavera Foundation, which promotes social and economic justice and provides “pathways out of poverty through safe, affordable housing, workforce development, and neighborhood revitalization.” The contribution will be made from Section funds as part of the community service component of the Section’s conference.

b. Section of Environment, Energy, and Resources

   The Board approved the request of the Section of Environment, Energy, and Resources (Section) to make financial contributions to carbon offset providers
from Section funds of up to $5,000 annually for fiscal years 2018-2019, 2019-2020 and 2020-2021.

5.2 Requests from Fund for Justice and Education

a. Create Endowment to Support the Legal Opportunity Scholarship Fund

The Board did not take action on the request of the Fund for Justice and Education to create an endowment to support the Legal Opportunity Scholarship Fund. This item was withdrawn.

b. Create Program Support Fund for Standing Committee on Gun Violence

The Board approved the request of the Fund for Justice and Education to establish a Program Support Fund for the Standing Committee on Gun Violence and to seek outside funding for this work.

5.3 Request to Approve FY2019 Consolidated Budget

The Board approved the Consolidated FY2019 Budget of $203.9 million of revenues and $210.9 million of expenses.

5.4 Reconstitution of A-E-F-C Pension Plan Administration Committee

The Board amended its action of June 22, 2018, to reconstitute the A-E-F-C Pension Plan Administration Committee effective at the conclusion of the 2018 Annual Meeting.

5.5 Request to Approve Policy Regarding General Revenue Funded Committee Meetings

The Board created a policy regarding general revenue funded committee meetings. This policy does not apply to Section committees or programs, nor does it apply to Divisions that must operate within their assigned budgets.

5.6 Grant Awards Modification Report (Board Acceptance)

The Board accepted the restricted grants totaling $7,183,929 awarded to the Fund for Justice and Education and not previously reported.
ABA BUSINESS LAW SECTION

MINUTES OF THE MEETING OF
THE OFFICERS, COUNCIL, AND COMMITTEE CHAIRS
BUSINESS LAW SECTION SPRING MEETING
Rosen Shingle Creek, Orlando Florida
Saturday, April 14, 2018

Welcome and Introductions

1. Call to Order; Introductions

The Spring 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 welcomed everyone and asked all attendees to introduce themselves. A list of all attendees, in is attached as Exhibit A.

2. Remarks from ABA President

Mr. Rockers introduced Hilarie Bass, ABA President. He noted some of Ms. Bass’s many professional achievements, including her current role as Co-President of the Greenberg Traurig law firm, former Chair of the ABA Section of Litigation and former Chair of the ABA Committee on Rules and Calendar and member of the ABA Board of Governors.

Ms. Bass thanked Mr. Rockers and expressed appreciation for his and other Section members’ attendance at a conference the previous day for an ABA pro bono project for homeless youth, for which the ABA has partnered with Disney. Ms. Bass provided an update on work being done on several significant initiatives designed to enhance ABA membership and attract new members, particularly younger attorneys, to the ABA. Ms. Bass stated that a new membership pricing model has been developed to make membership dues more affordable and attractive for younger attorneys, while dues for more experienced attorneys will generally stay the same, or go down slightly. The number of membership price points will be dramatically reduced, from the current 157 categories to five. A few additional categories will be created, including for retirees, international attorneys and paralegals, which will also fit into the five price levels.

Ms. Bass explained that work was still being done to determine what would be included for the ABA membership fee, such as membership in one or more Sections without having to pay an additional fee, and having a significant amount of downloadable content available without encountering a paywall of the Section or other entity that created the content.

Ms. Bass noted other work being done to transform the ABA and assure its future viability, including reorganization of the current 92 Standing Committees and Commissions, providing early retirement opportunities for long-term ABA Staff, eliminating multiple levels of middle management, and development of a new ABA website. Standing Committees and Commissions will be aggregated into Centers relating to common topics, such as a Center for Education and a Center for Public Engagement. In addition, all Centers are aligned with one or more of the four goals of the ABA. The funding needs for individual Standing Committees and Commissions – all
of which are funded out of general operating funds – is also being scrutinized in light of current realities. Ms. Bass stated that the new ABA website was expected to be rolled out in early summer.

Mr. Rockers thanked Ms. Bass for her presentation. He noted that one of the nine Centers formed as part of the realignment project was the Center for Member Practice Groups, which will be led by Amy Eggert, and two Managing Directors who will report to Ms. Eggert and managed multiple Sections and other entities. Sue Tobias has been appointed as one of these Managing Directors, and will manage 12 Sections, while continuing in her role as Director of the Business Law Section. Mr. Rockers asked the Council members, Committee Chairs and other attendees to congratulate Ms. Tobias on her new role, which recognizes her leadership and effectiveness. The meeting attendees gave Ms. Tobias a round of applause.

3. Report of the ABA Board of Governors

Mr. Rockers introduced Kevin Shepherd, the Section’s Liaison from the ABA Board of Governors. Mr. Shepherd reiterated that the Board of Governors is committed to the transformational changes described by Ms. Bass, to assure that the ABA is effective for the long term. He encouraged everyone in attendance to contact him with any questions and concerns that they wished be communicated to the Board. He also expressed his appreciation for how well the Business Law Section operates, as evidenced by the strong attendance and smooth functioning of the Spring Meeting.

Action Items


Jeannie Frey, Section Secretary, requested approval of the minutes, as amended, of the Council Meeting held on Wednesday, January 13, 2018, at the Section’s Midwinter Leadership Meeting at Newport Coast, California. A draft of the minutes was included in the meeting materials distributed to Section leadership prior to the Council Meeting. Upon motion duly made and seconded, the minutes were unanimously approved by the Council.

Reports

5. Officer Reports

5.1 Chair

5.1.1 Update on One ABA

Mr. Rockers noted certain elements of the new ABA membership framework being considered at that time. These include unlimited access for all ABA members to a CLE library with content from all Sections, Divisions and Forums. Surveys of ABA members and potential members by Avenue, an outside consulting firm, found that ready access to law-related content was an important factor for individuals in determining the value of ABA membership. Avenue also found that new admittees to the bar were willing to pay for an ABA membership, so the ABA will be ending its practice of providing free one-year memberships to new lawyers. Other aspects of the membership pricing structure are based on Avenue’s survey findings.

Mr. Rockers noted that the consulting firm determined that there were seven “Must-Do” items for the ABA to succeed in the future:
1. More effective marketing to expand the association’s reach;
2. More robust product bundle;
3. Significantly improve the member experience and help members extract value from their ABA membership;
4. Enhance the acquisition strategy to attract lawyers within their first four years of practice;
5. Retain senior dues-paying members;
6. Improve awareness of the ABA brand, and consistency of branding activities across the association; and
7. Address negative perceptions of the ABA.

Mr. Rockers, Ms. Tobias, Vicki Tucker and others are attending weekly conference calls to discuss the One ABA plan, and many of the details are still being determined. The ABA House of Delegates will consider a resolution on new dues categories and rates at the ABA Annual Meeting in August, with implementation planned for FY 2019-2020. He encouraged anyone who had any questions or ideas to contact any of them to discuss those issues or concerns.

5.1.2 Update on Budget Review Task Force and February Budget Report

Mr. Rockers noted that after the Section budget was passed last year, it became clear that the budget and its components needed to be evaluated in light of both fiscal realities and current Section goals. A Budget Task Force was created, chaired by Linda Rousch and otherwise comprised of the ladder Officers and Chairs of the three Council Committees. The Task Force met every few weeks since early 2018. Early on, the Task Force developed lodestars, or core principles against which each line item was considered, to assess how effectively such expenditures supported the Section’s goals and purposes.

Ms. Rousch and Ms. Tobias Linda and Sue worked together to reorganize the budget segments, so that similar expenditures – such as those relating to leadership, meetings, membership outreach, and Staff – could be considered together. Mr. Rockers noted that the Budget Task Force was scheduled to finish its work and finalize its recommendations for the FY 2019 budget by mid-May, at which point it will be presented to the Officers, and be voted on by the Council in July.

Mr. Rockers also reviewed the Budget Variance Report for February 2018. He noted that Section dues were down slightly. Personnel costs were up slightly, reflecting the fact that the Section was at a full Staff level. There was a small variation from budget in overhead expenses, largely due to timing issues.

5.1.3 Section Scorecard

Mr. Rockers reviewed some of the highlights of the Section Scorecard, showing the Section’s progress in key areas since the Annual Meeting in September 2017. He noted that the Scorecard is a great tool developed by former Section Chair Dixie Johnson. For Q2 of the 2017-2018 fiscal year, there were 355,000 page views of the Section website, plus another 105,000 hits on the BLT website. These numbers indicate that the Section is getting members engaged through accessing our online content. The 24% open rate for BLT emails well exceeded the industry average of 17%.

The Section had a 9% increase in new lawyer members joining the Section compared to Q2 of the prior year. The In the Know and Business Law Basics programs continue to be very popular with Section membership, with 3,813 registrants for the quarter. These programs help members see the value of Section membership, especially for members who cannot attend the in-person meetings.
The Section Publications program had a successful quarter in Q2, including sales of over 1700 copies of the *A Manual of Style for Contract Drafting*.

5.1.4 2018 Section Annual Meeting

Mr. Rockers noted that the 2018 Section Annual Meeting will be held in Austin, TX at the Fairmont Austin and Austin Convention Center, September 13-15. Mr. Rockers encouraged everyone to register for the hotel as soon as possible after notice that registration has opened, noting that there will be competition for hotel reservations in Austin due to other events occurring at the same time, including a popular college football matchup that weekend.

5.2 Chair-Elect

5.2.1 Chief of Diversity and Inclusion

Mr. Rockers introduced Vicki Tucker, for the Section’s Chair-Elect report. Ms. Tucker, who as Chair-Elect also serves as the Section’s Chief of Diversity and Inclusion, noted that work is proceeding to update the Section’s Diversity and Inclusion Plan, last updated in 2014. Ms. Tucker, together with Diversity and Inclusion Committee Chair Chris Young, Council Member Sharon Weiss and Section Committee Manager Leslie Archer, are working on a draft update document that will be circulated for comment by Section leaders.

Ms. Tucker thanked the Programs Committee and the Program and Committee Chairs who helped assure that all Section-sponsored CLE programs satisfied the CLE program diversity requirements adopted by the ABA’s Board of Governors. She reminded the Committee Chairs and Council members that the CLE diversity requirements also applied to stand-alone Committee meetings as well as the Section’s *In the Know* and *Basics* webinars.

Ms. Tucker asked that any Committee Chair who had not yet appointed a Director to the Diversity and Inclusion Committee do so. She also encouraged the Committee Chairs to keep diversity in mind when making Subcommittee Chair and Vice Chair appointments, and when appointing members to Committee Task Forces.

Ms. Tucker noted that she would like to report best practices in promoting diversity in the Section, and asked the Committee Chairs to email her with short bullet points explaining actions they’ve taken to support diversity within the Committee.

5.2.2 Committee Chair Appointments

Ms. Tucker noted that one way in which she can promote diversity within the Section is through Committee Chair appointments. To date, most of the new Committee Chair or Co-Chair appointments she has made were for diverse attorneys. She announced the following new Committee Chair appointments made and pending:

**Substantive Committees**

- Business Law Education – TBD
- Consumer Financial Services – Katrina Christakis
• Corporate Social Responsibility – Chris Johnson
• Credit Unions – Peter Woods
• Director and Officer Liability – John Mark Zaberkiewicz
• Dispute Resolution – John Levitske, Jr.
• Federal Regulation of Securities – Robert Buckholtz
• Government Affairs Practice – Brett Lininger
• Health Law and Life Sciences Committee – Angela Humphreys
• Institutional Investors – Cynthia L. Collins
• Mergers and Acquisitions – Wilson Chu
• Taxation – Imke Gerdes
• Trust Indentures and Indenture Trustees – Kristin Going
• Uniform Commercial Code – Candace Zierdt

Administrative Committees

• Judges Initiative – Judge Christopher Yates
• Leadership Development – new Co-Chair Kathy McLeroy
• Pro Bono – John Quinn
• State and Local Bar Relations – Merritt Cole, current Chair, has agreed to extend his term by one year
• Young Lawyer – Monique Hayes

Ms. Tucker also thanked all outgoing Chairs of these Committees for their service.

5.2.3 2018 - 2019 Meeting Dates and Locations

Ms. Tucker announced that due to the effects of the hurricane that hit Puerto Rico, the 2019 Midwinter Leadership Meeting had to be relocated. The meeting will now be held in Amelia Island, off the coast of Jacksonville, Florida. She reviewed all the 2019 meeting dates and locations:

2019 Midwinter Leadership Meeting
January 17-20, 2019
Amelia Island, Florida
Hotels: Ritz-Carlton, Amelia Island
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  
Washington, D.C.  
Hotel: Marriott Marquis  

5.3 Vice Chair  

Mr. Rockers ask Pat Clendenen to give the Vice Chair report.  

5.3.1 Report on The Business Lawyer  

Mr. Clendenen noted that the principal responsibility of the Vice Chair is to serve as Editor-in-Chief of the *The Business Lawyer*. He noted that *The Business Lawyer* is the Section’s law review publication. The Section is fortunate to have four professional editorial Staff: Diane Babal, Production Manager; Greg Duhl, Associate Executive Editor-in-Chief; and Faculty Editors Jacqueline Milner and Steve Cleveland. *The Business Lawyer* is also supported by its strong Editorial Board. Mr. Clendenen announced that he has appointed six new members of the Board, how have diverse backgrounds and areas of subject-matter and industry expertise: Karle Ege, Judge Jean FitzSimon, Chris Johnson, Jenna Nan, and Hank DuPont. Both Mr. Johnson and Mr. DuPont previously served as Section Advisors, as did current Editorial Board member Dick Pound. Mr. Clendenen asked the Committee Chairs to let him or next year’s Editor-in-Chief, Jeannie Frey, know if they are aware of other Section Advisors who have an interest in scholarship and might be interested in serving on the *TBL* Board.  

Mr. Clendenen provided an update on the status of current and the upcoming issues of *The Business Lawyer*. The Winter 2017-2018 issue was published shortly before the Midwinter Leadership Meeting, and is now available online. The Spring 2018 issue is complete at approximately 270 pages and is at the printer: it is comprised of three articles, two surveys and an abstract from the Mendes Hirschman Student Writing Contest. One of the surveys were done by members of the Mergers and Acquisition Committee, the other by members of the Consumer Financial Services Committee, and each represents a tremendous amount of work by many individual authors.  

The Summer 2018 Issue is also full, with three articles, one report, and two surveys. This issue is slightly larger than most, at 388 pages. The surveys were authored by the Corporate Compliance Committee and the Federal Regulation of Securities Committee. The fourth issue, Fall 2018, is close to being full, with three articles, one keynote address, one report and one survey. At least two potential articles for this issue are in peer review.  

Mr. Clendenen noted that there are currently over 30,000 subscribers to *The Business Lawyer*, which is also distributed electronically to law students.  

Mr. Clendenen reported on the many efforts that he and members of the Editorial Board and Staff have made in the past year to assure that authors and potential authors of scholarly articles or surveys on business law topics consider and recognize *The Business Lawyer* as a prestigious publication in which to publish. These efforts include letters sent to the National Conference of
Supreme Court Justices for the 50 States and territories, a letter to by Judge Jean FitzSimon to the Federal District Court Judges and many District Court and Magistrate Judges in her District; outreach by Greg Duhl and Jonathan Lipson to the National Association of Law School Deans; and individual outreach efforts by Editorial Board members to potential authors and to certain Section Committees for which they serve as a liaison. The Business Lawyer is also now featured on the Scholastica website, along with other law journals that focus on business law, and serves as a new channel through which authors can submit articles for consideration. Mr. Clendenen also noted that from time to time articles on relevant topics that are not appropriate for a law journal such as The Business Lawyer may be referred to Business Law Today for its consideration.

Mr. Clendenen asked the Council members and Committee Chairs to let him, Vicky Tucker or Jeannie Frey know if they have any suggestions for new members of the Editorial Board. He also encouraged the attendees involved in legal scholarship to consider publishing with The Business Lawyer.

Efforts to develop an effective online format for The Business Lawyer are continuing. A Working Group of Editorial Board members has been formed to evaluate options, and will be reviewing a proposal from a potential vendor.

5.3.2 2019 - 2020 Section Meeting Dates

Mr. Clendenen reviewed the following locations for the FY 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

5.4 Secretary

Jeannie Frey, the Secretary of the Section, reported that she had nothing to report that was not covered in other Officer reports.

5.5 Content Officer

Norm Powell, the Section Content Officer, reviewed several key indicators regarding access and development of Section content, as shown on the Section Content Scorecard. He noted that the new online platform of Business Law Today went live approximately six months prior, and as shown on the Content Scorecard has experienced consistent strong growth, with each month showing a higher number of page views (including almost 40,000 in March 2018). Mr. Powell also referred to the Book Financials section of the Section’s Content Scorecard on, which showed a consistently strong net revenue performance by the Section’s publications program.

Mr. Powell thanked Program Committee Co-Chairs Alison Manzer and Kevin Johnson for their leadership in establishing a new practice of requiring the program chairs for all CLE programs to
provide an abstract of their program. He also thanked all the Committees for their responsiveness, which resulted in valuable content being created consisting of 88 program abstracts for each CLE program presented at the Spring meeting. These abstracts are now available to view by the approximately 95% of Section members who were not able to attend the meeting, or those who attended the meeting but were unable to attend all the programs they were interested in.

Mr. Powell reported that the Content Committee is actively working on assuring that Section Committees have multiple, easy-to-use ways to make Committee-developed content available on a variety of platforms. He made the point that Section members have different needs and preferences for how they access content: some may attend in-person programs, many others like the convenience of webinars, while others would prefer to watch a video or listen to a podcast or audio file. The Content Committee is also “reimagining” the role of Content Directors. In part, the Content Directors will help assure that content developed by the Committee in any form has an opportunity to be widely distributed through inclusion, excepts or references in *Business Law Today*. He asked that all Chairs of substantive Committees appoint a Content Director from their Committee, to be engaged in this and many other exciting Content-promotion initiatives.

Other focus areas of the Content Committee include developing new and enhanced ways to recognize authors and other content generators, such as by tracking when and where Business Law content is cited in court opinions or other publications. The Content Committee is also looking to institutionalize the *In the Know* and *Business Law Basics* webinar programs and avoid overburdening individual Section leaders who have played crucial roles in establishing and continuing these very popular Member benefit programs.

[7.1] Report of Council Committee on Content Strategy  [Bracketed number shows original Agenda item number]

Mr. Rockers noted that the report of the Council Committee on Content Strategy would be moved up on the Agenda, to accommodate Committee Chair Michael’s Flemings travel schedule. Mr. Flemings noted that the Council Committee is responsible for overseeing content strategy over the long term, as opposed to the more immediate operational focus of the Content Officer and the Content Committee. The Council Committee oversees and supports the work of the Section’s content-related Administrative Committees and publications entities in achieving the Section’s strategic content goals. These Administrative Committees and publication entities are: *The Business Lawyer*, *Business Law Today*, Content Committee, Programs Committee, Publications Board, and the Technology Committee. In addition, the Council Committee has asked the International Coordinating Committee to liaise with the Council Committee, in connection with the Coordinating Committee’s work relating to content pertaining to international business law issues.

The Council Committee has been engaged in reviewing the approximately 40 individual content strategy goals that were detailed in the Section’s current Strategic Business Plan, which itself was based on the Advance IV several years ago. The Council Committee asked the content-related Administrative Committees and publication boards to report on the degree to which they were working on various content strategy goals, and to identify areas in which they were successful or were making progress, or where they had encountered obstacles. Based on that feedback and further review of the content goals, the Council Committee is analyzing which of the goals should be prioritized, updated, or reframed to best reflect current Section content strategy and resources. The Council Committee expects to complete this work before the Section Annual meeting in September, and to report on proposed revised strategic content goals then.
Mr. Fleming further reported that he and Mr. Powell are working to draft an editorial policy for the Section, as required by new ABA policy. This policy would provide standards relating to publication decisions regarding certain potentially controversial and other content.

5. [Reports, Continued]

5.6 Delegates

Moment of Silence

Mr. Rockers asked for a moment of silence in memory of Chip Lion’s twin brother Steve, who recently passed away.

5.6.1 ABA House of Delegates Meeting, February 2018

Mr. Rockers introduced Barbara Mayden, Alvin Thompson and Steve Weise, who along with Chip Lion, are the Section’s Delegates to the ABA House of Delegates.

Ms. Mayden reported that all resolutions that the Section Council had voted to approve at the Midwinter Leadership meeting were approved by the House of Delegates, except for two that were withdrawn from consideration. The resolutions that were withdrawn were: the Family Law resolution on the tax treatment of alimony payments when made and received, and the resolution regarding gender bias issues in the U.S. Armed Forces.

Ms. Mayden reported that of the two resolutions the Delegates had been instructed by the Council to oppose, one was passed despite the Section’s opposition and the other was withdrawn. Mr. Weise explained that the resolution that passed involved approval of ABA accreditation for a Privacy Specialization credential. The Section had opposed such action on the grounds that “privacy” is a very broad concept, covering a wide range of laws and industries; therefore, such a credential could be misleading to the public. The other resolution that was withdrawn was for approval of the proposed Uniform Unclaimed Property Act. The Section had opposed this draft Uniform Act due to specific constitutional concerns. Mr. Weise noted that the Section Delegates, as well as former Section Chair Bill Johnston in his capacity as a Delaware Delegate, were very active in discussing the Section’s concerns. The House voted to postpone consideration of the proposed Uniform Act indefinitely. He further noted that after the House of Delegates meeting, Section Delegates and other leaders have had numerous discussions with the Uniform Law Commission to assure that they understood that the Section’s opposition was specific to this particular set of facts. He believes that the ongoing relationship between the Commission and the Section will continue to be a positive one.

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

Mr. Bill Johnston noted that a draft of a proposed resolution regarding the benefits of use of Special Masters in federal and state civil litigation cases, was provided for information purposes in the Council meeting materials. Comments are welcomed. Work on the draft is ongoing, and has involved the cooperative efforts of a wide group of leaders from throughout the ABA, including the Business Law Section, the Section of Litigation, the Judicial Division and other ABA entities. The purpose of the resolution is to establish ABA policy to promote greater use of Special Masters in appropriate circumstances, and encourage judges to consider a more diverse and inclusive range of individuals who could serve as Special Masters. Mr. Johnston noted that the final draft of the
resolution should be ready in time for the Council to consider approval at the September Annual Meeting. It is expected that the resolution would be submitted to the ABA in November so it can be considered by the House of Delegates at its Midyear meeting in late January 2019.

