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ABA SEER Sustainability Framework for Law Organizations

(Note: This framework has been approved by the Council of the ABA Section of Environment, Energy and Resources (SEER) and is supported by the ABA Standing Committee on Environment Law, the Law Practice Management Section and other ABA groups.)

Overview of Contents

This Sustainability Framework –the model policy, implementation guidelines and references--can be found on the ABA Web site at <http://www.abanet.org/environ/committees/climatechange/>. The framework tool shows how sustainable development relates to lawyers and their individual firms, corporate law departments, and other law organizations (“firms”). It is designed to allow such entities to demonstrate in a meaningful way what they are doing to be good organizational citizens in fulfilling the economic, social and environmental responsibilities that sustainability entails.

The Framework is designed for flexible use. Firms and other law organizations desiring to adopt a public policy on only environmental or social aspects of sustainability may find those parts of the tool useful for that purpose. Other firms, such as the many that have already piloted the Framework, may want to embrace sustainability’s full *Triple Bottom Line (TBL)* of economic, social and environmental responsibility. Firms that adopt the model Triple Bottom Line policy presented below, or develop one substantially like it, will be so identified on the ABA SEER website. The Model Policy will be considered to have been adopted by each endorser not developing its own TBL version. Endorsing firms are also expected to (1) develop a plan for improving performance under their policy; (2) report their progress via the web or otherwise to SEER’s Committee on Climate Change, Sustainable Development and Ecosystems by July 1, 2011 or two years after committing to such a policy, wherever comes later; and (3) provide a program update every two years thereafter. Adopters are expected to review the Guidelines and References, below, as they plan their implementation, but have the option of taking other approaches to fulfill their commitment. Update reports may be sent by email or simply provided through an ongoing live link to the firm’s website showing their sustainability programs/performance. In any event, this progress and program information will also be noted on the ABA SEER website. In addition, the site will list any major sustainability-related recognition (environmental, community, employee, economic) provided to the firm by the ABA; a city, state or foreign bar association; or a governmental entity.

This document contains the following parts:

- A. Background; Frequently Asked Questions.** This provides background information on the sustainability concept, on why and how this initiative was developed, and on how it relates to other ABA initiatives.
- B. Model Sustainability Policy.** This is a one-page policy that covers the economic, social and environmental elements that law firms have found practical and many firms are already following. It was based on the elements of sustainability now embraced by leading corporations, non-governmental organizations and standards-setting bodies. The intention is that the Model Policy be adjusted by each endorsing law organization, producing a version of a commitment to sustainability’s Triple Bottom Line of economic, social and environmental responsibility that best fits the organization’s own location, structure, nature, values and culture. Those endorsing firms not developing their own versions are assumed to adopt the Model Policy as written.
- C. Implementation Guidelines.** The Guidelines provide suggestions on how a firm might use the policy and make it an effective instrument for driving constructive change within the organization. Special guidance is provided on how the approach may be simplified for sole practitioners. The resources mentioned in the References section of this document can be used to help identify practices and programs to be taken by firms to implement their policy. Among the more useful tools cited are those

developed by various ABA sections; bar organizations from California, Oregon and Massachusetts; and a number of major cities. In addition, a document entitled *Shared Ideas for Implementing the ABA Model Sustainability Framework* (“Shared Ideas for Implementation”) is provided on the SEER website. This posting is a periodically updated collection of practices used by various law firms and other service-type organizations to fulfill their economic, social and environmental responsibilities. Bear in mind some listed practices will likely be inappropriate for some firms, and none of these practices are required to be included in the plan. The purpose of the list is simply to stimulate ideas. Each law organization should implement its sustainability policy in a practical way, in a way that is most suitable to its resources, location, structure, values, culture, and nature of operations, and services.

- D. References.** This is provided to help those who seek more insight and help on various sustainability topics related to the practice of law. It mentions other ABA tools and groups, those from a number of state and local bar organizations and cities, as well as other resources.

A. Background: Frequently Asked Questions

1. Why should a law firm or other law organization adopt the Sustainability Framework initiative, especially during tough economic times?

