“All Politics Is Local”
A Practical Guide to Effective Advocacy for State and Local Bars

Governmental Affairs Office
American Bar Association

Government Relations Section
National Association of Bar Executives
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Acknowledgments

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Preface

The American Bar Association’s Governmental Affairs Office (GAO) and the National Association of Bar Executives’ Governmental Relations Section (NABE GR) have worked together for many years to advance the public policy interests of the legal profession, bar organizations, and our system of justice. For the most part, GAO focuses on federal issues, while the members of NABE GR are most active at the state level. From time to time, GAO provides information and assistance to state bars; quite frequently, state bars join to support the ABA on national issues.

This Guide represents an effort on the part of both organizations to provide a set of tools for state and local bars to engage in effective public policy advocacy on their home turf. Much of the information in this Guide may seem basic, even simplistic, to the seasoned lobbyist, though even the most experienced are likely to find useful nuggets throughout the chapters that follow. We have calibrated much of the presentation to bar leaders, executives, and active members whose exposure to lobbying may have been minimal—or even nonexistent—but who find themselves interested in or called to engage in advocacy before a state legislature or Congress.

The Acknowledgments page lists those in GAO and NABE GR who participated in drafting or reviewing and editing various chapters in the Guide. It was truly a team effort. As with every team, though, there were also leaders who stood out in the writing process and merit recognition. At GAO, special thanks goes to Ken Goldsmith for jumpstarting the project, to Larson Frisby for diligently supervising it, and to Denny Cardman for streamlining the Guide and expertly editing the entire work to ensure accuracy, quality, and consistency for all of us. Special thanks also goes to Bill Weisenberg for helping to coordinate the NABE GR input and for his seasoned contributions regarding the contents of the Guide.
While this is a final product, it remains open to improvement. Please share your thoughts about the value of this Guide, as well as your suggestions for improvement, clarification, correction, or expansion. We look forward to receiving your feedback.

**Thomas M. Susman**  
Director, Governmental Affairs Office  
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Legislation developed at the state and federal levels affects every lawyer and every lawyer’s employer, client, firm, or organization. Taxation of legal services and intrusion into the confidential lawyer-client relationship, for example, are but two areas that have direct impact on lawyers and the practice of law. Preserving the ability of courts and the criminal justice system to function effectively is a special responsibility of the legal profession. Additionally, lawyers are committed to ensuring that legal services are available to those who cannot afford them through legal aid and legal defender services. Finally, there are always a myriad of other legislative proposals that would affect each lawyer’s employer or clients, as well as those to which lawyers can bring special expertise in finding and delivering solutions.

There is no short and easy guide to advise bar leaders, executives, and governmental relations professionals how to respond to legislative challenges. It may be that legislation has been introduced attacking the bar, proposing to tax the legal services provided by a bar’s members, burdening their members’ clients, or undermining the independence of the courts or the legal profession. Perhaps a high-profile disaster has filled the overnight news cycle, and the bar has been inundated with requests for comment on a proposed response by the governor or legislature.

On the one hand, bar leaders and executives represent a constituency that relies on the bar’s governmental relations professionals to represent their views and best interests in times like this. On the other hand, advocacy and politics may seem a daunting, risk-filled arena, and bars that have no or limited experience with lobbying may reasonably question whether the required effort is worth the risk.

Governmental decisions will be made with or without bars’ input, and the noise made by the many special interests trying to influence government decision making can be deafening. These interests go well beyond the usual
businesses and trade associations, encompassing groups as diverse as universities, bicyclists, doctors, unions, environmentalists, historical societies, and charities, to name just a few. As advocacy groups, they may know less about political and governmental processes than lawyers do, but they oftentimes are well organized and prepared to launch a lobbying campaign at the federal or state level.

Legendary Speaker of the U.S. House of Representatives Thomas “Tip” O’Neill (D-MA) popularized the phrase “All politics is local” (which apparently was coined by his father). It has become a cliché because it captures a truth: As mysterious as the political process may appear, or as complex the legislative process actually is, successful participation usually boils down to knowledge and common sense that the advocates already have, skills they already utilize, people they already know, and the ability to frame and advocate the issue as one important to the legislator’s district, state, and constituents.

Advocacy and politics can be risky for the uninformed, but there is no reason to remain uninformed. The ABA Governmental Affairs Office (GAO) and the NABE Government Relations Section (NABE GR) collaborated to produce this Guide to help bar professionals understand and successfully navigate the legislative terrain. The ultimate goal of this Guide is to empower bars to develop and deliver influential and effective messages to lawmakers.

This is not the first book discussing legislative advocacy. In fact, NABE GR, in cooperation with the GAO, published a predecessor volume, the Manual of Legislative Techniques, which was last printed a decade ago. However, both the Manual and other similar publications address only selected topics and tend to be written for those with prior lobbying experience.

State and local bars face unique challenges and should have more precise guidance on a broad set of essential lobbying-related topics when launching into the legislative arena. The purpose of this Guide is to complement existing materials by providing the “nuts-and-bolts” guidance that bar professionals need to bridge the gap between concept and action to advocate effectively.

Although much of this Guide addresses lobbying fundamentals and hence is geared more toward those governmental affairs professionals who have had limited exposure to policymakers, other portions of the Guide, such as those chapters dealing with technical disclosure laws, political action committees, or the nuances of congressional lobbying vs. state legislature advocacy, will be useful to all bar professionals, including the most seasoned state bar lobbyists. It is our hope that this Guide offers something for everyone.

We know that the more empowered and prepared a bar association is, the stronger a voice it will have in its state and even in Washington, DC. Members of NABE GR and the GAO would be pleased to assist you in any way they can.
Two notes on terminology:

1. While most of the basic principles of legislative advocacy—and therefore most of the material in this book—apply to lobbying at both the federal and state levels, there are times when it is important to identify whether the discussion refers to situations involving state legislatures or the halls of Congress. Therefore, Member or Member of Congress is used when discussing a technique specific to advocacy at the federal level, and legislator, when used alone, is meant to describe both state legislators and congressional members. Finally, the term elected official is a broader term, used when referring to executive and legislative branch officials of either a state or the federal government.

2. This guide is intended for the use of state and local bars. No effort is made to distinguish among bar organizations; the term “bar” is used to cover all types and sizes.
Effective advocacy or lobbying involves education, persuasion, and influence. While developing strategies, marshaling troops and allies, assembling and presenting relevant information, and crafting persuasive arguments are essential elements of the lobbyist’s craft, in the end much of the effectiveness of the lobbyist’s message depends on that advocate’s credibility.

But how does a lobbyist gain credibility? Not just by being smart, tactful, and articulate, but through embodying and projecting a long list of important character traits: honesty, candor, reliability, responsiveness, trustworthiness, loyalty, and more. In short, by consistently acting in an ethical manner.\(^1\)

No one can doubt that lobbyists are influential and are perceived as influential in affecting governmental decision making. Perhaps it is the very power that lobbyists wield that also carries concomitant heavy responsibilities requiring them to understand and be sensitive to the impact their efforts have on the institutions of government and the public good. It is also the same power—and its misuse through the decades—that has led lobbyists to be criticized by many in the media and often reviled by the general public. The association of lobbyists with corruption, secret deals, special interests, and other negative concepts has been around for a long time, perhaps as long as lobbying itself. Some of that low repute has been hard-earned and well-deserved; from Teapot Dome and before, to Jack Abramoff and after, lobbyists have been associated with scandal. Since

\(^1\) Much of the material for this chapter is taken or derived with permission from Thomas M. Susman, Where to Look, What to Ask? Frames of Reference for Ethical Lobbyists, 41 McGeorge L. Rev. 161 (2009), available at http://www.mcgeorge.edu/Documents/Publications/MLR4106_Susman_MASTER.pdf.
the media feeds on negative images and politicians appear to gain mileage from harsh criticism of lobbyists, the negative images often become magnified.

This is not without consequence—for the lobbying community, for government institutions, and ultimately for our democracy. As one study observed:

[T]he negative perception of lobbyists by ordinary Americans has contributed to diminished public confidence in the electoral and decision-making process. Popular distrust of government has serious consequences for our democracy. It produces an alienated and disengaged citizenry, discourages public-spirited citizens from seeking political office, threatens the credibility of elected officials, and reduces the prospects for fair and farsighted policies and laws.2

Simply stating that each lobbyist should strive to live up to the highest ethical standards provides a starting point, but not a very helpful one. For it is necessary to know what those standards are and where to find them.

Compliance with Laws and Regulations

The starting point will always be the laws and regulations governing lobbyists and lawmakers. Compliance with applicable laws is likely the most important single mandate for ethical lobbying. Therefore, each lobbyist must be familiar—and assiduously comply—with the many and varied laws governing lobbyists and lobbying.

The first set of applicable laws are those statutes governing bribery, fraud, corrupt practices, false reporting, and similar offenses that are outlawed by general criminal laws in all states. All states also have lobbying disclosure statutes, although those differ widely in both the thresholds triggering application and the registration, reporting, and other requirements.3 Not only must lobbyists and lobbying organizations comply with these laws, but they will ordinarily want to make sure that clients and employers of lobbyists, or members of lobbying organizations, understand that the work being done by their lobbyists is subject to regulation and public reporting requirements.


Some state laws reach beyond reporting and disclosure. For example, a number of states have laws requiring payment of fees for lobbyist registrations; requiring lobbyists to wear visible identification badges when in the state Capitol; preventing government agencies from hiring lobbyists; and prohibiting lobbyists from entering into contingent fee lobbying arrangements. Plus, many restrict lobbyists from providing gifts, gratuities, travel, meals, and other things of value to elected officials—or at least limit in some ways the lobbyist’s ability to bestow these favors.4

So-called “revolving door laws” also often have unique application to lobbyists, restricting the ability of lawmakers and other government officials to move from the public to the private sector. For example, many of these laws have cooling-off periods of one or more years before a former legislator may engage in lobbying activities.5

Finally, lobbyists ordinarily are engaged in the political processes beyond legislative or policy advocacy; they often serve as fundraisers, campaign chairs, finance committee members, bundlers, or confidantes of candidates for office. Ethical lobbying requires the lobbyist’s adherence to the requirements of the campaign finance laws applicable at the federal, state, and local levels.6

But an exploration of the applicable laws (and regulations) is not nearly the end of the inquiry for the ethical lobbyist. Even total compliance with applicable laws will not always ensure ethical lobbying, for two key reasons. First, there may be occasions for the lobbyist to provide favors to a legislator where there are no clearly applicable prohibitions, but where appearances would lead observers to believe the favors were corrupting influences, even if law enforcers could not prove it. Second, there are simply too many situations where there is no applicable law, and the lobbyist must look to some other source for obtaining ethical guidance. Ethics codes provide one of those potential sources.


Ethics Codes

Lawyers are subject to codes of professional responsibility that are used to guide ethical conduct. These codes, which were developed over long periods of time, generally consist of specific ethical rules followed by detailed comment sections that further explain or elaborate on the meaning of each rule and its application to specific situations. The legal profession's ethical rules are also interpreted in publicly available opinions by state bar counsels and committees and by courts, widely studied and written about by academic commentators, and enforced by state court and bar disciplinary authorities. In these and other ways, the legal profession's ethical rules are imbedded in the professional life of practicing lawyers across the country. While these rules also apply to the lawyer-lobbyist, they are often not well-suited for application to lobbying activities, and there are few comments, articles, or advisory opinions addressing common ethical dilemmas faced by lobbyists.

Lobbyists' codes of ethics are few and far between. While the federal Canadian lobbying statute mandated the promulgation of a Code of Ethics by the Commissioner of Lobbying that applies to all registered lobbyists, lobbyists at the federal level in Washington have no comparable mandatory code of conduct beyond the compliance requirements contained in the Honest Leadership and Open Government Act (HLOGA). The former Association of Government Relations Professionals (AGRP), which used to be the largest professional

}_{7. See ABA Model Rules of Professional Conduct (2014), available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html. Rules identical or substantially similar to the ABA Model Rules have been adopted as legally binding ethical rules in all 50 states and the District of Columbia and are binding on all lawyers licensed in each particular state. For the specific lawyer ethical rules adopted by each state, see ABA, Links to Other Legal Ethics and Professional Responsibility Pages, available at http://www.americanbar.org/groups/professional_responsibility/resources/links_of_interest.html.


10. See Pub. L. No. 110-81, 121 Stat. 735 (2007). For example, Sec. 203 of HLOGA requires lobbyists to certify that they are in compliance with the House and Senate gift rules. Id. at § 203.
organization for lobbyists in the United States, required its members to commit to comply with AGRP’s Code of Ethics.\(^\text{11}\)

While many states have adopted laws and regulations governing the ethical conduct of officials in both the legislative and executive branches, there appear to be no statutorily imposed ethics codes for lobbyists. At least one state and some state organizations representing lobbyists or public affairs professionals have adopted codes of ethics.\(^\text{12}\) Lobbyists should familiarize themselves with these codes even if they are not members of the relevant organization, since the codes may be seen as reflecting community standards and thus embodying the standards that both clients and legislators would expect all lobbyists to adhere to.

Even when ethics codes exist, they often are so general in their language that they can be inadequate and quite unhelpful in specific situations. In addition, advisory authorities—whether in organizations or attached to governments or legislatures—often are unable or unwilling to provide answers, or even guidance, to lobbyists seeking to resolve ethical dilemmas and make the “right” choices. Even so, there are various frameworks, mostly developed outside of the legal and lobbying communities, that can assist the lobbyist in resolving ethical questions.

**Beyond Laws, Regulations, and Codes**

Several organizations, including the Institute for Global Ethics, the Markkula Center, and the Joseph and Edna Josephson Institute of Ethics, have developed frameworks or catalogued tools or philosophies for guiding ethical decision making. Because they are often very theoretical, it is unclear how useful these might be to a practicing lobbyist with limited time to delve into whether Utilitarianism or Kant’s Categorical Imperative is best suited to assisting decision making in the practical world of government and politics.

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\(^{11}\) AGRP ceased operations in April 2016. The National Institute for Lobbying and Ethics hopes to make the Code of Ethics available soon.

More practical and relevant—and surely simpler—approaches for the lobbyist’s use have been compiled by a practicing Washington lobbyist. They are the following:

1. The *visceral response test*, where the individual lobbyist learns to rely heavily on his or her primal gut response, as educated by experience and informed by applicable laws and other ethical standards. While it may occasionally be difficult to distinguish one’s crisis of conscience from a bad case of indigestion, for professional lobbyists who understand their trade and the institutions with which they work, the visceral response can be a highly reliable ethics indicator.

2. The “Post” *hoc assessment* is familiar to most Washington lobbyists and relies on the answering the questions: How would the lobbyist feel (here is the visceral reaction again) about reading an article in the *Washington Post* detailing his or her conduct in the prospective situation? How would the lobbyist feel about his or her employer, client, or family reading the article? While post hoc reasoning is criticized as fallacious in philosophical circles, it might help provide a better perspective for those in the public policy sphere.

3. Finally, where certain practices are well accepted, they might not trigger any ethical red flags for the practicing lobbyist. Nonetheless, *ideals and aspirations* might well convey a discomfort to the lobbyist that should be heeded. Lobbyists’ immersion in campaign fundraising might be one of those issues that, although well-accepted and widely practiced, is perceived by many participants in the process as corrosive and corrupting. If this means that all lobbyists will not share the same ethical standards, then so be it.13

**Conclusion**

Lobbying is an honorable profession that involves the petitioning of the government for a redress of grievances, a fundamental right that—like freedom of speech, assembly, and religion—is enshrined in the First Amendment to the U.S. Constitution. In these increasingly complex times when governments exercise more and more power over our private lives as well as business and professional activities, the information that lobbyists impart to decisionmakers is indispensable to their making rational, responsible decisions.

Lobbyists have a responsibility to their clients, employers, and association members for whom they work or who they represent, to the government institutions and officials who they seek to influence, and to society at large to act honorably, professionally, and ethically at all times. That means obeying all applicable laws and adhering to principles and requirements set out in relevant codes of conduct. It also means being guided by conscience, taking actions that the lobbyist would be proud to share with family members or to see reported in the media, and avoiding even the appearance of impropriety.
Selecting Issues, Developing a Lobbying Plan, and Navigating the Legislative Landscape

The subject matter of any discrete advocacy effort by a bar organization can emerge in response to an immediate threat to lawyers (e.g., a proposed tax on legal services), to legal institutions (e.g., an attack on judicial independence), or to important client interests (e.g., expanded corporate disclosure requirements). Or it can derive from a strategic plan developed by the bar that is aimed, for example, at overhauling the state domestic relations code, revising criminal sentencing practices, changing methods for judicial selection, or increasing funding for legal aid programs. Whether reactive or proactive, advocacy must be focused on a specific objective. Since all bar organizations have limited resources—and many also have limitations on the subject matter that may be addressed in their advocacy—priorities must be set.

Many bars have full-time professional staff available to manage their legislative programs. Others retain outside counsel on a part-time basis to address their advocacy needs. In both cases, bar leaders, staff, and members-at-large may play effective roles in carrying the bar’s messages to elected officials.

This chapter has three parts. The first focuses on selection of legislative issues for advocacy, keeping in mind that each bar will have different priorities and different approaches to setting priorities. But without a clear delineation of the objective sought in a legislative advocacy program, development and implementation of any lobbying program will likely be doomed from the start.

The second part sets out the elements of a lobbying plan. Not every plan must contain every element discussed, but each plan should be refined and re-evaluated with the passage of time. Careful consideration of each of the elements discussed will enable the bar to assess opportunities and obstacles and to prepare itself for what may be a long and arduous journey.
Finally, the third part focuses on navigating the legislative landscape: mapping the landscape, identifying legislative vehicles, and identifying legislators and other officials who can assist—and lead—the effort to attain the legislative objective.

**Selecting Legislative Issues for Advocacy**

The governing documents of an organization will typically provide a sound basis for defining its legislative objectives. Most bars are organized to improve and preserve the law, advance the administration of justice, foster and promote legal reform, and protect the interests of their members. These categories offer a wealth of potential subjects for legislative advocacy.

The starting point for any lobbying activity is to clearly identify the specific objective of the potential advocacy effort: “expanding legal services to the poor” is not a specific objective, nor is “opposing efforts to interfere with judicial independence.” The better statement of these objectives would be “secure at least a 10 percent increase in funding for state-supported legal aid offices in the next fiscal year’s appropriations bills” and “defeat proposed bills to require judges to testify before the legislature in response to controversial rulings.”

Even unified bars that are constrained by the *Keller* doctrine are permitted some leeway to engage in legislative advocacy. The Supreme Court in *Keller* recognized that a unified bar may constitutionally fund with mandatory dues activities related to the core purposes of every bar, including “regulating the legal profession” and “improving the quality of the legal service available to the people of the state.” These core purposes provide a sound, and broad, foundation on which any unified bar can develop an active legislative lobbying program.

Each bar may have its own procedure for identifying potential lobbying issues and setting priorities. This may involve issues selected by the bar’s sections or committees, issues included in policy statements by the bar’s governing councils, or issues developed as priorities by the bar’s president, board, or other policymaking or leadership entity. Sometimes a new policy statement will be required to respond to developing legislative activities or emerging leadership

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14. In the landmark case *Keller v. State Bar of California*, 496 U.S. 1 (1990), the U.S. Supreme Court held that members of a unified bar should not have to pay dues to support political or ideological positions that are unrelated to the purposes that constitutionally compel the lawyer’s membership in that bar.
priorities; ideally, that process should be streamlined to facilitate timely action given the uncertainty of legislative agendas.

All issues should be grounded on the broadest possible legal and public policy principles, such as: due process, fairness, human rights; right to effective counsel, confidential lawyer-client relationship, privacy; and other basic constitutional and legal rights. Lawyers are recognized for their expertise in these areas, and hence advocacy by bars will likely have heightened influence when firmly grounded on these types of principles.

Each bar, therefore, must start by identifying those specific issues within its appropriate authority and then setting priorities based on the interests and concerns of both its leadership and members. But before a bar begins its actual lobbying activities—which are the subject of many of the other chapters of this Guide—it should develop a “plan” that maps out the issues and arguments, assesses strengths and weaknesses, engages relevant supporters, and uses the most effective advocacy tools and approaches. Even if the plan is not precisely followed, it provides a framework and checklist for ensuring that bases are covered and progress can be measured.

The Lobbying Plan

Statement of the Problem and Recommended Solution. As previously explained in this chapter, it is important for a bar to first identify a clear and precise objective before proceeding with the rest of its lobbying plan. While the problem may be easily stated, a specific solution also should be identified before the issue will be ripe for legislative advocacy.

Fiscal Impact. Many solutions to the most pressing problems—such as expanding civil legal services for those who cannot afford to hire lawyers, providing adequate funding for public defenders, increasing judicial pay, and relieving overcrowding in prisons—often will require new or added governmental funding. The assessment of how much additional funding will be required is an important starting point and may be, under conditions of severe fiscal restraint, an ending point as well.

Sometimes the proposal or program being advanced is expected to bring about certain savings. For example, additional funding for community diversion programs can wind up saving high costs of incarceration (while also being fairer and more humane). Rough calculation of these cost-benefit comparisons can be extremely valuable up-front; it often is impossible to advocate even the most
principled objective before any legislature without being asked “how much will it cost, and where will the money come from?” Bar advocates should anticipate these questions and be ready to address them effectively.

**Timing.** A number of considerations go into determining the right timing for a lobbying effort. It makes little sense to advocate for reauthorization of a program off-cycle, press for additional funds after the year’s appropriations bills have been approved, or advocate for a tax provision if the legislature has already completed work on a tax bill that session or will not be taking one up. Some advocacy efforts will require longer-term commitments, even four years or more, depending on the issue and the legislative agenda. Since the legislature often will be extremely preoccupied with other initiatives that may appear more pressing than those sought by the bar, rather than focusing on enactment of legislation, lobbying efforts might most effectively be spent setting the stage, rallying support, educating officials, and gathering data.

**Identify Supporters and Allies.** Few bills can be moved through the complex legislative processes without major efforts by a broad group of supporters, no matter the importance of the policy or the benefits that might be achieved by enactment. The more people or groups the bar has in support of its cause, the better. In the bar’s own state, constituents who have the ear of the relevant representative or senator (e.g., friends, past colleagues, campaign donors, politically active people) can assist in getting the bar’s issue heard by the legislator and his or her staff. For attorneys, state and local bar organizations, Access to Justice commissions, Interest on Lawyers’ Trust Account organizations, and specialty bar groups (e.g., trial lawyers, corporate lawyers) can all assist in reaching out to legislatures.

When seeking to identify potential supporters and allies, bars should consider a number of important factors, including:

- Which industries, interests, organizations, agencies, government entities, and the like are likely to be supportive of the proposal?
- Is their support based upon direct economic interest or other impact, or on policy or ideological grounds?
- Is there already a coalition or organization in existence that is supporting the issue in a focused, current manner?
- What are the coalition’s strengths and weaknesses, and how would the bar fit in with the other groups comprising the coalition? If there is
none, would it be desirable to create a coordinating organization, and might the bar effectively do so?
• Can the bar benefit from the experience of bars in other states?

In short, the political strengths and weaknesses of potential allies on an issue should be assessed, as well as how a coalition would function should possible compromises be needed to advance the issue.¹⁵

Identify Likely Opposition. As a bar examines all the strengths of its particular legislative position, it should also identify obstacles, opponents, and opposition arguments to its points. For example, the cost of the legislation, controversy surrounding an issue, and timing could present obstacles and need to be addressed. The bar must be prepared to deal with and counter or undermine opposition arguments early in the process, directly and honestly addressing obstacles and crafting counterarguments that remain truthful to the facts and are most likely to resonate with the legislator or audience being addressed.

It is generally easier to defeat a legislative proposal than to enact one. The nature of intrabranch and interbranch checks and balances—competing committee jurisdictional claims in each chamber; powerful dueling committee and party leaders with control over agendas; differences in perspective between the chambers; the power of the minority to block legislation; arcane budget and reconciliation rules; the requirement for a governor’s signature—all provide opportunities to block even the narrowest proposal.