6. **Report on Advance V**

Mr. Rockers asked Advance V Chair Mr. William Rosenberg to provide an update on the work of the Advance. Mr. Rosenberg thanked everyone who participated in the Advance discussions at the Midwinter Leadership meeting in January, and in particular the table reporters whose notes have been very helpful for the Steering Committee in the development of a focused and time-sensitive Strategic Plan to address key goals. He acknowledged the other Steering Committee members, Norm Powell, Nikki Munro, Chris Rockers, Jeannie Frey, Grace Powers, and Eddie Fitzgerald. Since the Midwinter meeting, the Steering Committee has discussed next steps through a series of conference calls and emails. In addition to the Advance table discussion reports, the Committee reviewed the results of a survey conducted by Section Staff of over 10,000 attorneys, including both Section members and non-members.

Mr. Rosenberg reported that the Steering Committee has concluded that the best immediate use of Section resources to achieve the Advance’s membership and retention goals is to focus on one market segment in particular: young lawyers in private practice. He noted that such focus does not mean that there will not also be efforts to promote membership and retention for other groups such as government lawyers, judges or private practitioners generally. However, it is a reflection that increasing awareness of the benefits of Section membership for young private practice lawyers is critical to the Section’s long-term success.

Mr. Rosenberg reported that the survey indicated that young lawyers are looking for benefits that will help them develop as practitioners. This includes forms, templates, distance learning and networking opportunities.

He noted the importance of the work done in the January 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. He stated that to encourage younger lawyers to attend and participate in Section meetings, financial incentives will be very important, such as reduced costs for lunches and dinners. Mr. Rosenberg mentioned that in addition to cost considerations, young lawyers in the survey expressed concerns about time commitment, and that is another factor that will need to be addressed in Section membership and retention efforts for this group.

Mr. Rosenberg reported that the Steering Committee will submit a proposed Strategic Plan to the Officers for their review, and then provided to the Council for its consideration. The plan will identify roles of Committees and others whose participation and involvement in the identified initiatives will be crucial to the success of the plan and achievement of the Section’s membership and retention goals.
7. **Council Committee Reports**

7.1 **Council Committee on Committees**

Committee Co-Chair Neal Kling gave the Council Committee on Committees report. He noted that the Committee has changed the nature of the reports the substantive Committees are asked to file. Instead of full reports twice a year, the Council Committee now requires a single report annually and a Quick Check report mid-year. The Committee is near completion of its review of the Quick Check reports. He asked that Committees Chairs who hadn’t submitted their Quick Check reports do so as soon as possible. The annual report for FY ’19 will be sent to Committee Chairs in May, with a return date in early June.

Mr. Kling reported that at the Committee had also been busy planning and hosting several meetings at this Section meeting: a First-Timers Breakfast, and a breakfast and orientation for Incoming Committee Chairs. In addition, the Committee continues to present webinars for Committee Chairs, with an upcoming webinar to focus on diversity, especially in connection with Committee leadership and succession planning. Another future webinar will focus on content.

7.2 **Council Committee on Content Strategy**

[See the summary of the Council Committee on Content Strategy report above, at page 8.]

7.3 **Council Committee on Membership, Diversity and Inclusion**

Committee Chair Nikki Munro gave the Council Committee on Membership, Diversity and Inclusion report. The Committee is working on three major projects, some parts of which are on hold pending adoption of the FY ’19 Budget and finalization of the Advance V Strategic Plan to promote engagement and retention of young lawyers. One of the Committee’s projects is implementation of the membership, marketing and outreach goals outlined in the Section’s Business Plan. In particular, since the Business Plan identified the need for the Section to do a better job in communicating the value proposition of Section membership, the Council Committee has created a Marketing Board. The Marketing Board is chaired by Peter Snell, with Brian Castro from the Council Committee serving as liaison between the Marketing Board and the Committee.

The second major task of the Committee is to implement the strategic plan for attracting and involving young lawyers to the Section. This work will commence after the Strategic Plan from the Advance V Steering Committee is completed and approved.

The third area of responsibility for the Committee is to support the Administrative Committees whose functions are most closely aligned with Membership, Diversity and Inclusion goals: Business Law Advisors, Business Law Fellows, Diversity and Inclusion Committee, International Coordinating Committee, Judges Initiative, Membership Committee, State and Local Bar Relations Committee, and the Young Lawyers Committees. Over the next few months, members of the Council Committee will be reaching out to leaders of these Administrative Committees to determine how the Council Committee can help further the Administrative Committee programmatic agenda, or remove obstacles. Council Committee liaisons will also ask the Administrative Committees to identify one or two strategic goals that Committee would like to accomplish within the next six months to one year.

Ms. Munro also highlighted outreach ideas discussed in the prior day’s Council Committee meeting. Since a key way to increase member participation and engagement is through
participation in a Committee, several strategies were discussed to encourage Committee membership. Council Committee member Meg Milroy has created a postcard that members can fill in to note Committees they would like to join. Specific tactics considered to promote Committee membership included: having Committee membership sign-up sheets at the back of the room for CLE programs; asking program chairs to encourage attendees to join a sponsoring Committee as part of the initial or concluding remarks for a CLE program; providing a link in online meeting materials to a Committee sign-up page; and having links for Committee sign-up in the meeting app. She noted that postcards and other ways to join Committees can be highlighted at Section events such as the First-Timers Breakfast. Ms. Munro observed that once a member has joined a Committee, email communications from the Committee Chair are often effective ways to make members feel more engaged.

Mr. Rockers thanked Ms. Munro for her report. He also responded to a question from Council Member Scott Ludwig regarding timing for the Advance V Strategic Plan, both of which are on track to be presented to the Council at upcoming meetings. Mr. Ludwig also expressed concern about the Section’s membership loss numbers of approximately 8,000 attorney members, which were only partially offset by the addition of new attorney members. Ms. Munro noted that the Council Committee on Membership, Outreach and Diversity is looking at the analytics to identify the specific groups in which membership loss is occurring, versus those in which the Section is successful in retaining. Much of the Council Committee’s work involves coordinating with the Administrative Committees and other Council Committees on various initiatives to increase membership and engagement. She noted that as referenced earlier in the meeting by ABA President Hilarie Bass, younger lawyers have different perspectives on Section and ABA membership, and the Section’s efforts must evolve to better reach that market segment. Mr. Rockers added that the issue of membership is multi-layered, and is a problem that the ABA as a whole is working on addressing, while the Section is addressing in numerous ways, including the Advance V’s exclusive focus on membership.


Mr. Rockers introduced Business Law Today’s Editor-in-Chief Jonathan Rubens to give the Business Law Today report. Mr. Rubens first thanked the hard-working and invaluable BLS Staff members who support BLT, including Sarah Claypoole, who joined the Staff recently as a full-time editor.

Mr. Rubens noted that the new BLT site went live approximately six months ago. He reviewed the organization of the BLT site, under which content is posted under eight designated practice areas. Within each practice areas there are designated topics, which collectively comprise the range of business law content generally created by BLS Committees and individual authors. He explained that when the new BLT was being developed, a goal was set to have at least one article and one month-in-brief item for each topic in each practice area. While BLT has been successful in obtaining and posting articles on a wide range of areas, he noted that it has been a challenge to assure regular postings on all topics on a regular basis. The BLT Editorial Board is working with Norm Powell and the Content Committee to develop new ways to work with Content Directors to help improve the volume and range of the BLT content pipeline.

Mr. Rubens stated that there are currently two Editors for each Practice Areas, although given the large number of topics falling under the Business Regulation and Regulated Industries Practice Area, a third Editor position has been created for that Practice Area.
Mr. Rubens noted the early success of the new BLT in attracting members and others to its content, noting the Section Content Scorecard data showing the increasing rate of BLT page views and the three most-viewed BLT articles.

Mr. Rubens advised that in addition to enhancement of the content pipeline for BLT, other enhancements for the site continue to be developed. Shortly before the Spring Meeting began, a new Tools resource was added to the drop-down menu of BLT resources; the Tools section will contain practice tools such as checklists and forms. He encouraged Committee Chairs to submit content of this time to be added to the Tools section. Another enhancement that will be added soon is video content. The initial set of videos are expected to be available on the BLT site in June, and will consist of video interviews of Section members (a video version of the popular Member Spotlight section of the old BLT), faculty members from some of the Spring Meeting programs, and authors of recent BLT articles. These videos were done during the meeting, in the Section lounge. In the future, BLT plans to incorporate videos of “live” content events identified by Committee and other Section leaders, such as portions of CLE programs, and other special events. Suggestions for such future video postings are welcomed.

In conclusion, Mr. Rubens noted that the new BLT site was recognized as a Webby Honoree for its redesign.

9. Publications Board

Collin Cooper gave the Publication Board report on behalf of Publications Board Chair Pete Walsh. The Publications Board has experienced good success during the 2018 fiscal year. Net revenue through March was $421,440, which is approximately $60,000 better than budgeted for this point of the year. During the Spring Meeting alone, an additional $5000 of books were sold. Mr. Cooper offered special thanks to Katrina Krause for her very effective marketing efforts of both new and existing publications.

Through April 7, 2018, the Publications program published eight books on a wide range of topics, including contract law, electronic payments, nonprofit entity law, bankruptcy, foreign investment and legal project management. An additional seven volumes are scheduled to be published by the end of FY 2018, including a three-volume set on Legal Opinions. Mr. Cooper noted that the book pipeline is also strong, with 12 book proposals having been considered this fiscal year to date, nine of which have been approved. Mr. Cooper thanked Publications Staff Rick Paszkiet and Rachel Kahn for all their support of the Publications Board and the Section Publications program.

10. Membership Committee

Committee Co-Chair Eddie Fitzgerald provided the Membership Committee report. He reviewed the specific details reflecting the Section’s net Member loss numbers discussed in the Advance meetings. He noted key membership metrics shown on the Section Scorecard. As of March 2018, the Section had 43,726 members, a slightly higher number than recent periods. This included 26,674 attorney members, 13,384 student members and 1688 associate members. The number of attorney members declined, along with the number of Committees joined by members. Approximately one-third of Section members join Section Committees. Of those that do, they typically join three Committees, slightly higher than 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.
Mr. Fitzgerald asked Committee Chairs to appoint a Membership Director to attend Membership Committee meetings and bring back information on membership trends and initiatives to their home Committees.

11. Marketing Board

Marketing Board Chair Peter Snell gave the Marketing Board report. He noted that the mission of this newly-formed Board is to assist Section leadership and committees in implementing strategies to promote the Section’s offerings and value proposition. He noted that the Marketing Board is comprised of a number of very capable Section members, each drawn from a Section Administrative Committee: Collin Cooper, Joan Durocher, Kristin Gore, Lisa Lifshitz, Jenna Nand, Robert Savoie, Lisa Stark, Peter Sullivan, and Mauricio Videla. The Marketing Board is fortunate in being assisted by Staff members Meg Spisich and Liza Nondorf. The Board met for the first time the morning of this Council meeting, and will be meeting on a monthly basis going forward. It will be evaluating what and how best to communicate to target market segments regarding the Section value proposition. Mr. Snell noted that the most effective communications methods, as well as perspectives on the value proposition, may vary for different target audiences.

12. In-House Counsel Task Force

A.J. Bosco commenced the In-House Counsel Task Force report. He noted that he and Co-Chair Anne Gwal had been involved with the Task Force for several years, from the idea stage at the Midwinter Meeting in 2015, to the current date. The creation of the Task Force was approved by then-Chair Chip Lion, and further supported in its development by the next Chair, Bill Johnston. The mission of the Task Force is to increase, retain and actively engage in-house counsel as Section members. Mr. Bosco reported that the Task Force has worked to develop a Strategic Plan to accomplish this mission.

Ms. Gwal noted that the In-House Counsel Strategic Plan was reviewed in detail at the Midwinter Meeting as part of the Advance V session. It is undergoing final changes, with implementation expected to commence this fall. The Strategic Plan contains four distinct goals:

- First, to communicate the value of Section membership to in-house counsel, including both current members and prospective members;
- Second, to develop curated content specific to in-house counsel, and provide access to such content via the Section website;
- Third, to provide a financial incentive to encourage in-house counsel to come to in-person meetings; and
- Fourth, to assure that the Section offers a forum for in-house counsel member to meet and network with their colleagues, and discuss common issue they deal with.

Ms. Gwal noted that since the Midwinter Meeting, the Task Force has had calls with numerous Committee Chairs, Task Force members and other stakeholders, to get feedback on the proposed Strategic Plan. This feedback is now in the process of being incorporated into the Plan. Initial implementation steps will include sending out emails to the Corporate Counsel listserv highlighting some of the most popular programs from the Spring Meeting and reminding those members of their ability to access program materials through the Section website and associated links. Once the In-House Counsel Strategic Plan is finalized, the Task Force will begin to reach out to Committee Chair and other Section leaders, to discuss how they can support the Plan’s implementation.
13. Liaison from the ABA Law Student Division

Cesar Escovar gave his report as the Liaison to the ABA Law Student Division. Mr. Escovar noted that the Law Student Division had recently completed its elections for governance of the Division. He announced that the Spring Meeting had the highest level of law students ever attending a Section meeting, with 147 attendees, compared to 62 law student attendees at last year’s Spring meeting and 86 students at the Annual Meeting.

Mr. Escovar recognized Alison Manzer and the Programs Committee for providing him and other law students with the opportunity to be published in Business Law Today for their abstracts and summaries of CLE programs given at the Spring meeting. In addition, work is being done to develop a law student track for future meetings, which would include professional development programming.

14. Liaison from the ABA Young Lawyers Division

Mr. Rockers then called upon Collin Cooper and Lacy Durham provide a report as Liaisons to the ABA Young Lawyers Division. Mr. Cooper began by noting some of the current YLD initiatives. These include two diversity initiatives, one of which is an educational outreach program for students from minority and other under-represented groups, called “What Do Lawyers Do?”. This program talks to the students about what it means to be a lawyer and encourages students to reach out to lawyers as mentors and consider attending law school. The other diversity initiative is known as the “EMBRACING Diversity Challenge,” with “EMBRACING” standing for Expose, Motivate, Broaden, Recognize, Advocate, Communicate, Include, Network and Grow. This program evaluates submissions from State and Local Bars regarding their diversity programs, with the top identified programs being given an award by Walmart, one of the YLD’s largest diversity sponsors. Other significant YLD initiatives include “Home Safe Home,” a public service program involving education and outreach on topics of domestic violence, child abuse, elder abuse and animal abuse; and “Fit to Practice,” which promotes awareness of the importance of physical, emotional and mental health for young lawyers, through training programs and discussions about topics in these areas, including maintaining work/life balance. Mr. Cooper stated that the Fit to Practice programs have been very popular with YLD meeting attendees.

Ms. Durham shared some of YLD’s initiatives for the 2018/2019 fiscal year. These include the “Legal Innovation Initiative”, being conducted in conjunction with the ABA Center for Innovation. This initiative takes advantage of the fact that young lawyers are typically more tech-savvy than more experienced practitioners, and are therefore in a position to help drive innovation in the legal profession. Such innovation can improve the way lawyers do their jobs, by increasing efficiency and making legal services more affordable. This initiative will also evaluate potential regulatory changes that may be needed to further such innovation. A second initiative for the 2019 fiscal year is the “Seat at the Table Initiative”, which aims to assist young women lawyers to develop fundamental skills in areas such as advocacy and negotiation. A third important new initiative is the “Men of Color Initiative,” to serve as a resource for men of color during law school and their early years of practice, and help empower them to become long-term leaders in the profession and the ABA. The final new initiative highlighted by Ms. Durham was the “No Limits Public Service Project,” focusing on domestic violence and domestic partnership issues.

Ms. Durham also shared thoughts on key elements of the value proposition of ABA and Business Law Section membership for young lawyers, including strategic programming aimed at young lawyers. She noted that the Business Law Section has a distinct advantage over other Sections in...
attracting young lawyers, due to the Section’s high amount of credible and useful content, as well as offering access through meetings to subject matter experts and legal luminaries. She stated that within YLD the Section is recognized for the tangible opportunities it offers for young lawyers to assume leadership positions and gain professional exposure.

In concluding the YLD Liaisons report, Mr. Cooper reviewed some of the YLD resolutions that will be proposed for consideration by the ABA House of Delegates.

15. **Section Director**

Section Director Sue Tobias gave the final report. She recognized the Section Managers and other Staff for all of the work they do to support all of the Section’s activities. Ms. Tobias offered special thanks to Associate Director Liza Nondorf; Meetings Director Mark Page; Content Development Manager Rick Paszkiet; and new mom and Committee Manager Leslie Archer. She also noted several talented and new members of Section Staff, such as Production Marketing Manager Meg Spisich; BLT Editor Sarah Claypoole; Program Specialist Gina Dickinson; and Program Associate Khalila Bruton. Ms. Tobias commented that Staff has enjoyed working in partnership with Mr. Rockers and other Section Officers, and looks forward to working next year with Vicki Tucker when she becomes Chair, and everyone else on the Officer ladder in the future.

Ms. Tobias highlighted many of the major projects that Staff has been working on, including:

- Revamping the Leadership Directory compilation process;
- Piloting the ABA’s new online collaboration tool, ABA Connect (formerly known as Higher Logic), which will replace the current Committee webpage platform;
- Section meetings activity since the Midwinter meeting: planning and preparing for the Spring Meeting, and for six stand-alone Committee meetings;
- Support of the three Council Committees;
- Working with William Rosenberg and the Advance V Planning Task Force; and

With respect to upcoming activities, Ms. Tobias noted that the Committee budgeting process has begun, and reminded everyone of various CLE programs, hotel and registration deadlines for the upcoming Annual Meeting. She also reviewed deadlines for the Business Law Fellows applications, Section Advisor nominations and annual Committee reports.

In concluding, Ms. Tobias thanked the Council Members and Committee Chairs for everything they do, and for their partnership with Staff. She noted that Staff is always interested in improving its work and processes, and encouraged leaders to contact her or the Staff’s Managers with any comments or suggestions.

**Final Remarks**

Mr. Rockers thanked Ms. Tobias and expressed his appreciation for the Staff’s excellent work and indispensable support for the work of the Officers and other Section leaders. He asked the attendees for a round of applause for the Section Staff, which was warmly given.

Ms. Tucker thanked Mr. Rockers for his leadership in making the Spring Meeting a success.


**Adjournment**

There being no other business, and upon a motion duly made and seconded, Mr. Rockers announced that the Council Meeting was adjourned at 5:45 p.m.

*See attached Exhibit A for a list of Meeting Attendees.*
**MEETING OF OFFICERS**  
**COUNCIL AND COMMITTEE CHAIRS**  
Saturday April 14, 2018  
3:00 pm – 6:00 pm  
Wekiwa 9, Level 2  
Rosen Shingle Creek  
Orlando, FL

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<th>NAME</th>
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<tr>
<td>Kristen Adams</td>
<td>Gulfport, FL</td>
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<td>Warren Agin</td>
<td>Boston, MA</td>
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<td>Gail Andler</td>
<td>Dana Point, CA</td>
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<td>Leslie Archer</td>
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<td>Cheryl Balough</td>
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<td>Sylvia Chin</td>
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<td>Karl Ege</td>
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MEETING OF OFFICERS  
COUNCIL AND COMMITTEE CHAIRS  
Saturday April 14, 2018  
3:00 pm – 6:00 pm  
Wekiwa 9, Level 2  
Rosen Shingle Creek  
Orlando, FL

<table>
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<tr>
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<tr>
<td>Cesar Escovar</td>
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<td>Keith Fisher</td>
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<tr>
<td>Jonathan Lipson</td>
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<tr>
<td>Chris Young</td>
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Call to Order and General Matters

1. Call to Order

A telephonic 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 3:00 p.m. Eastern Daylight Time. Section Secretary, Jeannie Frey, took minutes of the meeting.

2. Introductions

All attendees introduced themselves. A list of all attendees is attached as Exhibit A.

Chair Report

1. Highlights from the Section Scorecard

Mr. Rockers noted several highlights from the Section Scorecard, including a significant increase in May of over 36,000 page views for Business Law Today, compared between 33,000 and 34,000 in March and April.

2. Update on the Section Annual Meeting.

Mr. Rockers reported that given the strong registration numbers for the Section Annual Meeting in Austin, the Early-Bird discount period was not extended. He also noted that the Fairmont hotel is sold out. Committee Chairs were advised that a limited block of rooms is being held for speakers if needed.

Action Items

1. Consideration of Proposed 2018-2019 Section Budget

Chair-Elect Vicki Tucker introduced discussion of the proposed 2018-2019 Section budget, which was provided to attendees as part of the meeting materials, and was also distributed in advance to the Officers Committee and Committee Chairs for comment. The Executive Summary included comments on the proposed budget from Section Officers. The proposed FY ’19 Budget was developed over several months by a Budget Task Force led by Linda Rusch. The other Task Force members were Chris Rockers, Vicki Tucker, Pat Clendenen, Jeannie Frey, Michael Fleming, Nikki Munro, Elizabeth Stong and Sue Tobias. Ms. Tucker thanked Ms. Rusch for her strong leadership throughout this process.

Ms. Rusch discussed the methodology used by the Budget Task Force to develop the proposed FY ’19 budget. She noted that the Task Force was faced with the need to cut between $500,000 and $600,000 for FY ’19, assuming no change to Section Dues and General
Revenues. Even with such decreases in spending, the Section will still need to rely on funds from its Permanent Reserves (in the amount of $835,417) and Contingent Reserve (up to $20,000); these amounts are determined consistently with the Section’s Investment Policy.

Ms. Rusch noted that to assure the Budget recommendations were focused on what expenditures best served the Section’s mission and strategic goals, the Task Force developed six guiding principles, and corresponding “lodestars,” against which all budget items were reviewed. In addition, the Budget itself was reorganized so that like activities, such as all meetings (both Section and Committee stand-alone meetings) and all Membership and Marketing activities, were included in the same category. The Executive Summary provided detail on the Task Force recommendations within each category.

Meeting participants asked questions and provided comments regarding specific elements of the proposed budget. Issues discussed included the status of Consumer Fellows, and expense reimbursement and meeting registration waivers for speakers. It was noted that developing a new standard for certain items will require further dialogue; nonetheless, it is important to stay within the necessary budget parameters.

Upon motion duly made and seconded, the Section budget for FY 2018-2019 was approved in the form presented.

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

Mr. Rockers introduced Barbara Mayden, one of the Section’s delegates to the ABA House of Delegates, to begin the review of the resolutions that were slated to be considered by the House of Delegates at its meeting in Chicago in early August. Mr. Rockers noted that after the discussion of each resolution, the Council members would be asked to vote to direct the Section Delegates to Support or Oppose such resolution. The Council can also vote to take No Position on any resolution, in which case each Section delegate is free to vote his or her conscience, i.e., to vote as s/he deems in the best interests of the Section and the ABA, after considering all relevant facts.