As further explained in the answer to question 6, below, sustainability entails the balance of economic, social and environmental responsibility. It reminds us that in tough economic times, we have a responsibility to sustain the financial viability of our law organization while doing what we can to demonstrate social and environmental actions that help fulfill the expectations of our stakeholders—our partners, employees, clients, suppliers, communities, governments, and others. Indeed, during periods of economic stress, a number of sustainability issues become of paramount importance, such as employee relations, ethical compliance, waste and cost reduction (such as through energy conservation, paper savings, e-communications in lieu of travel, etc.), assistance for the unfortunate, and the counseling of clients on all these matters. As reported in the Wall Street Journal (Mar.20, 2009), some major firms are coping with a drop-off of business by paying their lawyers a reduced salary to perform public service.

Whether in good times or bad, the adoption and implementation of the policy should not only strengthen a firm’s reputation or “brand,” but its efficiency, productivity and employee recruitment and retention. It will more closely align the firm with the growing legions of current and potential clients who are now embracing the Triple Bottom Line of sustainability. Such alignment should enable the firm to better understand and reflect the values of such clients and provide more effective counsel. Moreover, the tool should improve the firm’s appreciation for the critical social, environmental and economic issues that lie ahead for society as a whole, and ultimately, for its clients and itself. Finally, the adoption and implementation of the policy by many ABA members should show others that the association, which has long supported the Triple Bottom Line of sustainability, is willing to “walk the talk” and enhance the reputation of the US legal profession as a responsible, caring contributor to the public good.

2. Why is the ABA involved in this initiative?

Sustainable development./sustainability is not new to the ABA. As far back as 1992, the association made a commitment to sustainable development, reaffirming that commitment in a formal resolution adopted in August 2003. A year before the resolution, ABA President Robert Hirshon wrote Secretary of State Colin Powell expressing the ABA’s desire that the US support the ideas of domestic good governance and the application of

the rule of law in negotiations at the then-upcoming World Summit on Sustainable Development in Johannesburg. Indeed, as noted in the report supporting the 2003 resolution:

“Laws and effective governance are central to sustainable development. Because governance is based largely on law, sustainable development raises profound challenges—and opportunities—for the rule of law and for lawyers.”

The report went on to say:

“Applying sustainable development from a legal perspective means understanding, developing, and applying legal mechanisms that are relevant to the complex relationships among economic, social, and environmental priorities. This suggests a cross sectional approach...that integrates a variety of legal specialties, including environmental, labor, property, tax, corporate, finance, international trade, and risk management.”

The Sustainability Framework offers firms a way to reflect the ABA’s commitment to sustainability in their own operations—to “walk the talk.” In so doing, endorsing firms will no doubt be drawing on and showcasing a range of ABA initiatives and policies they are using, such as those dealing with the environment, diversity, pro bono legal services, and professional responsibility.

3. My law firm would like to adopt the Sustainability Framework. What do we have to do?

The firm need only declare they are endorsing the Model Sustainability Policy presented below or developing one substantially like it and undertake the other steps noted in the General Requirements of the Guidelines below.

4. Why was the Sustainability Framework program developed?

This initiative was developed to give practical effect to the resolutions on sustainability previously adopted by the ABA and to show that the legal profession was willing to share leadership in the march toward sustainability with corporations, NGOs, governments and other sectors of society that have already embraced the Triple Bottom Line of economic, social and environmental responsibility. It responded to law firms that wanted a vehicle by which they could demonstrate their commitment to sustainability to their corporate clients and communities.

5. How was the Sustainability Framework initiative developed? Who was involved?

The Framework was developed by SEER’s CCSDE Committee working for several years with a special team of ABA members from over 20 firms; with the SEER Council, the Law Practice Management Section and the Standing Committee on Environmental Law (SCEL); and with numerous other groups within the ABA. The Framework was also built to embrace environmental and other sustainability practices tools developed by various state and local bar organizations and cities.

As a starting point, the CCSDE group began in late 2006, using a model sustainability policy accepted by 16 major companies in a study commissioned by The Conference Board, a leading US business association. (See The Conference Board, *Going Green: Corporate Commitment to Citizenship and Sustainability Issues Takes on a Greater Role*, Executive Action Series no. 260, p. 7). That model was modified by the working team through 14 rounds of comments and revisions to make it suitable for law organizations.