An analysis similar to the one described above relating to allies should be undertaken with regard to likely opponents as well. In particular, bars should consider a number of factors when identifying likely opponents, including such questions as:

• Which industries, interests, organizations, government agencies, or other stakeholders are likely to oppose the proposal?
• Is their opposition based upon direct economic interest or other impact, or on policy or ideological grounds?

¹⁵. For more information on building coalitions, see The Power of Coalitions and Joint Advocacy, infra Chapter 6.
Is there already a coalition or organization in existence that is opposing the issue in a focused, current manner? What are its strengths and weaknesses?
• Could the bar seek common ground with any of these groups, and are there opportunities to achieve objectives through compromises that would gain additional substantial supporters or neutralize opposition?

Role of the Executive Branch. Often the position of a key executive branch agency can mean life or death to a legislative proposal. Therefore, bars should ask themselves several key questions. For example:

• Which executive branch agency or office is responsible for carrying out programs on this issue, if any, and what is its position on the bar’s proposal?
• What steps might be taken to gain or reinforce the governor’s or agency’s support or to diminish or deflect opposition?
• Might the objectives be attained through agency action without legislative consideration, and, if so, should the lobbying efforts be directed primarily to the relevant state agency?

Relevance of the Judiciary. If an issue or legislative proposal affects the courts—potentially, for example, leading to increased litigation, inadequate funding for the courts, or changes in court rules or judicial selection procedures—then determining the position of and communicating regularly with the judiciary is essential. Assessment of the impact on and role of the judiciary—both in obtaining enactment of the legislation and in implementing it—should be part of the lobbying plan. If the issue may implicate courts in other states, then it may be useful to coordinate efforts with groups such as the Conference of Chief Justices and the National Center for State Courts. If concern or opposition from the judiciary might be anticipated, this should be confronted and addressed from the start.

Academic and Think Tank Positions. Academics and participants in think tanks at the state or even national level often are important sources of data that can be used to support (or oppose) policy proposals. Advocates should become familiar with available analyses and research on the issue being addressed and assess the strengths and weaknesses of the arguments advanced. If bars believe that obtaining additional information through surveys, research, collection of
empirical data, or other approaches might be helpful in advancing the bar's interest, attempts should be made to fill the gaps before legislative action begins.

*Compliance with Lobbying Disclosure Laws and Ethics Rules.* Separate chapters in this Guide address more fully the need for bar leaders and executives to closely adhere to any legal requirements that might require registration or reporting of lobbying activities. In addition, the first chapter in this Guide places front and center the need to remain mindful of and compliant with both ethical guidance and norms affecting lawyers as lobbyists. However, recognizing that each state takes a different approach to lobbying disclosure requirements, compliance with applicable laws and regulations should be an indispensable element of any comprehensive lobbying plan.

*Issues with a Federal Focus.* Sometimes a state or even local bar will set its sights on addressing federal legislation. Issues such as funding of the Legal Services Corporation and preventing inappropriate federal agency regulation of lawyers engaged in the practice of law are two areas where bars often weigh in on the federal level. In these situations, the starting point should be consultation with the GAO, which likely has already developed expertise on the subject matter and an informed perspective on its legislative prospects. Whether through multi-state coordinated advocacy, participation in the annual ABA Day in Washington grassroots lobbying program, or simply remaining informed of current developments, working on federal issues with GAO will enhance bar's effectiveness in making its voice heard in Washington.

**Navigating the Legislative Landscape**

*Map the Landscape.* With the groundwork completed through the assessments suggested in the above paragraphs, it is time to plot a strategy to advance a legislative proposal or launch an opposition effort. It is always useful to engage allies in this process, both to ensure that planning is informed by diverse perspectives and to prevent competing efforts that might dissipate energies and prove counterproductive.

Knowing how the legislative landscape relates to the issue is essential. Therefore, bars should examine and consider various key questions, including:

- What is the legislative history of the issue; where were the impediments to enactment in the past?
“All Politics Is Local”

- Which committees have jurisdiction; how can overlapping or competing jurisdictional claims be addressed?
- Who have been the past leaders, supporters, opponents?

Only with a firm grip on history can a successful road forward be planned.

Select a Legislative Vehicle. In most cases, a bar will advance its policy objective by supporting or opposing legislation that has already been introduced. There are occasions, however, when a bar will have to start from scratch. This will require the bar to identify legislators who are supportive of its policy objective and willing to introduce legislation on the subject. (Tips on identifying legislators are offered below.) Once a sympathetic legislator is identified, the bar typically will work with legislative staff to develop legislation that accomplishes the intended objectives. This can take time, depending on the complexity of legislative drafting that will be required and whether multiple viewpoints need to be accommodated.

How and when to introduce the bill is a strategic decision. Will the objective be to introduce and pass a free-standing bill, introduce the bill but look for opportunities to move it as part of a package or as an amendment to other legislation, or will the objective be to hold the draft and wait for the opportune time to propose it as an amendment to a relevant bill that is moving through the legislative process? While the bar’s input is important, tactical decisions such as timing and legislative vehicle will be made by staff and revisited periodically throughout the process.

Identify Legislators and Other Officials Who Can Assist. Once a bar has a plan developed and has a good grasp of the legislative landscape, it needs to figure out who can assist it; for example, the bar needs to know who in the legislature can assist, as well as the governor’s position and the position of other relevant state-wide officeholders and agencies.

In most state legislatures, the people with the most authority over the bar’s issue will be House and Senate leadership, who control the agenda and determine what issues and legislation the legislators will vote on. The chair of the

16. For simplicity, the two chambers of state legislatures and of the U.S. Congress will be referred to in this Guide as “House” and “Senate,” even though within certain state legislatures, “Assembly” or another word might be the proper term for the lower chamber and Nebraska has a unicameral legislature.
relevant committee of jurisdiction (and to a lesser extent, the ranking member of each committee) will also have a great deal of influence on legislation in their respective committees.

Bar advocates should be sure to talk to their own legislative representatives, who are the most likely to be responsive to the bar’s requests. Bars should determine whether similar legislation has been introduced recently; following up with the sponsor and cosponsors of that legislation could be helpful. The position of the governor is also important; even if passed by both chambers, the governor may opt to veto legislation he or she finds unfavorable.

Research Legislators and Identify Their Motivations. Knowing the background of the legislators whom a bar intends to target is critical. Many different factors determine how likely a legislator is to support or oppose certain legislation. Figuring out what motivates your legislators is crucial to achieving success in advocacy. Common motivators include: getting reelected; attaining higher office (statewide office or governorship, or federal office in the U.S. House or Senate); a desire to vote with his or her party or thwart the opposing party; certain issues of long-standing importance to the legislator; and funding or delivering other benefits to the district, among other incentives.

Here are some key questions about the legislator that a bar will want to consider:

1. How long has the legislator been in office? Those who have been in office longer have more seniority (and therefore more clout), but newer legislators are often more eager to achieve legislative victories or simply to find legislative issues on which to work. For those states with term limits, bars should keep in mind that their legislators may be more motivated to accomplish something promptly since their time in the legislative body is limited.

2. Is the legislator in leadership or a committee chair or ranking member? Committee chairs control the agenda in their respective committees and often sponsor or cosponsor the limited number of bills that are

17. Congress.gov (and the similar site, Thomas.loc.gov, which was phased out at the end of 2014) is the Library of Congress’s website, which allows the user to search for federal legislation by bill name or number, key word, or the name of the sponsor or cosponsor of the bill. In addition, some state legislatures also have established similar searchable databases that allow users to obtain similar information.
ultimately marked up and approved by the committee. Although others in leadership positions ultimately control the agenda, they often do not sponsor or cosponsor legislation. Therefore, while the support of leadership generally is necessary for final passage, a bar will have to find other legislators to sponsor or cosponsor its legislation.

3. Is the legislator in the majority or minority party? In the lower chamber, the majority generally controls the agenda; in the upper chamber, the majority has more control than the minority but must work more with the minority to move items forward. Legislation will almost always be easier to pass if it is bipartisan.

4. Does the legislator belong to the same party as the governor or to the opposing party?

5. By what margin did the legislator win his or her election? Does he or she plan to run for reelection? Those who have been through a difficult race or anticipate a difficult reelection may be less likely to appear hyperpartisan or take the lead on controversial issues but more anxious to score legislative victories to tout to constituents. What were or are the legislator’s campaign promises or goals?

6. Has the legislator expressed interest in any of the bar’s priorities? Does the legislator have a voting record on issues of importance to the bar? What bills has the legislator sponsored or cosponsored? Is the legislator associated with any particular cause or legislative goal?

7. What type of district does the legislator represent? Rural or urban? Who are the major employers in the district? Is it a wealthy or poor district? What is the racial composition of the district? Is immigration a major issue for the state? Do voters there tend to be Republican, Democratic, or split-ticket/independent voters?

8. What did the legislator do before being elected to the legislature or what does he or she do while the legislature is not in session? For example, a doctor might be interested in healthcare, an accountant in tax policy, or a lawyer in legal or tort reform.

9. What is the legislator’s ideology or political philosophy? Does he or she lean conservative on fiscal issues and moderate or liberal on social issues, or vice-versa? Does the legislator’s ideology closely match that of his or her constituents? If so, the legislator may feel at liberty to take positions based on personal views; if not, the legislator may feel obligated to moderate his or her personal views with respect to certain legislation to stay in office.
Craft the Message to Fit the Legislator. Once a bar has determined which legislators to target, it needs to craft its policy message in a way that makes the legislators want to enact the legislation the bar supports (or defeat the legislation the bar opposes). The bar should figure out how the legislation will be beneficial or detrimental to a particular legislator or that legislator’s constituents. It should not have one message for all legislators; instead, it should highlight the aspects of the legislation that a particular legislator will respond to and localize the issue to his or her district whenever possible.

Conclusion

Advancing an issue before the legislature will require some combination of direct lobbying, grassroots and grasstops advocacy, media-related efforts, and coordination with allies. Each of these is addressed in separate chapters of this Guide.

Achieving legislative victories is a long-term process that can often take years or several legislative sessions to achieve when the goal is to pass legislation. Therefore, a bar must be willing to adapt its messaging and strategy over time, as needed, and above all, to recognize the importance of and derive satisfaction from achieving incremental victories that signify legislative progress. In many instances, obtaining a hearing on the issue, recruiting bill sponsors or cosponsors, amending a harmful bill to mitigate its worst provisions, or passing a scaled-down version that accomplishes some but not all of what it is seeking are significant partial victories that will help sustain multi-year advocacy efforts.
Why Build Relationships?

Long-term, effective advocacy is dependent on the development of strategic, trusting relationships with legislators and other elected officials who are decisionmakers, with the media who have the power to shape public perception of your issue, and with your bar’s member-advocates, whose support and involvement are essential to a robust advocacy program. This chapter specifically focuses on building relationships with legislators and their staff.

Relationships, at the most fundamental level, form the basic building block of every advocacy campaign. If policymakers know and respect you, they will be primed to listen to what you have to say. Developing strong ties with legislators and their staff will increase the likelihood that your in-person visits and other communications—whether in the form of emails, advocacy letters, written statements, or grassroots campaigns—will be seriously considered by your legislator. Simply put, relationship building offers a gateway to effective advocacy.

With Whom?

Cultivating and maintaining legislative relationships takes time and effort. Therefore, advocates need to be strategic and focus on building relationships with legislators and other elected officials who are considered potential or essential supporters of the bar’s policy agenda. The time spent building relationships will be worthwhile; relationships that emerge as a result of advocacy on a specific issue...
issue often turn into long-term friendships that provide the basis for forming legislative alliances for years to come.

While developing a direct bond with a legislator may be an ultimate goal, never underestimate the benefit of getting to know the legislator’s office staff. Many staff members provide significant substantive assistance to their bosses by researching, drafting, analyzing, and vetting information required to make informed decisions. Key staff members not only determine what information is presented to the legislator, but they also serve as sounding boards, making them a direct conduit to the legislator’s decision-making process. They generally are knowledgeable, on the lookout for helpful information, and far more accessible than the legislators for whom they work.

Strategies for Building Enduring Relationships

The key to building enduring relationships with lawmakers and their staff is to remember that they need the help of advocates as much as advocates need their support. Bar advocates have experience, expertise, data, and constituent stories—information and resources that lawmakers need. Every communication, whether in-person or written, direct (e.g., email, formal letter), or indirect (e.g., social media or grassroots), provides an opportunity for the bar advocate to build a relationship by demonstrating that he or she is honest, credible, knowledgeable, and a reliable and eager resource for providing timely information—in other words, a trustworthy advocate who is invested in developing a mutually beneficial relationship. With this in mind, consider utilizing the following strategies for relationship building:

Know your legislator. What committees does the legislator sit on? What legislation has he or she championed? Do any prior positions or statements provide a clue to the legislator’s likely reception to the bar’s request for action?

While it is important to research this type of nuts-and-bolts information, it also is important to know what makes your legislator tick. What are the demographics of the legislator’s district? Do any particular passions or personal experiences guide his or her decision making? Is the legislator especially obligated to any particular constituency? Is the legislator popular back home or concerned about reelection?

And, finally, search for ways to make a personal connection. For example, perhaps you attended the same college, grew up in the same town, belong to the same civic associations, or share a sport or hobby.
Connect your issue to the legislator’s constituents. Why should the legislator care about your issue? How will it affect the legislator’s constituents and the way he or she will be perceived back home? Provide practical examples and experiences. If possible, make the connections personal and direct through constituent visits and grassroots contacts.

Act professionally. Be honest, credible, trustworthy, and respectful. Provide accurate and timely information. Never exaggerate or misstate facts to enhance your position, or deride or denigrate others for contrary opinions or positions. Do not violate a confidence or promise what you cannot deliver. And always treat the legislator and staff respectfully, even when such behavior is not being reciprocated. To do otherwise underestimates the power of a scorned or betrayed legislator or staffer to derail your legislative plans, no matter how meritorious they may be.

Establish yourself as a willing and reliable resource. Ask what assistance the legislator needs to do his or her job. Make it as easy as possible for staff to use your materials or to understand an issue by, for example, providing clear and concise fact sheets, distilling pro and con arguments to understandable bullet points, or drafting talking points for a floor speech or questions for a hearing. Do they need a lawyer to explain a legal issue or how proposed legislation will affect access to the courts? Are they looking for constituents who are directly affected by the issue? Be willing to help with the legwork, and be sure to provide any requested information in a timely manner.

Seize opportunities to connect with your legislator. In addition to arranging for in-person meetings, attend events honoring the legislator or where he or she may be speaking, such as candidate forums or town hall meetings. Take advantage of informal, unplanned meetings to make a connection.

Create opportunities for your legislator to connect. Demonstrate how important the legislator is to your work by hosting an event to honor him or her; arrange visits that will boost the legislator’s visibility; arrange a visit to enable the legislator to meet with constituents over a specific issue or to learn about a specific problem or possible solution.

Communicate regularly but strategically. While it is essential to send brief, accurate, and timely information about your issue and how it affects constituents
when the legislature is in session, it also is important to communicate off-cycle whenever there are important developments and to check in at regular intervals, which will serve as a reminder of your commitment to the issue and to the relationship.

*Be patient with staff.* Recognize that staffers have significant responsibilities and may be doing more work with less resources, given the tough budgets most states are facing. They may not have the time to respond immediately to calls or emails. Unless the matter is urgent, wait a few days and then follow up if emails are unanswered, but do not badger.

*Be grateful.* Let your legislator know that you appreciate his or her support at every appropriate opportunity. Send the legislator thank you notes for actions taken on your behalf, or use social media and site visits to express your appreciation publicly.

**Communicating Effectively**

Relationship building—indeed, every component of an effective advocacy campaign—requires the ability to communicate clearly in a manner that will command attention and respect. Understanding the “what, why, when, how, and who” of effective communication may appear to be a daunting task—and many of the forthcoming chapters will attempt to answer these questions in the context of specific advocacy strategies—but it is less so when one understands that the basic principles of good communication apply to each situation.

- Know what you want to communicate before your start.
- Tailor your message to the concerns and interests of your audience.
- Revise the message as needed to reflect changed circumstances.
- Keep your communications brief and concise, but if length is unavoidable, provide a roadmap.
- In choosing the communication vehicle, pay heed to any announced or obvious communication preferences.
- Utilize the best messenger for the job.
- Be aware of the legislative cycle and other external events that might affect the timing for your communication.
- Calibrate the number of communications you are sending so that you inform rather than infuriate.
Deanna Gelak, in her comprehensive 2008 book on lobbying and advocacy, offers five principles of effective legislative communications, which she terms the “CHATS” method.\textsuperscript{19} She explains each principle with famous quotes that embody its essence. Her five principles and some of her illustrative quotes are reprinted below:

- **C-**onnect to Find Something in Common
  “When I’m getting ready to reason with a man, I spend one-third of my time thinking about myself and what I am going to say—and two-thirds thinking about him and what he is going to say.”—Abraham Lincoln

- **H-**ear
  “Don’t ever talk until you know what you’re talking about.”—Rep. Sam Rayburn

- **A-**void Arguing
  “Arguments only confirm people in their own opinions.”—Booth Tarkington

- **T-**ake the Temperature
  “Occasionally allow yourself the luxury of an unexpressed thought.”—Sen. Everett Dirksen

- **S-**ow Seeds for Change
  “We are usually convinced more easily by reasons we have found ourselves than by those which have occurred to others.”—Blaise Pascal

Writing to relevant legislators and their staff is an essential component of advocacy. In fact, a written communication expressing a bar’s policy positions and the key arguments for or against proposed legislation or regulations often provides the best opportunity for a bar to share its views in a cogent and convincing manner. A carefully written fact sheet or “one-pager” that boils down complex issues to their core elements can provide a valuable aid for legislative staff in addition to offering the advocate an opportunity to present the bar’s policy views. Likewise, a tweet that distills a viewpoint to a few carefully chosen words or a timely white paper that provides a thoughtful analysis of an issue can influence a legislator’s position on an issue. What you say is as important as how you say it. Effective written communications must be tailored to the audience, presented in an easy-to-digest format, and delivered in a way that will motivate legislative staff to read and pass them on to their bosses.

**Advocacy Letters**

Advocacy letters generally should be easy to read and to the point. It is a service to the reader and good practice to identify the bar’s position and purpose for the policy letter in the first paragraph. A letter that discusses a legislative policy issue for several paragraphs before getting to the point is confusing and risks losing the attention of staff before they grasp its point.

It also is helpful to establish your credentials at the beginning of the letter. While legislative staff generally pay attention to communications from a bar association willing to offer its expertise and provide input regarding issues affecting the justice system, they will pay even closer attention to communications
from a knowledgeable bar whose members are comprised of all or a substantial
number of the legislator’s lawyer-constituents.

Crafting a persuasive advocacy letter requires knowledge of your issue and
your legislator so that you can explain the issue succinctly and support your
position with facts that will resonate with and win over your audience. Before
you start writing, it is very helpful to know the history of the issue and its cur-
rent status, opposing arguments, coverage by the media, its intended or expected
effect on the legislator’s district, and the views expressed by constituents or local
editorial boards. Legislators genuinely want to know how a proposed action will
affect and be received by their constituents; it therefore behooves the advocate to
support the bar’s position by focusing on a few arguments that demonstrate the
issue’s relevance to constituents rather than trying to summarize every available
supporting argument.

Every advocacy letter should include a clear “ask.” What do you want your
legislator to do: Cosponsor a bill? Support an amendment that will be offered?
Vote against the legislation? Whatever it is, be specific and state your request
clearly.20

Generally, advocacy letters should be brief—no more than two pages in
length.

Legislative staff do not have time to read lengthy letters. A short, clear, and
well-written letter is more likely to be read and remembered than one that is
dense and difficult to understand. If it is necessary to write a longer letter, one
effective technique is to give your reader a roadmap by prefacing every section
with a summary sentence or bullet point.

Anything you can do to increase readability will increase the probability
that your letter will be read and remembered. In Congress and in some state
offices, staff members not only are tasked with summarizing letters from con-
stituents, but also with choosing which summaries to present to their legislator.
A busy staff member will appreciate a letter with a clearly stated purpose that is
supported by cogent, easy-to-follow arguments or facts.

Needless to say, letters should contain the proper form of address and
be free of grammatical, typographical, and other errors. Even the most well-
written and persuasive letter will lose much of its effectiveness if it contains
misspellings, omitted words, or other defects that distract from the letter’s in-
tended message.

20. The Appendix, infra, contains two examples of advocacy letters that illustrate
these requirements.
The timing of a letter is often critical to its ability to affect policy decisions. As a bill or issue moves through the legislative cycle, letters may serve different purposes. For example, submitting a letter before a floor vote and bringing it to the attention of the right staff member creates an opportunity for the letter to be quoted on the floor, which provides visibility for the organization that wrote it. On the other hand, if the purpose is to sway votes, it is best to educate legislators about the bar’s position earlier in the process when information is being gathered and opinions are being formed. This will include submitting letters in support of a bill soon after it is introduced to provide some added momentum; providing testimony or a statement for the record of a hearing where a bill or issue will be examined in depth; or submitting a letter before a committee markup when amendments will be considered. In addition to considering the stage of the legislative process, bar advocates also should be mindful of the budget and election cycles when determining the optimal time for communicating a particular message.

Organizations sometimes join together informally or as a coalition and submit a single letter (typically known as a “sign-on” letter) that represents their joint views on legislation or administrative action. Joint letters can be a useful tool to communicate widespread agreement on an issue when signed by a large number of organizations. They also are an effective way to demonstrate that the issue transcends partisan politics or is of such overriding concern that organizations that typically disagree on issues have become “strange bedfellows” and joined forces over it. For example, a sign-on letter that comes from organizations separately representing judges, prosecutors, and defense counsel may be particularly effective in demonstrating broad support for a bill that would alter court jurisdiction. A joint letter from conservative and liberal think tanks may convey a surprising new consensus across the political divide. A letter regarding discrimination protection for workers that is signed by most of the national civil rights organizations may offer verification that the views expressed truly represent the consensus view of that community.

While joint letters can be very effective, some fail to achieve the desired result of communicating strength or breadth of concern. If the same organizations repeatedly sign the same letters, the letters may lose impact and the organizations involved may be perceived as lacking independence. On issues where the bar has particular authority and expertise, careful consideration should be given to whether the bar should speak on its own behalf to showcase those attributes.

21. Information about working with coalitions is presented in The Power of Coalitions and Joint Advocacy, infra Chapter 6.
Fact Sheets

Fact sheets should present essential information in a concise, easy-to-read format. They generally should be no more than a page or two and should start with an abbreviated overview of the issue or legislation, followed by a series of brief points that the author wants the reader to focus on. With large bills that address multiple issues of concern to the bar, it may be better to prepare separate fact sheets on each issue in the bill. The key consideration in deciding how to present the information should always be clarity. Succinct, clearly written fact sheets are particularly helpful to, and appreciated by, legislative staff.

A fact sheet may be transformed into a concise advocacy document by including a summary of the bar’s position and a request for specific action. These documents, often referred to as “one-pagers,” are extremely useful to leave with staff after an in-person meeting and as a tool for recruiting allies outside of the bar. They also are an efficient way to quickly educate or refresh the recollection of bar leaders and other spokespersons.\(^{22}\)

Written Reports

Bars frequently issue written reports of varying lengths and formats that may be of interest to legislators and other policymakers. Major reports should be announced through a press release, and a strategy to disseminate them to various audiences and stakeholders should be developed in advance. Advocates should be mindful that legislative offices often are swamped with constituent communications and should use restraint in disseminating their reports to legislative staff. An unsolicited email and 50-page attachment sent to the legislator’s staff from an unknown bar advocate will most likely be filed for later reading and forgotten. Unless a staff member has been previously apprised of the report and anticipates receiving a copy, a better practice might be to have the bar’s media office send a press release and links to the executive summary and the full report.

As with all written communications designed to advance a bar’s policy positions—whether advocacy letters, fact sheets, or written reports—less is often more.

Email Delivery of Written Documents

Most correspondence to and from legislative offices is delivered today by email due to technological efficiency, cost, time, and, in some cases, security concerns.