Ms. Mayden, along with the other Section Delegates present, Paul “Chip” Lion and Steven Weise, reviewed the resolutions that would be presented to the House of Delegates, and the preliminary recommendations made by interested Section Committees. The Section Delegates and Officers responded to 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 their roles in the federal judiciary, Judge Mac McCoy, Judge Elizabeth Stong, and any other federal judges present abstained.

<table>
<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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Minutes ABA BLS Council Meeting July 24 2018
Page 2
| 10A | **American Bar Association**  
**New York State Bar Association**  
**New York County Lawyers Association**  
Urges states to adopt  
General Provisions for  
Regulation of Online  
Providers of Legal  
Documents to establish  
reasonable standards of  
product reliability and  
efficacy, provide  
consumers with  
information and recourse  
against abuse, ensure  
consumers are made  
aware of the risks of  
proceeding without  
attorneys, inform  
consumers where  
anaffordable attorneys can  
be found, and protect  
confidential information. | Legal Analytics  
Professional Responsibility | TBD | Oppose  
(if not withdrawn) |
| 101 | **Standing Committee on Ethics and Professional Responsibility**  
Amends Model Rules 7.1 through 7.5 and their  
related Comments of the  
*ABA Model Rules of Professional Conduct*  
regarding lawyer  
advertising rules. | Professional Responsibility | Support | Support |
| 102A | **Section of Family Law**  
Urges Congress to enact  
certain former sections of  
Taxation | No Position | No Position |
the Internal Revenue Code that, before their repeal in 2017, allowed a deduction for alimony paid and treated alimony received as taxable income; and urges other governmental bodies to enact such provisions if Congress does not re-enact the repealed IRS Code provisions.

| 102B | **Section of Family Law**  
**Section of Science and Technology Law** | Health Law and Life Sciences  
Intellectual Property | Support | Support |

Adopts the *ABA Model Act Governing Assisted Reproductive Technology*, dated August 2018, to replace the 2008 Model Act, and urges its adoption by appropriate governmental agencies.

| 103 | **ABA Working Group to Advance Well-Being in the Legal Profession**  
**Commission on Lawyer Assistance Programs** | Professional Responsibility | Oppose | **Oppose** (if not withdrawn) |

Adopts the ABA Model Law Firm Policy on Impairment, dated August 2018, to provide a mechanism within law firms to identify impairment and craft proper intervention, and to prevent professional standards and the quality of work for clients being compromised by any law firm personnel’s impairment, and urges
<table>
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<tr>
<th>Bill</th>
<th>Description</th>
<th>Opposing Committee</th>
<th>Position</th>
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| 104B | **Section of Civil Rights and Social Justice**  
                 **Section of State and Local Government Law**  
                 Urges governments to adopt and enforce stronger fair lending laws targeted against discrimination in vehicle sales market and urges Congress to amend the Equal Credit Opportunity Act to collect data on race and national origin for auto-lending transactions. | Banking Law Consumer Financial Services | Oppose Oppose |
| 105  | **Section of Dispute Resolution**  
                 Urges providers of domestic and international dispute resolution to expand their rosters with minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities (“diverse neutrals”) and to encourage the selection of diverse neutrals. | Business & Corporate Litigation | Support Support |
<p>| 113  | <strong>National Conference of the Administrative Law Judiciary Judicial Division</strong> | Business &amp; Corporate Litigation | No Position No Position |</p>
<table>
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<tr>
<th>Section of Administrative Law and Regulatory Practice</th>
<th>Government Public Sector Lawyers Division</th>
<th>Colorado Bar Association</th>
<th>Denver Bar Association</th>
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<tbody>
<tr>
<td>Adopts the <em>ABA Model Code of Judicial Conduct for State Administrative Law Judges</em>, dated August 2018, and urges governments to enact and adopt the Model Code.</td>
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<tr>
<th>116A</th>
<th>Commission on Disability Rights</th>
<th>Middle Market and Small Business</th>
<th>TBD</th>
<th>No Position</th>
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<tbody>
<tr>
<td></td>
<td>Amends the Air Carrier Access Act (“ACCA”) to establish a private right of action for violations of the ACAA and to provide equitable and legal relief, including compensatory and punitive damages, as well as reasonable attorneys’ fees, reasonable expert fees and costs to plaintiffs who prevail in civil actions.</td>
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<tr>
<th>116C</th>
<th>Commission on Disability Rights</th>
<th>Cyberspace Law Intellectual Property</th>
<th>Oppose</th>
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<tr>
<td></td>
<td>Urges all courts and other appropriate government entities to interpret Titles II and III of the</td>
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Americans with Disabilities Act to apply to technology, and to goods and services delivered thereby, regardless of whether it exists solely in virtual space or has a nexus to a physical space.

**Adjournment**

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.*
EXHIBIT A
TELEPHONIC
MEETING OF COUNCIL AND
COMMITTEE CHAIRS
ATTENDEE LIST JULY 24, 2018

<table>
<thead>
<tr>
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<td>Kristen D. Adams</td>
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MINUTES OF
ABA BUSINESS LAW SECTION
ANNUAL BUSINESS MEETING AND ELECTION
August 5, 2018
DuSable Room, Hyatt Regency Chicago Hotel
Chicago, Illinois

Introductions and General Matters

1. Call to Order; Members Present; Quorum

The Business Meeting of the members of the American Bar Association's Business Law Section (the “Section”), was called to order by Section Chair, Christopher Rockers, at 4:30 p.m. Central Daylight Time.

In addition to Mr. Rockers, the other Section members present, and constituting a quorum, were: Mr. William Johnston, Ms. Barbara Mayden, and Mr. Steven Weise.

Action Items

2. Approval of Recommendation of the Nominating Committee

Mr. Rockers reviewed the report of the Nominating Committee, which consisted of William Rosenberg, Chair, Paul “Chip” Lion, Bill Johnston, Cathy Dixon, Neal Kling and Anne Gwal, together with Christopher Rockers and Vicki Tucker, both serving ex officio. The Nominating Committee recommended that the Section Council elect the following individuals to serve in the offices noted:

- Chair-Elect: Patrick T. Clendenen, Boston, MA
- Secretary: Penelope L. Christophorou, New York, NY
- Content Officer for a three-year term ending August, 2021: Norman M. Powell, Wilmington, DE
- Delegate to the ABA House of Delegate for a three-year term ending August 21, 2021: Barbara M. Mayden, Nashville, TN
- Council Positions for terms ending August 2022:
  - Kristen D. Adams, Gulfport, FL
  - Linda M. Leali, Miami, FL
  - Thomas J. Walsh, Southport, CT
  - Ashley C. Walter, Seattle, WA
Upon motion duly made, seconded and unanimously carried, the report of the Nominating Committee was accepted and all of the recommended individuals were elected to the positions noted.

**Other Business**

There being no other business, and upon a motion duly made and seconded, Mr. Rockers announced that the Business Meeting was adjourned.
The focus of the Section’s Advance Summit Meeting held in January 2018 (the “Advance”) was on Section membership. More particularly, with the Section being faced with declining membership and dues revenue, the Section leadership examined how best to identify and implement improvements in the areas of attracting and retaining members.

Unlike typical strategic plans that have a 3-5 year implementation period, this Strategic Plan is intended to cover a shorter and more immediate time period (12-18 months from the date of implementation). Accordingly, the specific goals of the Advance are to (1) identify one or more market segments within the legal profession on which the Section should prioritize its efforts, (2) identify areas that need improvement with respect to the Section’s efforts to attract and retain members from within the prioritized market segment(s), and set a goal for each area, and (3) propose specific implementation steps, or action items, corresponding to each stated goal.

A strong consensus emerged from the group discussion at the Advance to establish a Strategic Plan that sets specific short-term goals aimed at attracting and retaining members who are young business lawyers in private practice. For such purposes, we are using the Section’s standard definition of “young lawyer”; namely, a lawyer who is under the age of 40 and/or has been in practice for less than ten (10) years. Note that, where appropriate, some implementation steps set out in the Strategic Plan will be aimed at young business lawyers generally, as opposed to limiting those steps only to young lawyers in private practice.

While government lawyers and members of the judiciary represent important market segments and are highly valued members of the Section, it was determined that encouraging, and increasing, their involvement in the Section should be viewed for purposes of this Strategic Plan as part of the tactics in attracting and retaining young business lawyers in private practice (see Strategic Goal II, Implementation Step I)...

In developing our implementation steps for this Strategic Plan, we have been mindful of the realities of limited resources with respect to staffing and available funding, as well as the need to work towards short-to mid-term results. Consequently, in implementing certain of the steps, the Section may need to make decisions based on law firm size and/or geographic location in order to gain maximum impact for its efforts.

Our strategic goals reflect the importance of addressing the particular challenges faced by the Section in connection with attracting and retaining young business lawyers in private practice as members, including the following “three C’s”:

- **Communication** - our survey results show that improvements must be made to the way in which the Section communicates its benefits to young lawyers generally. Marketing that is tailored to this group is needed in order to make young business lawyers aware of those Section offerings and benefits that are likely to be of interest to them. These marketing efforts must also highlight how these offerings and benefits
distinguish the Section from its competition, whether based on the higher quality of our content or by some other positive distinguishing factor.

- **Convenience** - our survey results highlight the concern shared by a number of respondents of not having the time to attend in-person meetings. We must find increasingly creative ways to maximize member benefits for the vast majority of our members who cannot, or choose not to, attend meetings in person. In this context, distance learning programs become a more important member benefit, as does access to other valuable content that is readily accessible to members without having to attend in-person meetings.

- **Cost** - this market segment is typically very cost-sensitive. While the Section should not try to compete with other service providers on the basis of price, the Section must at least remain within an acceptable range of our competitors when it comes to the fees we charge for membership and for in-person attendance.

Even if we succeed in making improvements to the offerings and benefits tailored to young business lawyers, it will be like “shoveling snow in a snowstorm” if we fail to adequately address these “three C’s”.

The specific strategic goals that emerged from the Advance and from the subsequent work of the Advance Steering Committee, are as follows:

I. Develop a communication plan (or “awareness campaign”) for young business lawyers in private practice who are (i) Section Members, or (ii) potential Section Members, regarding existing Section member benefits likely to be of interest to them.

II. Develop new relevant content for young business lawyers in private practice and ensure delivery of such content in a format that responds to the needs and expectations of this particular market segment.

III. Provide an active forum for young business lawyers in private practice to be involved in Section activities.

IV. Provide additional financial incentive to encourage young business lawyers in private practice to become more actively involved in Section activities.

The Council Committee on Membership, Diversity and Inclusion, (“CCMDI”), working closely with Section staff, will have primary responsibility for overseeing and coordinating the implementation of this Strategic Plan in a timely fashion. To achieve this, the CCMDI will rely heavily upon various Section committees, boards and other Section leaders. Many of the Implementation Steps set out in the Strategic Plan should be implemented prior to the 2019 Section Spring Meeting, if not well before then. It should be left to the CCMDI, in consultation with other Section leaders, to determine the specific timetable for implementation in each case.
STRATEGIC GOAL I: Develop a communication plan (or “awareness campaign”) for young business lawyers in private practice who are (i) Section Members, or (ii) potential Section Members, regarding existing Section member benefits to be of interest to them.

IMPLEMENTATION STEPS

1. Ensure that young business lawyers in private practice are made aware of existing content contained in Section publications, webinars and newsletters that is likely of interest to them, as well as how such content can be easily accessed.
   - Create an inventory of existing Section model forms and agreement templates that are likely of interest to young business lawyers in private practice.
   - Use Section social media channels to communicate member benefits to young business lawyers in private practice (Facebook, Instagram, Twitter, LinkedIn, Young Lawyer Listserv, and other social media).
   - Work with the ABA as part of the ABA’s current initiative to make more content available to ABA members outside of the Section.

2. Send letter from the Section Chair to law firm managing partners outlining Business Law Section member benefits for young business lawyers, as well as benefits to be gained by the law firms themselves, through young lawyer involvement/active participation.
   - Highlight our strengths and what distinguishes us from our competitors.
   - Emphasize the importance of diversity and inclusion within the Section, including diversity of thought.

3. Send letter to young business lawyers in private practice who are Section members or potential Section members, outlining the benefits of Section membership that are likely of interest to them, including those benefits related to in-person meeting attendance.
   - Highlight our strengths and what distinguishes us from our competitors.
   - Highlight the Section’s pro bono initiatives, including pro bono assistance for unaccompanied minors, and explain how young lawyers can easily get involved.

4. Have Committee Chairs send a tailored message to young business lawyers in private practice who are members of their committees, explaining how to maximize Section benefits without necessarily having to attend in-person meetings, while also encouraging attendance at upcoming in-person meetings by highlighting those benefits likely to be of interest to them.
   - Present a more tailored and personal approach to our initiative, with a view to (a) helping young business lawyers gain the most from the Section’s value proposition, and (b) creating a less intimidating and more welcoming environment in which young lawyers are encouraged to become more actively involved through in-person attendance.

STRATEGIC GOAL II: Develop new relevant content for young business lawyers in private practice, and ensure delivery of such content in a format that responds to the needs and expectations of this particular market segment.

IMPLEMENTATION STEPS
1. Develop relevant content (CLE and non-CLE) tailored to young business lawyers in private practice (distance learning and in-person)
   - focus on maintaining the high quality of our content while ensuring that it is accessible in a format that is helpful to young business lawyers
   - focus on quality with respect to printed materials, as well as the quality and reputation of our panelists
   - encourage involvement of government lawyers and members of the judiciary who have the profile to attract young lawyers to Section programming
   - with respect to *Business Law Today*, explore with the BLT Editorial Board ways in which to improve BLT as a member benefit for young business lawyers (such as the possibility of adding a dedicated column containing articles and other content that young business lawyers in private practice would find useful)

2. With respect to model forms and agreement templates, update and expand inventory to better meet the needs of young business lawyers

**STRATEGIC GOAL III: Provide a forum for young business lawyers in private practice to become more actively involved in Section activities.**

1. Increase the number of young lawyers in private practice on CLE and non-CLE panels, including in-person programs and webinars

2. Actively encourage young lawyers in private practice who are Section members to contribute content for publication in BLT, Committee newsletters or other Committee-generated content (see also Strategic Goal I, Implementation Step 4)
   - distribute a “how to” guide for publishing with the Section

**STRATEGIC GOAL IV: Provide additional financial incentive to encourage young business lawyers in private practice to become more actively involved in Section activities.**

**IMPLEMENTATION STEP**

1. Examine with the Section Officers the feasibility of making tickets available for young lawyers to attend the Section dinner (and possibly the Section lunch) at discounted prices, to further encourage their attendance at these events

2. Encourage Committees to offer young lawyers reduced pricing for tickets to their Committee dinners
   - increase sponsorship of Committee dinners as a way to help defray the overall cost of this discount
Objective

The American Bar Association Business Law Section (“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, and sets forth 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 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. Develop relevant content that is made available in a format to meet the ever-changing needs of in-house counsel;
3. Provide a financial incentive or discount to encourage and reward active participation within the Section; and
4. Ensure that the Section provides an active forum for in-house counsel members.
<table>
<thead>
<tr>
<th>STRATEGIC GOAL I:</th>
<th>Develop a communication plan for in-house Section members and potential Section members regarding existing Section membership benefits</th>
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<tr>
<td>IMPLEMENTATION STEP</td>
<td>BY WHOM</td>
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</tbody>
</table>
| 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 Section members | • Business Law Today Editorial Board  
• Content Committee  
• Content Officer  
• Section Staff  
• In-House Counsel Task Force | Quarterly  
Communication;  
February 1;  
May 1;  
July 15;  
November 1 |
| Send letter from Section Chair to corporate department heads outlining Section membership benefits  
  • Include all 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 | • In-House Counsel Task Force  
• Membership Committee  
• Marketing Board  
• Staff to research department heads  
• Section Staff | Annually,  
July 15 |
| Promote the Section’s practice-specific committees and encourage membership in same  
  • Send Letter to in-house counsel not on a committee | • Council Committee on Committees  
• Section Staff  
• International Coordinating Committee | Annually;  
June 15 |
| Send letter to in-house Section members and potential Section members that outlines the benefits of meeting attendance | • In-House Counsel Task Force  
• Programs Committee  
• Marketing Board  
• Membership Committee  
• Section Staff | January 18 (prior to Spring Meeting);  
June 1 (prior to Annual Meeting) |
| 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 | • Committee chairs  
• In-house Counsel Task Force  
• Marketing Board  
• Membership Committee  
• Section Staff | January 18 (prior to Spring Meeting);  
June 1 (prior to Annual Meeting) |
| Use Section social media channels to communicate member benefits to in-house counsel (Facebook, Instagram, Twitter, LinkedIn) | • Corporate Counsel Committee  
• Content Committee  
• Section Staff | Monthly, as relevant content becomes available |

<table>
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<tr>
<th>STRATEGIC GOAL II:</th>
<th>Develop relevant content that is made available in a format to meet the ever-changing needs of in-house counsel</th>
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<tr>
<td>IMPLEMENTATION STEP</td>
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</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  
• Content Committee | One piece of content identified |
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| Continue to improve website content searchability  
  - Promote free access to legal research databases to in-house Section members | In-House Counsel Task Force | 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  
  - In-House Counsel Task Force | Ongoing |
| Encourage in-house counsel presence in Business Law Today  
  - Add a dedicated in-house counsel column or similar content in the reimagined BLT  
  - 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 | Business Law Today Editorial Board | Ongoing |
| Creation of podcast series tailored to in-house counsel | Corporate Counsel Committee  
  - Content Committee  
  - In-house Counsel Task Force  
  - Section Staff | TBD |

**STRATEGIC GOAL III: Provide a financial incentive or discount to encourage and reward active participation within the Section.**

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<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>Section Leadership</td>
<td>TBD</td>
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<tr>
<td>Determine the percentage discount after review of other similar bar association offers or other sections within the ABA</td>
<td>Section Leadership</td>
<td>TBD</td>
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<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>Section Leadership</td>
<td>TBD</td>
</tr>
<tr>
<td>Regularly explore additional financial incentives, such as corporate legal department membership options, and value to make the 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>Section Leadership</td>
<td>TBD</td>
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**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. Encourage committees to develop programs for and/or presented by in-house counsel and establish each Section Meeting as a “go-to” place where in-house counsel in the Committee’s practice area can meet and discuss the latest developments and best practices in their respective fields.”**

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| Create forum for in-house counsel members by tailoring an event/reception at the Annual, Spring and Fall meetings for in-house Section members | In-House Counsel Task Force  
  - Corporate Counsel Committee  
  - Membership Committee | Spring and Annual Meetings |
| 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 | TBD |
| 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  
Council Committees on Committees  
Nominating Committee  
Section Officers  
ICC | Ongoing |
|---|---|---|
| Increase the number of in-house counsel members and non-members on CLE and non-CLE panels including in-person programs and webinars | Programs Committee  
Council Committee on Committees  
ICC | Ongoing |
| Encourage in-house counsel members to publish in Section publications | Publications Board  
Content Committee  
Business Law Today Editorial Board  
The Business Lawyer Editorial Board  
Membership Committee | Ongoing |

**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.

| Review Section in-house counsel membership numbers | Section Staff  
In House Counsel Task Force  
Corporate Counsel Committee | Twice per year: January and September |
|---|---|---|
| Review Section in-house counsel meeting attendance numbers for Spring, Annual and Fall Meetings | Numbers Provided by ABA Staff  
In House Counsel Task Force  
Corporate Counsel Committee | After each meeting |
| Review Section leadership in-house counsel numbers | Numbers Provided by ABA Staff  
In House Counsel Task Force  
Corporate Counsel Committee | Twice per year: January and September |
| Periodically survey in-house counsel as a follow-up to implementation of this plan | In House Counsel Task Force  
Corporate Counsel Committee | After one year of implementation of plan |
| Formally review and revise strategic plan | In House Counsel Task Force | September every other year or as often as needed as determined by the In House Counsel Task Force |
AMERICAN BAR ASSOCIATION
GUIDELINES ON THE APPOINTMENT AND USE
OF SPECIAL MASTERS IN FEDERAL AND STATE CIVIL LITIGATION

A Draft Proposal to the ABA House of Delegates (January 2019)

and

Report of the Special Master Working Group

Contact:
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Membership:

Judicial Division
Hon. J. Michelle Childs
Hon. David Thomson
Merril Hirsh (Convener)
Cary Ichter (Reporter)
Christopher G. Browning
David Ferleger
Mark O’Halloran

ABA Standing Committee on the American Judicial System
Hon. Shira A. Scheindlin (ret.)

Business Law Section
William Johnston
( Convener, policy subgroup)
Hon. Clifton Newman
Richard L. Renck
Hon. Henry duPont Ridgely (ret.)
Hon. Joseph R. Slights III

Section of Dispute Resolution
Hon. Bruce Meyerson (ret.)
Prof. Nancy Welsh

Section of Intellectual Property Law
David L. Newman
Scott Partridge
Gale R. (“Pete”) Peterson

Section of Antitrust Law
Howard Feller
James A. Wilson

Tort Trial and Insurance Practice Section
Sarah E. Worley

With Assistance From
Hon. Frank J. Bailey

Section of Litigation
Mazda Antia
John Barkett
David W. Clark
Koji Fukumura
Lorelie S. Masters

ABA Staff members
Amanda Banninga
Denise Cardman
Julianna Peacock
Tori Jo Wible
RESOLVED, That the American Bar Association adopts the ABA Guidelines for the Appointment and Use of Special Masters in Federal and State Civil Litigation, dated January 2019.

Guidelines for the Appointment and Use of Special Masters

(1) It should be an accepted part of judicial administration in complex litigation and in other cases that create particular needs that a special master might satisfy, for courts and the parties to consider using a special master and to consider using special masters not only after particular issues have developed, but at the outset of litigation.

(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 weigh the expected benefit of using the special master, including reduction of the litigants’ costs, against the anticipated cost of the special master’s services, with the view of making the special master’s work efficient and cost effective.

(4) Participants in judicial proceedings should be made aware that special masters can perform a broad array of functions that do not usurp judicial functions, but assist it. Among the functions special masters have performed are:
   a. discovery oversight and management, coordination of cases in multiple jurisdictions;
   b. facilitating resolution of disputes between or among co-parties;
c. pretrial case management;
d. advice and assistance requiring technical expertise;
e. conducting or reviewing auditing or accounting;
f. conducting privilege reviews and protecting the court from exposure to privileged material and settlement issues; monitoring; class administration;
g. conducting trials or mini-trials upon the consent of the parties;
h. settlement administration;
i. claims administration; and
j. receivership and real property inspection.

In these capacities special masters can serve numerous roles, including management, adjudicative, facilitative, advisory, information gathering, or as a liaison.

