

MEMORANDUM

TO: Members of the Vermont Bar

FROM: Robert Paolini, ABA Delegate

SUBJECT: 2017 Midyear Meeting of the American Bar Association and Meeting of the House of Delegates

DATE: February 23, 2017

REPORT ON THE ABA MIDYEAR MEETING

CHILDREN AND THE LAW

[300] On behalf of the Young Lawyers Division, Lacy L. Durham of Texas moved revised Resolution 300 urging governmental agencies and legislative bodies to review their laws on luring, enticing, or intimidating minors for sexual acts to ensure that such laws explicitly address internet and other electronic means of communication. Kenneth G. Standard of New York moved an amendment. The amendment was **adopted**. Myra L. McKenzie-Harris of Arkansas spoke in support of the revised resolution as amended. The resolution was **adopted as revised and amended**.

CIVIL JUSTICE

[102] On behalf of the Standing Committee on the American Judicial System, William K. Weisenberg of Ohio moved Resolution 102 urging all state courts to develop and implement a civil justice improvement plan to improve the delivery of civil justice guided by the Recommendations of *Call to Action: Achieving Civil Justice for All* as endorsed by the Conference of Chief Justices and urging bar associations to promote those Recommendations. Michael H. Reed of Pennsylvania spoke in support of the resolution. The resolution was **adopted**.

CRIMINAL JUSTICE

[112A] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of Washington D.C. moved and Kevin J. Curtin of Massachusetts presented Resolution 112A urging the United States Department of Justice to continue its accuracy and quality assurance efforts in the area of microscopic hair analysis and urging prosecutors, similarly, to commit to a timely review of all cases in which such erroneous expert testimony was used and to consider adopting the Department of Justice's policy. The resolution was **adopted**.

[112B] On behalf of the Criminal Justice Section, Mathias H. Heck, Jr. of Ohio moved Resolution 112B urging prosecutor's offices to adopt and implement internal conviction-

integrity policies when an office supports a defendant's motion to vacate a conviction based on the office's doubts about the defendant's guilt of the crime for which the defendant was convicted, or about the lawfulness of the defendant's conviction. The resolution was **adopted**.

[112C] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of Washington D.C. moved Resolution 112C urging law enforcement authorities to develop and use, prior to custodial interrogation of suspects, translations of *Miranda* warnings in as many languages and dialects as necessary to accurately and fully inform individuals of their *Miranda* rights. Kevin J. Curtin of Massachusetts spoke in support of the resolution. The resolution was **adopted**.

[112D] On behalf of the Criminal Justice Section, Neal R. Sonnett of Florida moved revised Resolution 112D urging the Food and Drug Administration ("FDA") to update its current policy requiring deferment of blood donations from men who have sex with men for one year after the donor's most recent sexual encounter with a man to a deferral policy based on an assessment of the risk posed by an individual based on potential recent exposures rather than on the individual's sexual orientation. The resolution was **adopted as revised**.

DISABILITY RIGHTS

[114] On behalf of the Commission on Disability Rights, Anita M. Ventrelli of Illinois moved Resolution 114 urging governments to enact legislation and implement public policy providing that custody, visitation, and access shall not be denied or restricted, nor shall a child be removed or parental rights terminated, based on a parent's disability, absent a showing that the disability is causally related to a harm or an imminent risk of harm to the child. Scott C. LaBarre of Colorado spoke in support of the resolution. The resolution was **adopted**.

DISASTER RESPONSE

[108] On behalf of the Standing Committee on Disaster Response and Preparedness and the Section of State and Local Government Law, Anthony H. Barash of California moved Resolution 108 urging federal, state, local, territorial and tribal governments to adopt standards, guidance, best practices, programs, and regulatory systems that make communities more resilient to loss and damage from foreseeable hazards and enhance the disaster resilience of communities. Stephen N. Zack of Florida, W. Andrew Gowder, Jr of North Carolina, Patricia E. Salkin of New York, and Benjamin E. Griffith of Mississippi spoke in support of the resolution. The resolution was **adopted**.

DIVERSITY AND THE COURTS

[10A] On behalf of the Virgin Islands Bar Association, Anthony M. Ciolli of the Virgin Islands, moved revised Resolution 10A urging the Supreme Court of the United States to consider racial, ethnic, disability, sexual orientation, gender identity, and gender diversity in the selection process for appointments of *amicus curiae*, special masters, and other counsel. Adriane J. Dudley of the U.S. Virgin Islands spoke in support of the resolution. The resolution was **adopted as revised**.

