ADOPTED


PROPOSAL: Amends §31.7 of the Association’s Bylaws to change the name of the Standing Committee on Professional Discipline to the Standing Committee on Professional Regulation and to revise its jurisdictional statement.

Amends §31.7 of the Association’s Bylaws to read as follows:

§31.7 Designation, Jurisdiction, and Special Tenures of Standing Committees. The designation, jurisdiction, and special tenures of standing committees are as follows:

Professional Regulation. The Standing Committee on Professional Regulation consists of 9 members. The Committee is responsible for identifying emerging issues in professional regulation and discipline, and for developing, promoting, coordinating, and strengthening professional disciplinary and regulatory programs and procedures. The Committee shall develop and promote Association policies and activities relating to professional regulation and discipline, such as model rules for disciplinary enforcement and standards for the imposition of sanctions. The Committee is also responsible for maintaining the ABA National Lawyer Regulatory Data Bank.

Professional Discipline Regulation. The Standing Committee on Professional Discipline Regulation consists of 9 members. The Committee is responsible for identifying emerging issues in professional regulation and discipline, and for developing, promoting, coordinating, and strengthening professional disciplinary and regulatory programs and procedures throughout the nation. The Committee shall include developing and promoting Association policies and activities relating to professional regulation and discipline, such as model rules for disciplinary enforcement and standards for the imposition of sanctions. The Committee is also responsible for maintaining the ABA National Lawyer Regulatory Data Bank.
The Discipline Committee seeks these changes to its name and jurisdictional statement so that what it is and what it does are optimally reflected in the Association's Bylaws. The Committee believes that its current name and the multiplicity of references in its jurisdictional statement to “disciplinary enforcement” incompletely describe the totality of the nature and scope of its work, expertise, and resources, and that clarification is necessary. The work of the Committee has long extended beyond just lawyer and judicial disciplinary enforcement to encompass post bar admission regulatory issues affecting the profession.

Enhanced clarity is particularly important at this time, because the ABA, state supreme courts, and other regulators face a barrage of new and different regulatory challenges due to technology, globalization, and heightened pressures to address the crisis in access to legal services. Now, more than ever, state supreme courts and regulators in countries where U.S. lawyers practice are grappling with whether and how to appropriately regulate (or not) lawyers and judges, as well as other legal service providers. This includes determining whether and how state-based judicial regulation can extend to legal service providers who are not lawyers (individuals and entities), and whether and how to further regulate lawyers in the context of anti-money laundering and terrorist financing efforts. These are broader regulatory questions for which the courts, the profession, and the public look to this Standing Committee for continued leadership.

The Discipline Committee is the only entity in the ABA that has had professional regulation as its sole, longstanding focus and area of expertise. The Committee has taken great care to ensure that its work and expertise in professional regulation as whole, and not just disciplinary enforcement, keeps pace with national and global developments that affect, and will continue to impact, the legal profession and members of this Association. Since its creation, the Discipline Committee, on the ABA’s behalf, has significantly shaped and continues to shape the regulatory landscape for lawyers and judges in ways that state supreme courts, the Conference of Chief Justices, disciplinary counsel, the public, and lawyer regulators embrace and rely upon. It does so through its development of national models and policies, as well as its programs and other initiatives.

For example, in addition to its responsibility for the Model Rules for Lawyer and Judicial Disciplinary Enforcement and other disciplinary policies, the Committee is studying and will develop appropriate regulatory policy proposals using the Reports of the ABA Commission on the Future of Legal Services and the National Task Force on Lawyer Well-Being as guideposts. The Committee is developing proposed policy relating to Proactive Management-Based Regulation (PMBR), which are programs to help keep lawyers out of the disciplinary process. The Committee has presented three one-of-a-kind Workshops for regulators on this issue. From those Committee sponsored events, two state supreme courts have adopted PMBR programs. The Conference of Chief Justices is monitoring the Committee’s work in this area.

Other historical illustrations of the Committee’s broader regulatory work include its helping to shape, and cosponsoring or supporting, most of the Resolutions of the ABA Commission on Ethics 20/20. The Committee has sponsored a Resolution relating to regulatory provisions of the General Agreement on Trade in Services, and cosponsored the Commission on the Future of Legal Services’ ABA Model Regulatory Objectives for the Provision of Legal Services. The
Committee also cosponsored the 2016 amendments to Model Rule of Professional Conduct 5.5 and the ABA Model Rule for Registration of In-House Counsel to address issues relating to practice authorization and accountability relating to foreign in-house counsel. Those policy changes addressed a situation unique to foreign in-house counsel who, because of their home countries’ laws, cannot be members of the bar while serving in that capacity for their employer.

Thank you for your consideration of this matter. Paula Frederick, Chair of the Committee, and I are happy to answer any questions. I may be reached at Lucian.Pera@arlaw.com. Paula may be contacted at PaulaF@gabar.org.