(5) Courts should choose special masters with due regard for the court’s needs and the parties’ preferences and in a manner that promotes confidence in the process and the choice by helping to ensure that qualified and appropriately skilled and experienced candidates are identified and chosen.

(6) The referral order appointing the special master should describe 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, power to conduct hearings or to facilitate settlement, requirements for issuing decisions and reporting to the court, and the extent of permissible ex parte contact with the court and the parties. Any changes to the scope of the referral should be made by a modification to the referral order.

(7) Courts should develop local rules and practices for selecting, training, and evaluating special masters, including rules designed to facilitate the selection of special masters from a diverse pool of potential candidates.

(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.

(9) Courts and, where applicable, legislatures should make whatever modifications to laws, rules, or practices that are necessary to effectuate these ends, including amending Bankruptcy Rule 9031 to permit courts responsible for cases under the Bankruptcy Code to use special masters in the same way as they are used in other federal cases.
REPORT OF THE AMERICAN BAR ASSOCIATION
SPECIAL MASTER GUIDELINES WORKING GROUP

Introduction

The American Bar Association ("ABA") has long advanced the use of dispute resolution tools to promote efficiency in the 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 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 promote research and education concerning special masters and to make proposals concerning using their use.1 This Committee concluded that one of the difficulties faced by both courts and practitioners is the lack of a methodical and consistent approach to the appointment and use of special masters.2

To address this lack of standardization and to urge greater use of this valuable resource, the Committee brought together stakeholders from diverse segments of the ABA to propose best practices in using special masters. The ABA formed a Working Group in the fall of 2017 and included representatives of the Judicial Division (including three of its conferences – the National Conference of Federal Trial Judges, the National Conference of State Trial Judges and the Lawyers Conference), the ABA Standing Committee on the American Judicial System, and the ABA’s Section of Litigation, Business Law Section, Section of Dispute Resolution, Section of Intellectual Property Law, Tort Trial and Insurance Practice Section, and Section of Antitrust. The membership

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1 Currently, 49 states have rules or statutes that provide for the appointment of court adjuncts to assist courts in the administration of justice. See Lynn Jokela and David F. Herr “Special Masters in State Court Complex Litigation: An Available and Underused Case Management Tool,” WILLIAM MITCHELL LAW REVIEW, Vol. 31, No. 3, Art. (2005) “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 judges in case management. See id. at 1302 n. 18. See also n.30, infra.

2 Even the name for these judicial adjuncts is a source of confusion. These Guidelines use the term employed by Rule 53 of the Federal Rules of Civil Procedure – “special master” – to refer to any adjunct a court determines to be necessary and appropriate to appoint to serve any case-management function or to manage or supervise some aspect of a case. 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.” Even states whose rules mirror the Federal Rules, use different titles to describe the court adjunct’s officers. For example, a Rule 53 adjunct in Maine is a “referee.” See Maine R. Civ. P. 53. States using 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 e.g., Mass. R. Civ. P. 53. See also 2006 Kan. Code § 60-253 (“[a]ls used in this chapter the word ‘master’ includes a referee, an auditor, a commissioner and an examiner.” These titles may suggest a more limited function.
included current and former federal and state judges, ADR professionals and academics, and litigators who represent plaintiffs, defendants, or both in numerous fields.\textsuperscript{3}

The Working Group also obtained information from other interested and knowledgeable agencies, organizations, and individuals, including the Federal Judicial Center (“FJC”), federal and state judges, court ADR program administrators, private dispute resolution professionals, representatives of a number of state bar associations, the academic community, professional groups (including the Academy of Court Appointed Masters (“ACAM”)), 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 FJC to explore ways of improving the administration of multidistrict and class action litigation.

Based upon the Working Group’s analysis, the ABA, consistent with the best practices described below, encourages courts to make greater and more systematic use of special masters to assist in civil litigation. These Guidelines provide recommendations concerning the use, selection, administration, and evaluation of special masters.

**Discussion and Rationale for the Guidelines**

Courts and parties have long recognized that, in far too many cases, civil litigation takes too long and costs too much. Since 1938, Rule 1 of the Federal Rules of Civil Procedure has declared (in a principle echoed in many state rules) that the Rules are intended to deliver “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” that end. Indeed, virtually every amendment to the Federal Rules over the past thirty-five years has been intended, at least in part, to address concerns regarding the expense and duration of civil litigation.\textsuperscript{4}

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\textsuperscript{3} The Working Group comprises representatives from the Judicial Division (Hon. J. Michelle Childs; Hon. David Thomson; Merrill Hirsh (Convener); Cary Ichter (Reporter); Christopher G. Browning; David Ferleger and Mark O’Halloran); the ABA Standing Committee on the American Judicial System (Hon. Shira A. Scheindlin (ret.)); the Business Law Section (William Johnston (convener, policy subgroup); Hon. Clifton Newman; Richard L. Renck; Hon. Henry duPont Ridgely (ret.); Hon. J. Stephen Schuster; and Hon. Joseph R. Slightes III); the Section of Litigation (Mazda Antia, John M. Barkett, David W. Clark, Koji Fukumura and Lorelie S. Masters); the Section of Dispute Resolution (Hon. Bruce Meyerson (ret.); Prof. Nancy Welsh); the Section of Intellectual Property Law (David L. Newman; Scott Partridge; Gale R. (“Pete”) Peterson); the Section of Antitrust Law (Howard Feller, James A. Wilson) and the Tort Trial and Insurance Practice Section (Sarah E. Worley). The members also wish to thank Hon. Frank J. Bailey and his staff, and ABA Staff members Amanda Banninga, Denise Cardman, Julianna Peacock, and Tori Wible for their assistance.

\textsuperscript{4} 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
All too often, however, modifications to procedural rules intended to make the litigation process more efficient have merely changed the subject of the dispute: for example, limiting the number of interrogatories can lead to conflict over how to count interrogatories and subparts.\footnote{Merril 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).} Unfortunately, the Rules are not self-executing.

Ensuring that parties will not gain an advantage by unreasonable conduct or delay requires a proportionate level of judicial case management. This case management is possible only 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 parties on fairly resolving the issues in controversy.\footnote{See id. at 29-31; Merril Hirsh, “Special Masters: How to Help Judges Extend Their Reach ... And Exceed Their Grasp,” ALTERNATIVES (June 2017), available at http://altnewsletter.com/sample-articles/special-masters--how-to-help-judges--extend-their-reach--and-exceed-their-grasp.aspx}

Judges, including magistrate judges, must dedicate the time needed to manage the pretrial process, and it is important to use their time most effectively. When warranted, appointment of a special master to manage the pretrial process can relieve courts of the burden of reviewing voluminous discovery materials or information withheld as privileged or proprietary, or addressing other disputes, allowing courts to focus on merits-based resolution of issues on a concise record. Where a case warrants this type of assistance, special masters have time that courts do not. The goal of these guidelines is not to detract in any way from the role of judges, including magistrate judges. It is to assist them.\footnote{Appointed masters are also used in other settings. Courts have appointed special masters in criminal cases, for example, to consider Brady obligations, see, e.g., United States v. McDonnell Douglas, 99-CR-353 (D.D.C.), or to shield investigators from privileged documents that might be obtained through warrants executed at attorney offices, see, e.g., United States v. Stewart, No. 02 CR. 396 JGK. 2002 WL 1300059 (S.D.N.Y. June 11, 2002); United States Attorneys Manual § 9–13.420, F, available at https://famguardian.org/Publications/USAttyManual/title9/13mcrm.htm#9-13.420. Masters are also appointed in non-judicial contexts (for example, 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). Many agencies and entities also use ombuds to serve numerous functions, including avoiding and resolving disputes and facilitating communication among stakeholders. These roles illustrate the utility and flexibility of using neutrals as a tool. A thorough discussion of appointments outside the civil litigation context, however, is beyond the scope of these Guidelines.}

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 or the practical ability to increase resources when such a case is filed. In the federal system and in some state courts, magistrate judges are available; in others they are not. In some courts, a few complex cases, or a single, particularly complex case, can strain a docket. Resources allocated to one case can 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.”
consume resources that would otherwise be available for other cases. Special masters can offer the time and attention complex cases require without diverting judicial time and attention from other cases.

Second, some cases benefit from specialized expertise. This is particularly true in federal multidistrict litigation (“MDL”), which accounts for nearly forty percent of the federal case load, excluding prisoner and social security cases.\(^8\) Managing those cases oftentimes requires a diverse set of skills (e.g., managing discovery, reviewing materials withheld as privileged or proprietary, facilitating settlement of pretrial issues or the entire case, 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).

Judges in MDLs and other large, complex cases are called upon to bring to bear knowledge of many fields, including, for example, science, medicine, accounting, insurance, management information systems, business, economics, engineering, epidemiology, operations management, statistics, cybersecurity, sociology, and psychology. No one person can be an expert in all these fields. Special masters who have specialized expertise in relevant fields can provide a practical resource to courts in cases that would benefit from subject-matter expertise.

Third, the judicial role limits the involvement judges can have in some aspects of the litigation process. Judicial ethics limit the ability of judges to facilitate informal resolutions of issues and cases, particularly if the process requires ex parte meetings with parties or proposing resolutions of issues on which the court may eventually need to rule.\(^9\)

Federal Rule 16(c)(2)(H) and certain 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 previously noted,\(^10\) however, the experience of the Working Group suggests that it is rare for courts to make use of this provision, especially when compared to the use made of other settlement procedures described in Rule 16(c)(2)(I).\(^11\) Few courts have a practice of regularly considering the appointment of a special master when they are preparing a scheduling order.\(^12\)

Despite the considerable assistance special masters can offer, appointing special masters...
masters has historically been viewed as an extraordinary measure to be employed only on rare occasions. This view appears to have stemmed from concerns regarding delegation of judicial authority and the costs that the parties will incur. But neither concern justifies limiting consideration of using masters to “rare occasions.”

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. Thus, at least at the federal level, if the use of special masters were an improper delegation of judicial power, courts would be barred from using them, and obviously they are not.

Moreover, as a matter of logic, a concern about delegating authority should apply only to situations where the special master is asked to perform an adjudicative role. And, unless the parties agree otherwise, a special master’s “adjudication” is merely a report and recommendation that can be appealed to the trial court as a matter of right. The ultimate decision-making authority continues to reside with the court.

Cost concerns actually animate these Guidelines. Effective special masters reduce costs by dealing with issues before they evolve into disputes and by swiftly and efficiently disposing of disputes that do arise. Although no scientific study has empirically established that special masters reduce the cost of litigation, there is broad consensus that anticipating and preventing disputes before they arise or resolving them quickly as they emerge significantly improves the effectiveness and efficiency of dispute resolution. Special masters can also inculcate a culture of compliance with procedural

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13 See, e.g., 2003 Advisory Committee Note 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 “the 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)).

14 See n.29 infra (discussing inherent authority of courts to appoint special masters to assist their judicial administration). See also Wellness Int’l Network, Ltd. v. Sharif, 135 S. Ct. 1932, 1944 (2015) (“The entitlement to an Article III adjudicator is ‘a personal right’ and thus ordinarily ‘subject to waiver.’ … 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”).

15 See Thomas D. Barton and James P. Groton, “The Votes Are In: Focus on Preventing and Limiting Conflicts, DISPUTE RESOLUTION, v. 24 n.3, 9, 10 (Spring 2018). Barton and Groton report that a Global Pound Conference survey of more than 2,000 business leaders, in-house counsel, outside counsel or advisors, academics, members of the judiciary and government and dispute resolution providers concluded that, by far, the step that should be prioritized to achieve effective dispute resolution is to employ processes to resolve matters pre-dispute or pre-escalation. Although the survey focused on preventing disputes before litigation begins, there is no reason why the same principle would not apply to preventing disputes within litigation before they start or escalate. See also http://globalpound.org/wp-content/uploads/2017/11/2017-09-18-Final-GPC-Series-Results-Cumulated-Votes-from-the-GPC-App-Mar.-2016-Sep.-2017.pdf at 42
rules by strictly monitoring the parties’ compliance with the rules and ensuring that parties do not gain leverage or time from non-compliance.

Special masters may be particularly helpful in assisting 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 to be “proportional to the needs of the case”16 and requiring objections to “state whether any responsive materials are being withheld on the basis of that objection.”17 Having a special master work with the parties in appropriate cases to apply these requirements as they propound or respond to discovery requests should promote cooperation and efficiency. Those benefits from using special masters do not detract from judicial administration; they enhance it.

A significant purpose of the 2015 Amendments was to use more proactive case management to prevent problems from arising or solving problems before they become needlessly expensive and time-consuming. Where warranted, if parties are unable to resolve disputes that have the potential to multiply, having a special master assist in the resolution helps to fulfill that goal and frees judicial resources for substantive decision-making and case resolution.

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.
- 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.

It is unclear whether the failure to use masters arises from hostility toward the concept or the unfamiliarity borne of 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 lawyers. 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).
• Increased cost and delay.
• The introduction of another layer between the court and counsel.

Regardless of the reason, the failure to consider using special masters in appropriate cases may disserve the goal of securing “a just, speedy, and inexpensive determination.” This failure has also led to appointments often being made without systems or structures to support selection, appointment, or use of special masters and, frequently, after cases have already experienced management problems. Although anecdotal evidence indicates that courts and parties are satisfied with their experiences with special masters, the ad hoc nature of appointments can lead to inconsistent results and perceptions that undercut the legitimacy of appointees. Moreover, because special masters are rarely used, courts and academicians have not thoroughly addressed such basic issues as what 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 should be, and what ethical rules should govern the conduct of special masters. Adopting standards for the appointment of special masters and making their use more common will allow for more research into ways to make the process more predictable and the work of special masters more effective.

Highlights of Specific Recommendations

(1) It should be an accepted part of judicial administration in complex litigation and in other cases that create particular needs that a special master might satisfy, for courts and the parties to consider using a special master and to consider using special masters not only after particular issues have developed, but at the outset of litigation.

Because courts do not typically consider appointing a special master at the outset of cases, special masters are most frequently appointed after case-management issues have emerged. Although special masters can be of use in these situations, this timing prevents courts and stakeholders from obtaining early case management that often eliminates the need for dispute resolution.

A special master can, for example, address discovery issues and privilege issues before discovery responses are due, thereby preventing disputes before they arise. While conferences that deal with discovery issues before the parties resort to costly motion practice are useful, intervening before parties serve responses would be even more efficient and could reduce conflicts among counsel and costs to the parties.

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(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. Indeed, it is not possible to list every conceivable role a special master can play. Courts, counsel, and parties are encouraged to consider creative approaches to integrating special masters into case management for the benefit of all participants.

Moreover, there are often different ways to serve the judicial process. For example, a special master charged with assisting in resolving discovery disputes could adjudicate issues relating to pending discovery motions or could assist counsel in working through discovery needs and obligations without motion practice, or both.

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

Special masters can also provide information to the court. For example, a special master could conduct a privilege review, analyze damages calculations, or summarize and report on the content of voluminous records to prepare the court for a hearing or trial. Special masters can perform these functions in different ways from a court-appointed expert (for example, providing adjudication and not merely an opinion), using different procedures (for example, in a process that does not contemplate party-appointed experts or depositions of the independent adjunct). Rather than the parties and the court bearing the expense associated with several experts, there would be only one special master and challenges would be made by objection to the special master’s rulings.

Special masters can productively serve as a flexible resource to address a range of problems. The order of appointment should describe the issues the master is to address and the powers afforded the master to do so. Once the court finds a need, the only practical limit that should constrain the decision to use special masters is 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 weigh the expected benefit of using the special master, including reduction of the litigants’ costs, against the anticipated cost of the special master’s services, and with the view of making the special master’s work efficient and cost effective.

The appointment of a special master must justify the cost. In most instances, the potential for disputes is a function of the amount of money at stake, the number of parties

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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 those cases, the cost of procedural skirmishes vastly outstrips the costs of paying a special master to deter, settle, or quickly dispose of issues when they arise.

The benefits of a special master cannot always be measured entirely in dollars. The value of special masters to courts and stakeholders lies in the extraordinary flexibility their use offers to import resources, expertise, and processes that can be flexibly adapted to the needs of each case. In some cases, particularly those involving non-financial concerns, using a special master may be justified if the master 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) Participants in judicial proceedings should be made aware that special masters can perform a broad array of functions that do not usurp judicial functions, but assist it. Among the functions special masters have performed are:

a. discovery oversight and management, coordination of cases in multiple jurisdictions;
b. facilitating resolution of disputes between or among co-parties;
c. pretrial case management;
d. advice and assistance requiring technical expertise;
e. conducting or reviewing auditing or accounting;
f. conducting privilege reviews and protecting the court from exposure to privileged material and settlement issues; monitoring; class administration;
g. conducting trials or mini-trials upon the consent of the parties;
h. settlement administration;
i. claims administration; and
j. receivership and real property inspection.

In these capacities special masters can serve numerous roles, including management, adjudicative, facilitative, advisory, information gathering, or as a liaison.

Special masters can be used creatively and thoughtfully in a wide array of situations. It is not possible to identify all the ways in which special masters could be used, however, the functions that special masters have performed include:

- Discovery oversight and management, including e-discovery, privilege reviews, resolution of discovery disputes, and application of confidentiality provisions, whether through efforts to reach voluntary resolutions with the parties or adjudicating discovery disputes.
- Coordinating cases in multiple jurisdictions or between state and federal courts.
- Facilitating resolution of disputes between co-parties and/or their counsel in multi-plaintiff and/or multi-defendant settings.
- Pretrial case management (preparing reports and recommendations on non-discovery motions suitable for special master consideration). Pretrial management could also include sequencing the disposition of issues to facilitate dispute resolution conducted without the master’s involvement.
- Providing technical advice and assistance for example in managing patent claim construction disputes in patent infringement litigation.
- Auditing/Accounting (e.g., facilitating review of complex accounting information or damages models).
- 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.
- Monitoring (in particular, monitoring implementation of court orders or consent decrees).
- Addressing class action administration and related issues.
- Mediating or facilitating settlement.
- Trial administration.\(^\text{20}\)
- Settlement administration (e.g., follow-on hearings or determinations and allocation and distribution of settlement funds).
- Allocation and distribution of a judgment (e.g., sale of property and distribution to heirs and lien holders).
- Claims administration.
- Receivership (a special master acting as a receiver has the unique ability to immediately bring the power of the court to a receivership).
- 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 relating 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:

- Adjudicative.
- Facilitative.
- Advisory.
- Informatory.
- Liaison.\(^\text{21}\)

The role a special master performs in a case is subject to ethical and legal constraints, the court’s control, and, in some instances, the consent of the parties. For example, a special master serving as a mediator may be subject to mediation-specific statutory or ethical obligations, such as confidentiality or a mediation privilege, and these

\(^{20}\) In some jurisdictions, if the parties consent, special masters are empowered to oversee trials, or to conduct “mini-trials” of specific, perhaps technical, issues. These proceeding differ from arbitrations in a number of ways and often, for example, are subject to review in ways that arbitrations usually are not.
\(^{21}\) “Liaison” refers to situations in which a special master is being used as go-between to provide information to the court while insulating it from matters such as settlement discussions or privileged information.
mediation-specific obligations could be inconsistent with other roles the special master is required to play, particularly adjudicative or informatory roles.  

These Guidelines do not direct any particular use of special masters or identify all the legal or ethical obligations that might apply to their activities. Rather, they seek to help courts and parties by increasing awareness of the potential for using special masters creatively and effectively, while highlighting some of the legal or ethical obligations that might apply. As discussed under Point 8 below, one advantage of a greater acceptance of special masters is that experience will foster creativity and promote understanding of the appropriate legal and ethical obligations that apply to special masters.

(5) Courts should choose special masters with due regard for the court’s needs and the parties’ preferences and in a manner that promotes confidence in the process and the choice by helping to ensure that qualified and appropriately skilled and experienced candidates are identified and chosen.

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 parties the opportunity to propose acceptable special master candidates. As discussed below, see Point 7, by maintaining rosters, courts can assist the parties and identify a pool of candidates who bring a diverse range of experience. Courts should always give serious consideration to any candidate identified by the parties, although the court should also always vet candidates to ensure that they have the time, qualifications, and independence 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.

(6) The referral order appointing the special master should describe 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, power to conduct hearings or to facilitate settlement, requirements for issuing decisions and reporting to the court, and the extent of permissible ex parte contact with the court and the parties. Any changes to the scope of the referral should be made by a modification to the referral order.

Rule 53(b)(2) of the Federal Rules of Civil Procedure and similar state rules prescribe that “[t]he appointing order must direct the master to proceed with all reasonable

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22 See n.9 supra. Fed. R. Civ. P. 53(a)(2), and accompanying Advisory Committee Notes (2003). The considerations may be different in the discovery context. As the parties sort through discovery issues with the special master acting as an adjudicator, opportunities often arise for the parties and the master to discuss and explore together voluntary solutions to discovery disputes.

23 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”).
diligence and must state:

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

The Court should consider adapting these terms (or adding others) consistent with the special master’s role in the case. For example, the Court is empowered to align the incentives with the process, for example, by making compensation in a particular case hourly, fixed or a mixture of both and providing for review of billing afterwards.24

(7) **Courts should develop local rules and practices for selecting, training and evaluating special masters, including rules designed to facilitate the selection of special masters from a diverse pool of potential candidates.**

Few courts have adopted a system for the selection, vetting, or training of special masters. As a consequence, court decisions and available relevant literature do not extensively examine special masters’ qualifications or how those qualifications should vary depending upon the role the special master is performing.25

Depending on the appointing court’s circumstances, local custom, and preferences, courts may wish to consider and adapt the following processes:

- Develop a list of the roles special masters will be expected to perform.
- Adopt and notify the bar of the considerations that will affect selection of special masters, including a commitment to diversity and inclusivity.
- Sponsor interactive discussions on the use of special masters to support efficient and productive case administration, and on legal, methodological, and logistical issues related to judicial adjuncts.

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24 The website of the Academy of Court Appointed Masters includes a Bench Book with guidance and examples of form orders that address additional issues raised by the appointment of special masters. See [http://www.courtappointedmasters.org/resource-center/appointing-masters-handbook](http://www.courtappointedmasters.org/resource-center/appointing-masters-handbook). See also Advisory Committee Notes to Fed. R. Civ. P. 53(b) (discussing ethical issues in appointing special masters).

25 The Indiana Commercial Courts Pilot Project and the Western District of Pennsylvania E-Discovery Special Masters Pilot Program are exceptions that can provide helpful guidance on how to develop rules. The United States District Court for the District of Delaware currently has a standing order recognizing the court’s inherent authority to appoint special masters to help manage the prompt disposition of cases. Special masters there serve 4-year terms at the pleasure of the Judges of the Court. The Court notifies the Bar when it is considering appointing new Panel members, allowing bar members to submit background information. [http://www.ded.uscourts.gov/sites/default/files/forms/SpecialMastersOrder2014.pdf](http://www.ded.uscourts.gov/sites/default/files/forms/SpecialMastersOrder2014.pdf) See also [https://www.discoverypilot.com/](https://www.discoverypilot.com/) (Seventh Circuit ediscovery pilot program incorporating neutral mediation).
• Adopt a method for attorneys (or other professionals in a needed field of expertise) to 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. These 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 that a diverse spectrum of qualified candidates (including first-time special master candidates) 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.