FAMILY LAW

[113] On behalf of the Section of Family Law, Marshall J. Wolf of Ohio moved Resolution 113 urging the United States Department of State to interpret the Immigration and Nationality Act, 8 U.S.C. § 1401, to recognize those children born to intended parents, even if those legally recognized parents do not have a biological (genetic or gestational) relationship to the child, so long as at least one of the intended parents is a U.S. citizen who is legally recognized as the child's parent by the country of birth or the intended parents state of domicile and the relevant resident or physical presence requirements are met. Richard B. Vaughn of California spoke in support of the resolution. The resolution was **adopted**.

HEALTH LAW

[116] On behalf of the Section of Health Law, J. Anthony Patterson of Montana moved revised Resolution 116 urging Congress to amend Section 1862(a)(1) of the Social Security Act (42 U.S.C. 1395y) and urging the Executive Branch to adopt regulations that broaden the scope of Medicare coverage by allowing for coverage for items and services that are reasonable and necessary. The resolution was **adopted as revised**.

HUMAN RIGHTS

[115] On behalf of the Center of Human Rights, Walter H. White, Jr. of the United Kingdom moved Resolution 115 urging governments and relevant organizations to implement the recommendations set forth in the policy brief, *Allies Against Atrocities: The Imperative for Transatlantic Cooperation to Prevent and Stop Mass Killings* (May 2016). Hon. Bernice B. Donald of Tennessee spoke in support of the resolution. The resolution was **adopted**.

IMMIGRATION

[10B] On behalf of the Connecticut Bar Association, Monte E. Frank of Connecticut moved Resolution 10B reaffirming and expanding existing policy regarding refugees in light of the January 27, 2017 Executive Order, calling for increased funding and legislation to process and handle refugee applications, and urging Congress to pass legislation that would provide for individualized assessments of refugee applications and that they be conducted expeditiously and justly. Daniel A. Schwartz of Connecticut and Barry C. Hawkins of Connecticut spoke in support of the resolution. The resolution was **adopted**.

[10C] On behalf of the Section of International Law, Glenn P. Hendrix of New York moved Resolution 10C urging the President to withdraw Executive Order 13769, and to follow legal procedures and legal rights in the promulgation of future Executive Orders regarding border security, immigration enforcement, and terrorism. Scott F. Partridge of Texas moved an amendment. The movant accepted the amendment. Kevin J. Curtin of Massachusetts, H. Thomas Wells of Alabama, and Walter H. White, Jr. of the United Kingdom spoke in favor of the resolution as amended. The resolution was **adopted as amended**.

[301] On behalf of the Section of Litigation, Lawrence J. Fox of Pennsylvania moved Resolution 301 urging Congress to preserve and develop laws, regulations, policies, and

procedures that protect or increase due process and other safeguards for immigrant and asylum-seeking children, especially those who have entered the United States without a parent or legal guardian. Mark I. Schickman of California and Kathleen J. Hopkins of Washington spoke in support of the resolution. The resolution was **adopted**.

INTELLECTUAL PROPERTY LAW

[111] On behalf of the Section of Intellectual Property Law, Susan B. Montgomery of Massachusetts moved Resolution 111 supporting the adoption of the nominative fair use doctrine as an affirmative defense to claims of trademark infringement and unfair competition. The resolution was **adopted**.

INTERNATIONAL LAW

[104] On behalf of the Section of International Law, Gabrielle M. Buckley of Illinois moved Resolution 104 urging the United States to ratify and implement the 2013 Arms Trade Treaty. The resolution was **adopted**.

[105] On behalf of the ABA Representatives and Observers to the United Nations, Bernice K. Leber of New York moved Resolution 105 urging the United Nations, the United States and other governments and relevant international actors to develop and implement methodologies to measure and track the prevalence of sexual and gender-based violence. Carolyn B. Lamm of Washington D.C., Mark H. Alcott of New York, and Salli A. Swartz of Paris, France, spoke in support of the resolution. The resolution was **adopted**.

JUDICIARY

[101] On behalf of the National Conference of Federal Trial Judges, Hon. Elizabeth Stong of New York moved revised Resolution 101 urging Congress to amend Title 28 of the United States Code to authorize the appointment of additional bankruptcy judges sufficient to meet the demands within each district. William D. Johnston of Delaware and Benjamin Strauss of Delaware spoke in support of the resolution. The resolution was **adopted as revised**.

LEGAL EDUCATION

[100] On behalf of the Section of Litigation, Don Bivens of Arizona moved Resolution 100 urging Congress to enact legislation to repeal the restrictions on federal student aid eligibility contained in the Higher Education Act, 20 U.S.C. § 1091(r), which affects eligibility for federal student aid based on certain drug convictions. James F. Williams of Washington and Hon. Bernice B. Donald of Tennessee spoke in support of the resolution. The resolution was **adopted**.