\(^{22}\) The Appendix, infra, contains examples of a fact sheet and an issue one-pager.
Even with the growing sophistication of social media platforms, email remains the most prevalent and preferred form of communication by legislative staff.\textsuperscript{23}

Email is not a fail-safe delivery system, however, given that legislative offices today are flooded with a level of email traffic that is a challenge to sort through and digest. According to the Congressional Research Service, more than 325 million email messages were received by the U.S. House and Senate offices in 2011 alone.\textsuperscript{24}

The following suggestions will increase the likelihood that your email will be opened:

- **Succinctly identify the purpose of the communication in the “subject” line.** Examples: “Bar Leaders Urge Rejection of Senate Bill 222, Legislation to Authorize a Tax on Legal Services” or “ABA Urges Prompt Consideration of Judicial Nominees.”
- **Keep your email message brief and to the point.** However, be sure to include contact information for the bar member or staff person to whom questions should be directed.
- **Attach letters.** Do not include the full text of the letter in the body of the email unless there is a specific reason to do so.
- **Send your email to the correct staff person in the correct office.** For legislative communications this most often will be the legislator’s personal staff member responsible for the issue about which you are writing or the staff member who is responsible for organizing or compiling a hearing record.

Email addresses for elected officials are generally available on the state government’s website.\textsuperscript{25} Most legislators have their own websites where they post their biographies, positions on issues, staff assignments and email addresses, and other useful information. At the federal level, the ABA Governmental Affairs Office subscribes to several online services that provide the names, titles, and email addresses of most key congressional and executive branch staff, along with an indication of the issues that each staff person handles. GAO would be pleased to provide this information to individual bars on request.

\textsuperscript{23} Columbia Books and Info. Servs., The Congressional Communications Report 14 (2014); see also CQ Rollcall, How to Email Congress and Make it Count 1 (2014).

\textsuperscript{24} Matthew Eric Glassman et al., Congressional Research Service, Social Networking and Constituent Communications: Members’ Use of Twitter and Facebook during a Two-Month Period in the 112th Congress 2 (2013).

\textsuperscript{25} For links to every state legislature, see The Library of Congress, State Legislature Websites, http://thomas.loc.gov/home/state-legislatures.html.
Arranging in-person meetings with legislators or their staff is one of the most effective ways for bars to build relationships with their lawmakers and to advocate on behalf of a policy position adopted by the bar.

**Lobbying Visits: From the Statehouse to Capitol Hill**

Although state and local bars inherently focus most of their lobbying activities and resources on state issues—and hence on the bars’ own state legislators—many also have occasion to lobby Congress on federal legislative issues that are critically important to the entire legal profession. Regardless of the locus of a lobbying effort, in-person meetings are an essential component of relationship building and a core advocacy tool. According to a Congressional Management Foundation survey, congressional staff reported that in-person visits and contact from a constituent who represents other constituents on an issue influenced the decision making of Members of Congress more than any other advocacy strategy.26

While bar leaders often prefer to meet directly with their legislators, meetings with legislative staff having subject-matter expertise on the issue in question are often as valuable—if not more—than legislator meetings. In-person meetings with both legislators and staff members offer state and local bar advocates

26. Congressional Management Foundation (CMF), *Communicating with Congress: Perceptions of Citizen Advocacy on Capitol Hill* 3 (2011) [hereinafter CMF, *Communicating with Congress*]. While this survey only involved congressional staff, it is highly likely that similar results would be obtained from a survey of state legislative staff.
a particularly good opportunity to establish their credentials as knowledgeable and trustworthy constituents by presenting insightful, reliable, and helpful information.\textsuperscript{27}

\textit{Location of Visit.} Even though the effectiveness of a visit is determined by what transpires during the visit, not by where it occurs, advocates generally will need to choose a meeting location based on the legislative calendar and the legislator’s location.\textsuperscript{28}

In addition to their main offices in the state capital or in Washington, DC, all Members of Congress and some state legislators also maintain district offices to serve their constituents more effectively.\textsuperscript{29} While most official meetings will be conducted in a legislator’s main office, there may be advantages to asking for a meeting at a district office. For example, district offices typically focus on constituent services and staff may be more readily available for meetings. By scheduling meetings with their congressional member in his or her district office, bar advocates can take advantage of the many scheduled district work periods for Congress and save their bar transportation costs. Meetings at a state legislator’s district office provide an opportunity to develop important relationships with local staff.

Bar professionals have a number of additional opportunities for meeting with their legislators, including arranging a local site visit or attending a local town hall meeting. Attending state or local events at which the legislator is likely to appear and chance encounters offer additional opportunities to connect and exchange information.

\textit{Scheduling a Visit.} When a bar wishes to schedule a visit with a state legislator or Member of Congress, it should be aware of the legislator’s typical work patterns and availability in determining the ideal location for the meeting. For example,

\begin{itemize}
    \item \textsuperscript{27} Columbia Books, \textit{The Congressional Communications Report} 36–39 (2014). This report, like the preceding one, is based on a survey of congressional staff. When asked to rate a list of 15 activities that influence Members of Congress, congressional staff gave high ratings to the following tools: “reliable information, concise arguments, constituent support, and face-to-face meetings.” \textit{Id}.
    \item \textsuperscript{28} According to the survey, congressional staff reported that constituent visits to Capitol Hill and to district offices were similarly influential. CMF, \textit{Communicating with Congress} at 3.
    \item \textsuperscript{29} According to a survey by the National Conference of State Legislators, of the 99 state legislative chambers, 24 allow their members to open district offices and provide funding to do so. Angela Andrews, \textit{District Offices in State Legislatures} 22 LegisBrief (July 2014), available for order at http://www.ncsl.org/research/about-state-legislatures/district-offices-in-state-legislatures.aspx.
\end{itemize}
when the bar is seeking a meeting with one of its Members of Congress, it should keep in mind that they are usually in Washington on Tuesdays, Wednesdays, and Thursdays and in the district on Mondays and Fridays, and during recesses. Therefore, the best days to try to schedule a Capitol Hill visit with the Member will be Tuesday through Thursday while Congress is in session, and the remaining days are the best times to try to schedule visits in the district.

Most state legislatures post on their websites the dates that they are in session and other key information that will be relevant to state legislators’ availability to meet.\(^{30}\) It is important to keep in mind, however, that state legislative and congressional calendars are prepared far in advance and the actual dates may change.

It is best to request a meeting, preferably by email, and then follow up with a phone call to the scheduler. If you wish to meet with a congressional member, it is best to request a meeting two to four weeks in advance.\(^{31}\) The request should state why the bar wants to meet with the legislator or staff, the issues it wishes to discuss, and its general availability. Once the meeting is scheduled, it is wise to confirm shortly before the actual date, keeping in mind that legislative schedules are subject to last-minute changes that might make it difficult for an office to provide advance notice of the need to reschedule an appointment.

**Preparing for the Meeting.** Prior to the meeting, the bar professional should consider preparing a one-pager summarizing the bar’s position on the issue under discussion to leave with staff at the conclusion of the meeting. This is another situation where less is better; try to present the most important information in two pages or less.\(^{32}\) While staff might appreciate a packet of additional background materials, depending on their level of familiarity with the issue, rather than inundating

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30. The calendar noting the days the House of Representatives is in session is available on the website of the Office of the Clerk at: http://clerk.house.gov/. The Senate Calendar is available at http://www.senate.gov/index.htm.

31. CMF, *Face-to-Face with Congress: Before, During, and After Meetings with Legislators* 8 (2013), available for download at http://www.congressfoundation.org/projects/communicating-with-congress/face-to-face. According to a survey of House schedulers, 38 percent responded that they prefer to receive a request two weeks in advance, and 55 percent indicted a preference for three-to-four weeks’ advance notice. *Id.*

32. CMF, *Face-to-Face with Congress* at 11. A survey of chiefs of staff for House members revealed that 94 percent felt that a one-to-two page issue summary left behind after a meeting was helpful, while only 18 percent felt the same about a five-page summary. *Id.* For additional information on drafting factsheets and one-pagers, see *Effective Written Communication*, supra Chapter 4.
them during your meeting, a better strategy might be to position yourself as a resource by offering to follow up by sending additional relevant material.

Perhaps the most important part of the meeting is stating a clear “ask”: What does the bar want the legislator to do? Sponsor a bill? Write a letter? Champion an issue? The bar professional should make sure he or she can articulate the appropriate “ask” clearly during the meeting and should coordinate speaking roles within the delegation in advance. The meeting should be a well-orchestrated event so that the bar can maximize the limited time it has with the legislator or staff person.

If the issue to be discussed is one on which the state or local bar and the ABA are working together, GAO will be happy to share any advocacy materials it has prepared on the issue. Oftentimes, these materials are posted on the GAO’s website.33

During the Meeting. It is important always to be on time for all meetings even though meetings with legislators are often delayed due to events beyond their control. Because such delays are common, it is generally best not to schedule multiple meetings less than one hour apart (which will allow for a brief delay, 30 minutes to meet, and sufficient time to get from one meeting to the next).

During a meeting, bar professionals should personalize their presentations by explaining the impact of their issue on the legislator’s constituents. To accomplish this, the advocate might share district and state-specific information on that issue or recount personal anecdotes to illustrate the importance of the issue to the legislator’s constituents. Oftentimes, it is the stories or the specific examples of how a particular bill or proposal would affect individual constituents that the legislator or staff member will remember and that will be most persuasive.

It is important to be brief and to the point, particularly if the meeting is with the legislator. The wise advocate will not try to cover too many issues; typically, it is best to focus on one major issue during a meeting, but if multiple issues need to be discussed, the advocate should try to focus on no more than three. After exchanging brief pleasantries to establish a rapport, the bar advocate should clearly state the main purpose of the meeting, succinctly explain the reasons for the bar’s position, state the specific “ask,” and move on to the next issue.

Legislators and staff often will ask who, if anyone, opposes the bar’s position or whether there are differing approaches to a particular problem. The bar

33. Information regarding the ABA Governmental Affairs Office, including contact information for its lobbyists, is available at http://www.americanbar.org/advocacy/governmental_legislative_work.html.
advocate should be prepared to answer these types of questions candidly and to anticipate and address counterarguments effectively.

An advocate should not overstay his or her welcome; while the lengths of meetings with Members and staff will vary, it is rare for a meeting to last more than 30 minutes. Therefore, it is critical that the bar convey its core message as clearly and concisely as possible, thank them for their time, and allow them to gracefully end the meeting.

**After the Meeting.** After the meeting, it is always a good idea to send a short thank you letter to those with whom you met that expresses appreciation for the meeting and briefly restates the bar’s main points and “ask” from the meeting. In the thank you letter (usually sent by email), the bar advocate might also consider briefly summarizing any understandings that may have been reached. However, it is important not to take generalized statements of interest or support to be firm commitments on your issue.

If during the meeting the legislator or staff member requests additional information, do your best to comply promptly. Following through with promised information will enhance the bar’s credibility and build trust. The bar advocate should use the initial meeting and the subsequent follow-up communications as opportunities to develop or deepen the relationship with the staff and to become a useful resource. These simple steps are likely to pay dividends over time by enhancing the bar’s access and influence with legislators and staff.\(^\text{34}\)

**Site Visits**

A site visit involves inviting a legislator to an event or destination that provides an opportunity for the legislator to engage with his or her constituents, learn about an issue firsthand, witness its effects in action, and discuss necessary next steps. Site visits provide an opportunity for legislators to learn directly whether legislative decisions are having intended or unintended consequences on their constituents and to learn through meaningful and personal interactions with constituents why the bar’s message is important. Arranging a site visit is an excellent way to build or solidify relationships with your legislators.

\(^\text{34}\) For additional information, see the CRS Report on Congressional Member Office Operations, available at http://www.policyarchive.org/handle/10207/bitstreams/1137.pdf. Visit the Congressional Management Foundation website, containing summaries of a number of surveys on effective communications and advocacy with Members of Congress and staff, at http://www.congressfoundation.org.
There are endless possibilities for site visits, but three types in particular deserve mention. One type involves using high-visibility visits that provide speaking and photo opportunities, such as commemoration events (e.g., anniversary of most anything, law day activities, ribbon-cutting ceremonies, law school graduations, or judicial investiture ceremonies); dining events with members of the bar or the official’s constituents; and bar meetings or conferences. Honoring the legislator or a prominent bar member at an event will provide additional incentive for the legislator to attend, increase the visibility of the event, and may result in greater organizational participation. Inviting the legislator to a community or charitable event and seating him or her next to bar leaders is another effective way to increase visibility and build relationships.

A second type of site visit focuses more on spotlighting a specific issue or need in the community, such as the inadequate delivery of legal services to underserved communities. This could be accomplished by arranging visits to a courthouse, immigration detention facility, law school clinic that provides legal assistance to the poor, or a legal aid office. In districts or states with a large number of military personnel or a military installation, bars may want to consider arranging for the legislator to visit a legal assistance or Staff Judge Advocate office on the installation, a Veterans of Foreign Wars Hall, or a Wounded Warrior facility to discuss the scope of services available and identify gaps where the bar thinks an elected official might be able to help. The strategic use of site visits provides endless opportunities to educate your legislator and motivate him or her to take action to remediate a problem affecting constituents.

The third type of site visit involves inviting a legislator or his or her staff to participate as a speaker or panelist in a program that focuses on an issue of concern to the bar. This could include inviting the legislator to attend or be a presenter at a local Continuing Legal Education program. The discussions that result from interactions at these sorts of events provide unique opportunities for attendees to gain insight into the politics of an issue and information about its current legislative posture.

Site visits require significant planning and often necessitate a budget. It is a good tactic to be sure that you have the complete backing of your bar association and a committee of volunteers to oversee the planning and execution of the event. The best way to set up an event with a legislator is to make your request in writing three or four weeks in advance of the proposed date.35 It is important

that your request clearly identify the purpose of the site visit and the constituents who will be present. Invitations that state the purpose clearly, provide detailed logistics, and are flexible on the timing will have the best chance of receiving an affirmative response. Legislators look forward to opportunities to interact with their constituents in real-life settings, and they appreciate the educational and photo opportunities that come with them, but time constraints limit the number of invitations they can accept.

Site visits require the legislator or staffer member to commit a significant amount of time to the activity. It is therefore especially important that the bar advocate follow up with a personalized thank-you letter, which will also help to build a long and successful information-sharing relationship.

Bar associations, like all advocacy groups, must keep in mind that site visits that include complimentary meals or travel must comply with applicable ethics rules, which vary from state to state and dictate what elected officials may accept.36

**Town Hall Meetings**

A town hall meeting is an informal public meeting held by a legislator in his or her state or district. These meetings are used by legislators to gauge how their constituents feel about a variety of issues, including current legislation under consideration, challenges facing the community, the effect of recently enacted laws on the community, and the legislator’s voting record.37 At the same time, town hall meetings provide a unique opportunity for bar advocate-constituents to ask their legislator to state his or her position on a specific issue in a public forum and to start a public dialogue with the legislator and participating constituents over an issue of concern to the bar. Legislators are attentive to constituents that attend town hall meetings and want to know how they can better serve their community. Here are some tips that will help you make the most of your interactions with legislators and their staff during town hall meetings:

*How to Locate a Town Hall Meeting.* The most direct method is to visit your legislator’s website or to call the local district office. Town hall meetings also are often


37. CMF, *Communicating with Congress* at 6–7. Fifty-seven percent of congressional staff surveyed said that in-person town hall meetings were very important for understanding constituents’ views and opinions, and 45 percent said they were very important for communicating the legislature’s views to constituents. *Id.*
announced by local media outlets or local signage. Oftentimes, you can request to be put on a mailing list to receive notifications of future town hall meetings.

**What to Expect at a Town Hall Meeting.** Town hall meetings generally begin with the legislator giving a brief speech or some informal remarks followed by a question-and-answer period. Sometimes you need to sign up at the beginning of the meeting if you wish to ask a question. When it is time to ask a question, stand up and state your name and the bar you represent. Start by thanking the legislator for holding the meeting and finish by thanking him or her for answering your question.

**Come Prepared.** Prepare your questions in advance. Try to keep them succinct and to the point. If you need to begin by explaining the issue, prepare a short, thoughtful presentation that ties your experience or that of a segment of the community to the issue at hand.

**Be Respectful.** Always address the legislator in a respectful manner and conduct yourself professionally, even if you disagree vehemently with a position taken by the legislator. Win the legislator over by marshaling the facts, presenting your position clearly, and demonstrating a willingness to engage in a dialogue.

**Use Constituent Numbers to Your Advantage.** For example, let the legislator know the number of lawyers in the legislator’s district that you are speaking for or provide an estimate of the percentage of the legislator’s constituents who will be affected by proposed legislation. Demonstrate that your concern is shared by other constituents by bringing along other like-minded colleagues.

**Pay Attention to Legislative Staff.** Staff will often be waiting in the background for their legislator to finish the event. This is a good opportunity to introduce yourself and tell them why the town hall meeting is important to you. Giving them a personal story to bring back to their legislator may make you their hero.

**Don’t Use Town Hall Meetings to Embarrass the Legislator.** Town hall meetings should not be viewed as an opportunity to embarrass or denigrate the legislator. Instead, bar professionals should use these events as an opportunity to determine the legislator’s position on specific issues, raise awareness of important issues, and build relationships. To this end, advocates should consider sharing their prepared questions with the legislator’s staff beforehand to avoid surprises and build good will.
In many cases bars can increase the effectiveness of their advocacy efforts through the use of coalitions, which are simply two or more like-minded groups combining and coordinating their advocacy efforts to advance, defeat, or monitor proposed legislation or regulations.\(^{38}\) Coalitions can take many different forms; they can be informal or formal, small or large, loosely or highly structured, narrowly or broadly focused, and temporary or long-term arrangements.

Joint advocacy, whether conducted informally or as part of a more formal coalition entity, can offer substantial benefits to bars by allowing them to speak with a unified voice and avoid conflicting messages, share information and expenses, coordinate the timing of advocacy blitzes for maximum effect, and divide the advocacy workload needed to accomplish the desired policy outcomes. By working in concert with other bars and entities, a bar can often amplify the effectiveness of its advocacy campaign and achieve greater results.

**Seeking Appropriate Allies and Joining or Building a Coalition**

Once a bar has determined that joint advocacy with one or more entities may be useful in advancing a particular policy position, the bar should consider the

\(^{38}\) Although the ABA cannot formally join coalitions or sign letters with other organizations or coalitions without the specific approval of the ABA Board of Governors, the ABA has worked closely in recent years with a large number of coalitions and other groups on issues including criminal justice reform, protecting the attorney-client privilege, and preserving the ability of associations to communicate with their members via fax and email, to name just a few.
following steps as it decides how best to seek out allies and whether to join an existing coalition or help form a new one:

Step One: Determine the Political Situation. As an initial matter, the bar should identify the governmental entity to be persuaded (e.g., a particular state legislative committee or congressional committee, the full state legislature or the U.S. Congress, or a particular state or federal agency) and the general status of the issue. The bar also should note which political party or leaders are in control of the political branches of the state legislature and governorship, or Congress and the White House and their predisposition on the issue.

Step Two: Analyze the Issue and the Bar’s Position. Early in its assessment process, the bar should also examine its position on the issue, the policy reasons and arguments for the position, and the specific objective sought (e.g., passing or defeating a bill, modifying a regulation, or approving a court rule).

Step Three: Determine the Position of Allies. The bar should determine which influential groups already have taken similar public positions on the issue. This can be accomplished by examining prior hearing testimony, comment letters submitted to government bodies or on file with state or federal agencies, public statements, and the websites of other relevant organizations.

Step Four: Seek Out Appropriate Allies or Coalition Partners. Once it has gathered this information, the bar can select appropriate lobbying allies or coalition partners based on several key factors, depending on the type of issue. For issues with ideological implications, the bar should determine which groups tend to be more influential with Republican or Democratic government officials and then reach out to the appropriate groups as potential allies or coalition partners.

Traditional Republican/conservative allies include business groups, companies, conservative legal groups, conservative social groups, libertarian groups, and property rights groups (e.g., the local or state chambers of commerce, state or local affiliates of the National Federation of Independent Business, and state chapters of the National Rifle Association).

Traditional Democratic/progressive allies include unions, civil rights groups, liberal or progressive legal or social groups, environmental advocacy groups, and academic groups (e.g., state and local affiliates of such national organizations as the AFL-CIO, the American Civil Liberties Union, and the National Association of Criminal Defense Lawyers).
Ideally, bars should consider reaching out to as many potential Democratic/progressive and Republican/conservative allies as possible as they seek opportunities to jointly advocate a particular policy position or as they seek to create or expand their coalition to maximize the group’s potential influence. In addition, bars should reach out to constituent groups for assistance, as those groups tend to be especially influential with their elected public officials.

Finally, for nonpolitical or technical issues, bars should also seek out possible lobbying allies or coalition partners that are recognized as having expertise and credibility, a direct stake, or a grassroots presence on the subject, whether or not those entities have close ties to legislators or other relevant government officials. For example, a bar may reach out to the National Center for State Courts or the Conference of Chief Justices for civil justice reform or judicial pay issues or proposed court rule changes; state medical associations for health or medical issues; or state and local chambers of commerce for business or regulatory issues.

Establishing the Ground Rules

After a bar association has informally partnered with one or more other lobbying entities or joined or helped to form a coalition, it should work with its partners to address certain key issues regarding how the joint lobbying should proceed or how the coalition should operate by following these steps:

Step One: Determine the Specific Goals and Objectives of the Group or Coalition. To be effective, the group or coalition should have clearly defined goals and objectives. When appropriate, the group or coalition also should reach agreement on how to prioritize any competing goals or objectives. Although the specific positions adopted by the individual entities sometimes will differ (or could be somewhat more detailed or nuanced than those adopted by other entities in the group), it is important for the group or coalition as a whole to reach a clear consensus regarding the desired outcome and what degree of success would constitute a victory.

Step Two: Decide Which Organization(s) Will Lead the Group or Coalition. Factors to consider include the importance of the issue to each organization, whether a joint lobbying group or coalition already exists, the relative resources, and clout and expertise of the various organizations.

Step Three: Determine the Degree of Joint Advocacy Desired and the Structure of the Group or Coalition. A bar should decide if it makes more sense to create an
informal lobbying group in which the individual entities simply act in close concert with each other, share information, and conduct some joint lobbying visits together or whether it should establish a more formal coalition that will conduct those joint activities as well as submit policy letters, written testimony, and press releases in the name of the coalition. When a particular issue or situation justifies the creation of a large, more formal coalition, participants should also consider creating a steering committee to help manage and lead the coalition.

**Step Four: Determine How the Lobbying Group or Coalition Will Function.** Once a bar has decided to jointly lobby with one or more other organizations, or if it has joined or helped create a more formal coalition, the participating organizations must make basic choices regarding how the group or coalition will meet, communicate, make decisions, lobby, and obtain necessary financing.

**Meetings and Communications.** Depending on the circumstances (such as geography, the timing and urgency of the policy issue involved, the size of the coalition, and other factors), the lobbying group or coalition needs to decide if it intends to meet periodically or on an as-needed basis. It also needs to decide whether it will prepare agendas for, and maintain official minutes of, its meetings.

**Decision Making and Lobbying Efforts.** Most lobbying groups and coalitions determine their objectives, plot strategy, and craft letters and testimony to policymakers by consensus, although when a large formal coalition is created, steering committees often take the lead in making strategic or tactical decisions for the coalition. When determining which arguments to emphasize in their written materials and oral advocacy, who the spokespersons will be, which coalition members will take the lead in legislative or agency lobbying visits, and other key issues, the participating organizations should consider the political views of the officials to be lobbied and the existing relationships and clout that coalition members have with those officials.

**Funding.** Sometimes joint lobbying groups and coalitions may decide to hire consultants or lobbyists, or they may choose to fund studies, surveys, or research, to help them achieve their advocacy goals. Funding may come from a variety of different sources depending on the relative resources of the various entities in the lobbying group or coalition, the priority that different entities place on the issue, and other factors. Some of these groups are funded mostly or entirely by one or more founding members, while others receive their funding from all members, either pro rata or based on size.
Step Five: Work Together to Achieve Agreed Goals and Know When to Declare Victory. After the joint lobbying group or coalition has reached a consensus on its specific goals, objectives, and priorities, it should focus its time and energy on achieving them and should avoid extraneous activities. Once the specific goals of the group have been achieved, it should declare victory and either disband or suspend its activities until another similar issue arises in the future.