• 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 system to ensure the evaluation and quality of the services provided (e.g., regular requests for feedback, monitoring, and disciplinary process).26

While exploring the different systems and structures for appointing and training special masters is beyond the scope of these Guidelines, some suggestions include: inviting applicants to self-nominate; creating and implementing qualifications criteria; establishing a diverse roster of approved masters; establishing a performance review component; and adopting training programs for masters.

Developing rosters of special master candidates could serve several positive functions. Rosters could facilitate vetting, qualifying, and training candidates to help ensure the quality of work and to enhance stakeholders’ perception of the legitimacy of the choice. Vetting 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 17M (urging the United States Supreme Court to consider racial, ethnic, disability, sexual orientation, gender identity, and gender diversity in the process for selecting amicus curiae, special masters, and other counsel).

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

• Developing a diverse pool of persons who qualify for appointment.

• Ensuring that the process is properly calibrated to the functions and roles special masters perform.

• Ensuring that candidates make appropriate disclosures and have no conflicts of interest with the parties or issues being addressed.

• Ensuring that the process properly assesses the talents and experience that the prospective special masters bring 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.

(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 and appropriate use of special masters.

Because special masters are appointed infrequently, many counsel have had no experience working with a special master.27 Promulgating local rules and procedures to systematize the consideration and use of special masters would assist in familiarizing practitioners with the appointment process and how masters are used. When parties are aware that courts intend to make more effective use of special masters, the parties 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 available to both bench and bar on the use of special masters. Greater use of special masters will also assist the advancement of appropriate professional standards for the multiple roles they perform.

Courts should have mechanisms for reviewing the quality of special masters’ work. They should scrutinize the quality of decisions, not only when parties raise challenges, but also through periodic quality control reviews. An appointing court could require that the master make periodic reports concerning the progress of the case to report on issues that have been addressed and resolved, 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.28

Monitoring special master performance and stakeholder satisfaction will allow courts to identify and correct problems. If a special master proves inappropriate, the court can replace the special master with a more suitable candidate. If tasks are too much for one special master to handle, the court can consider dividing tasks among more than one master. If the process is ineffective, the court could consider vacating the appointment.

When cases conclude, it should be a regular practice for participants to complete a brief confidential survey concerning the special master’s work. These surveys would provide, for the first time, a source of data researchers can use to assess the use of special masters and make recommendations for improvement.

27 Indeed, commentators have noted the need for basic guidance on what a special master can do and how that might affect the litigation. See, e.g., David R. Cohen, “The Judge, the Special Master, and You,” LITIGATION v. 20, No. 1 (2015).
28 See supra n.26, supra for methods of feedback.
Courts and, where applicable, legislatures should make whatever modifications to laws, rules or practices that are necessary to effectuate these ends, including amending Bankruptcy Rule 9031 to permit courts responsible for cases under the Bankruptcy Code to use special masters in the same way as they are used in other federal cases.

Federal Rule 53 and many state rules and authority on inherent judicial power, appear 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.

For example, Bankruptcy Rule 9031 currently provides “Rule 53...does not apply in cases under the [Bankruptcy] Code.” This rule is confusing. The power to appoint special masters ultimately derives not merely from Rule 53 but from courts’ inherent power to do those things that are necessary to manage their dockets. And in practice, Bankruptcy Rule 9031 has been interpreted to prevent judges from making use of special masters in bankruptcy matters, even though bankruptcy dockets include many especially complex cases in which special masters could be of great utility.

To the extent Bankruptcy Rule 9031 is intended to prevent bankruptcy judges from appointing special masters, the Rule does not serve the goal of achieving a “just, speedy and inexpensive determination of every case and proceeding,” which is the mandate of Bankruptcy Rule 1001, just as it is the mandate of Federal Rule 1.

In addition, 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 vetting, selection, use 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.

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29 It “is well-settled that” federal “courts have inherent authority to appoint Special Masters to assist in managing litigation.” United States v. Black, No. 16-20032-JAR, 2016 WL 6967120, at *3 (D. Kan. Nov. 29, 2016) (citing Schwimmer v. United States, 232 F.2d 855, 865 (8th Cir. 1956) (quoting In re: Peterson, 253 U.S. 300, 311 (1920)); see Ruiz v. Estelle, 679 F.2d 1115, 1161 n.240 (5th Cir. 1982) (“[R]ule 53 does not terminate or modify the district court's inherent equitable power to appoint a person, whatever his title, to assist in administering a remedy”); Reed v. Cleveland Bd. of Educ., 607 F.2d 737, 746 (6th Cir. 1979) (the authority to appoint “expert advisors or consultants” derives from either Rule 53 or the Court’s inherent power); Regents of the Univ. of Cal. v. Micro Therapeutics, Inc., No. C 03-05669 JW, 2006 WL 1469698, at *1 (N.D. Cal. May 26, 2006) (citing Ass’n of Mexican Am. Educators v. California, 231 F.3d 572, 590 (9th Cir. 2000)) (“A district judge has inherent authority to appoint a technical advisor when the judge deems it desirable and necessary”)). Courts have relied on this authority, for example, to appoint special masters in criminal cases even though the Federal Rules of Criminal Procedure have no analog to Rule 53. Indeed, Rule 53, by its terms, purports to limit the circumstances in which this inherent authority may be exercised, not to create the authority for appointment.

30 See Paulette J. Delk, “Special Masters in Bankruptcy: The Case Against Bankruptcy Rule 9031,” 67 Mo. L. Rev. 29, 41-42 & nn.65-68 (Winter 2002) (noting that the rule was adopted with almost no explanation and contradicts the historic equitable authority that Bankruptcy Code otherwise fosters).
MEMORANDUM

TO: Board of Governors
FROM: Tracy A. Giles, Chair Standing Committee on Membership
        James Dimos, Deputy Executive Director
DATE: July 25, 2018
RE: Request for Approval of New Membership Model

This proposed New Membership Model improves the value of ABA membership in line with extensive market research at a tolerable cost and risk to the ABA and its member entities. It is a critical step forward for the Association and moves the ABA on a path to sustained membership growth and increased financial stability.

*Everyone agrees* that change in the business model is necessary. That change must enhance the value of membership and align it more closely with the market’s willingness to pay. As with all business decisions, the Association must achieve a balance between benefits and costs. This approach, based on data and assessed risk, strikes the appropriate balance and allows the Association to address long-running trends in membership and dues decline and, in the long-term, strengthen its financial viability.

The ABA should move forward with this approach with an important caveat: This is an early and important step, but it is *not* the last necessary step. The Association needs to continue to research and evolve its offerings to all dues paying members to be responsive to their needs and relevant to their practice.

At the meeting of the Board of Governors on June 22, 2018, the Board approved five dues categories, consistent with the pricing research. The Board approved the dues structure with the specific understanding that the Board must approve the related product “bundle” at the 2018 Annual Meeting, and absent such approval the proposal on dues price points will *not* be presented to the House of Delegates for its ultimate approval. This memorandum provides the details of that product bundle for consideration by the Board.

**Summary of Elements of Proposed New Membership Model**

- Allow all ABA members to join Law Practice and GPSolo at no additional charge. Membership in these divisions will be “opt-in” and lawyers will not be auto-enrolled. Content produced by both entities in addition to access to substantial content from the Center for Professional Responsibility will be available to all ABA members as part of the bundle of benefits included with base ABA membership;
- Build value in basic membership by implementing a modern content strategy to improve both member benefits and promote the quality content created by entities through a more
personalized, curated content experience for all ABA members while minimizing any undesired impact on our sections, divisions, and forums;

- Maintain a robust CLE marketplace, with both free content and CLE for sale by producing entities, with an appropriate annual contribution from CLE-producing entities;
- Increase the value of membership in both the ABA and its entities by strategically limiting access to substantive website content by non-members and providing all members with the chance to sample the quality content produced by the entities;
- Improve the member experience for all members, with an emphasis on law students and young lawyers;
- Focus on the financial health, flexibility, and sustainability of the Association.

Summary of Membership Dues

Since the June 22 approval by the Board of the pricing structure, and in an effort to strengthen the dues model, two modifications have been introduced and are presented here for Board approval.

Members with 20+ Years’ Experience: Avenue’s analysis of the demand curve shows a proposed $25 increase in price from the June 22, 2018 approved $425 to $450 for the 20+ year members will have a minimal negative impact on overall membership growth while providing more resources as we transform our membership value proposition and marketing. Members with 20+ years of experience will still receive a discount in their dues. The Board is asked to approve the pricing model with an increase of $25, from $425 to $450 for Members with 20+ Years’ Experience.

International Lawyers: In the pricing model approved by the Board on June 22, 2018, the dues for the new International Lawyers category was $250. While this price would have been an increase for our current international Associate members, it reflected the increased value of two entity memberships at no additional cost. As the two-entity included is no longer under consideration, the dues for International Lawyer category should be amended to $150. This reflects a modest decrease in current dues. It does not have any impact on membership or dues revenue projections as International Lawyers were not included in the projections. The Board is asked to approve the pricing model with a decrease of $100, from $250 to $150 for International Lawyers.

Thus, Board approval will be requested to present the pricing model to the House of Delegates with a minor modification (to the pricing model approved by the Board on June 22, 2018) that increases the amount of the top membership tier from $425 to $450 and reduces the amount of the International Lawyer membership tier from $250 to $150.

All other elements of the pricing model remain as approved by the Board on June 22, 2018 remain the same.
Entity Memberships

Allowing members to join the Law Practice Division and Solo, Small Firm and General Practice Division ("GPSolo") for no additional cost will strategically enhance the core value of ABA membership at a cost the ABA can afford. These two groups effectively become member benefits, but actual involvement with and receipt of product and other value from any or all of these groups would be an optional, no-cost choice for ABA members. Members would not be auto-enrolled and no change in the Divisions representation in the House of Delegates will occur as a result.

These entities will not become “fully funded” by general operations, but general operations will provide the equivalent of the amount of dues revenue and CLE net revenue the two groups collect in FY 2019 as support in future years. Many of the benefits of entity membership (e.g., product and event discounts and online content) would thus be made available to all ABA members in exchange for the guarantee of dues and CLE revenue. The two entities will provide the following content:

- **Law Practice as a member benefit**
  - General Revenue replaces dues and budgeted CLE revenue for the Law Practice Division at an estimated cost to general revenue of $370,000 annually;
  - Law Practice shifts all online CLE to become member benefits (including Law Practice’s back catalog). Law Practice commits to produce at least 36 new online CLE programs annually for the CLE Marketplace via ABACLE;
  - While existing Law Practice members will continue receiving print subscriptions as long as they retain ABA membership (unless they choose to convert to digital), all new Division members will receive Division periodicals in a digital format only. New Division members who prefer print will have the option of adding print periodicals at an additional cost. The print version also may be used as a promotional tool by the Law Practice Division and the ABA;
  - Law Practice discounts will be made available to all ABA members (e.g., discounts on Law Practice books and TECHSHOW). Adjustments will be made for this change to be revenue neutral for Law Practice;
  - Law Practice will commit to develop new, members-only content for ABA.

- **GPSolo as a member benefit**
  - General Revenue replaces dues and budgeted CLE revenue for GPSolo at an estimated cost to general revenue of $225,000 annually;
  - GPSolo shifts all online CLE to become member benefits, including back catalog. GPSolo commits to produce at least six new online CLE programs annually for the CLE Marketplace via ABACLE;
  - While existing GPSolo members will continue receiving print subscriptions as long as they retain ABA membership (unless they choose to convert to digital), all new Division members will receive Division periodicals in a digital format only. New Division members who prefer print will have the option of adding print periodicals at an additional cost. The print version also may be used as a promotional tool by GPSolo and the ABA;
GPSolo discounts will be made available to all ABA members (e.g., discounts on books and conferences). Adjustment will be made for this change to be revenue neutral to GPSolo;

GPSolo will commit to develop new, members-only content for ABA.

**CPR as a Member Resource**

While CPR will continue to operate as an ABA dues membership option for an annual $100 fee, and retain the dues revenue generated from this membership structure, it agrees to make a significant amount of content available to all ABA members. In particular:

- CPR will make its entire back catalogue of online CLE available for the free library in the CLE Marketplace;
- CPR commits to produce at least 12 new online CLE programs annually to be available to all ABA members via ABACLE;
- CPR will make ABA Formal Ethics Opinions available to all ABA members for no additional fee;
- CPR commits to develop new content as well as to repurpose some of its existing content for availability to all ABA members;
- General Revenue will replace budgeted CLE revenue (both new content and back catalogue of online CLE) and Formal Ethics Opinions revenue in an amount to be determined in discussions with CPR leadership.

All other membership entities (sections, divisions, forums) remain available at their established dues rates, and the entities retain the ability to adjust those rates in accordance with existing ABA policy.

**Content Modernization**

When Avenue created the product bundle description for its quantitative (survey) research, it used the following description for access to e-content:

*Practice-specific, member-only content curated and served to you on the completely re-designed ABA website. Choose your areas of interest and see recommendations on free articles, PDFs, whitepapers, and more from across the ABA.*

The focus group research performed by Avenue shaped the description of the e-content portion of the bundle in the subsequent survey. The participants in the focus groups expressed a clear preference for access to substantive, practice-specific content curated for their personal interests. They didn’t want to have to search the website for it, they didn’t want to have to pay extra for it, and they didn’t want legal content of only a general nature.

There is broad agreement that high quality content drives the ABA’s value. Yet there is also a consensus that our current content experience is difficult to navigate, especially for new members who are unfamiliar with the ABA section model, and it is overly reliant on traditional
content forms and outdated technology. The new ABA website will alleviate many of these problems, but others are inextricably tied to our extraordinarily complex structure.

The success of this new membership model relies on providing all ABA members with greater access to substantive, practice-specific content relevant to them. This improves the value of Association membership. At the same time, we know that part of the value of membership in a section, division, or forum is access to a significant amount of specialized content only for the entity’s members. We need to make these interests complement each other rather than compete. Put simply, we need to make enough substantive, practice-specific content available to attract lawyers to join the ABA and retain their membership without diminishing the value proposition of membership in sections, divisions, and forums.

To improve both member value and promote the quality content created by our entities, the proposed new membership model will create a more personalized, curated content experience for ABA members with minimal impact on entities. A new content team will work to develop a “virtual library” of content from a variety of sources to provide the necessary value to more than justify the base cost of membership, while actively promoting the value of entity membership. This will encourage members to view entities as valuable resources where they can obtain greater substantive practice area content (i.e., encourage them to join our sections, divisions, and forums).

Under a curated content strategy, the new content team using the new “virtual library” will work to deliver substantive content to members that directly aligns with their areas of practice as well as the challenges and needs they have at that moment in their career. For example, a first-year IP associate at a large firm would receive an article on claims construction along with one on how to work well with support staff. Solo practitioners may receive a checklist for dealing with environmental cleanup issues at a real estate closing along with assistance to understand how the latest health care reform impacts their own small business. A senior litigation partner could receive a link to a free CLE on effective closing arguments and a podcast on mentoring young lawyers.

While the ABA has produced content on many of these subjects, it is totally unreasonable to expect that the target audience will find it wherever posted. In fact, that is a daunting and frustrating task that is increasingly at odds with the way individuals of all ages interact with digital content in all sectors. It is time for the ABA to work to actively understand our audience, their needs, and where they are consuming their content -- and we need to go there. Now.

To achieve this objective, the content team will focus not just on developing and identifying high quality content, but will place significant emphasis on where and how the content is delivered. They will pursue an omni-channel strategy that delivers the right content to the right consumer in the right context. This requires a recognition that each platform -- email, website, various social media sites, the press -- have slightly different audiences and norms, and we must segment and optimize our message to each platform to enhance its performance. It also requires the use of data such as entities to which the member belongs, expressed Areas of Interest, the member’s usage patterns, and what other lawyers with similar interests as the member are interested in to identify the types of content that are of interest to our members.
This is not a novel approach to content; indeed, in many industries and organizations, this level of personalization has become the norm. Nor is this a significant departure from our earlier strategy but instead a different approach to the natural curation provided by including entity membership as part of base membership. Updating our approach is a change that could have significant impact on our ability to grow the Association and remain dynamic into the future. Pursuing modern content tactics -- ranging from search engine optimization, data capture and analysis, and social media and marketing automation -- can help us deliver the modern experience our content merits and our audience wants. Simply stated: We must stop expecting lawyers to understand and decipher our Association and instead focus on understanding them. That will enable us to be in a much stronger position to overcome the challenges and opportunities ahead.

In detail, this model proposes to:

- Build value in basic membership by implementing a modern content strategy to improve both member value and promote the quality content created by entities through a more personalized, curated content experience for ABA members that increases the value in Association membership and actively promotes the value of entity membership;
- Develop and promote high quality, original, digital native content of sufficient appeal to all potential members;
- Strategically deploy content among all available channels (website, email, social media) to engage with members and potential members where they currently consume content while also drawing them back to ABA controlled platforms;
- Support the content effort with a new, cross-functional, dedicated content team that includes content strategists, social media experts, and talented creators with modern storytelling skills (e.g., video, podcasting, design). The new team will consist of individuals familiar with both new media and the law as well as having a working knowledge of the ABA. The content team would work to ensure the value of base membership and entity membership are complementary, encouraging members to understand that sections are valuable resources where they can obtain greater substantive practice area content (i.e. encourage them to join entities);
- Invest in talent to produce and curate content, data management tools to better gather and utilize member data, and paid social/digital advertising to improve our ability to personalize, segment, and reach our key audiences;
- The content team will draw from a virtual library of e-content to deliver substantive content to members that is relevant, timely, and fresh;
- The term “e-content” for purposes of the new membership model includes periodical articles, journals, newsletters, scholarly papers, reports, case summaries; outlines/checklists, single presentation podcasts, blogs, daily/breaking legal news, and updates about legal and policy issues. In the case of a magazine, e-newsletter, or journal, each substantive article constitutes a piece of e-content. For these purposes, e-content does not include online CLE, which is discussed below;
- The content team will work with all providers of e-content to educate on the most effective ways for e-content to be presented to today’s audiences;
• The content team will generate e-content and use e-content generated by GP Solo, LP, CPR, ABA committees and commissions, ABA Journal, and third-parties (e.g., ABA Insurance administrator USI);

• The sections, divisions, and forums not included as part of ABA base dues will provide a substantial amount of high quality and relevant “evergreen” substantive e-content to create the initial virtual library. Evergreen e-content is e-content that does not become dated or will only become irrelevant after a significant change in the law or its practice. This initial batch of e-content must be identified and available for marketing no later than March 1, 2019;

• In addition, the sections, divisions, and forums not included as part of ABA base dues will also provide a substantial amount of high quality, current, and relevant substantive e-content annually. This is content posted within the proceeding twelve months. Beginning September 1, 2019, substantive e-content will be identified and made available by the sections, divisions, and forums on an ongoing monthly basis;

• The content team may ask a producing entity to provide additional pieces of e-content for the virtual library or discrete marketing campaigns. While the expectation is that the e-content would be provided, if the producing entity prefers not to release that piece of e-content for inclusion in the virtual library or marketing campaign, the matter will be discussed for collegial resolution; the ultimate decision rests with the producing entity. The decision of whether that piece of e-content is included in the virtual library or marketing campaign rests with the producing entity;

• Once a piece of e-content is made available for the virtual library, it will remain there unless removed by the content team;

• Quality is more important than quantity. Entities are encouraged to contribute as much high quality e-content as the producing entity believes is appropriate, including additional evergreen e-content from entity archives;

• E-content will clearly and prominently identify the producing entity;

• Contributions to the virtual library are not expected to be provided at the same level by every entity. Some may provide more, and others less. However, all entities are expected to contribute substantial high quality substantive e-content to ensure a robust curation strategy;

• The content team will review the substantive e-content provided and may make requests for additional or different e-content. While the expectation is that the e-content would be provided, if the producing entity prefers not to release that piece of e-content for inclusion in the virtual library or marketing campaign, the matter will be discussed for collegial resolution; the ultimate decision rests with the producing entity;

• The sections, divisions, and forums understand that the needs for the virtual library may change as strategy is refined and more data on the market needs and content usage is gathered. The content team will discuss these potential changes with the entities to try and reach consensus on any changes in this approach. The senior manager for the content team will report the results of such discussions to the Board for its consideration if necessary;

• The senior manager for the content team will report to the Board on the annual contributions made by each of the producing entities;

• The content team may ask entities to produce original e-content pieces annually to be developed in coordination with the content team (e.g., a toolkit, form, podcast, video) for
marketing purposes. An entity may suggest an alternative type of e-content (including one it has already produced but not selected for the virtual library). The ultimate decision of whether to provide such content rests with the producing entity;

- Member benefit entities, including Law Student Division, Young Lawyers Division, Law Practice Division, Senior Lawyers Division, GPSolo, the Career Center, as well as CPR, will work closely with the content team to provide a more significant volume of content and ensure baseline coverage for members regardless of career stage, practice area, or setting
- We would request a supplemental allocation of funds for FY19 in order to begin to acquire the necessary technology and hire members of the content team so that the curation strategy will be ready for implementation on May 1, 2019.

**CLE Marketplace**

The new model leverages the ABA’s breadth of substantive expertise and national reach to position the Association as the definitive provider of online CLE. The research clearly indicates that a robust online CLE library in the ABA membership bundle increases willingness to pay across all classes of ABA members. Of the five membership options tested, bundling CLE increased willingness to pay more than any other option for those in practice 10 years or less. If an entity does not currently produce online CLE, it is not required to begin producing it under these guidelines, though the entity may do so if it desires.