[110A] On behalf of the Section of Legal Education and Admissions to the Bar, Hon. Solomon Oliver, Jr. of Ohio moved Resolution 110A concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated February 2017 to the *ABA Standards and Rules of Procedure for Approval of Law Schools* as follows: Standard 204 (*Self Study*); Standard 303(a)(1) (*Curriculum*); Interpretation 303-1; Standard 311(d) (*Academic Program and Academic Calendar*);

Standard 501 (*Admissions*); and Rules 35, 37, 38, 39, 40 and 41 (*Appeals Panel*). The House **concurred** in the action of the Council of the Section of Legal Education and Admissions to the Bar.

[110B] On behalf of the Section of Legal Education and Admissions to the Bar, Hon. Christine M. Durham of Utah, moved Resolution 110B concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated February 2017 to Standard 316 (*Bar Passage*) of the *ABA Standards and Rules of Procedure for Approval of Law Schools*. Dean Raymond C. Pierce of North Carolina, Hulett H. Askew of Georgia, Pauline A. Schneider of Washington D.C., and Tracy A. Giles of Virginia spoke in support of the resolution. Dean Austen Parrish of Indiana, Dean Phylis Craig-Taylor of North Carolina, Claire P. Gutekunst of New York, Wendy C. Shiba of California, and Hon. Peter M. Reyes, Jr. of Minnesota spoke in opposition to the resolution. The House **did not concur** in the action of the Council of the Section of Legal Education and Admissions to the Bar and referred the resolution back to the Section.

LEGAL SERVICES

[107] On behalf of the Standing Committee on Legal Aid and Indigent Defendants, Hon. Lora J. Livingston **withdrew** Resolution 107 urging Congress to enact legislation deeming it unlawful for any governmental authority or any person acting on behalf of a governmental authority, to engage in a pattern or practice that deprives persons of their constitutional right to the effective assistance of counsel.

[118] On behalf of the Commission on Veterans Legal Services, Dwight L. Smith of Oklahoma, moved Resolution 118 urging lawmakers at all levels to work with the legal profession to collaborate in the identification and removal of legal barriers to veterans' access to due and necessary assistance, including housing, education, employment, treatment, benefits, and services, particularly those provided by the Department of Veterans Affairs. Vice Admiral (Ret) Nanette M. DeRenzi of Virginia, Gregory L. Ulrich of Michigan and Michael L. Fox of New York spoke in support of the resolution. The resolution was **adopted**.

MINIMUM CONTINUING LEGAL EDUCATION (MCLE)

[106] On behalf of the Standing Committee on Continuing Legal Education, Christina Plum of Wisconsin moved Resolution 106 adopting the *Model Rule for Minimum Continuing Legal Education (MCLE) and Comments* dated February 2017, to replace the *Model Rule for MCLE and Comments* adopted by the American Bar Association in 1988 and subsequently amended. The resolution was **adopted**.

PARALEGALS

[103] The House **approved by consent** Resolution 103 as submitted by the Standing Committee on Paralegals granting approval and reapproval to several paralegal education programs, withdrawing the approval of three programs at the requests of the institutions, and extending the term of approval to several paralegal education programs.

SPECIALIZATION

[109] On behalf of the Standing Committee on Specialization, Lucian T. Pera of Tennessee **withdrew** Resolution 109 as submitted by the Standing Committee on Specialization accrediting the Privacy Law program of the International Association of Privacy Professionals of Portsmouth, New Hampshire for a five-year term as a designated specialty certification program for lawyers.

UNIFORM ACTS

[117A] The House **approved by consent** Resolution 117A as submitted by the National Conference of Commissioners on Uniform State Laws approving the Uniform Family Law Arbitration Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[117B] The House **approved by consent** Resolution 117B as submitted by the National Conference of Commissioners on Uniform State Laws approving the Uniform Wage Garnishment Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[117C] The House **approved by consent** Resolution 117C as submitted by the National Conference of Commissioners on Uniform State Laws approving the Uniform Employee and Student Online Privacy Protection Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[117D] On behalf of the National Conference of Commissioners on Uniform State Laws, Robert A. Stein of Minnesota **withdrew** Resolution 117D approving the Revised Uniform Unclaimed Property Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[117E] The House **approved by consent** Resolution 117E as submitted by the National Conference of Commissioners on Uniform State Laws approving the Uniform Unsworn Domestic Declarations Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[117F] The House **approved by consent** Resolution 117F as submitted by the National Conference of Commissioners on Uniform State Laws approving the Uniform Unsworn Declarations Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.