By remaining focused and disciplined—and by respecting the valuable time of its participants—the lobbying group or coalition can maximize its immediate effectiveness while increasing the chances that its participants will be open to engaging with each other in the future, should the need arise.

Special Considerations for Joint Advocacy on Federal Issues

As a practical matter, most state and local bar advocacy occurs at the state legislative and executive levels with the relevant bar acting as the primary or leading voice of the legal profession. However, on occasion, state and local bars weigh in on important federal legislation or proposed agency regulations, usually as part of a national or multi-state coalition or joint lobbying effort.

These joint lobbying efforts are usually formed and led by national organizations, many of which have state or local affiliates or counterparts throughout the country. For example, national organizations such as the ABA, the American Civil Liberties Union (ACLU), the National Association of Criminal Defense Lawyers (NACDL), the AFL-CIO, and the U.S. Chamber of Commerce have state and local affiliates or counterparts that they regularly mobilize or partner with to help pass or defeat measures that are of mutual concern to both the national and state or local entities.

In recent years, the ABA has worked in close concert with many state and local bars to achieve numerous federal legislative and regulatory successes important to the legal profession. These include increased funding for the Legal Services Corporation, reversal of the Justice Department’s attorney-client privilege waiver policy, and exemption of most practicing lawyers and their law firms from the expanded regulatory authority of the Consumer Financial Protection Bureau, to name just a few. In each of these lobbying endeavors, the ABA took the lead in framing and analyzing the issues for the organized bar, developing letters or testimony to Congress or federal agencies, and preparing talking points and sample bar letters. The ABA then reached out to the state and local bars
through “Legislative Action Alerts” or other means with a request that they take specific action.39 Each of these endeavors resulted in a lobbying victory that was achieved in large part because of the joint advocacy effort.

By engaging in joint advocacy, the ABA and the state and local bar association participants have amplified the effectiveness of their individual lobbying efforts and the voice of the profession and helped to achieve victories of importance to lawyers, clients, and the legal system.

39. The Appendix, infra, contains an example of a legislative action alert sent to coalition partners.
Grassroots: Harnessing the Power of a Bar’s Membership

Mobilizing the Troops—Grassroots, Grasstops, and Key Contacts

One of the simplest and most meaningful definitions of “grassroots” advocacy is a campaign driven by the politics of a community. Under this definition, a community can be a group of people who share common beliefs, interests, or certain demographics, or the community can include members of a particular organization. Grassroots campaigns can be very effective because they generate constituent contacts for lobbying purposes. For bars, a grassroots advocacy campaign means using their membership to achieve their public policy goals.

In contrast, “grasstops” lobbying taps into a different part of an organization’s membership. The term “grasstops” describes the most involved and well-connected members of a grassroots group. In many cases, grasstops members will also be “key contacts,” people who have a meaningful relationship with policymakers and are willing to use that relationship for advocacy purposes. Some key contacts may be rank and file members who have a close personal or professional relationship with a policymaker. Advocacy by grasstops and key contacts is a very effective component of an overall grassroots campaign designed to influence decisionmakers.

Another way to conceptualize the difference between broad grassroots campaigns and more individualized advocacy by grasstops or key contacts is to view it in terms of “quantity vs. quality.” Broad grassroots campaigns are generally designed to generate large numbers of contacts (phone calls, emails, and in-person visits) with elected officials and their staff. Grasstops or key contacts...
outreach to policymakers, on the other hand, is typically designed to generate a smaller amount—but a more meaningful level—of contacts with policymakers.

**Grassroots Tools and Strategies**

Grassroots advocacy is most effective when it is part of a coordinated and unified advocacy effort. The foundations for a bar’s successful grassroots advocacy campaign include: communicating regularly with grassroots members; providing them with effective message at the appropriate time to advocate; giving them a method of action; and, finally, thanking them and reporting on any legislative gains achieved through their efforts. By following these steps, bars will increase member participation in their grassroots campaigns and increase their chances of success.

*Communicating with the Bar’s Members.* Communicating with member advocates is an essential part of any grassroots strategy. A bar association that wishes to engage in grassroots advocacy needs to be able to contact most, if not all, of its members and supporters—at a moment’s notice when necessary. There are many programs, databases, and email systems that can be purchased to provide this capability.

*Giving Members the Right Message at the Right Time.* Keeping the bar’s members well-informed and giving them regular updates are important, but to have a truly successful grassroots advocacy campaign, a bar must make sure its members understand what message needs to be delivered, to whom it should be delivered, and when it should be delivered. Bar members cannot be expected to know the optimal message to convey to policymakers or the best time to deliver the message without effective guidance from the bar. For example, a bar and its members might support a particular bill for a variety of reasons, but the bar may know from previous lobbying efforts which points are the most effective to emphasize when communicating with particular policymakers. It is in the bar’s best interest to actively direct its grassroots lobbying effort.

*Specifying a Method of Action.* Bars need to give their members a specific avenue for action and make it as easy as possible for them to engage in advocacy. Asking members to make a phone call, send an email, or sign a standardized letter are the most common ways that organizations achieve membership participation in grassroots advocacy efforts. These often take only moments for members to
complete and can influence legislators and policymakers by letting them know that a large number of constituents are interested in what they are doing. Newer grassroots communications methods include using social media.40

It is important that a bar make it as easy as possible for its members to participate. If it wants its members to send emails to their legislators, the bar should provide them with the email addresses for the legislators or the legislators’ key staff or it should provide easy access to a source where the members can look up their legislators’ contact information. There are web-based services, often referred to as grassroots platform vendors, that utilize a bar member’s congressional or state legislative district information and provide ready access to a form email addressed to the bar member’s specific Members of Congress or state legislators.41 It is always preferable that bar members add their own information to the forms, as personal stories carry more weight than form letters.

**Updating Supporters.** Finally, after a bar has asked its members to take action, the bar must follow up with a progress update. This is an often overlooked but crucial step in building and maintaining a grassroots network. A follow-up communication should let members know what was accomplished by their efforts. Sometimes this will be obvious (e.g., passage or defeat of a bill), but sometimes progress is incremental and the bar will need to find a way to explain that its members’ efforts, while not producing immediately measurable results, were nonetheless important because they signaled to the policymaker that there is constituent concern for the issue in question. By following up and letting its members know the fruits of their efforts, the bar will be building a bond with them that will be even stronger the next time it needs to enlist their efforts.

**Cataloguing Relationships**

To run an effective key contacts campaign, it is critical to have a consistent and easy way of tracking supporter relationships with legislators. The first step to accomplishing this goal is to develop a systematic method of cataloguing these

40. For more information on effective ways for bars and their members to use social media in their advocacy, refer to Internet Advocacy: Websites and Social Media, infra Chapter 10.

41. Some grassroots platform vendors in business in 2016 are listed at the end of this chapter.
relationships. While there are many helpful (albeit expensive) database platforms that allow large organizations to track these types of relationships, a simple Excel spreadsheet might be the easiest and most cost-effective way for bars to begin tracking relationships. Either way, a decision must be made regarding how to categorize the different types of relationships that a bar’s supporters may have with their key legislators.

There are two ways to categorize every relationship: the strength of the relationship and the type of relationship. For each of these categories there are many possible subcategories to better define each relationship.42

When considering the strength of a bar member’s relationship with a legislator, two or three subcategories should be used. This will make it easier for the bar to find the strongest key contacts when it needs them. A simple way of doing this would be to rate each relationship as being a “close contact” or an “acquaintance.”

When considering the type of relationship that exists between the bar member and the legislator, several more subcategories are needed. There is an endless possibility of values for this field, but some common ones are “personal friend,” “business associate,” “classmate,” “neighbor,” “campaign contributor,” and “coworker.” These designations are helpful for the bar to know before it contacts a potential supporter and asks him or her to contact an elected official. Oftentimes, there will only be a need for the most well-connected supporters to contact a single lawmaker.

Attempting to find relationships for every relevant legislator can be daunting. While that may be a noble goal, it is advisable to start with the most important legislative targets and relationships first.

Leadership within a legislative body is often a tempting place to start. Although speakers and majority or minority leaders can exert a considerable amount of control when it comes to advancing legislation, there are other legislative leaders who are equally influential in the legislative process. Committee chairs, as well as ranking members, frequently determine whether a bill gets attention and moves forward or is ignored and dies in committee.

For bars and other organizations with a direct interest in the legal profession, judiciary committees are good places to start. Appropriators and members of budget committees can also be key contacts for the bar, as they usually have a hand in a majority of the bills that are considered in each legislative session. Once the proper legislative committees have been identified, a bar should identify the chair and ranking member of those committees and try to uncover which of the bar’s supporters have relationships with those legislators.

42. Appendix D contains a sample spreadsheet.
Cataloguing relationships will make it possible for bar advocates to quickly and easily find the relationship, and hence the proper key contact to mobilize, when they need it. The example in Appendix D illustrates what a possible list of relationships might look like, though this is one of the simplest examples. More sophisticated database platforms track congressional districts, committees, and a host of other important information.

There are several methods that can assist bars with the most difficult part of key contacts advocacy: finding the relationships. Usually, the most effective way to identify grasstops or other bar members who have relationships with legislators is to survey the bar’s leadership and its most engaged members. Asking members to self-identify their key contact relationships can lead to a treasure trove of useful data. Likewise, asking bar members to indicate their interest in advocacy at meetings and functions is another way to unearth key contact relationships.

It is important to make it as easy as possible for people to report their relationships, so preparing a form in advance that can be filled out might be an effective tool. Face-to-face networking is also an effective way to solicit key contact information because trust is vital. Personal relationships are sometimes sensitive, so bars should make sure that people know how they intend to use the information. An assurance that the information will be kept in confidence can alleviate privacy concerns.

**Tracking Legislator Votes and Activities**

For in-person visits, few things are more important than knowing where the lawmaker stands on the bar's issues. Bar advocates should prepare their members for visits by providing them with a straightforward background sheet highlighting the lawmaker’s cosponsorship and voting record on important, relevant issues. These lists can be generated from a variety of sources. The most comprehensive tools are services that track votes and cosponsorship records on specific issues or pieces of legislation.

If this is not an option, there are ways for bars to create these types of lists on their own. The simplest and most cost effective is to create an Excel spreadsheet that includes each member of the targeted legislature. Sorting through a roll call vote or a list of cosponsors can usually provide bars with the necessary information. The challenge will be merging these lists together and creating a single page for each lawmaker with all of his or her relevant positions listed. If possible, it is always helpful to include talking points, maps, and other
information that would be helpful to the bar’s supporters when they are visiting a lawmaker’s office.

**Updating the Bar’s Data**

Since new officials are elected from time to time, legislators’ positions on issues may change, and new bar leaders and activists will emerge each year, the bar’s databases should be routinely updated and revised to reflect current issues of interest to the bar. By taking the time to regularly update these databases, bars can ensure that the legislator background sheets and other materials provided to the bars’ supporters contain current information, thereby preventing a supporter from losing credibility by relying on stale information that is no longer true.

**Best Practices for Communicating with Grassroots Advocates**

Bar advocates should take into consideration that their members likely receive multiple emails from other entities within their bar as well as dozens of outside mass emails each day. As a result, the challenge is to figure out how to make the bar’s advocacy messages stand out from the rest.

The subject line of an email is the first item that a person will read, and it often will determine whether the recipient will open and read the message or delete it. Long subject lines should be avoided. They often do not fully display on a reader’s email viewing application; if people have to read a long subject line to ascertain the purpose of the email, they are less likely to open the message. Therefore, the subject line should be thought of as a newspaper headline—it is an advertisement for why someone should read your email. Some experts actually advise advocates to spend just as much time crafting the subject line as they would spend crafting the text of the message.

The same rule applies to the body of the message: convey the message in as few words as possible. It is tempting to overelaborate a particular point—and lawyers are especially prone to communicate with great detail as well as precision—but excessive detail or wordiness often deters people from reading the entire message.43

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43. Appendix D contains examples of two ABA grassroots action alerts; one was sent by email to every ABA member willing to receive email alerts. The other, sent through social media and accessible on the GAO website, asked recipients to use social media to contact their Members of Congress.
When it comes to mass emails, a user will usually glance over the email and make a decision in a matter of seconds whether reading the remainder of the email is worthwhile. Therefore, bars should avoid multiple, long blocks of text in their emails. If they need someone to read detailed instructions or comprehensive information about a particular issue, they should consider providing links to their website instead of trying to fit all of the detailed information into the body of the email.

One word of caution: Bars should make sure that they are aware of, and comply with, all applicable state and federal laws regarding mass email communications. For example, the CAN-SPAM Act, a federal law regulating commercial emails, contains provisions that may apply to certain kinds of bar-generated emails. Specifically, the law regulates certain political advocacy email messages that include commercial content (e.g., an ad for an upcoming paid bar event or appeal for the recipient to join the bar) or transactional or relationship content (e.g., a bar’s outreach to its members where advocacy could be seen as a benefit of bar membership). Violating the law could have serious financial repercussions: penalties can be severe—up to $16,000 for each email violation. Because email is such a basic tool of grassroots communication, bars need to become familiar with the applicable laws and regulations governing mass emailing before they initiate a campaign.

One other hotly debated topic is how often bars or other entities should send emails to their supporters. The key here is balance. A bar should not inundate its supporters with too many emails; however, it needs to keep them interested and well-informed. There is no hard and fast rule about how to do this, but there are some best practices that can be helpful:

*Send emails that include an “ask” whenever possible.* To keep a bar’s supporters engaged, it is always helpful to ask them to do something. Asking supporters to send an email to legislators, watch a video, or visit a website are common ways to encourage them to participate.

*Send educational emails.* It is important to give members the information and training they need to advocate effectively. Advocates who make phone calls,
send emails, or make in-district visits need to be educated about the issue on which they are advocating. However, they also need to know the best ways to be influential, and what not to say.

_Produce value._ Grassroots campaigns often ask a lot of their supporters. Sending an email, making a phone call, and providing information about personal relationships may seem simple, but it often comes with hesitation. Providing value to the bar’s members makes its grassroots advocacy request seem more reasonable and justified, and it may increase the chances the members will agree to the bar’s request. Insider’s reports, webinars, training opportunities, and opportunities to meet elected officials are just a few of the many ways that value can be provided.

_Do not send unnecessary updates._ E-newsletters can be a positive way of keeping a bar’s supporters well-informed, but they should be limited to new and relevant information.

**Examples of Grassroots Platform Vendors**

This list is provided for informational purposes only; it is not meant to be construed as endorsement of the listed vendors.

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Product</th>
<th>Website</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aristotle International</td>
<td>Aristotle 360</td>
<td><a href="http://aristotle.com/">http://aristotle.com/</a></td>
</tr>
<tr>
<td>Blackbaud (formerly Convio)</td>
<td>Luminate Advocacy</td>
<td><a href="http://www.convio.com/">http://www.convio.com/</a></td>
</tr>
<tr>
<td>CQ Roll Call</td>
<td>Engage; Knowlegis</td>
<td><a href="http://corporate.cqrollcall.com/">http://corporate.cqrollcall.com/</a></td>
</tr>
<tr>
<td>DDC Advocacy</td>
<td>Democracy Direct</td>
<td><a href="http://www.ddcadvocacy.com/">http://www.ddcadvocacy.com/</a></td>
</tr>
<tr>
<td>Salsa Labs</td>
<td>Salsa (for nonprofits)</td>
<td><a href="http://www.salsalabs.com/">http://www.salsalabs.com/</a></td>
</tr>
<tr>
<td>Soft Edge</td>
<td>Various</td>
<td><a href="http://www.thesoftedge.com/">http://www.thesoftedge.com/</a></td>
</tr>
<tr>
<td>Vocus, Inc.</td>
<td>Vocus GR</td>
<td><a href="http://www.vocus.com/government-relations/">http://www.vocus.com/government-relations/</a></td>
</tr>
<tr>
<td>voterVOICE LLC</td>
<td>voterVOICE</td>
<td><a href="http://www.votervoice.net/">http://www.votervoice.net/</a></td>
</tr>
</tbody>
</table>
Do not send an email for the sake of sending an email. Many times, organizations will send emails to supporters because they have not sent anything for a while and do not want people to forget about them. However, the most certain way for a bar to make its members or supporters forget about the bar—or worse yet, resent its outreach or block its future emails—is to send a purposeless or redundant email. When asked why they unsubscribed from an email list, most people say that it is because they receive too many emails.

**Conclusion**

Grassroots campaigns can be one of the most effective means of advocating the bar’s policy positions and persuading state legislators and Members of Congress to support or oppose legislation important to the bar. By mobilizing the bar’s membership and leadership through grassroots, grasstops, and key contacts advocacy campaigns, the bar can magnify its influence with policymakers, better achieve its policy goals, and further enhance its relationship with its members. Bars should take full advantage of these critical advocacy tools.
Bar leaders and executives occasionally are afforded the opportunity to present the organization’s views before a legislative committee. That opportunity should seldom be missed, since testifying before a legislative committee is an effective, highly visible, and—especially for lawyers—satisfying tool for legislative advocacy. Because slots to testify at hearings are often reserved for government officials, nongovernmental witnesses typically are grouped into panels and hence confined to a couple of minutes’ presentation each. Bar witnesses who are given the opportunity to appear will want to make the most of the occasion.

A legislative committee hearing provides an opportunity for the bar to reach a number of important audiences, both with regard to its witness’s brief oral testimony and the longer written statement submitted for the hearing record. Even if the bar is not invited to designate a witness to testify in person, the bar should consider submitting a statement for the hearing record on issues of importance and interest; it allows the organization to be identified with the issue and provides a useful vehicle for advocating and publicly disseminating its views. The benefits of testifying or submitting a prepared statement can be accrued even if the purpose of the hearing itself is simply window dressing or pro forma and the committee leaders do not intend to advance the issue in the near future.

**Invitation to Testify**

Bar associations may be asked to send witnesses to hearings if certain circumstances exist. For example, they may be asked to testify if they:

- have participated actively on an issue of public importance over time (such as funding of legal services);
• represent members who will be directly affected by legislative proposals (e.g., taxes on professional services); or
• have recognized expertise relevant to the issue under consideration (e.g., court rules and procedures or the constitutionality of a proposal).

Because of the many benefits of testifying, the organization will almost always want to respond positively to this opportunity. A bar may even decide to create the opportunity by requesting a slot to testify at an upcoming hearing.

There are at least two notable exceptions to this general rule, however. First, some hearings are very adversarial, and lawyers or the bar may well be in a chairman’s cross-hairs for criticism and abuse. That is the time to stay home and submit a written statement for the record. Second, if the bar does not have time to prepare a witness adequately, and the likely bar witness does not already have expertise in the area, the bar should take a pass but consider submitting a written statement for the record, saving their witness from a potentially embarrassing public cross-examination. Hearings are often announced on very short notice, so this problem could well arise.

Maintaining a close relationship with legislative committee members and staff throughout the year will make it more likely that the bar’s leaders will be invited to testify at a hearing on an issue of concern to them and will also help ensure that the presentation is most effective. When these testifying opportunities arise, bar staff can work closely with committee staff to ensure that the testimony is relevant to the hearing topic and sufficiently focused and responsive to the needs and interests of the committee and its members, while still advancing the organization’s advocacy objectives.

When a bar is invited to testify, it should designate an appropriate witness, who ordinarily will be the president or president-elect; the relevant task force, section, or committee chair; or another prominent bar leader or member whose subject-matter expertise is well-recognized. The ideal witness in a given situation will often depend on a variety of factors, including the subject-matter to be covered, its importance to the bar, and its complexity; the level of detail to be addressed; the likelihood of hostile questions; the need to generate publicity; and whether there is a close or personal relationship between the prospective witness and the chairman, ranking member, or any other member of the committee holding the hearing.

When the bar prepares its testimony for an upcoming hearing, the testimony should be carefully reviewed and vetted to ensure that it is fully consistent
with policy positions adopted and prior statements made by the organization. If draft testimony is prepared by the bar leader witness, it usually is wise to have the draft reviewed, edited, and finalized by the bar’s governmental relations professionals or by others with relevant legislative experience or substantive expertise.

Time permitting, a draft of the testimony might even be shared informally with the legislative committee’s staff before the final statement is formally submitted to determine whether it unwittingly touches any areas of sensitivity that might better be avoided and whether it otherwise adequately addresses the committee’s objectives. This step should not wait until the day before the hearing, when staff is likely to be preoccupied with the mechanics of preparing for the hearing. Those drafting the bar’s testimony also should be sensitive to any applicable deadlines. For example, many congressional committees require submission of written testimony at least 48 hours before the hearing to allow the committee members and staff adequate time to prepare.

Knowing the Audience(s)

Bars and other organizations should recognize that there are several important audiences that can be reached through testimony, both during and after a committee hearing.

First, of course, are the legislators who will be attending the hearing. Although they often appear to be highly distracted—chatting with colleagues or staff, signing letters, or reading documents—legislators who actually take the time to attend usually have been briefed by staff regarding the identity of the witnesses and what they are expected to say. Many also will have read the submitted statements (or summaries prepared by staff) in advance, and they are likely to be focused and engaged on the issue when the time comes to question witnesses. Hearings that attract large audiences or media attention will likely attract more attention from legislators.

Even in those instances where legislators are distracted or even absent, committee members’ staffs are almost always in attendance and paying attention to testimony. Staff will be looking for nuggets of information to be used in reports, floor statements, and speeches that they must prepare for their bosses. While staff are usually amenable to meeting with bars or other advocacy groups before or after the hearing to discuss the issue, the hearing itself focuses attention and provides an efficient way for the bar to effectively reach a large number of legislative offices in a short time.
Public education is often important in generating support, or at least understanding, for an issue of importance to the bar. Legislative hearings are frequently covered by media, and even when they are not, release of written testimony to the press can result in media coverage that reaches the public and other government decisionmakers.

Finally, the members of the bar are an important audience for the messages delivered at hearings by bar leaders. Bar members can be reached through special announcements, press releases, routine emails, or other news channels used by the bar, including magazine articles and special columns. It is useful for bar members to understand the issues on which their leadership is actively engaged and to be invited to join in making their views known to legislators. Such member outreach can be highly effective, as legislators are even more likely to listen to organizational messages when they come directly from or are reinforced by voting constituents.

Preparing the Witness

If the witness has not attended or participated in similar legislative hearings before, it is worthwhile to encourage your witness to attend a hearing—or at least visit the hearing room—in advance to avoid any orientation issues on the day of the hearing. Witnesses should also be reminded that testifying before a legislative body is different from speaking in other forums: the committee chair will be in charge and will normally articulate the majority party’s position; the ranking member will typically voice the minority party’s view; and each of the remaining legislators will use the hearing as an opportunity to advance his or her own agenda with regard to the issue under discussion.

Witnesses are typically permitted to deliver their testimony in its entirety without interruption (subject to pre-established time limits), followed by questions from the committee members. Many “questions” may actually be short speeches by a legislator who simply wants to make a point on the record; others may be completely irrelevant to the witness’s intended testimony, but relevant to a point the legislator wants to make in a public forum.

In all cases—even when frustrated or annoyed by what appears to be showboating by legislators—witnesses must remain deferential and professional to the legislators involved in the process and should deftly avoid any confrontations. The hearing is part of the legislative process, and the legislators will always be in control.

Where other witnesses are known in advance, it may be useful to obtain copies of their prepared statements (or at least learn informally what areas they
intend to cover and their conclusions) to ensure that the bar representative is prepared for questions that might arise during the hearing. Sometimes it might be worthwhile to attempt to coordinate areas of emphasis in advance with other like-minded witnesses.