To achieve this robust CLE marketplace, the ABA will:

- Build and maintain a user-friendly library of high quality content that emphasizes ease of navigation and registration, consistency in look and feel, streamlined communications, and simplified certificate fulfilling and tracking;
• Rapidly build up the CLE marketplace through back catalog content. With the following proposed minimum entity contributions in the first year, the CLE marketplace would offer more than 650 substantive accredited programs:

<table>
<thead>
<tr>
<th>Lawyer Membership</th>
<th># entities</th>
<th>Initial</th>
<th>Ongoing</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>&gt; 12mo old*</td>
<td>&lt; 12mo old</td>
<td></td>
</tr>
<tr>
<td>MPG 25,000 - 50,000</td>
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<td>25</td>
<td>6</td>
<td>74</td>
</tr>
<tr>
<td>MPG 10,000 - 24,999</td>
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<td>20</td>
<td>4</td>
<td>112</td>
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<tr>
<td>MPG 5,000 - 9,999</td>
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<td>12</td>
<td>2</td>
<td>160</td>
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<td>3</td>
<td>2</td>
<td>104</td>
</tr>
<tr>
<td>CPR</td>
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<td>6</td>
<td>2</td>
<td>20</td>
</tr>
<tr>
<td>LPTG</td>
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<td>30</td>
<td>108</td>
</tr>
<tr>
<td>GP Solo</td>
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<td>3</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>ABACLE/Membership</td>
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<td>36</td>
</tr>
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<td>5</td>
<td>1</td>
<td>1</td>
<td>15</td>
</tr>
</tbody>
</table>

Less common acronyms used for the Groups in this chart:
  - MPG = Member Practice Group
  - LPTG = Law Practice and Technology Group

• ABACLE will pursue capture of live in-person CLE at a high production value (general revenue expense, marketplace programs). We will feature these and other key CLEs as “showcase CLE” (similar to Netflix original programming);
• ABACLE will work collaboratively with the new content group and the producing to identify and select programs that ensure the marketplace features a rich selection of high quality, relevant, and timely CLE that is consistent with the Association’s membership goals. While the expectation is that the CLE would be provided, if the producing entity prefers not to release that piece of e-content for inclusion in the free library, the matter will be discussed for collegial resolution; the ultimate decision rests with the producing entity;
• Programs will be rotated in and out of the free library as determined by ABACLE and the content team;
• Once a program has been selected for the free library, it will remain available for free unless the content team chooses to take it out of the free library. If that occurs, it will be available for purchase and the producing entity will receive the revenues;
• The producing entity will be responsible for all production costs and accreditation fees. The producing entity is also responsible for attendance fees unless the program is selected for use in the free library; in that case, general operations will pay the attendance fees while the program is offered through the free library;
• To maintain a robust selection of new programs, the new member benefit entities (LP, and GPSolo) as well as CPR will provide additional (new) programs and not merely past programs;
• Entities will be free to continue producing additional programs for purposes of non-dues revenue or enhancing entity member value as they see fit;
• The sections, divisions, and forums acknowledge that the needs for the CLE Marketplace and the free library may change once the strategy is refined and gather more data on the market needs and content usage. The content team will discuss these potential changes with the entities to try and reach consensus on any changes in this approach. The senior manager for the content team will report the results of such discussions to the Board for its consideration if necessary;
• The senior manager for ABACLE will report the annual contributions made by the producing entities on an as requested basis;
• To maintain a robust selection of new programs, the new member benefit entities (LP, GP Solo), and CPR will provide additional (new) programs and not merely past programs
• Entities will be free to continue producing additional programs for purposes of non-dues revenue or enhancing entity member value as they see fit;
• ABACLE will pursue technical and user experience improvements (e.g., a CLE tracker) that will benefit all groups.

Paywall Strategy

It is essential that the Association employ a thoughtful paywall strategy that serves its marketing purposes, encourages non-members to join, and preserves the entities’ ability to build value in entity membership. Though the ABA website has featured a paywall for many years, it has not been employed consistently and the requirements for accessing paywalled content often has not been clear to users.

Under the proposed new membership model, the focus for the paywall will be twofold:
• Apply paywall restrictions consistently and strategically to serve the Association’s membership purposes. Content that is intended to market the ABA and its entities may reside outside the paywall still. Substantive content generally should be placed behind the membership paywall or an entity paywall. Entities will retain the ability to determine how their content should be positioned, but they will be provided with better tools and education to help ensure the most effective use of the Association’s paywall strategy;
• To improve the member experience, the paywall must provide a frictionless experience for visitors. Users must be able to ascertain quickly what they need to do to access the content, whether that means joining the ABA or joining a member entity, and receive a clear call to action to join.

The ABA will develop a mechanism (e.g., a metered paywall) as part of the new membership model that provides members with the ability to access a limited number of paywall-protected articles per month (no more than five) to provide some additional substantive value for casual browsers and to better showcase the value of entity membership. Materials for in-person CLE programs uploaded to the website or e-content that the entity charges its own members an additional fee will not be accessible by non-entity members through the metered paywall. A determination on the mechanism will be dependent on the technical and financial hurdles of implementation.
The sections, divisions, and forums understand that the needs for the metered paywall may change as strategy is refined and more data on the market needs and content usage is developed. The Association recognizes the potential for abuse by members as well. The content team will work with the sections, divisions, and forums on the refinement of the strategy and discuss any potential changes with the entities to try to reach consensus on any changes in this approach. The senior manager for the content team will report the results of such discussions to the Board for its consideration if necessary.

A simple, consistent, user-centric approach to the paywall should help the ABA and its entities better position our valuable content as a powerful justification for joining or retaining membership.

Communications & Member Experience

While a key component of its acquisition strategy is content marketing, the Association’s engagement with its members and potential members extends well beyond content and is critical to the success of a new membership model. Avenue’s research shows clearly that ABA members and potential members expect a coherent and personally relevant experience when engaging with brands. The Beta version of our new website, which will be available beginning July 30, will provide a substantially improved experience for all users, and notably so for dues-paying members of the Association.

The ABA must develop a cohesive, modern communications and customer experience strategy, and carefully consider each engagement opportunity with members. This requires rethinking ways to communicate, better leveraging technology, consistent branding, and investing in digital marketing and social media to complement content:

- Provide all members with five or more years of practice curated substantive e-content and online CLE based on their preferences as determined from such data points as entities joined, selected areas of interest, and other user data. The curated content would be delivered to the member in the manner they prefer: a weekly email with curated content, on the member’s myABA page on the website, or through targeted social media;
- Implement a periodic (perhaps starting as a weekly and eventually moving to daily if the research supports it) email for law students and young lawyers in the first four years of practice. This regular email would be crafted to strike an audience-appropriate tone while highlighting key, curated content, including content supplied by any member entities these members may join. This email would replace all other email marketing/communication for this audience, aside from mandatory emails (e.g., billing, registrations) and listservs;
- Continue ongoing work to improve email communications for all ABA members, building on the concepts outlined in the 2016 ABA Email Task Force report and consistent with a more comprehensive, sophisticated and coordinated Association-wide email and content delivery strategy;
- Significantly update our social media strategy to align with the broader content strategy;
- Work collaboratively with all entities that interact with younger audiences to improve messaging and create a more cohesive customer experience;
• Conduct an organization-wide process improvement sprint with an eye towards improving customer experience. In other words: getting away from print-based or print-analog processes (reimbursements, speaker/author releases, applications, etc.). Challenge the entire ABA staff to identify these kinds of opportunities;
• Overhaul and streamline the customer service experience, while seeking efficiencies through technology including chat and social media.

Other Initiatives/Ideas

• The new membership model offers entities an opportunity to significantly expand their membership by tapping into a new pool of engaged, dues-paying members. The entities can work with Membership, the new content team, Chief Marketing Officer, and outside marketing firm (The latter two are yet “to be selected” as of the date of this memo) to ensure optimal entity positioning and promotion in the new model through entity specific strategy development and training.
• The Full Firm program will be continued, with renewed emphasis on identifying ways to make full firm membership more valuable to the firms;
• Content generated by Full Firm, individual members, and third-parties will be promoted as part of the virtual library and CLE Marketplace to ABA members. This program will provide value to those members and it will fill in content gaps.

If we continue to do the same things we have done (status quo), the projections indicate that dues-paying membership will continue to decline at an unacceptable rate. The projected loss of market share under the status quo approach will put at risk the organization’s ability to deliver value at the current levels for members. This proposed new membership model, combined with the necessary allocation of resources, provides the first and most important step to reversing these trends. The entire Association must work together to advance, grow, and fortify the ABA for generations to come.
REPORT ON THE ABA ANNUAL MEETING

The 140th Annual Meeting of the American Bar Association (the “ABA” or the “Association”) was held August 2-7, 2018, at the Hyatt Regency Chicago Hotel, in Chicago, Illinois. Wide varieties of programs were sponsored by committees, sections, divisions, forums and affiliated organizations. The House of Delegates met for one and a half days. The Meeting of the Membership was held and the Nominating Committee also met.

The Nominating Committee sponsored a “Coffee with the Candidates” Forum on Sunday, August 5, 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: 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, August 6, and Tuesday, August 7, 2018. Deborah Enix-Ross of New York presided as Chair of the House of Delegates.

The Chicago Police Department Honor Guard presented the colors. The invocation for the House was delivered by former ABA President Robert J. Grey, Jr. of Virginia. 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 this meeting of the House. The motion was approved.

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 noted that two additional bar association resolutions were filed and moved that one late-filed resolution be calendared. She moved to adopt the final calendar and approve the list of individuals who sought privileges of the floor. All motions were approved. Ms. Frederick noted that the deadline for submission of Resolutions with Reports for the 2019
Midyear Meeting is Wednesday, November 14, 2018, while the deadline for Informational Reports is Friday, December 7, 2018. She also referred to the consent calendar, noting the deadline for removing an item from the consent calendar or from the list of resolutions to be archived. Ms. Frederick reminded the House of the treatment of Reports 400A and 400B regarding the archiving of policies.

Ms. Frederick noted that in an effort to streamline ceremonial activities in the House while continuing to respect and acknowledge deceased members of the House, the practice for memorials during the meeting of the House has changed to have remarks regarding former presidents and chairs of the house only.

Later in the day, Ms. Frederick moved the items remaining on the consent calendar. The motion was approved.

Secretary Mary L. Smith of Illinois moved that the proposed Summary of Action for the House for the 2018 Vancouver Midyear Meeting be adopted as the official record of the House. The motion was approved. Secretary Smith moved that the House adopt the recommendations for the continuation of certain special committees and commissions (Report 177A). The motion was approved. Secretary Smith noted the submission of Report No. 177B, the Board of Governors Informational Report.

Deceased members of the House were named and remembered by a moment of silence. Chair Enix-Ross recognized Reginald M. Turner, Jr. of Michigan and former ABA President Dennis W. Archer of Michigan on a point of personal privilege to speak about past president Wallace D. Riley of Michigan.

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, welcomed the delegates to the House and thanked the ABA Communications and Media Relations Division for informing ABA members, the legal community and the general public about developments in the House by providing updates and reporting on the proceedings of the House via Twitter @ABAesq. Chair Enix-Ross extended a special welcome to new members of the House and recognized those delegates who have served the House for 25 years or longer.

In her statement to the House, Chair Enix-Ross discussed the procedure 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 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 highlighted the important policy role of the House, identifying recent successes in the ABA’s work with Congress to support the Legal Services Corporation and reauthorization of the Violence Against Women Act. She encouraged all members to be active in the ABA Grassroots Action Team and participate in ABA Day in Washington, D.C. on April 9-11, 2019.

Chair Enix-Ross referred delegates to materials at the delegates’ seats or on the publications’ table highlighting ABA Insurance, and the Judges’ Journal magazine that focuses on the timely topic regarding building public trust in the American Justice System.

Chair Enix-Ross noted that the ABA Medal was presented at the General Assembly and congratulated Bryan Stevenson as the recipient of the 2018 ABA Medal. Chair Enix-Ross also recognized Rochelle Evans, Director of ABA Division for Policy and Planning, for her more than 29 years of exemplary service to the American Bar Association. Ms. Evans will be leaving the ABA August 31, 2018.

Statement by the ABA President

ABA President Hilarie Bass of Florida expressed her pride in the ABA’s staff and volunteers as well as the reputation of the Association. That pride reached a new high during the immigration crisis as lawyers stepped up to fight injustice and help families in need. ABA’s ProBar is on the ground helping clients who have been separated from their children and have not been told what they needed to do to get them back. Ms. Bass stated that the lawyers of America will not rest until all are reunited with their children. In support of this work, the FJE has developed a website to inform people how they can help. Law firms have been sending lawyers to the border and numerous entities within the ABA have worked with other organizations to aid in the crisis. In addition, over $300K has been donated to FJE by 1200 people, the vast majority of which are non-ABA members and the ABA has received commitments of $1M from foundations to support this work. Of 2600 children separated from their parents, 650-700 remain in government custody and may never see their parents again. These children and their parents must have pro-bono lawyers in order to navigate the process. The ABA is committed to providing this legal assistance. Ms. Bass thanked Kimi Jackson, Director of ProBar, and Meredith Linsky and Mary Meg McCarthy from the ABA Commission on Immigration who continue to work valiantly during this crisis.
President Bass noted that the ABA has addressed other important issues including the provision of services to homeless youth. After an international summit last fall, the House approved the principles of the UN General Comment on Street Youth. The implementation mechanisms associated with this will be distributed to 191 signatory countries shortly and the ABA will be available to assist these countries. Domestically the ABA continues to pair law firms, in-house counsel groups and bar associations with homeless youth to provide needed legal services.

Another important focus has been on achieving long-term career success for women lawyers. Research shows that the profession is not supportive of women in the practice of law with high incidents of gender bias, discrimination and unwanted sexual contact. These findings are disturbing and require action. Next year the ABA will come back with list of specific recommendations so that women can look forward to the same opportunities as their male counterparts.

The Commission on the Future of Legal Education is working to align the ABA’s system of legal education and licensing with the practice needs of lawyers in the 21st century. Studies are being conducted to advise on how to accomplish this and aspiration principles will be developed for law school and employers to aid students and evaluators.

Also of concern is the issue of the physical and mental health of the profession. The ABA has done research on attorney impairment and found alarming rates of alcoholism and substance abuse as well as high rates of depression and anxiety among lawyers. Added to this, lawyers are reluctant to seek help. A working group on the advancement of attorney well-being has developed a tool kit for employers to assist in this area.

The ABA has also been active in fighting the criminalization of the poverty that occurs when people are jailed because they cannot pay court-ordered fees or fines. The Working Group on Building Trust in the Justice System is proposing ten guidelines to help jurisdictions avoid putting people in jail because they cannot pay fines and fees. In other work, President Bass noted that Federal Emergency Management Agency (“FEMA”) contracts with the ABA’s Young Lawyers Division (“YLD”) to provide legal services to disaster victims and expressed her thanks and pride in the work they have done this year.

In terms of the internal operations of the ABA, enormous progress has been made focusing on improving efficiency and prioritizing the ABA’s goals. The ABA has an updated web site that is now in beta. The ABA has also done an associated-wide realignment. There are now ten centers each focused on one of the association’s priorities and grouping entities together that are engaged in similar work. Staff efficiencies were also realized. In addition, the ABA has been working on a new membership model with lower dues, more member content, including CLE as well as curated content. President Bass thanked James Dimos, Deputy Executive Director and Standing Committee on Membership (“SCOM”) chair Tracy Giles who worked hard to develop this model.

President Bass closed by stating that the reason we work so hard to make sure the ABA is strong is not only because it represents the entire profession, but because of its role in defending the independence of the judiciary throughout the world. As part of this effort, the
Rules of Law Initiative (“ROLI”) provides legal support and education in 50 countries around
the world to address issues such as gender abuse in the Congo, assisting Syrian refuges in
Turkey, and educating Libyans on their new constitution. The ABA makes a difference everyday
as it stands up for the rule of law, the independence of the judiciary and ensures that our
profession lives up to its ideals.

President Bass was thankful for the opportunity to serve and to the ABA staff, its
volunteers, her assistant, and her law firm Greenberg Traurig.

Statement by the Executive Director

ABA Executive Director Jack L. Rives of Illinois thanked President Bass and Chair Enix-
Ross as well as the members of the House for their service. He welcomed the members of the
House to Chicago, headquarters of the ABA, and noted that the city of Chicago is a story of
change and resiliency much like the ABA. His remarks focused on finding solutions to the
Association’s challenges, including a need to recruit and retain dues-paying lawyer members;
prioritizing and examining spending; and making technological and structural changes. The
ABA has many strengths compared to other associations trying to increase their membership,
such as $300M in highly liquid assets, an expense budget of $210M, and more than 400,000
members. However, due to revenue shortfalls, major changes have been needed and cutting
expenses has been critical. Comparing the 2019 budget to that of 2014, has reduced annual
general revenue expenses by $25M, or 22 percent.

The ABA is at an inflection point and the decisions made today will position the ABA to
be the guiding force and the voice of the legal profession in the years ahead. The ABA must
tear down the silos within the ABA to build cooperation among the many entities. To accomplish
this, the staff structure has been simplified and staff reorganized around the four goals of the
Association. This reorganization and the staff reduction will save $4.5M in FY19 and future
years.

The Board of Governors has begun to prioritize spending using the following criterion to
evaluate programs: does it serve existing members; does it attract new members; is it
redundant with another program; is it successful; is it something only the ABA can do; and are
other funding sources available? Based on these factors, the Board reduced programmatic
spending by more than $2M for FY19.

As the ABA moves forward, there needs to be a clear value proposition for members
through a new membership model. The first part of achieving this is to simplify the dues
structure, and the proposal before the House has five price levels, down from 157. The ABA
must provide reasons to join the Association, and that will be done through a bundle of new
benefits including: 1) a CLE marketplace with more than 650 CLE programs for members at no
additional cost; 2) provision of curated content; 3) access to content from the Law Practice
Division, Solo, Small Firm and General Practice Division (“GP Solo”), and the Center for
Professional Responsibility; 4) member-only access to materials behind a pay wall; and 5) a
new and streamlined website that functions efficiently on mobile devices. The ABA must
effectively communicate its value proposition. The ABA will be hiring a Chief Marketing Officer
and an outside marketing firm help convey the ABA’s value to lawyers.
The winds of change are all around, not only in the profession but also within the Association. The ABA can weather the storm if it has the courage to make the profound and essential decisions that will help the ABA grow membership and better appeal to the legal community. Doing it will place the ABA on a firm foundation for success for the next 140 years.

SCOPE Nominating Committee

Thomas M. Fitzpatrick of Washington, Chair of the Committee on Scope and Correlation of Work (“SCOPE”), nominated Linda L. Randell of Connecticut, to serve on the Committee on Scope for a 5-year term, beginning at the conclusion of the 2018 Annual Meeting. Chair Fitzpatrick then moved to close the nominations. The motion was approved. Later that day, the House elected Ms. Randell to serve on SCOPE.

Presentation by the American Bar Endowment

Chair Enix-Ross recognized J. Anthony Patterson, Jr. of Montana, President of the American Bar Endowment (the “ABE”) to report to the House of Delegates on the importance of the American Bar Endowment and the revenue generated by its insurance offerings. Mr. Patterson was joined by David S. Houghton, President of the American Bar Foundation (“ABF”), Ajay K. Mehrotra, Director of the American Bar Foundation, Stephen N. Zack, Vice President of ABE, Michelle A. Behnke, ABA Treasurer, and Jack L. Rives, Executive Director of the ABA, for the presentation of checks from the ABE to the ABF and the Fund for Justice and Education in the amount of $3,545,630. In addition, Mr. Patterson noted that the ABE made opportunity grants totaling $300,000 to state and local bar associations to aid in their work. Mr. Zack encouraged state and local bar associations to apply for opportunity grants in the coming year.

Passing of the President’s Gavel and Statement by President-Elect

ABA President Hilarie Bass introduced and passed the gavel to President-Elect Robert M. Carlson of Montana. Mr. Carlson was sworn in as President of the American Bar Association by the Honorable Leslie Halligan, judge of the Fourth Judicial District Court. Mr. Carlson thanked President Bass and Chair Enix-Ross for their service and thanked the dedicated staff of the ABA and his wife Cindy, his family, the Montana delegation and others.

Mr. Carlson expressed that he is honored to steward the ABA and to fight for American lawyers and the public they serve. As the ABA moves forward, its agenda will determine the health of the association and its position the world. The profession and the nation needs the ABA to be a strong, national, collective voice that stands against those who oppose equal justice under law, mock due process and scorn the independent judiciary.

Some cynics say the ABA is driven by ideology and they are correct. The ABA ideology is the essential role of an independent legal profession and an independent and impartial judiciary. The ABA is the protectors of equal justice under law in a free democratic society. Mr. Carlson stated that his leadership is rooted in the four goals of this association: to serve our members, improve the profession, eliminate bias, and advance the rule of law. Today the ABA is serving its members by lowering their dues and enhancing member benefits so more
members can be part of the ABA. In addition, the ABA will promote standard member benefits that many are not aware of such as the ABA Retirement Funds and ABA Insurance. As the gold standard of law practice, the ABA will build on ABA Blueprint to make it easier and less expensive for lawyers to get the tools they need. This will also provide a pivotal member benefit. The Association will advance Goal 2 through highest quality legal education, ethics, professionalism and pro bono. The ABA will build on our initiative on the Future of Legal Education and ABA Center on Innovation as well as encouraging pro bono work and legal aid. The ABA also seeks to improve the profession by addressing issues of mental health and wellness. Goal 3 to eliminate bias and increase diversity is served when the ABA encourages everyone to be at the table. As President Carlson stated he will continue efforts to rebuild the public’s trust in the judicial system and to make sure the courts are open and accessible to all. Justice must be available to everyone and justice must look like everyone. The ABA will fight every day until that happens. Goal 4 is to advance the rule of law and the ABA will always be there to protect an impartial and adequately funded judiciary. In addition, the ABA is the only group that reviews judicial appointees solely on their professional qualifications. The ABA advances the rule of law by standing up for an independent profession, by fighting for adequate funding for legal services, and by ensuring America’s constitutional protections are honored everywhere, including U.S. borders. Mr. Carlson expressed his excitement about Law Day 2019 with the theme: Free Speech, Free Press, Free Society. Now more than ever Americans need to hear the voices of lawyers who stand up for the rule of law and American lawyers need a strong national voice that only the ABA can provide. All of us working together can make America a beacon for liberty and justice.

**Issues of Concern to the Legal Profession Presentation**

Chair Enix-Ross recognized Mark I. Schickman of California, Chair of the Committee on Issues of Concern to the Legal Profession who introduced University of Chicago law professor Lior J. Strahilevitz who addressed the state of privacy laws and regulations around the world including recent developments such as the European Union’s General Data Protection Regulation (GDPR), California’s Consumer Privacy Act of 2018, and the recent U.S. Supreme Court decision in *Carpenter vs. the United States.*

**Greetings by Rahm Emanuel, Mayor of Chicago**

The Honorable Rahm Emanuel, Mayor of Chicago, welcomed the delegates to Chicago. He spoke about his grandfather who had only one cousin that he could live with when he came to America at age 13 years old to make a new life. Today his grandfather would be called “undocumented” and yet today his grandson is the mayor of the city to which he came. Mr. Emanuel spoke of Chicago as a welcoming city to all and noted that Chicago will never turn its back on people who struggle to give their kids a better chance. As part of this effort, he noted the success of Chicago’s summer jobs program. Mayor Emanuel thanked the ABA for having its conference in Chicago and encouraged members to enjoy the city and to “spend a lot of money.” He stressed that we should never allow the rule of one man’s opinion over the rule of law, and he encouraged America’s lawyers to have their voices heard.
Resolution and Impact Review Committee Video Presentation

Chair Enix-Ross recognized John C. Yang of Virginia, Chair of the Resolution and Impact Review Committee. Mr. Yang reported that every other year, the Committee selects one or two resolutions to highlight and this year the Committee selected Resolution 107A which was approved in 2015. Resolution 107A addressed the issue of youth shackling in the criminal justice system. A video presentation addressed the impact Resolution 107A has had on the criminal justice system.

