

Message from the Chair

Adopting Standards

There are other bar associations out there. The American Bar Association can fairly be considered the granddaddy of them all. In this column I would like to share with you a few facts and a few thoughts about a long-running project of the ABA's Criminal Justice Section—the Criminal Justice Standards Project.

The ABA standards provide comprehensive guidelines for conduct in the course of criminal practice. They are currently organized so as to cover 25 separate topic areas. The first edition of the standards, published in 1968, addressed 17 of those areas, with "black letter" standards accompanied by extensive explanatory commentary. Since then new standards have been prepared in the remaining areas, covering such topics as Prosecutorial Investigations and DNA Evidence. The existing standards are updated from time to time. For example, the present standards for the Defense Function and those for the Prosecution Function are now in their third edition.

The standards do not write themselves. For each new set of standards, and for each revision of prior standards, the ABA's Criminal Justice Section creates a task force with nine members and a reporter. Three members will be defense attorneys, three will be prosecutors, and three will be "neutrals"—usually judges or law professors. Occasionally one of the neutral members will be a non-lawyer. For example, the task force that created the DNA standards profited greatly from the input of a member who was a DNA expert with extensive experience at New York City's Office of the Chief Medical Examiner and at Penn State.

Each task force engages in a series of weekend meetings in which the standards are drafted and then improved. The task force reporter, generally a law professor with expertise in the area, does the actual drafting. The final product is examined in three levels of review. First, standards are comprehensively reviewed by the members of the Criminal Justice Standards Committee, nine lawyers balanced in the same manner as a task force, who each serve up to three two-year terms. The fruits of their labors are passed on to the Executive Committee of the Criminal Justice Section, and thereafter to the ABA House of Delegates, for possible revision and approval.

Finally, the reporter produces the commentary for the final product, providing standard-by-standard legal explanations for their content. The commentary is then reviewed and approved by the Standards Committee. The commentary, unlike the black letter, is not "official" ABA policy as it is not approved by the House of Delegates. But practitioners find the various comments to be an immense resource when doing legal research in the areas covered.

The standards are sufficiently authoritative to have been cited in well over 100 Supreme Court cases and thousands of lower court opinions. Justice Martin Marcus of the Bronx Supreme Court, formerly the Chair of the Standards Committee and now the head of a task force revising the Discovery standards, has chronicled their influence in a law journal article entitled "The Making of the ABA Criminal Justice Standards: Forty Years of Excellence," *Crim. Just.* Winter 2009, at 10, an article available in several locations on the internet. The standards and commentary are available free on the ABA website, at the address: http://www.americanbar.org/groups/criminal_justice/standards.html.

A final note: the most central standards are the lengthy ones addressing the Defense Function and the Prosecution Function. The third edition of each was published in 1993, and both the standards and the commentary are showing their age. A new task force undertook to revise them a decade ago. The project is finally near completion. The Executive Committee of the Criminal Justice Section is scheduled to vote on the standards in the near future, and approval is anticipated. If it comes, final endorsement by the House of Delegates would be expected next year. The commentary, being prepared by Professor Rory Little of the Hastings College of Law at the University of California, will follow—if not in 2015 then in 2016. In the meantime, the ABA will publish the black letter by itself.

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***The views reflected in this column are those of the Section Chair and are not the policies of the Criminal Justice Section or the New York State Bar Association.**



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