All lawyers know the benefits of practice; few would consider making an important appellate argument without practicing it before a moot court, or at least rehearsing it informally before firm colleagues. Similarly, bar witnesses should consider practicing their oral testimony and their responses to likely questions prior to the actual hearing. During these practice runs, bar colleagues should consider engaging in hostile cross-examination of their witness to provide opportunities to decide how key points should be phrased, which points to emphasize, downplay, or avoid altogether, and generally to prepare the witness for a worst-case scenario.

While oral testimony often is limited to three or five minutes, the question-and-answer period generally takes substantially more time. A witness must be prepared to respond to questions that have nothing to do with the hearing topic; unlike the courtroom setting, most legislative hearings are not governed by rules requiring relevance. A witness also should be ready to answer the same question from multiple legislators and respond as though it were the first time. Because each legislator has constituents to whom he or she is responsible, each may want to engage in a personal dialogue, even if it covers the same area of inquiry.

The witness must not only be prepared to testify on the advantages of his or her organization's position, but must also be prepared to respond effectively to a committee member's question or comment concerning a potential disadvantage or opposition argument. He or she should strive to respond calmly to opposition views, deflect criticism, and explain the bar's position without getting flustered or adversarial. It is important for the witness to know and take into consideration when answering questions that there are no prohibitions against a legislator badgering a witness.

The bar should try to determine which members of the committee may be present during the hearing; a few well-placed calls to committee staff or schedulers of individual legislators can be a good investment. Research on the committee members’ positions can help the witness craft more effective responses to questions and personalize the messages during the course of the oral statement.

Bar advocates who have strong relationships with committee members or staff should consider offering to prepare questions to ask during the hearing—questions that will help the witness emphasize the most important points or perhaps bring out facts that would be difficult or awkward to present in shortened...
oral testimony. At a minimum, conversations with committee staff prior to the hearing can alert the bar professional and the witness to questions that have been prepared in advance or particular issues of concern to committee members that the witness should be ready to address.

The Prepared Statement and Oral Testimony

Rules of the legislative committee should be consulted before testimony is prepared; different legislative bodies and different committees within a single body may have differing rules regarding the format for the written testimony, whether specific information need be included, page limits for the written statement, the time allowed for oral statements, and other specific matters.45 Rules on format for legislative testimony may not be as strict as those governing court filings, but where there is a hearing record or a committee practice of posting statements online, specific format requirements and timelines may be imposed.

Unless the legislative committee's rules specify otherwise,46 written statements generally should include a cover page that states the full name of the person testifying, the person's title, and the name of the organization represented; the name of the committee (and subcommittee) holding the hearing; the title or subject matter of the hearing; and the date of the hearing.47 When the statement is lengthy or if the committee rules require it, the witness statement should also include a one-page summary of the testimony immediately following the cover page.

45. For example, some committees of the U.S. House of Representatives require both electronic and written testimony while others do not. Some require submission of prepared testimony 24 hours in advance; others 48 or 72 hours before the hearing. In addition, the House Appropriations Committee requires all testimony to append a curriculum vitae or "CV" of the witness and a listing of all federal grants or contracts received within the past two years by the witness or the organization being represented.

46. For example, the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies states that written testimony shall not include a cover page; instead, the name of the person or organization testifying must be listed at the top of the first page, along with the name of the Subcommittee and which department and/or agency the testimony is addressing. U.S. Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, Outside Witness Testimony Instructions for FY 2016 Appropriations, http://www.appropriations.senate.gov/imo/media/doc/CJS-OWTGuidelines-FY2016.pdf.

47. Examples of ABA written witness testimony and other ABA written statements to congressional committees are included on the ABA Governmental Affairs Office's Letters & Testimony webpage at http://www.americanbar.org/advocacy/governmental_legislative_work/letters_testimony.html.
page, since legislators and their staff cannot be counted on to read long statements in their entirety, even if provided in advance of a hearing.

Lawyers and legal organizations are often brought into the hearing process because they are perceived to have special legal expertise on the issue under discussion. Therefore, any bar testimony should demonstrate the unique contribution that experienced legal professionals and their legal research, analysis, and perspective can bring to the subject. At the same time, the witness needs to tell a story as well, and that story often will be the primary point of focus of any oral testimony.48

Witnesses are often confined to a strict time limit for oral testimony, and it can be as short as three or five minutes. That will necessitate developing a shorter oral statement than the written one submitted for the formal record and released to the public. As with any effective oral presentation, the witness should maintain good eye contact and should not simply read the formal written statement or even key excerpts from the formal statement. Instead, the witness should speak in a conversational style from an outline that contains all the major points and respects the time limit.49 The oral statement generally should conclude by thanking the committee for the opportunity to testify and offering to answer any questions the committee members may have.

Answers to questions asked by committee members should be short and responsive, but the witness should answer only those questions to which they know the answers.

If the witness does not know the answer to a question, he or she should state that “I don't know the answer but will follow up and provide the committee with the information after the hearing.” It is important that the witness not fudge or appear to make something up, as doing so will only impair the witness's (and the organization's) credibility. Sometimes the witness may even be uncertain of the question; whether it is advisable to seek clarification or simply to answer the question that should have been asked will depend on personalities and circumstances.

48. For additional tips on preparing written advocacy materials, see Effective Written Communication, supra Chapter 4.

49. The oral testimony, even when fully written out for the witness's use at the hearing, should not be provided to the committee in advance, though a copy might be given to any stenographer responsible for maintaining the hearing record. It is distracting to have legislators read the statement along with the witness's delivery and could be confusing if the witness decides to deviate from the prepared testimony during his or her actual oral statement.
 Even if the committee’s rules require a certain number of advance copies of the written testimony to be submitted prior to the hearing, the bar should bring additional copies of the testimony to the hearing for distribution. In many cases, these additional copies of the written testimony can be placed on the table set up by committee staff outside or inside the hearing room for that purpose. Reporters or spectators attending the hearing typically will pick up one copy of each organization’s written testimony prior to or during the hearing, so placing additional copies of the bar’s statement on the table will significantly increase the public and media awareness of the bar’s policy positions.

While media representatives might be apprised of the testimony in advance, it is not good form to upstage the committee and its chair by generating media attention regarding the organization’s testimony before it is delivered at the hearing. Because of the media potential inherent in legislative hearings, a bar witness should ensure that the written and oral testimony have quotable sound bites. While technical legal terms or jargon might be appropriate for conveying serious analysis of legislative proposals, it generally is not helpful to attracting favorable public and media attention to the underlying message and so should be avoided.

**Media and Follow-Up**

As stated at the outset, one of the reasons for testifying at legislative hearings is to use the occasion to generate media attention to the issue and the bar’s position. This means making sure that media representatives have access to copies of the bar witness’s written testimony, that written or oral testimony has quotable sound bites, and that the witness remains available to talk to reporters who might call.

Even if the bar is not invited to provide a witness for live testimony, a written statement from the bar—either in the name of a bar leader or simply in the name of the bar itself—should be submitted for the record and copies made available at the hearing. Alternatively, the bar may want to consider submitting a letter to the chair and ranking member of the committee, with copies to all other committee members, expressing the bar’s position and requesting that the letter be made part of the hearing record.50

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50. Examples of ABA letters and written statements sent to congressional committees for inclusion in the hearing record are available on GAO’s Letters & Testimony webpage at [http://www.americanbar.org/advocacy/governmental_legislative_work/letters_testimony.html](http://www.americanbar.org/advocacy/governmental_legislative_work/letters_testimony.html).
Whatever form the bar’s written communication to the legislative committee may take, it should include appropriate bar contact information in case media representatives want clarification, additional information, or further discussion for quotation in a news story. A media alert can also be sent out to reporters who have covered legal issues or the subject matter of the hearing in the past.51 In addition, the bar’s own communications to its members should highlight these advocacy efforts.

Finally, it is important to remember that the legislative hearing is only one step in a bill’s march toward enactment. Continuing communication with committee members and staff, volunteering to provide drafting or research assistance, developing or participating in coalitions to work on the issue, and lobbying key legislators identified as part of the organization’s overall legislative strategy may all be needed to help advance the organization’s interest, whether in promoting or preventing the enactment of legislation. The other chapters in this Guide provide roadmaps for these activities.

51. For a full discussion of effective media relations, see Strategic Communications, infra Chapter 9.
Lawyers are trained to analyze carefully and communicate persuasively, but those skills do not necessarily equip lawyers to interact effectively with the media. The media serve as a lens through which the public views and receives information. Therefore, lawyer advocates must understand and appreciate the way that the media lens influences the information that is presented. The media lens may focus policymakers on a particular issue, and it may disseminate a message widely, but in all circumstances, the media filters information in some way.

This is evident from the fact that media reports narrow the information that is presented to the public because of practical limitations, like space or time. Few arguments are as comprehensive in a 400-word column as they should be. No issue appears as nuanced on the evening news as it does in real life. Newspaper stories are likely fewer than 1,000 words, and television segments are rarely longer than a minute. The media also narrow the public views they present. The media often interview two opposing sides in a dispute to demonstrate its attempt to be fair, but individuals with more nuanced or complex views on the issue are often ignored.

Ultimately, the objective of a reporter is to tell a story. The objective of an advocate therefore must be to shape that story, cognizant of the media’s narrowing effect. Working with the media requires an understanding of who the media are and development of a plan to communicate information to them to reach audiences through them.

This chapter provides essential information and tips that will allow bars to understand, plan, and work effectively with the media to advance a legislative agenda.
Why Interact with the Media?

Effective use of the media can benefit the advocate in three basic ways. First, the media are a means to interact with audiences that could not otherwise be reached. Those audiences can be educated about a topic, persuaded to take action to advance a legislative objective, or discouraged from taking action that would otherwise hinder advocacy efforts. Public opinion weighs heavily in the policymaking decision model. Refusing to use the media squanders an opportunity to bring public opinion to bear and allows counter opinions free reign in the public square.

Second, the media present a way to communicate with policymakers outside of a scheduled, face-to-face meeting or other direct communication. Like many Americans, legislators and their staff follow preferred news outlets closely. News and opinion items in the media enable legislators and their staff to assess public opinion, articulate reasons to support or oppose legislative initiatives, and develop arguments to defend their position.

Finally, the media are themselves a potent lobbying force, if only indirectly through shaping public opinion. A media narrative can snowball into policymaking. For example, when the investigative television program 60 Minutes suggested that Members of Congress unethically leverage their insider positions to benefit their financial investment portfolios, the public and Capitol Hill took notice. In a matter of weeks, legislation known as the “Stop Trading on Congressional Knowledge Act” (“STOCK” Act, Public Law 112-105)—that had previously languished in the House of Representatives for six years—was quickly passed and signed into law. Even issues that would not otherwise be described as interesting or relevant by the public can become the focus of major policy discussions if the media covers the topic extensively and in a manner that resonates with ordinary citizens.

For all these reasons, the media should be used regularly and extensively by bars to create an environment that is supportive of their lobbying programs. However, effectively engaging the media requires development of a strategic media plan.

Core Components of a Strategic Media Plan

The hallmark of a comprehensive advocacy campaign is a strategic media plan. At its simplest, a strategic media plan is a method to prioritize, organize, and track the impact of communications and related actions that seek to support the policy objectives of the organization.
Although no two media plans are identical, most are framed in terms of the goals that need to be achieved to advance a specific legislative objective of an organization. For every goal, the plan will identify key audiences that need to be reached, and for each targeted audience the plan will specify how to frame and deliver the message for maximum impact.

**Goals.** A media plan should be based on narrowly defined goals and should specify the intermediate steps that need to be achieved to reach each goal. Narrow goals make it easier to determine target audiences, which in turn drive the creation of appropriate messaging, the identification of media outlets that can carry the message, and the selection of effective communication strategies. What’s more, narrowly defined goals are more likely to be achieved.

For example, if a state bar wants to protect funding for the Legal Services Corporation (LSC), it may decide to support the work of an outspoken Member who champions LSC funding by making sure constituents in the district know the service that the local legal aid provides to the community and the role that the Member has played in supporting adequate funding. A media plan would identify this as its goal and list specific steps that would be undertaken in furtherance of it. These steps might include discussing the importance of LSC funding on local radio and placing op-eds in district papers thanking the legislator for supporting legal aid.

**Messages.** Effective communication relies on delivering the right message to the target audience. Powerful political messaging can frame an issue for an audience in such a way that it draws attention to the aspects of the issue that are most likely to resonate with the audience. Effective messaging tailors language and content to the audience and is written to elicit a response or action from the audience. Helpful questions to consider when honing a message include:

- What does the audience already believe (good and bad) about the issue?
- What information will persuade an audience to perform the desired action?
- What must an audience know to successfully complete the desired action?

Many topics and processes that lawyers deal with every day are completely foreign to the vast majority of Americans, and the public often does not know or care about many issues that lawyers find hugely important. For example, the
organized bar’s calls to preserve client confidentiality and adequate funding for the judiciary may seem irrelevant to ordinary people’s lives even though all Americans benefit from effective counsel and rely on their access to the courts to resolve disputes or protect their constitutional rights. Therefore, the first objective is to make the topic relevant to the audience.

When crafting an effective message, bars must also avoid the use of jargon. Even frequently used Latin terms such as *amicus curiae* and *mens rea* must be defined and clearly explained to nonlawyer audiences. Messaging frequently means translating unfamiliar terms or complicated ideas into simpler, resonant concepts.

Staying on message also can be challenging, especially in interactive media situations. Succinct talking points often keep the messenger on track and should be written into a media plan. Staying on message also means avoiding framing the issue in a way that can alienate the audience. For example, medical care for prisoners is contentious because some individuals feel that the public should not pay to improve the quality of life of those convicted of sometimes horrifying crimes. Highlighting a story about a nonviolent inmate who died despite a curable condition rather than arguing that prisoners are legally entitled to medical care can help the advocate avoid divisive pitfalls.

*Media Outlets and the Communications Toolbox.* Choosing a media outlet can be simple if the audience is well defined. For example, social media outlets would be an obvious choice for messages directed to college students, whereas the radio may be the preferred method of delivery for messages directed to residents of a senior citizens home. Information about how different demographic groups and locales access news is publicly available from major advertising research companies, including Nielsen and Advertising Age. This information is extremely informative and helpful.

Most media can disseminate a message across several communication platforms. Newspapers interview subjects and accept op-eds and opinion pieces. Their websites increasingly feature video elements. Radio is a spoken medium, but radio websites need written content. Television increasingly relies on social media to find stories and to solicit user feedback. Thinking creatively and preparing free, high-quality content will earn media coverage for your issue.

A common but misguided notion holds that the most prestigious national newspapers are the best way to reach every audience. Writing letters to the editor or op-eds to the *New York Times* or *Washington Post* is often not the best strategy
except in exceptional situations. Both papers receive hundreds of submissions every week. Because most newspapers require exclusive rights to op-eds, precious time can be wasted while a major outlet decides whether it will accept a submission. Submitting an op-ed to a local newspaper is generally preferable because the piece is more likely to run, and the topic may be more relevant to, and have more impact on, the audience.

When targeting media and choosing communications tools, organizations should ask:

- What are the most popular media for target audiences?
- What are the most popular media for policymakers?
- What media outlets will be responsive to pitches and content?
- What type of content can realistically be prepared?
- What is the best communications tool to relate information?
- How can interviews and media content be promoted to policymakers and to target audiences to increase media, public, and legislator exposure?

**Engaging the Media**

Once a bar association has developed a sound media plan, it must implement its plan by engaging the media. By reaching out to the media in a thoughtful and skillful way, a bar can communicate its message to the target audience more effectively, avoid ambiguity and misunderstanding, educate and influence policymakers and the general public, and bolster the bar’s advocacy efforts.

**Timing and Deadlines**

Timing is as important in dealing with the media as it is in advocacy. When trying to pace an article or op-ed it is important to factor into timing decisions that newspapers will not run articles and submitted content on a requested date. Instead, editors will run items when it is best for their publication.

Timing is just as important when interacting with reporters who must complete their assignments before unforgiving deadlines. Identifying the best spokesperson to answer questions is organizationally and strategically important, and should be determined in advance. Failure to provide a quote from a leader or a spokesperson willing to be interviewed before a deadline, for example, translates into a missed opportunity for news coverage and makes it less likely that the reporter will return in the future for information. Proactively
connecting with reporters about subjects of interest and providing work and personal contact information increase the likelihood of reporter interaction when it matters.

Interviews

Legal experience can either be helpful training for an interview or a daunting hindrance. A lawyer simply cannot speak as technically or combatively in an interview as he or she may otherwise do in court or other adversarial settings. Interviews must not be viewed as contests where the interviewer and interviewee verbally spar like in a courtroom drama. A spokesperson who assumes this posture is likely to subvert the delivery of the message by shifting the reporter’s focus—and subsequent coverage—to the messenger. To avoid this unfortunate outcome, when evaluating requests for interviews bar advocates should give careful consideration to who would be asking the questions and who would be the bar’s spokesperson.

When receiving an interview request from a reporter, it is important to establish:

- What the story is about;
- Questions the reporter will ask or the information desired;
- If that information will be provided on background (not attributed) or on the record;
- What the reporter has previously written on the subject; and
- Who else the reporter intends to interview and what others have already said.

In addition, when deciding whether to accept an interview request, it is important to know:

- Whether the reporter and news outlet reach an audience that is valuable for the organization to reach;
- The potential to shape the story and reach an audience versus the potential harm done if the interview goes poorly or the media outlet’s coverage is biased or unfavorable; and
- Whether it is better to provide comment or remain silent. In circumstances where it is less favorable to accept an interview, a bar should never say “no comment.”
In the course of an interview it is important to:

- Keep in mind that the reporter is not a friend and the interviewee is always speaking on the record, unless a specific agreement is made to the contrary;
- Stay on message and avoid responding to hypothetical situations;
- Only provide truthful information. False or misleading information or exaggeration will hurt the organization’s credibility and can be very damaging;
- Remember that a quote may be edited for length, so speak in deliberate sentences;
- Request to see quotes before they go to print (but this may not always happen); and
- Offer to provide additional materials that the reporter may find helpful.

After an interview it is important to:

- Follow up with the reporter and offer to contribute to future stories; and
- Review the story for any factual errors and request corrections if permitted. Note that it is inappropriate to request that a news story be modified for nonfactual reasons.

The Strategic Communications Toolbox

As with any craft, it is important to use the right tool for the job. The correct strategic communications tool for advocacy varies according to the organization’s objective, the specific audience, and the media outlet involved. With all the advertising and conflicting messages that an individual receives in the course of a day, a message must be easy to understand and immediately relevant.

Op-eds and Letters to the Editor. Newspapers receive hundreds of prospective op-ed submissions a week and are more likely to publish op-eds that offer interesting—even provocative—insights and arguments on timely topics. Whereas op-eds typically are between 400 and 800 words in length, letters to the editor are shorter (typically between 100 and 200 words) and more narrowly focused. Oftentimes, they are submitted to the newspaper in response to columns, editorials, or op-eds printed earlier in the week. While they offer less space to lay out an argument, writers are more likely to have their content accepted, especially
now that many newspapers post letters to the editor online and are thus free from space concerns.

Local newspaper editorial pages are monitored by legislators and their staff, who use them to assess constituent support and stay apprised of public opinion. They will often cite those pieces they find persuasive in committee or floor statements. Op-eds and letters to the editor are useful tools for rallying allies and legislative champions, refuting a narrative being offered by opposing advocates, or demonstrating a lack of consensus on a given issue.

Tips to consider when submitting op-eds and letters to the editor include:

- Determine the submission requirements of the target media outlet ahead of time. Many newspapers expect the submissions to be written by local residents, and all outlets require contact information to confirm authorship.
- Build an op-ed around the target audience. What should they do? Why should they care? What evidence can be presented to motivate them?
- State the “ask” close to the beginning, usually in the first paragraph.
- Stay on message. Avoid unexplained jargon and technical summaries.
- Letters to the editor are easy to modify and localize. Consider providing templates that grassroots activists can fill out and submit to their local newspapers.
- Op-eds and letters to the editor must be offered exclusively to a newspaper, but if a newspaper does not run the piece, it may be offered to another newspaper.

Press Releases. Press releases are an efficient way to alert the media about an organization’s events, statements, or policy positions or to provide quotes for anticipated news stories. However, repeatedly sending un-newsworthy items to reporters is a sure way to harm an organization’s credibility and diminish the likelihood of media pickup when it is most important.

All press releases should include, in the following order, a short, attention grabbing headline; contact information for media questions and follow-up; dateline information; a clear declaration of what type of information is being provided.; the five Ws—who, what, when, where, and why; information that is needed to attend an upcoming event, including any access or security procedures; a concise summary about the topic in the body of a statement or as an addendum; and boilerplate background statement regarding the issuing organization.
Include sufficient information in the release so that a reporter can write a short story about the topic, and encourage reporters to copy parts of the release into a news story by including choice sound bites and writing it in Associated-Press style. Finally, remember that reporters are not the only audiences of press releases. Posting press releases on a website repurposes completed content for a new audience.

*The Spoken Word.* Spoken communications, such as speeches, interviews, meetings with elected officials or editorial boards, and testimony before a governmental body, are particularly challenging because the presence of an audience or individuals who can ask difficult questions introduces risks and variables. As with all in-person advocacy encounters, plan for these events carefully.

**Conclusion**

The media can be a highly effective tool to advance a bar’s legislative agenda, and advocates should embrace its careful use. Because successful advocacy relies on disseminating information to a large audience in a favorable way, there is simply no tool better able to reach and influence diverse audiences—from voters to policymakers—than the skillful use of media.

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52. An up-to-date AP Stylebook may be purchased at www.apstylebook.com/ or any local bookstore.
As the Internet has expanded to encompass virtually every aspect of our daily lives, lobbying organizations have come to appreciate the tremendous value of Internet-related advocacy. The easiest way for bars to engage in Internet advocacy is to take advantage of their existing websites and dedicate a portion of it to advocacy activities. Although perhaps a little more daunting at first, bars should also consider incorporating social media—the new tools of advocacy—into their lobbying plans. For bars that already engage in Internet advocacy, the challenge is to keep abreast of new developments in this rapidly expanding technology and to add new social media platforms to the Internet advocacy tools at your disposal.

Advocacy Websites

Considering that there are now over a billion unique websites across the world, chances are high that virtually every bar already has a website. But not all bars use their website for advocacy purposes. This is a missed opportunity; 87 percent of American adults use the Internet today, compared to 14 percent in 2005, and a growing number rely on it for their news for political engagement. There is

55. See, e.g., Columbia Books and Info. Servs., The Congressional Communications Report 76 (2014). Eighty-seven percent of the congressional staff respondents reported that they prefer to get their news online; see also Pew Research Center, Low
no question that websites have increasingly become the gateway through which Americans engage in politics.

**Educating Policymakers and Staff**

A well-organized, easy-to-read, and comprehensive website can be a valuable and trusted resource for policymakers and their staff. Such websites will help establish and maintain a bar’s credibility. When policymakers can rely on an organization’s website to access dependable information, the organization has an opportunity to not only inform the policymaker, but to shape the way that the information is interpreted. This requires that the information posted on the website is accurate and regularly updated to maintain its currency. Just as quality information can add to an organization’s credibility, few things can undermine its credibility more than out-of-date or factually incorrect information.

**Providing Updates to Association Members and Constituents**

A vital part of many advocacy strategies is to build and maintain a well-informed constituency. Dedicating a portion of the bar’s website for this purpose is an easy and efficient way to provide members with access to information on issues of concern to the bar that has been prepared especially for them.

Bars that have not already done so should consider creating a website page for each issue on which they are focusing their advocacy efforts. The website page ideally should provide an overview of the issue and the bar’s position, regular and frequent updates on new developments, and the status of the bar’s advocacy effort, at a minimum.

It is very helpful to include links to your organization’s documents such as policy, advocacy letters, statements, fact sheets, and one pagers; congressional and executive branch resources such as legislation, cosponsor lists, hearing records, cost-estimates, and executive branch statements of policy; and advocacy letters and position papers from both supporting and opposing organizations. It also would be helpful to provide information on upcoming events featuring

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*Marks for the 2012 Election (Nov. 15, 2012), http://www.people-press.org/files/legacy-pdf/11-15-12%20Post%20Election.pdf. Following the 2012 presidential elections, nearly half (47%) of voters reported that the internet was a main source of campaign news over the course of the election (up from 36% during the 2008 presidential elections), while only 27 percent named newspapers as their main source. Id. at 3.*
Chapter 10  Internet Advocacy: Websites and Social Media

the legislator (e.g., town halls and award presentations) to facilitate attendance by bar members. These documents could be listed on the main webpage for the particular issue or on a separate resource page. How you present the information will affect readership, so give some thought to visual appeal, readability, and ease of navigation.