Statement by the Treasurer

ABA Treasurer, Michelle A. Behnke of Wisconsin reported on the FY18 year to date results and on the FY19 budget.

FY18 results. Revenue has been a challenge over the last few years. This year budgeted $172.6M was budgeted in revenue and year to date actual revenue is $168.7M. In terms of general operations, this is because of lower than expected dues collection and a shortfall in sponsorships, meeting fees and advertising. In sections, the revenue shortfall in dues and meeting fees was offset by higher than expected royalties. Expenses. The ABA is usually able to manage expenses however this year general operation is $1.1M over budget, primarily because of litigation costs associated with accreditation. Section expenses are favorable in mostly all line items. As a result, on a consolidated basis expenses were under budget by $3.6M. Together overall results through June show the ABA has a $4M deficit. Non-operating activity. The ABA had investment income of $5.1M that is reduced by non-operating expenses (primarily associated with the reorganization). On a consolidated basis, operating and non-operating results show a $4.6M deficit year to date. On the balance sheet the ABA has $330M in assets and liabilities of $162M (primarily the pension loan and the pension obligation) resulting in $167.5M of net assets. This year there was a $13M reduction in liabilities because of decrease in obligations to the pension fund resulting from increases in interest rates. In summary, net assets are impacted by three primary factors: the pension liability, investment income and what we spend on operations.

FY19 Budget. The dues revenue has been decreasing each year. In recognition of this, next year the Board has budgeted $54.2M in dues revenue (2% less than the actual dues collected this year.) The budget was also built on applying less investment income to operations (3.5%) and decreasing the expected advertising revenue. All together this reduced budgeted revenue by $6.9M. In addition, expenses were reduced by $7.1M through reorganization, implementing a new meeting and travel policy, and making programmatic changes. This budget will produce a small surplus. These changes have not been easy and it will take everyone working together to define the ABA's future and to keep the ABA strong and vibrant.

Election of Officers and Members of the Board of Governors

On behalf of the Nominating Committee, the Honorable James S. Hill of North Dakota, Chair of the Steering Committee of the Nominating Committee, reported on the nominations for officers of the Association and members of the Board of Governors. The House of
Delegates elected the following persons for the terms noted:

**OFFICERS OF THE ASSOCIATION**

**President-Elect for 2018-2019 Term**

Judy Perry Martinez of Louisiana

**Chair, House of Delegates for 2018-2020**

William R. Bay of Missouri

**MEMBERS OF THE BOARD OF GOVERNORS (2018-2021 Term)**

**District Members**

District 3: Lynn Fontaine Newsome of New Jersey
District 5: Charles E. English, Jr. of Kentucky
District 9: Susan M. Holden of Minnesota
District 14: Andrew J. Demetriou of California
District 15: Mark 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

Section of 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

**Judicial Member-at-Large**

Hon. Frank J. Bailey of Massachusetts

**Young Lawyer Member-at-Large**

Sheena R. Hamilton of Missouri
Law Student Member-at-Large (One-Year Term 2018-2019)

Matthew W. Wallace of New York

It was noted that the Association’s Constitution provides that the President-Elect automatically becomes the President at the conclusion of the Annual Meeting and Robert M. Carlson of Montana will assume that office.

Remarks by President-Elect Nominee

President-Elect Nominee, Judy Perry Martinez of Louisiana stated that it is an honor to serve the Association. She thanked her law firm and her past employer as well as her husband and family for their support. Ms. Martinez also recognized the dedicated staff of the ABA as well as the officers and Board of Governors. She also expressed her admiration for outgoing President Hilarie Bass and her ability to drive change and incoming president Robert Carlson for his commitment to making this association stronger.

Ms. Martinez noted that the ABA must face the work that lies ahead with hope. She noted that there will be sacrifices, but that the ABA must do what is necessary to drive a stronger association, because the profession is in need of the Association’s collective leadership. Ms. Martinez spoke about Equality and noted Equal treatment of all in the profession and the justice system must be realized and everyone can do more to make this a reality. She then turned to Innovation and asserted that it is everyone’s duty to be forward thinking. She said there must be research, education and design accessible solutions that benefit the public and make sense for the long-term sustainability of the profession. She urged that the ABA must change to meet the needs of American lawyers today. Ms. Martinez next spoke about the ABA as the Voice of the Legal Profession. She said that the Association’s finest moments are when the ABA uses its voice and resources to speak in the areas where the ABA speaks with authority and an expertise about the law. The ABA must speak for the rule of law, independence of the judiciary, free press, and speak out against injustice. Lawyers must give the best to those that we have taken an oath to protect and serve.

She noted that the greatest contribution lawyers can bring to a challenge or a problem is the ability to bring people of different perspectives together to discuss and devise solutions. The ABA brings lawyers together from all areas of the law to speak on issues critical to the rule of law and our democratic values. Ms. Martinez challenged everyone to show the world the ABA, the American justice system, and to make a difference.

Remarks by Chairman of the Board of Directors of the Legal Services Corporation

John G. Levi, Chairman of the Board of Directors of Legal Services Corporation (“LSC”) thanked President Hilarie Bass and the ABA for a strong partnership with the LSC and noted that the ABA has been an indispensable ally with LSC. The ABA’s presence on the Hill during ABA Day is critical to adequately funding the LSC. As part of its work, the LSC has established two task forces. The first is focused on the opioid crisis and will highlight the critical role of legal aid programs and will identify best practices to aid in that work. Second is the disaster task
force that will develop a systematic approach to responding to the civil legal needs of low income Americans who are victims of a disaster. Mr. Levi outlined approaches the LSC is taking to address these and other legal needs of Americans. Despite these efforts, America is still burdened by a legal justice gap. There are over a million issues brought to legal services centers which cannot be addressed because of a lack of resources. The civil legal needs of 86% of low-income persons were left unmet. In some courts 90% of low income tenants have no representation and 90% of parents in child support cases are not represented. LSC funding must be significantly increased in order to make the justice system accessible to all Americans. Equal justice is not charity rather it is critical to democracy and the rule of law. Efforts must be redoubled to ensure this access to the justice system.

II. RESOLUTIONS VOTED ON BY THE HOUSE

A brief summary of the action taken on resolutions brought before the House follows. The resolutions are categorized by topic areas and the number of the resolution is noted in brackets.

**ADMINISTRATIVE LAW JUDICIARY**

[113] On behalf of the National Conference of the Administrative Law Judiciary, Hon. Julian Mann III from Louisiana moved revised Resolution 113 adopting the ABA Model Code of Judicial Conduct for State Administrative Law Judges, dated August 2018, and urging governments to enact and adopt the Model Code. Hon. Mary Kelly of California spoke in support of the resolution. The resolution was adopted as revised.

**ARCHIVING**

[400A] The House adopted by consent revised Resolution 400A recommending that certain Association policies that pertain to public issues and are 10 years old or older be archived. Items 35 and 36 were removed from the archival list prior to approval.

[400B] The House adopted by consent revised Resolution 400B recommending that certain Association policies that pertain to public issues that were adopted in 1998 which were previously considered for archiving but retained, be archived. Items 3 and 39 were removed from the archival list prior to approval.

**ASSOCIATION’S CONSTITUTION, BYLAWS AND HOUSE RULES OF PROCEDURE**

[11-1] Association Member Edward Haskins Jacob of the Virgin Islands presented and Secretary Mary L. Smith of Illinois moved Report 11-1 amending §1.2 of the Constitution to include the following language as one of the purposes of the Association: “to defend the right to life of all innocent human beings, including all those conceived but not yet born.” Carlos A. Rodriguez-Vidal of Puerto Rico, Chair of the Standing Committee on Constitution and Bylaws, reported that the committee reviewed the resolution and found that it was inconsistent with §1.2 of the ABA Constitution. Mark I. Schickman of California moved to postpone indefinitely. Robert L. Weinberg of the District of Columbia spoke in opposition to the motion. Alice E. Richmond of Massachusetts spoke in support of the motion. Tom Bolt of the Virgin Islands
asked for a point of order. The motion to **postpone indefinitely was approved.**

[11-2] Anthony M. Cioli of the Virgin Islands moved Resolution 11-2 amending §6.2(a)(1) of the Association’s Constitution to provide the U.S. Virgin Islands with a State Delegate, who pursuant to the existing language of §9.2, would automatically serve as a member of the Nominating Committee. Carlos A. Rodriguez-Vidal of Puerto Rico, Chair of the Standing Committee on Constitution and Bylaws, reported that the committee reviewed the resolution and approved it as to form but took no position on the substance. Palmer Gene Vance II of Kentucky spoke in opposition to the resolution. Thomas Bolt of the Virgin Islands, Adriane J. Dudley of the Virgin Islands, and Michael M. Miller of Minnesota spoke in support of the resolution. Robert M. Carlson of Montana moved to postpone indefinitely. Anthony Cioli of the Virgin Islands spoke in opposition to the motion to postpone. The motion to **postpone indefinitely was approved by a vote of 237 to 226.**

[11-3] Seth Rosner of New York moved Resolution 11-3 amending §6.7(e) of the Association’s Constitution to increase the number of Senior Lawyers Division delegates to the House of Delegates from two to four. Carlos A. Rodriguez-Vidal of Puerto Rico, Chair of the Standing Committee on Constitution and Bylaws, reported that the committee reviewed the resolution and approved it as to form but took no position on the substance. John Weber of Kentucky spoke in support of the resolution. The resolution was **adopted.**

[11-4] Andrew M. Schpak of Oregon moved Resolution 11-4 amending §7.3 of the Association’s Constitution to reconcile the eligibility requirements for a young lawyer member-at-large on the ABA Board of Governors with the definition of young lawyer in the ABA Young Lawyers Division Bylaws. Carlos A. Rodriguez-Vidal of Puerto Rico, Chair of the Standing Committee on Constitution and Bylaws, reported that the committee reviewed the resolution and approved it as to form but took no position on the substance. The resolution was **adopted.**

[11-5] The House **approved by consent** Report 11-5 amending §29.6 of the Association’s Bylaws to clearly state that the Association’s financial statements are audited and not the Treasurer’s report, and that the Association’s annual financial statements shall be submitted for examination and audit by a certified public accountant designated by the Board of Governors upon recommendation of the Audit Committee.

[11-6] The House **approved by consent** Report 11-6 amending §31.7 of the Association’s Bylaws to more completely and accurately reflect the Standing Committee on Audit’s duties as they have been assigned by the Board of Governors.

[11-7] Frank X. Neuner, Jr. of Louisiana moved Resolution 11-7 amending §31.7 of the Association’s Bylaws to change the name of the Standing Committee on Client Protection to the Standing Committee on Public Protection in the Provision of Legal Services and to amend its jurisdictional statement. Carlos A. Rodriguez-Vidal of Puerto Rico, Chair of the Standing Committee on Constitution and Bylaws, reported that the committee reviewed the resolution and approved it as to form but took no position on the substance. Janet Green-Marbley of Ohio spoke in opposition to the resolution. Lynda C. Shely of Arizona and Hon. Daniel J. Crothers of North Dakota spoke in support of the resolution. The resolution was **adopted.**
The House approved by consent Report 11-8 amending §31.7 of the Association’s Bylaws to discontinue the Standing Committee on Medical Professional Liability at the conclusion of the 2018 Annual Meeting and that its work be subsumed by the Tort Trial and Insurance Practice Section.

The House approved by consent Report 11-9 amending §31.7 of the Association’s Bylaws to change the name of the Standing Committee on Professional Discipline to the Standing Committee on Professional Regulation and to revise its jurisdictional statement.

The House approved by consent Report 11-10 amending §31.7 of the Association’s Bylaws to revise the jurisdictional statement of the Standing Committee on Professionalism.

The House approved by consent Resolution 11-11 amending §31.7 of the Association’s Bylaws to revise the jurisdictional statement of the Standing Committee on Technology and Information Systems.

Tracy A. Giles of Virginia moved Resolution 11-12 amending various Sections of the Association’s Constitution and Bylaws as necessary due to the New Membership Model adopted by the Board of Governors and the House of Delegates. Carlos A. Rodriguez-Vidal of Puerto Rico, Chair of the Standing Committee on Constitution and Bylaws, reported that the committee reviewed the resolution and approved it as to form but took no position on the substance. The resolution was adopted.

BUSINESS LAW

On behalf of the New York State Association, Michael Miller of New York moved Resolution 10B urging Congress to enact legislation to provide a permanent exemption for the Commonwealth of Puerto Rico from the requirements of the Jones Act, 46 U.S.C. §§55101 et seq. Robert L. Weinberg of the District of Columbia, Roger Juan Maldonado of New York, Carlos A. Rodriguez-Vidal of Puerto Rico, Anthony M. Ciolli of the Virgin Islands, Sandra R. McCandless of California and David M. Rivera of Puerto Rico spoke in support of the resolution. The resolution was adopted.

CIVIL RIGHTS AND SOCIAL JUSTICE

On behalf of the Section of Civil Rights and Social Justice, Robert N. Weiner of the District of Columbia, moved Resolution 104A urging Congress to enact legislation that implements the “Law Enforcement Equipment Working Group Recommendations Pursuant to Executive Order 13688” dated May 2015. The resolution was adopted.

On behalf of the Section of Civil Rights and Social Justice, Estelle H. Rogers of California, withdrew Resolution 104B urging governments to adopt and enforce stronger fair lending laws targeted against discrimination in vehicle sales market and urging Congress to amend the Equal Credit Opportunity Act to collect data on race and national origin for auto-lending transactions.
[104C] On behalf of the Section of Civil Rights and Social Justice, Estelle H. Rogers of California, moved revised Resolution 104C supporting an interpretation of Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116(a), that its prohibition on sex discrimination by covered health programs or activities includes discrimination on the basis of sexual orientation and gender identity. Kristen M. Galles of Virginia spoke in support of the resolution. The resolution was adopted as revised.

[104D] On behalf of the Section of Civil Rights and Social Justice, Estelle H. Rogers of California, moved Resolution 104D urging governments to enact legislation providing employees with job-guaranteed paid sick days and job-guaranteed paid family and medical leave. The resolution was adopted.

[104E] On behalf of the Section of Civil Rights and Social Justice, Mark I. Schickman of California, moved Resolution 104E urging governments and international institutions to adopt and implement legislation and regulations to eliminate, prevent and provide remedies for gender-based violence in the workplace, including sexual harassment, based on virtue of their actual or perceived sex (including pregnancy), family responsibilities, sexual orientation, gender identity, gender expression, the intersectionality between race and sex or status as a victim of domestic or sexual violence. Maria-Vittoria (Giugi) Carminati of Colorado spoke in support of the resolution. The resolution was adopted.

[300] On behalf of the Commission on Women in the Profession, Hilarie Bass of Florida moved Resolution 300 urging legal employers not to require mandatory arbitration of claims of sexual harassment. Stephanie A. Scharf of Illinois spoke in support of the resolution. The resolution was adopted.

COURTS

[114] On behalf of the Working Group on Building Public Trust in the American Justice System, Robert N. Weiner of the District of Columbia moved Resolution 114 adopting the black letter and commentary to the ABA Ten Guidelines on Court Fines and Fees, dated August 2018, and urging governmental agencies to promulgate law and policy consistent with the Guidelines. H. Thomas Wells, Jr. of Alabama, Jaime Hawk of Washington, and Joel D. Matteson of Washington spoke in support of the resolution. The resolution was adopted.

CRIMINAL JUSTICE

[100A] On behalf of the Criminal Justice Section, Neal R. Sonnett of Florida, moved Resolution 100A urging bar associations, law schools, and other stakeholders to develop and increase curricular offerings through which law students provide pro bono representation of incarcerated individuals and those reentering society. April Frazier Camara of Tennessee and Pauline A. Weaver of California spoke in support of the resolution. The resolution was adopted.

[100B] On behalf of the Criminal Justice Section, Judy Perry Martinez of Louisiana, moved Resolution 100B urging Louisiana and Oregon to require unanimous juries to determine guilt in felony criminal cases and reject the use of non-unanimous juries where currently allowed in felony cases. Vanessa A. Nordyke of Oregon spoke in support of the resolution. The resolution was adopted.
DISABILITY RIGHTS

[116A] On behalf of the Commission on Disability Rights, Robert T. Gonzales of Maryland withdrew Resolution 116A amending the Air Carrier Access Act (“ACAA”), 49 U.S.C. § 41705 (1986), to establish a private right of action violations of the ACAA and to provide equitable and legal relief, including compensatory and punitive damages, as well as reasonable attorneys’ fees, reasonable expert fees, and the costs to plaintiffs who prevail in civil actions.

[116B] On behalf of the Commission on Disability Rights, Robert T. Gonzales of Maryland moved revised Resolution 116B urging governments to: 1) enact laws and adopt policies that prohibit the use of out-of-school suspension and expulsion of pre-kindergarten through second grade students; 2) require ongoing training of teachers, administrators, and other school staff on alternatives to school exclusion; and, 3) provide sufficient funding and resources to ensure the provision of alternatives to school exclusion. The resolution was adopted as revised.

[116C] On behalf of the Commission on Disability Rights, Scott C. LaBarre of Colorado moved revised Resolution 116C urging all courts and other appropriate government entities to interpret Titles II and III of the Americans with Disabilities Act to apply to technology, and goods and services delivered thereby, regardless of whether it exists solely in virtual space or has a nexus to a physical space. The resolution was adopted as revised.

DISPUTE RESOLUTION

[105] On behalf of the Section of Dispute Resolution, Pamela C. Enslen of Michigan, moved Resolution 105 urging providers of domestic and international dispute resolution to expand their rosters with minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities (“diverse neutrals”), and to encourage the selection of diverse neutrals. The resolution was adopted.

DOMESTIC AND SEXUAL VIOLENCE

[107A] On behalf of the Young Lawyers Division, Dana M. Hrelic of Connecticut moved Resolution 107A urging all emergency management agencies to provide proper training to staff and volunteers to respond to unique needs of intimate partner violence and sexual violence victims during and after a disaster. The resolution was adopted.

ETHICS AND PROFESSIONAL RESPONSIBILITY

[101] On behalf of the Standing Committee on Ethics and Professional Responsibility, Lucian T. Pera of Tennessee moved revised Resolution 101 amending Model Rules 7.1 through 7.5 and their related Comments of the ABA Model Rules of Professional Conduct regarding lawyer advertising rules. Secretary Mary Smith reported on the action of the Board of Governors. James F. Williams of Washington spoke in support of the resolution. The resolution was adopted as revised.
FAMILY LAW

[102A] On behalf of the Section of Family Law, Anita M. Ventrelli of Illinois, moved Resolution 102A urging governments to enact preserve tax code provisions that allow the alimony deduction for payors and treat alimony as taxable income to payees. Roger A. Royse of California spoke in opposition to the resolution. Richard Lipton of Illinois spoke in support of the resolution. The resolution was adopted.

[102B] On behalf of the Section of Family Law, Scott Norman Friedman of Ohio, withdrew Resolution 102B adopting the ABA Model Act Governing Assisted Reproductive Technology, dated August 2018 to replace the 2008 Model Act, and urging its adoption by appropriate governmental agencies.

GENERAL PRACTICE

[10A] On behalf of the New York State Association, Michael Miller of New York withdrew Resolution 10A urging states to adopt General Provisions for Regulation on Online Providers of Legal Documents to establish reasonable standards of product reliability and efficacy.

GUN VIOLENCE

[109] On behalf of the Standing Committee on Gun Violence, Monte E. Frank of Connecticut withdrew Resolution 109 urging governments to reduce potential harm that individuals may inflict on themselves or others by enacting statutes, rules or regulations that allow individuals to: 1) voluntarily and confidentially submit their names into databases used for gun background checks, and 2) remove themselves from those systems.

IMMIGRATION


[119] On behalf of the Commission on Immigration, Mary Meg McCarthy of Illinois moved revised Resolution 119 adopting the 2018 ABA Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States, to replace the 2004 Standards. The resolution was adopted as revised.
INTELLECTUAL PROPERTY LAW

[117] On behalf of the Section of Intellectual Property Law, Susan B. Montgomery of Massachusetts moved Resolution 117 urging Congress to approve appropriations to the Library of Congress necessary to enable the United States Copyright Office to adequately staff, maintain, modernize, and enhance its services, facilities, databases, studies, and digital projects. The resolution was adopted.

INTERNATIONAL LAW

[106A] On behalf of the Section of International Law, Michael E. Burke of District of Columbia, moved Resolution 106A reaffirming the ABA’s commitment to advance the rule of law and condemns the harassment arbitrary arrest and detention, arbitrary disbarment, denial of due process, other ill-treatment, and killings of judges, lawyers, other members of the legal profession, and their extended families throughout the world for serving in their designated capacities. The resolution was adopted.

[106B] On behalf of the Section of International Law, Michael E. Burke of District of Columbia moved Resolution 106B recognizing the important role that non-lawyer human rights defenders, journalists and others play in protecting justice and the rule of law, and deplores attacks on those professions, as well as on individuals, aimed at silencing or intimidating human rights voices. The resolution was adopted.

LAW AND AGING


LEGAL EDUCATION

[111A] On behalf of the Section of Legal Education and Admissions to the Bar, Hon. Solomon Oliver, Jr. of Ohio moved Resolution 111A concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2018 to the Rules of the ABA Standards and Rules of Procedure for Approval of Law Schools, to restructure the work of the ABA accreditation process by eliminating the Council’s Accreditation and Standards Review Committees, and having all work completed by the Council. The resolution was adopted.

[111B] On behalf of the Section of Legal Education and Admissions to the Bar, Hon. Solomon Oliver, Jr. of Ohio moved Resolution 111B concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2018 to the Standards of the ABA Standards and Rules of Procedure for Approval of Law Schools, to restructure the work of the ABA accreditation process by eliminating the Council’s Accreditation and Standards Review Committees, and having all work completed by the Council. The resolution was adopted.
On behalf of the Section of Legal Education and Admissions to the Bar, Hon. Solomon Oliver, Jr. of Ohio moved Resolution 111C concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2018 to Rules 3, 5, 10, 14, 22, 23, 24, 25, 34, 52, and 53 of the ABA Standards and Rules of Procedure for Approval of Law Schools. The resolution was adopted.