When the time is ripe, the webpage could be expanded to urge grassroots advocacy. Alternatively (or additionally), an emailed grassroots action alert would link to its issue or resource page for background information.

Making these diverse resources easily available to your bar members will enable them to learn about important advocacy issues without being bombarded by unwanted emails. Ready access and the ability to choose which documents they wish to read may increase their participation in the bar’s advocacy efforts and contribute to uniform constituent messaging. Members who already are familiar with an issue of priority concern to the bar will be more committed to advocating on its behalf when a grassroots action alert and call to action is issued.

A robust and well-maintained advocacy website also can enhance a bar’s credibility and help position it as an authority on specific issues. The best advocacy websites may even garner a reputation as the “go to” source for reliable and trustworthy information. Unfortunately, in the fast-paced world of the Internet, even a model website’s reputation can be quickly tarnished by incorrect or out-of-date information. Assigning an editor to regularly check the organization’s website for typographical errors, incorrect or outdated information, and material that is no longer relevant is important to preserve credibility. For example, hosting a copy of a bill from a prior legislative session can lead to confusion when there is a newer bill with the same title. Sometimes, there will be a valid reason for keeping old information on a separate resource webpage, but outdated or historical bills or other information should always be clearly marked as such to avoid confusion.

What Is Social Media?

Social media is real-time, interactive web-based communication that allows groups to instantly create a conversation with people sharing similar interests, with no requirement for previous relationships with new connections. According to one source, social media is “a catch-all term for a variety of Internet applications that allow users to create content and interact with each other,” and can include sharing links to interesting content produced by third parties; public
updates to a profile; sharing photos, videos, and posts; and commenting on the items or information shared by others.56

For advocacy purposes, the most common social media platforms include Facebook, Twitter, YouTube, Instagram, and to a certain extent, LinkedIn, although dozens of others are gaining in popularity, and new ones are constantly emerging.

Blogs deserve separate mention. A blog is a regularly updated website or web page to which one or more authors post information or commentary. Most blogs combine text, images, and links to other blogs, websites, and social media, and the majority now allow visitors to leave comments. Their limited interactivity distinguishes them from static websites, but prevents them from fully fitting the definition of social media since they do not provide for contemporaneous interactive communication. Regardless of how they are categorized, blogs have become a powerful medium for the dissemination of news, in-depth analyses, opinions, and commentary. They, like other social media platforms, have enabled people to use the Internet to unite over an advocacy issue.

Demographics of Social Media Usage

Americans, on average, spend more time on social media than on any other Internet activity, including email.57 According to a 2015 Pew Research Foundation report, nearly two-thirds of all American adults use social networking sites.58 The report documents a number of trends in the use of social media, the most striking of which relate to age. Specifically, the report found that 90 percent of young adults (ages 18 to 29) use social media, followed by 77 percent for adults age 30 to 49, and 51 percent for adults age 50 to 64. Moreover, even though usage for adults 65 and over still lags behind, it has more than tripled since 2010, with 35 percent now using social media.59

While no organization can wholly depend on social media as its external communications outlet, trends in usage make it obvious that ignoring social

59. Id. at 3-4.
media increasingly will limit an organization's ability to reach important potential audiences, particularly those within younger age groups.

## Use of Social Media by Legislators

An increasing number of legislators use social media to disseminate and receive news. In 2009, only 39 percent of Members of Congress had established a Twitter account.\(^6^{0}\) As of June 2015, every Senator now has an active Twitter account and every Member of Congress, but one, has an active social media account of some kind.\(^6^{1}\) However, it is not only the pervasiveness of social media use by policymakers that should persuade bars to use social media for advocacy purposes, but also the increasing influence that social media activities are having on policy-related decisions.

State legislators also are adopting social media strategies as a method to better communicate with constituents.\(^6^{2}\) Today, every state legislature has some type of social media presence.\(^6^{3}\) Some states, like Washington, Wisconsin, Alaska, and Hawaii, have even published policies governing social media usage within their state legislatures.\(^6^{4}\) While lists of state legislators' social media accounts are not as prevalent as those for federal legislators, searching for a state legislator online is likely to reveal some type of social media presence. For example, a Wiki list of state legislators with active social media accounts reports that 77.5 percent of state senators in California and 75 percent of state senators in Texas maintain active social media accounts.\(^6^{5}\)

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Why Use Social Media?

Social media platforms are an easy way for bars to communicate with their constituency. Keeping members informed and educated about policy issues should be a key part of any bar’s advocacy strategy, and social media is increasingly becoming an effective tool for that purpose. As more Americans get their news through social media networks, advocacy groups have an opportunity to educate their constituents in a way they never have before. Information that once would have been delivered through a monthly journal or newsletter can now be delivered to a large audience in real-time.

Social media has given constituents unprecedented access to, and influence with, thought-leaders and policymakers. A 2015 report by the Congressional Management Foundation offers some insight into the growing use and influence of social media on public policy development.66 The report is based on surveys of legislative staff conducted during July and August 2014. For starters, the authors reported that Members of Congress are more inclined to use social media than they were a few years ago and that “the trend to integrate social media into congressional operations will continue to grow.”67 In fact, 63 percent of the surveyed legislative staff agreed or strongly agreed with the statement that “[i]n the next 5-10 years more constituent communications will come in via social media than email, phone, and other means.”68

The most surprising finding was that “[t]hirty or fewer similar comments on social media are enough to get an office’s attention, but they need to be posted quickly or they may not be seen.”69 As the authors point out, while traditional methods of communicating with legislators continue to be successful strategies, social media now offers an efficient and effective alternative method for influencing undecided legislators. In fact, they think that social media networks may give constituents more influence over their elected officials than ever before. Forty-nine percent of the survey respondents indicated that one single constituent could have some or a lot of influence. While stories abound about the one personal story that moved a legislator to action, the authors did not mince words

67. Id. at 9.
68. Id. at 11.
69. Id. at 12.
when they stated that “this finding suggests that one voice now has another way to influence public policy: social media. “70

Social media also serves as an equalizer. Even a small organization can become directly involved in a national advocacy campaign and exert a disproportionate amount of influence on an issue by using social media. A well-organized social media campaign can create a massive response, often at little cost.

When bars and other groups use social media, they are communicating in real-time with their members and audience, as well as with policymakers and their staffs, both directly and indirectly through grassroots contacts. Without a doubt, social media has become a crucial tool for those who wish to wage effective modern advocacy campaigns.

How to Engage in Social Media Advocacy

The first step in engaging in social media advocacy is for the bar to decide which social media platforms are best suited to help reach the organization’s goals. When it comes to advocacy, Facebook, Twitter, and YouTube are three of the most visited and used social media networks today.

Facebook is best utilized as a portal to an organization’s resources and information. When an organization posts updates to its Facebook page, fans of that page will be able to see the information in their news feed. Typically, an advocacy group strives to get as many users as possible to become “fans” of their page to reach the greatest number of people.

Twitter, on the other hand, is most often utilized as a way to access information about specific issues in real-time. When a user becomes a “follower” of an organization’s Twitter account, anything posted (“tweeted”) by the organization is added to the user’s Twitter feed. Therefore, each person is able to create a personalized stream of information by selecting the content that he or she wishes to follow.

YouTube is a video uploading and streaming service. Just as Facebook and Twitter allow users to view running counts of fans, likes, follows, and retweets, YouTube keeps track of how many “views” each video receives. The amount of activity on YouTube is staggering. Each day, videos posted to YouTube receive billions of views, and 300 hours of video are uploaded every minute.71 YouTube is a service that many advocacy groups use to share videos with their members.

70. Id. at 15.
and the general public. Many organizations have benefited from posting videos to YouTube that go “viral” and end up being viewed by millions of people.

Instagram, a platform for sharing photographs and videos, was created in 2010 and is now used by over 300 million people. It is gaining traction as another effective social media advocacy tool. There are dozens of additional social media platforms that have hundreds of millions of users. In time, they, too, no doubt will also become major social media platforms utilized by advocates across the world.

Most organizations’ social networks are public and easy to find. An organization’s social media accounts will appear in Google searches, and they are (for the most part) open source platforms that allow quick and free information-sharing to a wide audience that may not otherwise be available to bars purely through their email lists and membership rolls. Social media allows an organization’s information to be seen by people who would potentially want to be connected to that entity but are not yet aware of it.

Disseminating information in a timely and relevant manner is crucial in social media. The best way to capitalize on social media is to promptly and regularly speak out on new, noteworthy developments. Generally speaking, the more active a social media account is, the better the results are likely to be. While cable news signaled the beginning of the 24-hour news cycle, social media established the 60-second news cycle. Thanks in large part to the number of people using platforms like Twitter and Facebook to access news, providing information about a topic or development a few days late will likely mark it as irrelevant on social media.

Getting Started and Moving Forward

There are a number of useful guides to effective use of social media. For example, Hootsuite, a social media management enterprise, offers a guide on its website for getting started with social media. The University of Maryland, Baltimore County, also makes available on its website a step-by-step guide to creating and developing a social media account.

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72. For examples of effective hashtags or Instagram profiles used for advocacy, see https://www.instagram.com/explore/tags/thxbirthcontrol/ and https://www.instagram.com/oceana/.


A bar must decide when creating the account what role it will play. For example, is it a clearinghouse of information, an interactive account where users can become engaged, or a purely informative account that announces association-only information? These are all positive online presences, but an organization should choose at the outset what is best for its type of advocacy.

Helpful models of bar-originated Twitter feeds are:

- Ohio State Bar Association, @OSBA
- Connecticut Bar Association, @CTBar
- North Carolina Bar Association, @NCBAorg

Samples of advocacy Facebook pages include:

- Ohio State Bar Association, www.facebook.com/OhioBar/
- Massachusetts Bar Association, www.facebook.com/MassBarAssociation

The following YouTube clips illustrate video presentations use by bars and the ABA to advance advocacy goals:

- Finish the Ballot, State Bar of Arizona, https://www.youtube.com/watch?v=A6r1eQNzT58
- “12 for 12” Program: Funding Fairness for Our Courts/Legal Aid, Massachusetts Bar Association, https://www.youtube.com/watch?v=Nk23w0pttmA
- Public Service Loan Forgiveness September 18th, ABA Law Students Division, https://www.youtube.com/watch?v=jgLTMa8jIoY

Establish Usage Standards for Twitter and Other Social Media

When beginning the process of utilizing Twitter, bars should consider establishing Twitter usage standards. Clear guidance is especially important for those who will be posting in an official capacity on the organization’s pages.75

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75. NABE GR has created a helpful template for bar associations to use to develop social media guidelines, which is available online, along with the usage policies.
While materials should be timely and interesting, they should also be business appropriate. Staff should understand the tweet approval process, the goals of Twitter use, and who in the office has the final word on what is posted to social media sites on behalf of the organization.

It is also useful to establish a social media editing and review process to ensure that incorrect or inflammatory messages are not published. However, the traditional communications review process usually will not work for social media due to the need for information to be posted in real-time. A social media editor’s waiting for approval of a message can result in the organization’s being late to the game. Each bar should tailor its social media review process to its specific needs, but uniform rules and procedures should also generally be established and followed. By following these procedures, organizations can minimize the risk of an embarrassing error or mistype “going viral.”

Set Realistic Goals

When using social media, bars should create goals that are realistic and attainable. Small, manageable goals should be set as mile markers for a new social media campaign, such as gaining a reasonable number of followers by a certain date. The bar should understand that becoming an overnight Twitter celebrity is unlikely, but getting a noticeable percentage of its members as followers on Twitter is achievable.

Tracking Your Social Media Footprint

- Often website links will be so long they will use half of the character space on Twitter. Mini URLs are the best way for an organization to manage its space.
- There are multiple websites that allow free mini URLs, but an entity should use a website that allows it to track how many people are clicking on its links as well.
- One of the most popular sites is Bitly, which helps “uncover new audiences, customize links, and analyze the organization’s your social footprint—all in one solution.” https://bitly.com/
There should be a general consensus within each particular organization about how often to tweet or post content. The recommendations regarding the optimal frequency of posting content are different for each platform. On Twitter, three to seven tweets per day will allow a bar to stay relevant but not overwhelm its followers. However, publishing more than one to two posts per day on Facebook is probably overkill.

For an ongoing campaign that is not highly active, there should be simple goals, such as a few tweets or one Facebook post per week. These are small, achievable goals for a bar that is just beginning to create its social media presence. While the line between too many and too few posts on Facebook is fuzzy, few things can brand an organization as irrelevant on social media as quickly as an inactive Facebook page. At least one post per week is advisable for a bar to be perceived as active on Facebook.

Success in social media is relative to the size and breadth of the campaign and therefore cannot be strictly quantified. Expanding the user base and creating a message that is heard by a significant audience, preferably those making the policy decisions, are the basic measures of a successful social media campaign.

Skillful use of both advocacy websites and various types of social media can significantly enhance the effectiveness of a bar’s specific lobbying campaigns and its advocacy program in general. Therefore, bars should take full advantage of these potent Internet advocacy tools whenever possible.
One question that may arise when building a comprehensive long-term advocacy program—or a shorter-term ad hoc campaign—is whether an organization should create a political action committee, or PAC.

Despite their utility, the mere mention of “PAC” can send shudders through some, eliciting visions of smoke-filled rooms, influence peddling, and indiscriminate bags of money. These visions do not accurately portray what a PAC is or how it works. And seldom, if ever, do conversations focus on the effort required to create and maintain a successful PAC. This chapter seeks to provide basic information that will be helpful to bar associations that wish to initiate a discussion on establishing a PAC.

Background

What Is a Political Action Committee?

Simply put, a political action committee is a state or federal tax-exempt legal organization created to support or oppose legislation, a public policy issue, or candidates for political office.76

A PAC is often created when the law prohibits a corporation, union, association, or other entity from using its money to make contributions to candidates for elected office or offering a campaign free use of the entity’s facilities, goods, or

76. This chapter is limited to a discussion of the value of forming a conventional PAC. The information presented does not apply to other types of political organizations that seek to influence federal or state elections such as Super PACs, which may make only independent expenditures, or 527 organizations, which do not have to register under the federal or state election laws.
services. Instead, the law may expressly permit an entity to organize a PAC that can accept financial contributions from specified sources, such as its members or employees, for the purpose of making contributions to, and expenditures on behalf of, candidates for elected office. About half of the states prohibit corporations from making direct contributions but permit them to form a PAC for the purpose of making direct contributions.\(^7^7\) Therefore, bars in those states must form PACs if they want to collect and make contributions to candidates that support their policy objectives. It is likely that bars in states that permit direct corporate contributions also would likely choose to form a PAC for a number of practical and strategic reasons, many of which will be mentioned later in this chapter.

**Laws Governing the Formation of PACs**

PACs are established and administered in accordance with federal or state election laws. A federal PAC must register with the Federal Election Commission (FEC) and may participate in federal elections and in state elections where permitted by state law. A state PAC must register with its state election agency and may make contributions to or expenditures on behalf of state or local candidates, but it may not participate in federal elections.

It is important for a state or local bar that is considering forming a PAC to become familiar with its state’s campaign finance laws, which, among other things, vary with regard to the limits imposed on the size of contributions.\(^7^8\) A bar that wishes to form a PAC to support both federal and nonfederal candidates will need to become familiar with both federal and state election laws and will have to determine whether federal or state law governs a particular election activity.\(^7^9\)

**Federal Election Laws.** Political action committees established and administered under federal election laws and registered with the Federal Election Commission

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78. A state’s campaign finance laws are available through the secretary of state or its election commission. State-specific information also is available from various sites, including the National Conference of State Legislatures, as mentioned in the preceding footnote, the FEC (http://www.fec.gov/pubrec/cfsdd/cfsdd.shtml) and the Campaign Finance Information Center (http://www.campaignfinance.org/states/index.html).

79. The FEC has an online brochure explaining the areas of campaign finance that are subject to the Federal Election Campaign Act and those that are subject to state law, available at http://www.fec.gov/pages/brochures/statefed.shtml.
(FEC) come in two distinct types: separate segregated funds (SSFs) and non-connected committees.\textsuperscript{80} SSFs—sometimes called “connected PACs” or simply “PACs”—are political committees established and administered by corporations, labor unions, trade associations, or other membership organizations, and they can only solicit contributions from individuals associated with the connected or sponsoring organization.

Nonconnected committees, on the other hand, are neither sponsored by nor connected to any of these entities, and so they are able to solicit contributions from the general public.\textsuperscript{81}

A corporation, union, association, or other membership organization forming a federal PAC must register with the FEC by filing FEC Form 1 as a SSF.\textsuperscript{82} All funds and records for the SSF must be kept separate from the sponsor organization, but the name of the committee should reflect the name of the sponsor entity. A SSF must register with the FEC within 10 days of its formation by its sponsor organization. State rules are often similar.

A SSF can only solicit contributions from certain groups as permitted by federal law, which specifically identifies the appropriate groups. While a SSF is not required to report its expenses (either administrative or fundraising) that are paid for by its sponsor organization, it \textit{is} required to report its self-funded expenditures.

Not only does the FEC make contribution data public, but organizations such as the Sunlight Foundation\textsuperscript{83} (http://transparencydata.com/#) and the Center for Responsive Politics (http://www.opensecrets.org/index.php) provide detailed analyses regarding contribution amounts from all donors and levels (e.g., individuals, corporations, unions, associations, other PACs), as well as SEC filings, FEC registrations, and other related information on candidates and their contributors.

Although there is no “official” designation of bipartisan or nonpartisan PACs, a PAC’s partisanship or ideological bent, if any, can generally be determined by analyzing its contribution trends. Most PACs that are interest-based


\textsuperscript{81} Id. Additional information regarding how to start a PAC, reporting requirements for the PACs receipts and disbursements, and other aspects of forming or administering PACs is available on the FEC’s website at http://www.fec.gov/ans/answers_pac.shtml.

\textsuperscript{82} For details regarding the FEC Form 1: Statement of Organization, see www.fec.gov/pdf/forms/fecfrm1.pdf.

\textsuperscript{83} The Sunlight Foundation also provides information on invitations sent to policy makers by lobbyist groups, as well as earmarks, grants, and government contracts provided through legislation.
or special interest groups tend to contribute to those candidates whose voting record aligns with their interests. A bar can escape—or at least mitigate—claims of partisanship by including in the bylaws of its PAC a requirement that it contribute the same, equal, or proportionate amount of money on Democratic and Republican election campaigns.

Why Consider a Political Action Committee?

A PAC provides a structured way for a bar to harness its members’ willingness to support the association’s legislative priorities and to ensure the bar receives the maximum benefit of those contributions with regard to advancing its priorities for the betterment of its members and the legal profession.

A PAC can provide an organization and its leaders with improved access to those in political office. When many similar groups are forced to compete for lawmakers’ attention, a PAC can provide an important edge in acquiring the access a bar needs to deliver its messages effectively to key legislators. A successful PAC, in the long run, also may help a bar shape and sustain a legislature of individuals with shared perspectives on issues of importance to the profession.

PACs have been established by a wide array of associations, businesses, labor unions, and ideological organizations. Trade associations account for almost 1,000 of the 1,600 federally registered corporate PACs. Some trade associations with recognized PACs include the American Medical Association and the American Association for Justice.84

Eight of the 18 voluntary state bars have PACs.85 To put that number in perspective, it is important to note that only voluntary bars may form PACs. Mandatory, integrated, and unified bars operate as an arm of the government and therefore are prohibited from forming PACs.

While bars should continue to focus primarily on the merits of issues in their political advocacy, PACs can provide significant additional clout that derives from the ability to reward allies and withhold rewards from those who oppose its objectives.

84. The American Association for Justice was formerly known as the Association of Trial Lawyers of America (ATLA).
85. As of November 2015, state bars in Arkansas, Illinois, Indiana, Iowa, Kansas, Ohio, Pennsylvania, and Tennessee have PACs, and at least one other voluntary state bar (New Jersey State Bar Association) is actively considering establishing a PAC. In 2014, the Minnesota State Bar Association dissolved its PAC.
Pros and Cons of Establishing a PAC

While PACs are not a panacea or a substitute for an effective lobbying program that engages and utilizes an entity’s members, an effective PAC can make things happen that elbow grease and hard work alone will not. The following are some of the basic factors boards and bar members should consider in determining whether to create a PAC.

Benefits

PACs provide a convenient and legitimate way to allow members and employees of an organization that otherwise would not be able to make contributions or expenditures in connection with federal and certain state elections to join together to participate in the political process. PACs facilitate the pooling of resources and, in turn, enable larger and more focused contributions than the bar's individual employees and members otherwise would be able to make. By combining these financial resources, the bar leverages individual contributions to increase the "bang for the buck," giving it a more influential voice and visible role in assisting candidates who support its interests.

Establishing a PAC also may encourage members and employees to become involved in the electoral process, many for the first time. The National Association of Business Political Action Committees estimates that as many as 20 million Americans participate in the political process by giving voluntary contributions to PACs.86

PACs can also facilitate the planning and organizing of fundraising events by state and local bars and their lobbyists; these events may be more difficult for an organization without a PAC.

In the end, of course, the purpose of a bar's PAC is to enhance the bar's influence on issues of importance to its members, the profession, and the justice system.

Drawbacks

While PACs enjoy many benefits, a number of burdens are also associated with sponsorship of a PAC; many of these are administrative and may require the assistance (and expense) of external consultants or legal counsel. For example, a bar that decides to create a PAC will need the assistance of persons who will be

responsible for operating it, and those persons must have a detailed understanding of campaign finance regulations and bookkeeping skills. Since the PAC has its own identity apart from the organization, separate bank accounts must also be established and maintained to hold the PAC’s assets.

In addition, when an organization establishes a PAC, various reports and forms must be completed and filed at regular intervals, in accordance with requirements under the federal and certain state election laws. These registration and reporting requirements, along with the related oversight by regulators, further increase the potential for liability based on failure to make the proper filings or comply with various other requirements.

As a practical matter, once an organization has established a PAC, it is also likely to be inundated with—and must often say no to—many requests for contributions, since candidates generally solicit contributions from a wide variety of PACs on a routine basis. It may be more difficult for a PAC to contribute to a challenger in an election since that may call unwanted, negative attention by the incumbent to the PAC’s corporate affiliate.

In addition, dollar for dollar, PAC contributions may have less value than individual contributions as a method to obtain face time with a candidate, in part because many fundraising events carry a higher admission for PACs than for individuals. On the other hand, PAC contributions are often the only realistic option for a bar unless its leaders with name recognition in the state legislature are willing to make contributions to particular candidates.

Finally, in creating a PAC, a bar may run the risk of relinquishing any claim it previously had that it was “nonpolitical” or that its influence with a particular legislative office was derived solely from the merit of its ideas, expertise, brand, and constituent relationships. These important advantages, however, can go to waste if the entity lacks the access it needs to get its voice heard by key lawmakers. Furthermore, a bar concerned about such misperceptions can take steps to structure its PAC to prevent it from being or appearing partisan.

**Practical Issues**

Beyond the pros and cons, there are some practical issues to consider as well when the question whether to establish a PAC is under consideration.

**Members’ Perspectives**

A PAC provides a convenient way for members to make political contributions to support a bar’s policy priorities. It also provides a way for members to channel
requests for contributions so that the entity’s agenda may best be advanced. Some members may resent being asked to contribute to the PAC, which may in turn have an adverse impact on membership. On the other hand, other members may appreciate the ability to support the association’s allies in such a direct way, and they may even become more engaged in the political process and actively support the bar’s objectives beyond financial contributions to the PAC. These are important considerations for the leaders of a bar contemplating a new PAC to discuss with its board.

Avenues for Participation
Historically, there have been a number of avenues by which companies, unions, and associations with significant and recurring legislative interests and politically active officers could support lobbying efforts in the absence of a PAC. However, many of these—such as providing honoraria for speaking engagements, paying for travel, providing corporate air travel, sponsoring recognition events at national party conventions, to name a few—are now prohibited or strictly limited at the federal level and in certain states. Therefore, state and local bars—whether they have a PAC or are contemplating the creation of a new one—should consult their particular state’s rules before engaging in any of these activities.87 The restrictions on activities that can visibly demonstrate support for a candidate, however, have magnified the potential value for and appeal of corporate PACs.

Need for a Robust PAC
A PAC that is only funded at a low level may prove ineffective and could be an embarrassment for the organization. Some state bar PACs are only intended to fulfill very limited purposes, such as buying tickets to campaign events, and thus do not require a great deal of money. However, if a bar’s intention is to demonstrate significant influence, a failure to raise sufficient funds could send the opposite message. The initial decision is not one to be taken lightly, and the bar’s leadership must commit to vigorously assist in promoting the value of PAC contributions to members (e.g., through the use of meeting badges, stickers, or other ways to voluntarily and visibly demonstrate who has contributed). Therefore, state and local bars considering a PAC should review the annual donation limits for a PAC (e.g., $5,000 per calendar year per individual to a federal PAC) as well as any applicable state limitations.

87. One resource is the National Conference of State Legislatures’ Center for Ethics in Government. For more information, see the NCSL’s website at www.ncsl.org.
Minimizing Partisan Appearances

A PAC can be effective without its organizational sponsors being considered partisan. Accomplishing this objective depends on the PAC’s adopting and adhering to contribution policies based upon transparent, nonpartisan criteria. Contributions can be allocated to maintain an equal or at least rough, cumulative balance between the two major political parties, although flexibility would be needed to ensure that contributions are given at such times and places to maximize effectiveness.

The PAC board would also need to determine whether the PAC should give any contributions to challengers. This would help ensure the proper balance and demonstrate not only that the bar’s friends will be rewarded, but that those who do not support a bar’s priority issues may find the bar’s PAC contributing to the other side.

Organization of the PAC

A bar’s PAC typically would be governed and administered by a diverse and balanced board and officers selected by the bar’s leadership. Whom the bar appoints, from where, and how the bar appoints them may all have an influence on the appearance of the bar’s PAC and its activities. Therefore, bars should consider how they will use the PAC—e.g., through direct donations to campaigns, purchasing political dinner tickets, or other political expenditures. The bar also will want to consider appointing a PAC board that encourages some geopolitical diversity.

PAC Administration

A number of reputable firms provide administrative support for PACs, ensuring that recordkeeping and FEC filings are in full compliance with applicable laws. While administration can be outsourced, the bar’s general counsel or outside attorney will need to oversee compliance with filing and disclosure requirements.

Conclusion

A PAC can strengthen a bar’s profile as an organization capable of securing access to federal and state policymakers and exerting influence on issues that are critical to the bar’s membership and society as a whole. Therefore, many state and local bars would do well to consider their medium- and long-term governmental affairs goals and then decide if a PAC is a tool that would help—or possibly hinder—their efforts to accomplish these goals going forward.
Compliance with Applicable Disclosure Laws

The first domestic lobbying registration act was passed by Congress in 1945. Since then, federal lobbying laws have expanded significantly, and all 50 states have adopted their own lobbying registration and reporting laws. Bar advocates need to be aware of the kinds of activities that trigger registration requirements and, once registered, the various disclosure and reporting responsibilities that apply. As stated in Chapter 1, compliance with all applicable disclosure laws is likely the most important single mandate for ethical lobbying, and each lobbyist must make compliance a top priority. Noncompliance not only can be financially costly, but even the appearance of lobbying improprieties carries a substantial risk of harming an organization’s reputation.

This chapter focuses exclusively on federal lobbying laws. The various state (and some local) laws differ significantly and would require far more space than available in this Guide to summarize adequately. Therefore, bar advocates should check their relevant state statutes to determine the type and level of activities that may subject them to their state’s lobbying regulatory regime. The National Conference of State Legislatures maintains an up-to-date chart on its website of applicable state statutes, covering issues ranging from registration and reporting requirements to related ethics and gift regulations. Other state-specific resources are available on the Internet as well.

88. This chapter provides summary and anecdotal information only and is not intended to provide legal advice. An organization that engages in advocacy activities should review the applicable statutes or consult counsel to determine potential legal obligations.


The Federal Lobbying Disclosure Act

The Lobbying Disclosure Act (LDA) is the primary federal statute governing lobbying activities directed to the federal legislative and executive branches.\(^{91}\) It was amended substantially by the Honest Leadership and Open Government Act of 2007, which added new provisions that, among other things, increased the frequency of lobbying activity reporting, provided for semi-annual reports of political and other contributions by lobbyists to covered officials, and enhanced civil and criminal penalties for violations of the LDA.\(^{92}\)

Although not authorized to issue regulations or to provide binding opinions, the Secretary of the Senate and the Clerk of the House of Representatives jointly publish a written Lobbying Disclosure Act Guidance (Guidance) that provides valuable information, including illustrative examples of specific circumstances that do or do not meet the provisions of the Act.\(^{93}\) The Guidance, which is available on both websites, is periodically updated, and referring to it regularly is advisable. The websites also contain other resources to assist in LDA compliance.\(^{94}\)

Registration

Bars engaging in federal advocacy activities generally either retain an external lobbying firm or employ in-house lobbyists. If a bar retains an external lobbying firm, that firm is responsible for complying with the applicable registration and reporting requirements for each client under the LDA.

For bars that engage in lobbying through employees, there are several factors that determine whether registration is required. First, at least one employee of the organization must meet the statutory definition of a lobbyist. The LDA defines a lobbyist as any individual (1) who is either employed or retained by a client for financial or other compensation, (2) whose services include more than

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\(^{94}\) Id.
Chapter 12  Compliance with Applicable Disclosure Laws

one lobbying contact; and (3) whose (federal) lobbying activities constitute 20 percent or more of his or her services’ time on behalf of that client during any three-month period. This definition excludes nonpaid lobbyists, so volunteer participation in Washington, DC, lobby fly-ins will not trigger LDA coverage.

A lobbying contact is any oral, written, or electronic communication to a covered official that is made on behalf of a client with regard to the formulation, modification, or adoption of federal legislation, rules, regulations, programs, policies, and executive orders, as well as other subjects enumerated in the LDA.96 There are a notable number of exceptions to the definition of lobbying contact, including media communications, testimony submitted to congressional committees for inclusion in the hearing record, and written communications requested by a covered official.97

For the legislative branch, covered officials are Members of Congress and their staff (or those acting as such) and elected or appointed officers of either chamber of Congress. Covered executive branch officials include: the President; the Vice President; officers and employees of the Executive Office of the President; officials serving in an Executive Level I-V position; senior members of the uniformed services; and Schedule C employees.

Although the contact threshold is very low (for example, two phone calls or one phone call plus one email to a covered official would suffice), the employee also must spend more than 20 percent of his or her work time engaged in federal lobbying activities for that particular employer or client to be considered a lobbyist with respect to that employer or client.

The LDA definition of lobbying activities is quite broad and encompasses more than just the time spent directly communicating with covered officials. Lobbying activities is defined as “[l]obbying contacts and any efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.”98 Examples of lobbying activities could include time spent drafting a one-pager or other materials to be provided to congressional staff or briefing an officer of the organization prior to a meeting with a Member of Congress.

Even if one or more of an organization’s employees meets the definition of a lobbyist, the organization still may be exempt from registration if expenses

95. 2 U.S.C. § 1602(10).
98. 2 U.S.C. § 1602(7).
incurred on lobbying activities do not exceed a specified monetary threshold. An organization employing in-house lobbyists is not required to register under the LDA unless its total expenses for lobbying activities exceed, or are expected to exceed, $12,500 during a quarterly period. This amount is adjusted for inflation every four years.

The LDA does not mandate any particular method for estimating lobbying expenses. However, the Guidance provides two primary examples that organizations might use to calculate lobbying expenditures. One method is to use the total budget of the organization's government affairs office or operation. This would not be a preferred method for an organization that may spend a majority of its advocacy resources on nonfederal or nonlobbying activities. The other method is to estimate expenses according to allocable staff hours, overhead, and other reimbursed expenses. The Guidance provides this illustration:

An organization employing in-house lobbyists might choose to estimate lobbying expenses by asking each professional staffer to track his/her percentages of time devoted to lobbying activities. These percentages could be averaged to compute the percentage of the organization's total effort (and budget) that is devoted to lobbying activities. Under this example, the organization would include salary costs (including a percentage of support staff salaries), overhead, and expenses, including any third-party costs attributable to lobbying.99

Whatever method is chosen, as long as an organization has a reasonable system in place to estimate lobbying expenses and adheres consistently to that system, it will likely meet the LDA's requirements.

If the organization meets the criteria for registration, it must be completed within 45 days after the lobbyist is employed or the first lobbying contact is made, whichever comes first. Once an organization is registered, it must comply with all applicable reporting and other requirements under the LDA unless and until that registration is terminated.

**Reporting**

The core reporting requirements for lobbying organizations under the LDA include quarterly lobbying activity reports and semi-annual political contribution reports. Organizations may also need to update their registration information.

LD-2 Lobbying Activity Report. Lobbying activity reports must be filed no later than 20 days after the end of each quarter. Each quarterly report must contain:

- a list of specific issues for which the organization engaged in lobbying activities;
- the houses of Congress and federal agencies contacted;
- the names of employees who acted as lobbyists; and
- a good-faith estimate of the total lobbying expenditures by the organization.

LD-203 Political Contribution Report. To address concerns regarding the connection between lobbying and political contributions, lobbyists, and lobbying organizations registered under the LDA also must report semi-annually a range of political donations and expenditures made directly or through any political action committee controlled by the registrant. Reportable LD-203 expenditures include:

- donations of $200 or more to any federal candidate, political party committee, or leadership PAC;
- funds paid for an event to honor or recognize a covered legislative or executive branch official;
- funds paid to an entity named for a covered official or to another entity in recognition of such official;
- funds paid to an entity established, maintained, or controlled by a covered official;
- funds paid for a meeting, conference, or other event held by or in the name of a covered official; and
- donations of $200 or more to a presidential library and inauguration committee.

The LD-203 report also requires lobbyists and lobbying organizations to certify that they have read and are familiar with the House and Senate gift and travel rules and that they have not knowingly violated those rules. Each registered lobbyist is required to personally file an individual report and the lobbying organization is required to file one institutional report.

Both LD-2 and LD-203 reports must be filed electronically and are available to the public through an online searchable database maintained by the offices of the Clerk of the House and Secretary of the Senate.
Enforcement

The Secretary of the Senate and Clerk of the House review LDA registrations and reports for accuracy and timeliness and will issue a notification in writing to lobbyists or organizations that have either submitted defective filings or that may have otherwise failed to comply with the LDA. If an appropriate response is not received within 60 days, they must notify the U.S. Attorney for the District of Columbia of the lobbyist’s noncompliance. Failure to comply with the LDA can lead to the imposition of both civil and criminal penalties.

In addition, the Government Accountability Office is required to perform random audits of LDA reports and annually evaluate compliance with and enforcement of the Act. Organizations subject to an audit may be asked for documentation to justify the information included in the quarterly lobbying and semi-annual political contribution reports. The House and Senate are required to maintain six years of records for each registrant, so an organization may want to keep documentation and reports for at least that period of time as well.

Gift and Travel Rules

Any individual or organization that interacts with federal legislative or executive branch officials should be aware of the applicable ethics rules. However, this is particularly important for those registered under the LDA because lobbyists and lobbying organizations are subject to more restrictive gift and travel rules for both the legislative and executive branches than are nonlobbyists. Organizations must keep these rules in mind when planning events, whether in Washington or at home, and site visits.

The Senate and House have separate ethics rules governing gifts and travel, but they contain many identical or substantially similar provisions. The definition of a gift is any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals. Both gift rules contain a ban on gifts from lobbyists, provide a monetary limit on gifts from others, and have a lengthy list of exceptions to the definition of a gift. These exceptions include commemorative items, books and other educational items, and honorary degrees and awards.

100. Up-to-date information on congressional gift and travel rules is posted on the websites of the House Committee on Ethics (https://ethics.house.gov) and the Senate Select Committee on Ethics (http://www.ethics.senate.gov/public/index.cfm/home).
Chapter 12  Compliance with Applicable Disclosure Laws  103

There are exceptions to the several gift rules that may be useful to organizations hosting events in Washington or at home. One is that food and refreshments of “nominal value” are not considered gifts. This has been interpreted to mean something less than a full meal, such as pastries and hors d’oeuvres, or other finger foods.

The other exception is for “widely attended events.” In appropriate circumstances, this exception may be used for receptions and dinners, but it could also include complimentary attendance at conferences, conventions, and other events. The primary criteria for an event to qualify as widely attended is that: (1) there must be more than 25 noncongressional attendees; (2) attendance must be open to a diverse group of persons from an industry or profession; and (3) the Member of Congress or staff person must determine that attendance is appropriate to the performance of his or her official duties.

Another exception allows the acceptance of commemorative items, including plaques and trophies, and for other bona fide, nonmonetary awards presented in recognition of public service. To qualify under the first exception, the item must be presented to the covered official in person, be commemorative in nature, and may not have significant utilitarian or artistic value.”

Gifts to federal executive branch employees, likewise, are restricted by federal law and regulation. Gift regulations for the entire executive branch have been promulgated by the Office of Government Ethics (OGE).101 Agencies, in consultation with OGE, also have promulgated specific gift restrictions for their own employees. OGE regulations prohibit all federal employees from accepting gifts from a “prohibited source”102 except under circumstances similar to those specified in the House and Senate gift rules. Executive branch appointees must adhere to even stricter rules: upon taking office, President Obama issued an executive order that, among other things, prohibits executive branch appointees from accepting gifts from registered lobbyists or lobbying organizations that otherwise would be allowed under the OGE gift rule exception for widely attended events.103

101. 5 C.F.R. § 2635.
102. A prohibited source under the regulation is defined as “any person who: (1) Is seeking official action by the employee’s agency; (2) Does business or seeks to do business with the employee’s agency; (3) Conducts activities regulated by the employee’s agency; (4) Has interests that may be substantially affected by performance or nonperformance of the employee’s official duties; or (5) Is an organization a majority of whose members are described in paragraphs (d) (1) through (4) of this section. 5 C.F.R. § 2635.203(d)(1)-(5).
There also are significant restrictions on privately funded travel, particularly for lobbyists and lobbying organizations. For example, an organization that employs in-house lobbyists (or retains a lobbying firm) generally may only fund domestic travel for Members of Congress for a duration of two days and one night. In addition, lobbyists working for the organizations are not allowed to plan, organize, or arrange the travel, nor may they accompany a Member of Congress or congressional staff during transportation. Executive branch employees also are prohibited from accepting privately funded travel except under specified circumstances, as determined by each agency.104

Bars considering sponsoring various types of events or trips should carefully consult all appropriate rules to ensure that the planned activity is structured in a way that enables the desired invitees to participate.

**Best Practices**

One person should be responsible for keeping abreast of developments in lobbying disclosure and ethics rules and ensuring that the bar and its employees comply with all applicable registration and reporting requirements. In addition, the bar should establish a compliance program that includes several key components, such as maintaining a system that enables staff to record hours engaged in lobbying activities and providing regular training on rules and reporting requirements. Because each state has different gift and travel restrictions applicable to government officials—some of which, like the federal rules, are more strictly applied to lobbyists—the bar should have a clear understanding of which state’s rules apply and ensure that they are carefully followed.

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Government Relations Section, National Association of Bar Executives (NABE GR)

The Government Relations Section of the National Association of Bar Executives (NABE GR) was created in 1983 for the purpose of establishing “a forum to provide education and information to employees of bar associations and their officers in regard to the formation, implementation and improvement of legislative affairs programs” at the state and federal levels. NABE GR helps to coordinate the exchange of information and advocacy techniques among state governmental relations programs on key issues affecting the legal profession at the state level. It also operates as an informal exchange and clearinghouse for current legislative trends affecting lawyers at the state level.

Another key role of NABE GR is to coordinate with GAO to establish and maintain a network for action on key issues that affect the legal profession at the national level.

Membership in NABE GR is open to any member of NABE, which is an affiliate of the ABA and receives administrative support from the ABA’s Division for Bar Services. The Section is comprised of 50 to 60 members. This relatively modest number reflects the fact that not all bar associations have a designated

106. Additional information about NABE GR is available on the Section’s website at http://www.nabenet.org/?page=GR.
staff member assigned to governmental relations duties. NABE GR is led by five officers and a Council comprised of the officers and four additional members.\(^{107}\)

For many years, NABE GR has provided numerous tangible benefits to its members and to bars in general. Prior to becoming a section, NABE GR published its first *Manual of Legislative Techniques*, which was prepared in recognition of the growing need for professional associations, especially bar associations, to advocate for their members in the state legislatures and in Congress. Since the *Manual’s* initial publication in 1975, NABE GR has updated it periodically; the last edition was published in 2006.

NABE GR regularly meets with GAO to discuss and help coordinate advocacy efforts with respect to legislation on issues of concern to the legal profession. NABE GR and GAO also cosponsor an annual State Legislative Workshop to exchange ideas, techniques, and knowledge, and to develop greater camaraderie among ABA and state and local bar lobbyists. The Workshop usually rotates annually between Washington, DC, and state capitals.

**Governmental Affairs Office, American Bar Association (GAO)**

GAO serves as the advocacy arm of the ABA with respect to public policy issues. Situated in Washington, DC, GAO is comprised of a Director, eight lobbyists, and several support staff. Each GAO lobbyist is responsible for handling a number of different policy issues.\(^ {108}\)

GAO performs several important functions in the federal governmental affairs area. First and foremost, GAO is responsible for lobbying Congress and the Executive Branch on federal issues on which the ABA House of Delegates or Board of Governors has adopted a policy position. GAO lobbyists concentrate their advocacy efforts on the ABA’s Legislative and Governmental Priorities, a focused list of approximately eight to 10 legislative issues of critical importance to the ABA. This list is established by the ABA Board of Governors at the start of

\(^{107}\) The current officers and other Council members of NABE GR are listed on the Section’s website at http://www.nabenet.org/?GRLeadership, and include bar professionals from eight states and an Ex Officio Council Member from the ABA Governmental Affairs Office.

\(^{108}\) See ABA Governmental Affairs Office, American Bar Ass’n, *Staff Contact Information and Legislative Responsibilities*, http://www.americanbar.org/groups/departments_offices/government_affairs_office/contact_us.html, or call the GAO’s main number at 202-662-1760.
every Congress. GAO also assists ABA entities in lobbying for additional ABA policies that are important to the entity.

GAO lobbyists analyze bills, draft policy letters, comment on proposed agency rules, and prepare other advocacy materials for distribution to Congress, the White House, and key federal agencies. GAO lobbyists meet frequently with congressional staff and agency officials to advocate ABA policy positions, and they periodically accompany ABA leaders on similar visits with congressional staff or with Members of Congress. GAO seeks opportunities for the ABA to testify on issues of priority importance before congressional committees or other governmental bodies.

GAO engages in grassroots and grasstips lobbying by enlisting ABA volunteers to lobby their Members of Congress on issues of special importance to the Association. GAO utilizes a variety of advocacy tools, including social media, when engaging its grassroots and advocating on behalf of the association.

When lobbying on issues that are of broad interest to the legal profession, GAO also frequently enlists the assistance of its state and local bar allies by sending legislative action alerts urging each of those bars to contact its own state’s congressional delegation on the issue in question. In addition to ABA-initiated joint lobbying activities on the federal level, state and local bars initiate joint lobbying activities on the state level by reaching out to GAO to enlist the ABA’s lobbying assistance on a state justice system issue that also is supported by broader ABA policy.

GAO also sponsors an annual grassroots lobbying program called ABA Day in Washington that is designed to facilitate joint lobbying by ABA, state, and local bar leaders, and NABE GR professionals on several specially selected priority issues of great importance to the organized bar. ABA Day in Washington 2015 included the participation of 49 states and the District of Columbia and resulted in lobbying visits to over 400 congressional offices over a three-day period.

**Tips for Working Effectively with NABE GR and GAO on Policy Issues**

There are several specific steps that state and local bar professionals can follow in order to work even more effectively with NABE GR and GAO on issues of mutual interest. For example, bar professionals can:

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110. The Appendix, *infra*, contains an example of an ABA action alert to state and local bars.
• Join NABE GR and become active in the Section. In addition to the many benefits of being a NABE GR member, the Section also offers significant leadership opportunities for state bar professionals.\textsuperscript{111}

• Regularly attend and participate in the annual ABA Day in Washington grassroots lobbying program held each spring.\textsuperscript{112}

• Join and participate in the ABA Grassroots Action Team (GRAT), directed and managed by the GAO.\textsuperscript{113}

• Bookmark and regularly refer to NABE GR’s Resources Page, available at http://www.nabenet.org/?GRResources. It contains a wealth of useful information, including links to many other helpful state and federal websites.

• Bookmark the GAO Website to keep abreast of national legislative developments of concern to lawyers.
  http://ambar.org/govaffairs.

• Sign up for a free email subscription to the ABA Washington Letter, the monthly GAO newsletter reporting on developments in Congress and the executive branch of importance to the legal profession and related ABA legislative activities.\textsuperscript{114}

• Follow GAO on Twitter at https://twitter.com/ABAGrassroots.


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  \item[111.] Information regarding membership in NABE GR is available at http://www.nabenet.org/?page=GR.
  \item[112.] Information regarding the next ABA Day in Washington is available at www.ambar.org/ABADay.
  \item[113.] Information on the ABA Grassroots Action Center, and instructions for joining GRAT, are available on the GAO website at http://aba.aristotle.com/Public.aspx?NavID=1.
  \item[114.] Please email Rhonda.McMillion@americanbar.org to request monthly electronic delivery of the ABA Washington Letter.
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As the primary voice of the legal profession in their respective jurisdictions, state and local bars have a unique ability to lobby and influence state legislators, Members of Congress, and state and federal agency officials on a wide range of issues important to lawyers and the overall legal system. This is especially true with respect to issues involving the lawyer-client relationship, the administration of justice, and other core legal issues. To realize their full potential, however, bars and their advocates must utilize all of the appropriate lobbying tools at their disposal.

While the advocacy tools and methods outlined in this Guide are many and varied, not all of these techniques will apply or be effective in every situation. Some lobbying campaigns will be carried out as a joint effort with other advocacy groups; other will require letters from the bar to legislators at critical junctures in the legislative process; in-person lobbying visits from bar leaders and other bar members who know the legislator well; delivering testimony at hearings; and creation of a grassroots action plan. Other issues may be best addressed through informal outreach and relationship building with legislative staff; skillful use of PACs; or building public support through the effective use of social media. Regardless of the advocacy techniques chosen, it is always critical to set priorities, develop an effective lobbying strategy, and make a concerted effort to ensure that all of the bar’s lobbying activities comply fully with all relevant ethical standards and disclosure laws.

The ABA Governmental Affairs Office and the NABE Governmental Relations Section are pleased to provide the bar community with this practical advocacy Guide and hope that you find it helpful.
Advocacy Letters to Congress
112 "All Politics Is Local"

1. Sample Letters from State Bars

May 27, 2014

The Honorable Peter Roskam
U. S. House of Representatives
Washington, D.C. 20515

Re: The Legal Services Corporation
Ensuring Fairness for All in the Justice System

Dear Representative Roskam:

The Legal Services Corporation is an integral part of fulfilling our nation’s fundamental promise of equal access to justice for all Americans. Thus, we respectfully request that you oppose any effort to reduce or eliminate any of its funding. Legal aid offices are consistently one of the most frequent referrals by local congressional offices serving your constituents’ needs.

LSC provides access to legal help for people to protect their livelihoods, their health, and their families. The people who depend on LSC-funded legal aid organizations include women and children victimized by domestic violence; veterans struggling after returning from combat; disabled and elderly persons who have been financially exploited and abused; and many other vulnerable Americans. Access to needed legal help can mean the difference between shelter and homelessness; medical assistance and unnecessary physical suffering; food on the table and hunger; economic stability and bankruptcy; or productive work and unemployment.