On behalf of the Section of Legal Education and Admissions to the Bar, Hon. Solomon Oliver, Jr. of Ohio withdrew Resolution 111D concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2018 to Standards 501 (Admission) and 503 (Admission Test) of the ABA Standards and Rules of Procedure for Approval of Law Schools.

On behalf of the Section of Legal Education and Admissions to the Bar, Joan S. Howland of Minnesota moved Resolution 111E concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2018, to Standard 303 (Curriculum); Standard 304 (Simulation Courses, Clinics, and Field Placements); Standard 305 (Other Academic Study); Standard 306 (Distance Education); Standard 307 (Studies, Activities, and Field Placements Outside the United States); and Standard 601 (Library and Information Resources, General Provisions) of the ABA Standards and Rules of Procedure for Approval of Law Schools. Estelle H. Rogers of California raised a point of order and moved to divide the resolution to remove Section 306 from 111(E). The motion failed. Estelle H. Rogers of California spoke in opposition to the resolution. Hulett H. Askew of Georgia, Stephen A. Saltzburg of the District of Columbia, Rene Morency of Missouri, and Dana Hrelic of Connecticut spoke in support of the resolution. The resolution was adopted.

LEGAL SERVICES

On behalf of the Standing Committee on Group and Prepaid Legal Services, Lee A. DeHihns of Georgia withdrew Resolution 115 adopting the American Bar Association Standards for Accreditation of Legal Plans dated August 2018, to ensure that Legal Plans are providing affordable access to legal services.

MEMBERSHIP DUES

On behalf of the Standing Committee on Membership, Hilarie Bass of Florida moved revised Resolution 177 amending the dues structure for the American Bar Association effective with FY2020 and each year thereafter. Tracy A. Giles of Virginia, Estelle H. Rogers of California, Robert J. Grey, Jr. of Virginia, and Robert M. Carlson of Montana spoke in support of the resolution. The resolution was adopted as revised.

PARALEGALS

The House approved by consent Resolution 110A as submitted by the Standing Committee on Paralegals granting approval to four programs, grants reapproval to eighteen paralegal education programs, withdraws the approval of three programs at the requests of the institutions, and extends the term of approval to several paralegal education programs.
The House approved by consent Resolution 110B as submitted by the Standing Committee on Paralegals amending the ABA Guidelines for Approval of Paralegal Education Programs, dated August 2018.

SEXUAL ORIENTATION AND GENDER IDENTITY

On behalf of the Commission on Sexual Orientation and Gender Identity, Akira Heshiki of Oregon moved revised Resolution 118 urging the federal government to recognize that service by persons who otherwise meet the standards for accession or retention, as applicable, in the United States Armed Forces should not be restricted, and transgender persons should not be discriminated against, based solely on gender identity. The resolution was adopted as revised.

SPECIALIZATION

The House approved by consent Resolution 108A as submitted by the Standing Committee on Specialization granting reaccreditation to the Medical Professional Liability and Legal Professional Liability programs of the American Board of Professional Liability Attorneys for additional five-year terms as designated specialty certification programs for lawyers.

The House approved by consent Resolution 108B as submitted by the Standing Committee on Specialization granting accreditation to the Truck Accident Law program of the National Board of Truck Accident Attorneys, a division of The National Board of Trial Advocacy for a five-year term as a designated specialty certification program for lawyers.

TAXATION

On behalf of the Young Lawyers Division, Anna M. Romanskaya of California withdrew Resolution 107B urging Congress to enact the Presidential Tax Transparency Act (H.R. 305) and the President-Elect Release of Tax Return Act (H.R. 1938), and supporting efforts to require disclosure to appropriate authorities of recent federal income tax returns for certain candidates for the Office of President of the United States, and to incentivize certain candidates for the Office of President of the United States to disclose their recent federal income tax returns to the extent any such laws are permitted by the United States Constitution.

WELL-BEING IN THE LEGAL PROFESSION

On behalf of the ABA Working Group to Advance Well-Being in the Legal Profession, Terry L. Harrell of Indiana withdrew Resolution 103 adopting the ABA Model Law Firm Policy on Impairment, dated August 2018, to provide a mechanism within law firms to identify impairment and craft proper intervention, and to prevent professional standards and the quality of work for clients from being compromised by any law firm personnel’s impairment, and urging law firms to adopt the Model Policy.
Passing of the Chair’s Gavel

At the conclusion of the meeting of the House on Tuesday, August 7, Chair Enix-Ross thanked the staff and the Committees of the House. She also took a moment to thank her fellow Officers. She also expressed her heartfelt thanks to the Delegates themselves. She then passed the gavel to William R. Bay of Missouri.

Chair Bay thanked Ms. Enix-Ross for her leadership and her service. He noted that the House is team effort and looks forward to serving. He thanked his law firm and his wife for their support.

Closing Business

Chair Bay recognized Amit D. Ranade of Washington who moved the host resolution. The motion was approved. Chair Bay recognized the Nevada delegation to invite and welcome the members of the House of Delegates to the 2019 Las Vegas Midyear Meeting. Chair Bay recognized Paula J. Frederick of Georgia who then moved the House adjourn sine die. The motion was approved.
Memorandum

DATE: September 7, 2018

To: ABA Business Law Section Officers and Council

From: Linda J. Rusch, Budget Officer

RE: FY 2018, July 2018 Budget Variance Report

FY 2018, July 2018 Budget Variance Report

FY 2018 closed August 31, 2018. While we will not have the year-end financials for a few weeks, the July 2018 Budget Variance Report gives us a very good look at our likely end of year position. The good news is that we are projecting that we will only need to use approximately $175,000 of the budgeted $609,040 of contingency reserve. That good news is largely fueled by several key factors: unfilled staff positions, careful monitoring of expenses, and better than expected performance in meetings. Of some concern is the decline in dues revenue and the over budget expense in some of the special projects (Business Law Advisors, Judges/Business Court Reps, Consumer Fellows, Fellows).

Thank you to Sue and all the staff for all their hard work to keep our financial house in order.

Investment report

As of September 6, 2018, our total investment funds are $19,246,043.79, 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 have benefited significantly from the equities market runup, which has increased the value of our portfolio. Obviously, past performance is not predictive of future performance of the market.

The Section also has a money market account, which is the operating account for paying all Section expenses and collecting all Section revenue.

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, the chair elect, the budget officer, and section director evaluates whether we need to rebalance 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 September 6, 2018, and the investment policy target ranges.

U.S. equity (Vanguard Russell 1000 and 2000 Funds) = $11,329,405.62 (58.87%)
Investment policy target =50% to 70%
Non U.S. equity (Vanguard Developed Markets and RIFL Emerging Equity) = $4,828,024.24 (25.09%)
Investment policy target = 10% to 35%

Total equity = $16,157,429.86 (83.95%)
Investment policy target = 65% to 85%

Fixed income (Core Bond and Low Duration Bond) = $3,088,613.93 (16.05%)
Investment Policy target = 15% to 35%
# Business Law Section
## Budget Variance Report
### Period Ending July, 2018

<table>
<thead>
<tr>
<th></th>
<th>Budget FY 17-18</th>
<th>Actual YTD FY 16-17</th>
<th>YTD PA II FY 16-17</th>
<th>Variance YTD FY 17-18 V YTD FY 16-17</th>
<th>Projection YTD FY 17-18 V Budget 2018 August FY18</th>
<th>Discussion of Projection/Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dues</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section Dues</td>
<td>1,500,000</td>
<td>1,416,176</td>
<td>1,555,273</td>
<td>(66,853)</td>
<td>(150,677)</td>
<td>1,475,323</td>
</tr>
<tr>
<td><strong>Total Dues</strong></td>
<td>1,500,000</td>
<td>1,416,176</td>
<td>1,555,273</td>
<td>(66,853)</td>
<td>(150,677)</td>
<td>1,475,323</td>
</tr>
<tr>
<td><strong>Staff</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personnel</td>
<td>(1,340,497)</td>
<td>(944,631)</td>
<td>(1,017,869)</td>
<td>(979,723)</td>
<td>(35,092)</td>
<td>360,774</td>
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<tr>
<td>Development</td>
<td>(13,000)</td>
<td>(5,725)</td>
<td>(6,322)</td>
<td>(6,565)</td>
<td>(840)</td>
<td>6,435</td>
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<tr>
<td>Overhead</td>
<td>(391,930)</td>
<td>(222,830)</td>
<td>(239,670)</td>
<td>(367,936)</td>
<td>(145,106)</td>
<td>23,994</td>
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<tr>
<td><strong>Total Staff</strong></td>
<td>(1,745,427)</td>
<td>(1,173,186)</td>
<td>(1,263,861)</td>
<td>(1,354,224)</td>
<td>(181,038)</td>
<td>391,203</td>
</tr>
</tbody>
</table>

### Discussion of Projection/Variance
- **Dues**: Dues revenue tracking behind last year. Dues revenue will be approximately $25K under budget.
- **Personnel**: Expenses over prior year due to full staffing situation this year. Expenses projected to be under budget due to two unfilled positions.
- **Development**: No material variance. Expenses projected to be under budget.
- **Overhead**: Variance over prior year due to misposting of expenses in FY 17. Expenses tracking to budget.
<table>
<thead>
<tr>
<th></th>
<th>Budget FY 17-18</th>
<th>Actual FY 16-17</th>
<th>Variance FY 17-18 v FY 16-17</th>
<th>Projection Budget 2018</th>
<th>Discussion of Projection/Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office Overhead</td>
<td>(3,500)</td>
<td>(305)</td>
<td>(609)</td>
<td>(225)</td>
<td>80</td>
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<tr>
<td>Travel Reimbursement</td>
<td>(50,000)</td>
<td>(37,293)</td>
<td>(41,963)</td>
<td>(30,675)</td>
<td>6,618</td>
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<td>Council Support</td>
<td>(20,000)</td>
<td>(16,673)</td>
<td>(19,723)</td>
<td>(29,043)</td>
<td>(12,370)</td>
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<tr>
<td>Midwinter Council Meeting</td>
<td>(268,500)</td>
<td>(235,856)</td>
<td>(235,856)</td>
<td>(281,504)</td>
<td>(45,648)</td>
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<tr>
<td>Total Leadership</td>
<td>(347,000)</td>
<td>(294,810)</td>
<td>(302,834)</td>
<td>(345,472)</td>
<td>(50,662)</td>
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<tr>
<td>Meetings</td>
<td>Budget FY 17-18</td>
<td>Actual PA II FY 16-17</td>
<td>YTD FY 17-18</td>
<td>Variance YTD 17-18 v FY 16-17</td>
<td>Projection YTD 17-18 v Budget 2018</td>
</tr>
<tr>
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</tr>
<tr>
<td>Prior Meetings</td>
<td>0</td>
<td>25,186</td>
<td>25,186</td>
<td>(60,249)</td>
<td>(85,435)</td>
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<tr>
<td>Section Annual</td>
<td>(17,575)</td>
<td>(251,614)</td>
<td>(233,867)</td>
<td>17,676</td>
<td>269,290</td>
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<td>Spring</td>
<td>40,745</td>
<td>224,147</td>
<td>189,130</td>
<td>25,960</td>
<td>(198,187)</td>
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<td>Fall Meeting</td>
<td>0</td>
<td>(16,479)</td>
<td>(31,532)</td>
<td>(9,708)</td>
<td>6,771</td>
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<tr>
<td><strong>Total Meetings</strong></td>
<td>23,170</td>
<td>(18,760)</td>
<td>(51,083)</td>
<td>(26,321)</td>
<td>(7,561)</td>
</tr>
</tbody>
</table>
### Educational Programming
- Budget: 100,000
- Actual: 124,758
- Variance: 40,667
- Projection: 98,000
  - Discussion: Variance due to the timing of posting of revenue. Tracking to budget.

### Membership
- Budget: 200,000
- Actual: (56,135)
- Variance: (84,091)
- Projection: (59,333)
  - Discussion: Variance due to the timing of posting of expenses. Expenses projected to be under budget.

### The Business Lawyer
- Budget: (440,767)
- Actual: (407,058)
- Variance: (1,523)
- Projection: (430,000)
  - Discussion: No material variance. Tracking to budget.

### Business Law Today
- Budget: (200,000)
- Actual: (23,506)
- Variance: (225,864)
- Projection: (255,000)
  - Discussion: 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: (21,791)
- Variance: 797
- Projection: (24,000)
  - Discussion: No material variance. Tracking to budget.

### ABA Support Service Fee
- Budget: (35,215)
- Actual: (37,659)
- Variance: 5,374
- Projection: (35,215)
  - Discussion: No material variance. Tracking to budget.

### General Marketing
- Budget: (25,000)
- Actual: (7,957)
- Variance: (18,093)
- Projection: (25,000)
  - Discussion: Variance due to timing and misposting of expenses. Tracking to budget.

### Total Membership
- Budget: (823,982)
- Actual: (429,348)
- Variance: (594,634)
- Projection: (721,215)
  - Discussion: No material variance. Tracking to budget.
<table>
<thead>
<tr>
<th>Committees</th>
<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 FY 16-17</th>
<th>August FY18</th>
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<tbody>
<tr>
<td>Committees-General</td>
<td>(65,200)</td>
<td>(60,834)</td>
<td>(32,035)</td>
<td>28,799</td>
<td>33,165</td>
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<td>(37,001)</td>
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<tr>
<td></td>
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<td>Expenses projected to be less than budgeted.</td>
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<td>Travel Reimbursement</td>
<td>(252,000)</td>
<td>(237,801)</td>
<td>(248,304)</td>
<td>(10,503)</td>
<td>3,696</td>
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<td></td>
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<td></td>
<td></td>
<td>(252,000)</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No material variance. Tracking to budget.</td>
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<tr>
<td>Meetings</td>
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<td>(65,613)</td>
<td>70,979</td>
<td>136,592</td>
<td>57,861</td>
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<td></td>
<td></td>
<td>(58,026)</td>
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<td>25,000</td>
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<tr>
<td></td>
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<td></td>
<td></td>
<td>Variance due to the timing of posting of expenses. Committee meeting budgets being monitored closely. Revenue expected to exceed budget.</td>
</tr>
<tr>
<td>Total Committees</td>
<td>(304,082)</td>
<td>(364,248)</td>
<td>(209,360)</td>
<td>154,888</td>
<td>94,722</td>
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<td>(264,001)</td>
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<tr>
<td>Special Projects</td>
<td>Budget FY 17-18</td>
<td>Actual YTD FY 16-17</td>
<td>Variance YTD FY 17-18</td>
<td>Projection YTD 17-18 v Budget 2018</td>
<td>August FY 18</td>
</tr>
<tr>
<td>------------------------------------------------------</td>
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</tr>
<tr>
<td>Pro Bono Project</td>
<td>(5,000)</td>
<td>(4,335)</td>
<td>(9,335)</td>
<td>(5,732)</td>
<td>(1,397)</td>
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<td>Governance Special Projects</td>
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<td>(5,000)</td>
<td>(10,000)</td>
<td>(5,000)</td>
<td>0</td>
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<tr>
<td>Business Bar Leader Conference</td>
<td>(30,000)</td>
<td>(43,879)</td>
<td>(45,498)</td>
<td>(11,782)</td>
<td>32,097</td>
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<tr>
<td>Business Law Advisors</td>
<td>(28,400)</td>
<td>(31,110)</td>
<td>(31,110)</td>
<td>(38,730)</td>
<td>(7,620)</td>
</tr>
<tr>
<td>Judges/Business Court Reps</td>
<td>(25,000)</td>
<td>(25,911)</td>
<td>(26,202)</td>
<td>(29,287)</td>
<td>(3,376)</td>
</tr>
<tr>
<td>Delaware Law Forum</td>
<td>0</td>
<td>11,081</td>
<td>13,053</td>
<td>0</td>
<td>(11,081)</td>
</tr>
<tr>
<td>NCCUSL Contribution</td>
<td>(5,000)</td>
<td>(5,000)</td>
<td>(5,000)</td>
<td>0</td>
<td>5,000</td>
</tr>
<tr>
<td>Consumer Fellows</td>
<td>(25,000)</td>
<td>(24,290)</td>
<td>(24,290)</td>
<td>(30,084)</td>
<td>(5,794)</td>
</tr>
<tr>
<td>Project</td>
<td>Budget FY 17-18</td>
<td>Actual FY 16-17</td>
<td>Variance FY 16-17</td>
<td>Budget FY 17-18</td>
<td>Actual FY 17-18</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>-----------------</td>
<td>-----------------</td>
<td>-------------------</td>
<td>-----------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Fellows</td>
<td>(158,500)</td>
<td>(156,214)</td>
<td>(159,228)</td>
<td>(196,043)</td>
<td>(39,829)</td>
</tr>
<tr>
<td>Miscellaneous Diversity Outreach</td>
<td>(15,850)</td>
<td>(10,865)</td>
<td>(10,865)</td>
<td>(11,821)</td>
<td>(956)</td>
</tr>
<tr>
<td>ABA Legal Opportunity Scholarship Fund</td>
<td>(30,000)</td>
<td>0</td>
<td>(20,000)</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Diversity Clerkship</td>
<td>(72,000)</td>
<td>(52,969)</td>
<td>(58,969)</td>
<td>(54,668)</td>
<td>(1,699)</td>
</tr>
<tr>
<td>Content Distribution/Tech Dev</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Member Benefit Projects (BLT)</td>
<td>0</td>
<td>(215,421)</td>
<td>(265,422)</td>
<td>0</td>
<td>215,421</td>
</tr>
<tr>
<td>Advance V</td>
<td>(34,000)</td>
<td>0</td>
<td>0</td>
<td>(63,921)</td>
<td>(63,921)</td>
</tr>
<tr>
<td><strong>Total Special Projects</strong></td>
<td>(438,750)</td>
<td>(563,913)</td>
<td>(652,866)</td>
<td>(447,068)</td>
<td>116,845</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>(2,136,071)</td>
<td>(1,428,089)</td>
<td>(1,570,411)</td>
<td>(1,713,458)</td>
<td>(285,369)</td>
</tr>
</tbody>
</table>

**Discussion of Projection/Variance**

- **Fellows**: Expenses projected to be 37K over budget due to increased participation at meetings and the addition of 3rd year for 10 fellows.
- **Miscellaneous Diversity Outreach**: No material variance. Tracking to budget.
- **ABA Legal Opportunity Scholarship Fund**: No material variance. Expenses projected to be less than budget due to last year of commitment.
- **Diversity Clerkship**: No material variance. Expenses projected to be less than budget.
- **Content Distribution/Tech Dev**: No material variance. Tracking to budget.
- **Member Benefit Projects (BLT)**: No material variance. Tracking to budget.
- **Advance V**: Expenses will be over budget due to increased attendance. All Midwinter Meeting attendees were invited to participate after the budget was developed.
<table>
<thead>
<tr>
<th></th>
<th>Budget FY 17-18</th>
<th>Actual YTD FY 16-17</th>
<th>PA II FY 16-17</th>
<th>YTD FY 17-18</th>
<th>YTD 17-18 v Budget 2018</th>
<th>YTD 17-18 v FY 16-17</th>
<th>YTD 17-18 v Budget 2018</th>
<th>Discussion of Projection/Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Publications</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Revenue projected to be better than budgeted.</td>
</tr>
<tr>
<td></td>
<td>670,031</td>
<td>728,727</td>
<td>681,446</td>
<td>711,627</td>
<td>(17,100)</td>
<td>41,596</td>
<td>711,627</td>
<td></td>
</tr>
<tr>
<td>Commissions, Royalties, List Sales</td>
<td>50,000</td>
<td>96,454</td>
<td>141,660</td>
<td>39,732</td>
<td>(56,722)</td>
<td>(10,268)</td>
<td>67,332</td>
<td>Variance due to revised split of commissions with ABA. Revenue projected to be better than budgeted.</td>
</tr>
<tr>
<td><strong>Total Other Operations</strong></td>
<td><strong>720,031</strong></td>
<td><strong>825,181</strong></td>
<td><strong>823,106</strong></td>
<td><strong>751,359</strong></td>
<td><strong>(73,822)</strong></td>
<td><strong>31,328</strong></td>
<td><strong>778,959</strong></td>
<td></td>
</tr>
<tr>
<td>Investment Income from Money Market</td>
<td>1000</td>
<td>0</td>
<td>13,931</td>
<td>7,940</td>
<td>7,940</td>
<td>6,940</td>
<td>8,000</td>
<td></td>
</tr>
<tr>
<td>Transfer from Permanent Reserve</td>
<td>806,000</td>
<td>693,382</td>
<td>756,417</td>
<td>738,833</td>
<td>45,451</td>
<td>(67,167)</td>
<td>806,000</td>
<td></td>
</tr>
<tr>
<td>Transfer from Contingency Reserve</td>
<td>609,040</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>(609,040)</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Transfer from Permanent Reserve Member Benefit Projects (New)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td><strong>Total Revenue/Expense</strong></td>
<td><strong>0</strong></td>
<td><strong>90,474</strong></td>
<td><strong>23,043</strong></td>
<td><strong>(215,326)</strong></td>
<td><strong>(305,800)</strong></td>
<td><strong>(215,326)</strong></td>
<td><strong>(174,876)</strong></td>
<td></td>
</tr>
</tbody>
</table>
**Leadership is Joyful.** The leader enjoys the role, finding it energizing and fulfilling. Because the leader genuinely respects and cares for the organization and its members, he or she views leadership as a privilege and honor, not as a burden or as a means to another end. “Aspects of Leadership,” ABA Business Law Section

**ABA Business Law Section – Leadership Academy**

- A new member benefit intended to be an alternative to leadership development and training programs offered by universities and for-profit organizations

- “Curriculum” will be integrated into regular Spring and Annual Meeting programs in concert with participating substantive and administrative committees

- Objective – offering a certificate of completion for the purpose of assisting participants in personal marketing efforts to attain leadership roles in non-profit, community and civic organizations

- Curriculum track scheduled at four consecutive Section meetings over two years with no more than two track programs at any one Section meeting

- Coordinated by the Leadership Development Committee with key substantive participation by the Non-Profit Organizations, Corporate Governance and other Committees; no net addition to CLE programs; attendance open to all meeting attendees

- Potential programming:
  (i) *The Basic Skills of Effective Leadership*
  (ii) *Leadership of Non-Profit Organizations*
  (iii) *Transformational Leadership – Making a Difference and Social Entrepreneurship*
  (iv) *Leading an Organization to Enhance Diversity, Overcome Implicit Bias, and Grow a Culture of Inclusion*
  (v) *Ethics of Non-Profit Organizations*
  (vi) *Confronting Difficult Situations – Leadership in Times of Crisis*
  (vii) *How to Run an Effective Meeting*

- Target inaugural class of 25-50; simple application process; selection process dependent on level of interest

- Target kick-off, Section Annual Meeting, September 2019 in Washington, D.C.