Unfortunately, LSC funding is near an all-time low while a record number of vulnerable and disadvantaged Americans are in need of these services. Since 1981, the number of Americans eligible for legal aid has increased by more than 50% to a record of more than 60 million people, yet Congress now allocates over 50% less in funding for LSC than it did in 1981 after adjusting for inflation. As a result, more than half of people in need of legal aid are turned away due to lack of resources.
The Honorable Peter Roskam
May 27, 2014
Page 2

The legal community is doing its part, providing more than two million hours of pro bono service and donating more than $15 million each year to support pro bono and legal aid organizations in Illinois alone.

LSC is a solid economic investment as well, saving money on other expensive government services and helping streamline the court system and cut down on court costs. A recent study found that legal aid in Illinois produces an almost 2:1 return on investment in economic benefits.

We respectfully request that you oppose any efforts to reduce or eliminate LSC’s funding. If you have any questions about this letter, please contact me. Thank you.

Respectfully,

JIM COVINGTON
September 10, 2014

The Honorable Sherrod C. Brown  
United States Senate  
713 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Brown:

On behalf of the Ohio State Bar Association, I am writing in support of S. 2698, legislation requiring in part that "the National Credit Union Administration [provide] pass-through share insurance for the deposits or shares of any interest on lawyers trust accounts" (IOLTAs). The OSBA also supports S. 2699, a narrower bill containing only the IOLTA credit union provision.

In Ohio, IOLTA revenue is a significant source of funding for programs providing civil legal aid to people at or near the poverty line, including veterans, the working poor, and individuals with disabilities. All lawyers in our state who handle client funds are required to participate in IOLTA. The funds placed in IOLTA accounts are those that cannot earn interest for the client in excess of the costs incurred to secure that interest. Banks in turn forward the interest earned on these accounts to our program, which we use to fund a variety of charitable causes.

S. 2698 and S. 2699 would provide credit unions with the same amount of insurance protections that funds held in IOLTA accounts at banks currently enjoy. IOLTAs held at banks currently have FDIC insurance providing $250,000 of protection per client per institution. However, the National Credit Union Administration (NCUA) only provides coverage for funds held in IOLTAs in two circumstances: 1) if the client is a member of the credit union; or 2) if the credit union is designated as low-income.

Under the proposed legislation, NCUA would provide IOLTAs with the same level of coverage that the FDIC provides to banks. This would ensure that client funds are protected regardless of whether the IOLTA is in a credit union or in a bank. Granting credit unions the ability to protect funds held in IOLTAs also could have a positive impact on our program, as many credit unions may offer higher interest rates than banks.

On behalf of the OSBA, I request that you move this legislation out of committee and work with Senator Reid to have it brought to the Senate floor for a vote. Thank you in advance for your assistance on this matter.

Sincerely,

Todd Book  
Director of Policy and Government Relations

cc: Martin E. Mohler, Esq., President, OSBA  
Angela Lloyd, Executive Director, OLAF  
Mary Amos Augsburger, Esq., Executive Director, OSBA
2. Sample Letter from ABA

November 17, 2015

The Honorable Robert W. Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Re: H.R. 3713 (the Sentencing Reform Act of 2015)

Dear Chairman Goodlatte and Ranking Member Conyers:

On behalf of the American Bar Association (ABA), I write to express our support for H.R. 3713, the Sentencing Reform Act of 2015, and to urge members of the House Judiciary Committee to promptly approve the bill without weakening amendments.

We strongly commend Chairman Goodlatte and Ranking Member Conyers for leading bipartisan negotiations that have resulted in a worthy reform consensus on complex and difficult sentencing and corrections issues. While H.R. 3713 is a compromise that does not go as far as the ABA would prefer in overhauling federal sentencing policy, it takes a number of important steps forward to reduce reliance on mandatory minimum sentences for low-level drug offenders and to improve fairness and the achievement of justice in the federal system.

Over the last 30 years, the United States has come to rely on its criminal justice system and lengthy prison terms more than any other nation. With just 5% of the world’s population, the U.S. holds nearly a quarter of the world’s prisoners, including one-third of all women incarcerated worldwide.

The federal prison population has increased nearly 800% since 1980 and more than doubled since 1994, with spending up 1700% over that period, and federal prisons are currently operating at 123% of capacity. This is due in significant degree to the proliferation of mandatory minimum sentences. Nearly half of all federal prisoners are serving sentences for nonviolent drug crimes.

Experience has shown that mandatory minimums have not only contributed to the vast increase in the nation’s incarceration rate, but have exacerbated the levels of racial disparity in the criminal justice and correctional systems. African Americans and Latinos make up about three-quarters of the federal prison population while representing only
November 17, 2015
Page 2 of 2

about one-third of the nation’s population. The U.S. Sentencing Commission has reported that mandatory minimum sentences are imposed on people of color at similarly disproportionate rates. This bill offers substantive revisions to the federal sentencing system that will help reduce our reliance on lengthy prison terms for low-level offenses, lessen the disparate impact of federal sentencing policies on African Americans and Latinos, and change direction away from policies that are unsustainable.

The ABA supports provisions in H.R. 3713 to narrow the applicability of some drug-related mandatory minimums and reduce others; to expand “safety-valve” authority; and to apply certain reductions retroactively, including those enacted in the Fair Sentencing Act of 2010, in qualified cases. Enactment will help focus prosecutorial and correctional resources on offenders who commit serious crimes that pose the greatest risk to public safety and will permit more sentencing flexibility for low-level, nonviolent offenders whose role and culpability will now receive more careful and balanced consideration by sentencing judges. We believe that H.R. 3713 will, overall, create a more just sentencing system than the one currently in place.

The ABA also supports a provision, included in separate legislation that may be considered by the Committee, to establish a “default mens rea” standard to apply to new criminal statutory or regulatory provisions that impose penalties that include imprisonment. The Judiciary Committee established a bipartisan Task Force on Over-Criminalization that held a series of hearings on this subject during the previous Congress highlighting the problems related to enactment of crimes that do not specify a standard or requirement for the element of criminal intent. We support enactment of a default mens rea standard that would apply prospectively to enactment or promulgation of any criminal statute or regulation that is silent on such a standard. We further support authorization for a comprehensive inventory of federal criminal statutory and regulatory law.

We commend the bipartisan sponsors of the Sentencing Reform Act of 2015 for proposing significant and positive sentencing and corrections reforms. We urge members of the Judiciary Committee to support H.R. 3713 so that it may soon be considered by the full House of Representatives and enacted into law.

Sincerely,

Paulette Brown

cc: Members of the House Committee on the Judiciary
1. Sample Fact Sheet

The Paycheck Fairness Act
114th Congress

Major Provisions

The Paycheck Fairness Act (PFA), introduced this Congress as H.R. 1619 (DeLauro, D-CT) and S. 862 (Mikulski, D-MD) would update and strengthen the Equal Pay Act of 1963 (EPA), which was passed by Congress expressly to prohibit “discrimination on account of sex in the payment of wages by employers.” Enacted half a century ago, the EPA needs a tune-up — it is out of date and out of touch with today’s business world.

The sole purpose of the PFA is to make the following common-sense changes to this important and historic law so that we can continue to make progress in eradicating gender-based wage discrimination and advancing this nation’s longstanding stated goal of equal pay for equal work.

1. The Paycheck Fairness Act will update the definition of a work “establishment.”

Under the EPA, a determination of wage discrimination is made by comparing the wages of a male and female employee who perform substantially equal jobs (i.e., jobs requiring similar skills, effort, and responsibility that are performed under similar conditions) and work at the same “establishment.”

The PFA will broaden the law’s definition of “establishment” by stating that wage comparisons may be made between employees who perform substantially equal jobs at any of the employer’s places of business that are located in the same county or political subdivision. This change is needed because many businesses today operate out of multiple offices in the same area.

2. The Paycheck Fairness Act will clarify the “factor other than sex” defense.

Some pay differentials are legal under the EPA. An employer will not be liable if the employer can prove that the pay differential is based on: 1) seniority; 2) merit; 3) the quality or quantity of production; or 4) a “factor other than sex.”

Courts have interpreted the “factor other than sex” defense inconsistently and, at times, without regard to its relevance to job performance. The PFA provides much needed guidance to help courts determine when a “factor other than sex” qualifies as a legitimate defense.

The PFA provides that a “factor other than sex” defense must be based on a bona fide, job-related factor such as education, training or experience that is consistent with business necessity. In addition, it specifies that a factor will not qualify as an affirmative defense if the employee can demonstrate that the employer refuses to adopt an existing alternative business practice that would serve the same business purpose without producing a pay differential.
3. **The Paycheck Fairness Act will strengthen the remedies available under the EPA.**

At present, the EPA provides for back pay and, in some cases, liquidated damages. These limited monetary remedies often provide inadequate compensation to make the victim whole and are insufficient to deter future violations of the law by employers who view them as a cost of doing business.

The PFA allows prevailing plaintiffs to recover compensatory and punitive damages. Compensatory damages include out-of-pocket expenses resulting from the discrimination and compensation for non-economic damages such as loss of reputation and mental anguish. Punitive damages would be allowed only in cases of intentional discrimination involving malice and reckless disregard and would not apply in cases against the United States.

These proposed changes would bring the remedy provisions of the EPA more in line with those of Title VII, and would put gender-based wage discrimination on an equal footing with discrimination based on race or ethnicity.

4. **The Paycheck Fairness Act will strengthen oversight and enforcement mechanisms.**

The PFA will revitalize the role of the Department of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC) in combating gender-based discrimination by requiring research, education, outreach, and ready public access to compensation discrimination information.

It also requires the DOL and the EEOC to collect compensation and other employment-related data by race, nationality and sex for the purpose of enhancing the EEOC’s ability to detect violations and improve enforcement of the EPA.

5. **The Paycheck Fairness Act will prohibit retaliation for disclosure of salary information.**

At present, the EPA prohibits an employer from retaliating against an employee who asserts his or her rights under the EPA, but it is silent with regard to situations involving salary discussions.

The PFA will protect employees from retaliation not only for seeking redress, but also for inquiring about the employer’s wage practices or disclosing their own wages to coworkers. Without the PFA’s broad prohibition against retaliation by an employer, fear of being fired will continue to inhibit workers from discovering and seeking redress for discriminatory gender-based pay disparities.

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Denise A. Cardman, Deputy Director  
Governmental Affairs Office  
denise.cardman@americanbar.org

June 2015
ABA Opposes Burdensome Tax Proposals that Adversely Affect Many Law Firms and Other Personal Service Businesses

Congress is considering proposed tax reform legislation that would impose substantial new financial burdens and hardships on many law firms and other types of personal service businesses throughout the country by fundamentally changing the manner in which they must pay their taxes. Section 3301 of H.R. 1, introduced during the 113th Congress, and Section 51 of a similar draft bill prepared by the Senate Finance Committee staff would require all such businesses with annual gross receipts over $10 million to use the accrual method of accounting rather than the traditional cash receipts and disbursements method. If the proposals are enacted in this Congress, many law firms, accounting firms, medical firms, and other personal service providers would be forced to pay taxes on “phantom” income long before it is actually received.

Congress should reject the proposed mandatory accrual accounting legislation because:

- Instead of simplifying the tax law as its sponsors claim, the proposals would create unnecessary new complexity in the tax law and increase compliance costs. Law firms and other personal service businesses favor the cash method of accounting—where income is not recognized until payment is actually received—because it is simple and generally reflects the way they operate their businesses, i.e., on a cash basis. Requiring them to switch to the more complex accrual method of accounting—where income is recognized when the right to receive it arises—would substantially raise their compliance costs by forcing them to keep more detailed work and billing records and hire additional accounting and support staff.

- The proposals would impose substantial new financial burdens on many law firms and other personal service businesses by forcing them to pay taxes on income they have not yet received and may never receive. Requiring these businesses to pay taxes on phantom income long before it is actually received—and to use their scarce capital or borrow money to do so—would impose a serious financial burden and hardship on many of these firms. The legal profession would suffer even greater financial hardships than other professions because many lawyers are not paid by their clients until long after the work is performed.

- The proposals would adversely affect clients, interfere with the lawyer-client relationship, and reduce the availability of legal services. If law firms are forced to pay taxes on accrued income they have not yet received, the resulting financial pressures would require many firms charging on a traditional hourly fee basis to collect their fees immediately after the legal services are provided to the clients (or at least much sooner than they currently do). Also, many firms would be unable to represent as many accident victims, start-up companies, or other clients on an alternative or flexible fee basis as they now do and would have to reduce the amount of pro bono legal services they currently provide to their poorest clients.

- The proposals would constitute a major, unjustified tax increase on small businesses and discourage economic growth. The Joint Committee on Taxation estimated that last year’s House proposal would generate $23.6 billion in new taxes over ten years by forcing many thousands of small businesses to pay taxes on phantom income up to a year or more before it is actually received (if it is ever received). Both proposals would also discourage individual professional service providers from joining with other providers to create or expand a firm because it could trigger the costly accrual accounting requirement. Sound tax policy should encourage—not discourage—the growth of small businesses, especially in today’s fragile economy.

July 2015

ABA Staff Contact: Larson Frisby • (202) 662-1098 • larson.frisby@americanbar.org

American Bar Association • www.americanbar.org/advocacy
Federal Judicial Nominations and Confirmations

Judicial Vacancies Must be Filled Promptly to Assure Timely Justice

Our nation is disadvantaged when our federal judiciary does not have sufficient judges to hear cases and resolve disputes in a thorough and timely fashion. High numbers of vacancies and too few judges to handle the ever-increasing caseloads adversely affect the ability of our federal courts to provide society with a just, efficient and timely mechanism for resolving important disputes.

The present vacancy situation is of concern to lawyers across the country not only because of the number of vacancies, which is high but not extraordinary, but also because of the length of time they have existed: there have been 75-100 vacancies on the federal courts for most of the past 48 months.

Vacancies have different effects on different courts. In districts struggling under excessive caseloads and too few judges, vacancies make it impossible for the remaining judges to keep up with the workload and give each case the time it deserves. This has real consequences for communities and businesses because short-handed courts have to delay civil trial dockets due to the Speedy Trial Act (establishing time limits for criminal prosecutions). Successful businesses may lose significant profits or even go bankrupt while waiting for their day in court, and new businesses may have to postpone opening or expanding operations because of the financial uncertainty created by pending litigation.

The consequences of unfilled vacancies will be exacerbated in the coming months when staff layoffs and reductions in operating hours are implemented in courts across the country to meet budget cutbacks mandated by sequestration.

- The ABA urges Senators to remain cognizant of the central importance of a fully staffed judiciary and to make the prompt filling of judicial vacancies an ongoing priority.

- The ABA urges the Senate to work collaboratively with the Administration to shorten the time between vacancy and nomination, especially for those vacancies classified “judicial emergencies.” Senators should be prepared to identify potential nominees for vacant district court positions and to submit recommendations to the President as early as possible. Senators should redouble their efforts to engage in prenomination consultation over all potential nominees, with the singular purpose of reaching consensus on qualified candidates for nomination to the federal bench.

- The ABA acknowledges the recent confirmation of nominees who were pending on the floor when the 112th Congress adjourned and urges the Senate to provide relief to understaffed courts by voting promptly on the remaining nominees.

- The ABA urges the Senate to avoid unnecessary delay and schedule prompt floor votes on all pending nominees reported by the Senate Judiciary Committee with little or no opposition. For contested nominees, sufficient time should be scheduled for full debate followed by a final floor vote.

April 1, 2013

Contact: Denise A. Cardman, Deputy Director • denise.cardman@americanbar.org

American Bar Association • Governmental Affairs Office • www.americanbar.org/advocacy
APPENDIX C

Legislative Action Alerts
Sample Alert from ABA to Bars

ABA Legislative Action Alert to State and Local Bars
Urge Congress to Reject Burdensome Tax Proposal that Adversely Affects Many Lawyers and Law Firms

We need your help to convince leaders of the House Ways & Means and Senate Finance Committees to remove key provisions from their draft tax reform bills that would impose substantial new financial burdens on many law firms, accounting firms and other personal service businesses throughout the country. These harmful provisions would require all such firms with annual gross receipts over $10 million to use the accrual method of accounting rather than the traditional cash receipts and disbursement method. As a result, all of these firms would be forced to pay taxes on income they have not yet received and may never receive.

BACKGROUND

Current law allows individuals and most partnerships and other pass-through entities—as well as other types of businesses with annual gross receipts of $5 million or less—to use the simple cash method of accounting for tax purposes, in which income is not recognized until cash or other payment is actually received. In addition, all law firms, accounting firms, and various other types of personal service businesses are allowed to use the cash method of accounting regardless of their annual revenue unless they have inventory. Most other businesses are required to use the more complicated accrual method of accounting, in which income is recognized when the right to receive the income arises, not when the income is actually received.

Last year, House Ways & Means Committee Chairman Dave Camp (R-MI) and Senate Finance Committee Chairman Max Baucus (D-MT) released separate discussion draft tax reform bills containing provisions that would fundamentally change the manner in which many law firms and other personal service businesses must pay their taxes. Section 212 of Chairman Camp’s draft "Tax Reform Act of 2013" and Section 51 of the similar draft bill by Chairman Baucus would dramatically change current law by raising the gross receipts cap to $10 million while eliminating the existing exemption for law firms and other personal service businesses, partnerships and S corporations, and farmers. The practical effect would be to substantially accelerate the firms’ tax payments.

In November 2013, the ABA Board of Governors adopted a Resolution opposing the draft legislation and any other similar measures that would require law firms and other personal service businesses to switch from the cash to the accrual method of accounting. Similar resolutions have been adopted by a number of state bars, including those in Ohio, Minnesota, New Jersey, and Wisconsin, and other bars are now considering taking similar action.
On January 13, 2014, the ABA sent letters to the House Ways & Means and Senate Finance Committees opposing Sections 212 and 51 in the respective draft bills. The ABA expressed concerns that these provisions would create unnecessary complexity in the tax law; increase compliance costs; and cause substantial hardship to many law firms and other personal service businesses by requiring them to pay tax on income they have not yet received and may never receive. Therefore, the ABA urged the Committees to remove these provisions from the draft bills. The ABA’s concerns are more fully explained in the ABA Fact Sheet on this issue.

URGENT ACTION REQUESTED

The ABA needs your bar’s help to persuade leaders of the House Ways & Means and Senate Finance Committees to remove Sections 212 and 51 from the House and Senate draft bills, respectively. Please assist us in this effort by:

- Adopting a resolution opposing these provisions in the draft legislation (See model bar resolution); and

- Emailing letters to your Members of Congress urging them to oppose the legislation and to convey their views to the relevant Committee leaders. (See sample bar letter to Representatives and sample bar letter to Senators.) Because the House Ways & Means Committee or Senate Finance Committee could schedule a mark-up and vote on the draft bills at any time, all state and local bars with Members on either Committee are especially encouraged to send letters to those Committee Members as soon as possible.

If you have any questions or if you adopt a resolution or send letters to Congress, please contact Larson Frisby, Associate Director of the ABA Governmental Affairs Office, at larson.frisby@americanbar.org. This will help us to coordinate and follow-up on your efforts.

Thank you for your assistance on this important issue.

January 31, 2014
Grassroots Advocacy
## 1. Sample Relationship Chart

### Relationships:
Bar Volunteers and Congressional Members

<table>
<thead>
<tr>
<th>First</th>
<th>Last</th>
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<th>State</th>
<th>Phone</th>
<th>Email</th>
<th>Relationship with</th>
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</thead>
<tbody>
<tr>
<td>George</td>
<td>Washington</td>
<td>Orlando</td>
<td>FL</td>
<td>555-458-8974</td>
<td><a href="mailto:g.wash@usa.com">g.wash@usa.com</a></td>
<td>Sen. Marco Rubio</td>
<td>Acquaintance</td>
<td>Personal Friend</td>
</tr>
<tr>
<td>John</td>
<td>Adams</td>
<td>Kenosha</td>
<td>WI</td>
<td>555-784-8966</td>
<td><a href="mailto:j.ad@usa.com">j.ad@usa.com</a></td>
<td>Rep. Paul Ryan</td>
<td>Close Contact</td>
<td>Former Coworker</td>
</tr>
<tr>
<td>Thomas</td>
<td>Jefferson</td>
<td>Bethesda</td>
<td>MD</td>
<td>555-154-2214</td>
<td><a href="mailto:t.jeff@usa.com">t.jeff@usa.com</a></td>
<td>Rep. Steny Hoyer</td>
<td>Close Contact</td>
<td>Church Associate</td>
</tr>
<tr>
<td>James</td>
<td>Madison</td>
<td>Charleston</td>
<td>SC</td>
<td>555-665-4122</td>
<td><a href="mailto:j.mad@usa.com">j.mad@usa.com</a></td>
<td>Sen. Lindsey Graham</td>
<td>Acquaintance</td>
<td>Classmate</td>
</tr>
<tr>
<td>James</td>
<td>Monroe</td>
<td>Leesburg</td>
<td>VA</td>
<td>555-493-3497</td>
<td><a href="mailto:j.mon@usa.com">j.mon@usa.com</a></td>
<td>Sen. Mark Warner</td>
<td>Close Contact</td>
<td>Neighbor</td>
</tr>
</tbody>
</table>
2. Sample Traditional Action Alert

American Bar Association

Action Alert on Federal Court Funding Crisis

From: James R. Silkenat, ABA President
Sent: Tuesday, August 27, 2013

Dear ABA Member:

I am so deeply concerned about the potential funding crisis facing the federal judiciary that I am sending you this alert – as my first official communication as ABA President – to request your assistance in educating Members of Congress about the adverse effects that sequestration already is having on our federal courts and to urge Congress to enact a FY 2014 appropriation for the federal judiciary that restores funding cuts and assures access to justice.

The House and Senate appropriators have sent a clear message that the judiciary needs to be treated as a funding priority by approving FY 2014 appropriation bills that increase funding for the courts by 5.5 percent and 7.5 percent, respectively, over current sequestration levels. However, these bills are not likely to receive floor consideration.

It is generally expected that the judiciary, along with the rest of the federal government, will operate under a Continuing Resolution at current sequestration levels. Even worse, unless the House and Senate agree to a budget that meets mandated discretionary spending caps or enact an alternative bipartisan deficit reduction plan, the federal courts could be subject to yet another round of across-the-board budget cuts.

The message that needs to be delivered to Congress is straightforward:

Regardless of the outcome of ongoing fiscal negotiations or the vehicle used to fund the government in October, Congress needs to provide the federal judiciary with a sufficient and certain FY 2014 appropriation. Our federal courts must be able to plan for and execute their essential constitutional and statutory functions in a fair, efficient, and timely manner. To accomplish this, we urge Congress to increase the federal judiciary’s FY 2014 appropriation to the Senate Appropriations Committee’s recommended funding level of $6.67 billion.

To facilitate your communications with your congressional delegation, we have provided a link to their contact information, as well as links to our prepared Talking Points and suggestions for Taking Action Now.

Thank you for your concern and invaluable assistance.
3. Sample Social Media Campaign

[Image of a social media campaign webpage]

*Save #Loan4Giveness*

Learn more about loan forgiveness. In 2013, Congress expanded the Public Service Loan Forgiveness program to nearly all college graduates who work in public service jobs for 10 years.

**3 Ways to Save PSLF**

1. **Record a Video**
   - Record a short video on your phone, detailing what you do as a public servant and why your Senators should support loan forgiveness. Share the video with your Senators.
2. **Snap a Selfie**
   - Take a photo against a banner with the hashtag #Loan4Giveness. Tag your Senators and tell them why they should save PSLF.
3. **Mention Your Senators**
   - Mention your Senators on social media using the hashtag #Loan4Giveness and tell them why they should save PSLF.
Save #Loan4giveness Web Graphics

Website Banner Ads

Website Box Ads

Twitter/Facebook Post Graphic  

Facebook Cover Photo  

Don’t let Congress kill #loan4giveness
Save #Loan4giveness Campaign Buttons