The tool was vetted through an extensive review process, which included ongoing oversight and support by the SEER Council and SCEL and review at three SEER section meetings. In addition, the document was distributed for comment to the state bar associations and a broad range of ABA groups, including those involved with professional responsibility, labor, diversity, pro bono legal services, students, young lawyers, and women. The following law firms piloted the tool:

- Ballard Spahr Andrews & Ingersoll, LLP
- Berg Hill Greenleaf & Ruscitti LLP

- Giarmarco, Mullins & Horton
- Holland + Knight (Chicago office)
- Levenfeld Pearlstein, LLC
- Manko, Gold, Katcher & Fox, LLP
- McMahon DeGulis, LLP
- Robinson & Cole LLP
- Pepper Hamilton LLP
- Porter Wright Morris & Arthur LLP
- Schwabe Williamson & Wyatt
- Sonnenschein Nath & Rosenthal, LLP
- Nixon Peabody LLP

Many of these firms shared their progress and lessons at a workshop in Chicago in April 2008, and their feedback prompted further improvements to the tool.

6. I thought sustainability was about environmental issues. If so, why does this initiative also cover matters related to economic, staff, community, philanthropic and ethical topics?

Environmental responsibility is just one aspect of sustainability as it applies to organizations, the other being social and economic. Together, these three aspects are often referred to as the “Triple Bottom Line” (TBL) of organizational responsibility. Philanthropic initiatives, employee safety and development, diversity, legal and ethical compliance and other topics covered by the Model Policy for law organizations are consistent with the scope of sustainability as covered by the Global Reporting Initiative’s Sustainability Reporting Guidelines, currently used by three-fourths of the world’s largest companies as the framework for their public sustainability reports. (Such reporting by the 100 largest US companies has doubled from 37 % in 2005 to 65% in 2009.) As noted above, the model policy also very closely tracks one that was accepted by 16 leading North American companies as a reflection of the scope of organizational sustainability. The draft ISO 26000 Standard on social responsibility, which is intended to apply to all types of organizations, also defines sustainable development to encompass the TBL. In the academic world, the Sustainability, Tracking, Assessment and Rating System (STARS 1.0) of January 2010, endorsed by over 500 universities and colleges, notes:

“Today, most uses of and references to sustainability emphasize the concept’s simultaneous economic, environmental, and social dimensions. For example, businesses talk about the triple bottom line: people, planet, and profits (or, alternately, human capital, natural capital, and financial capital). Likewise, sustainability educators commonly refer to the Three E’s of sustainability: economy, ecology, and equity.”

Moreover, the scope of the model policy is consistent with the vision of sustainable development already acknowledged by the House of Delegates (HOD) of the ABA. In its 2003 resolution on sustainable development, the HOD adopted “the internationally accepted concept of sustainable development, as recognized at the United Nations Conference on Environment and Development in 1992 and subsequent international conferences: simultaneous achievement of environmental protection, economic development, social development, and peace, for present and future generations.”

Sustainability is similar to the concept of Corporate Social Responsibility or CSR and the latter terms are often used to mean the full triple bottom line of sustainability. However the ISO 26000 Standard on Social Responsibility (SR) indicates that SR as applied to corporations as well as other organizations covers traditional environmental, social (community and employee) issues as well as the economic well being of supporting communities, but excludes one thing sustainability encompasses: the economic viability of the organization itself.

7. How does this initiative relate to other ABA environmental and social programs concerning law firm practices, such as the Climate Challenge, and ABA’s pro bono, ethical and diversity programs?

The sustainability policy adopted by firms embracing the Framework serves as an umbrella which can sweep in many other ABA groups and initiatives. For example, a number of firms that piloted the Framework are using the ABA-EPA Climate Challenge initiative, which was endorsed by the ABA House of Delegates in its February 2009 resolution, to help address their commitment to environmental responsibility. The policy tool is also intended to be consistent with and support the ABA's initiatives on diversity, pro bono legal services, business development, and professional responsibility, among other areas. It can serve as a vehicle through which firms can showcase their work in these many areas. See the section on References, below, which provides further information on these other ABA programs and groups.

8. If my firm endorses the Framework and develops a policy under it, will we be expected to make changes in it if the tool later changes?

Given the extensive review process that led to the development of the policy tool, it is not anticipated that the tool will change in significant ways in the future. Of course, new ideas for implementation will be shared as firms and ABA and state bar groups contribute them. In any event, firms are not expected to adopt the policy verbatim or to absolutely adhere to the guidelines, and therefore will not lose their status even if adjustments are made to the tool later.

9. The model policy says that the firm will operate “in a way that is ethical and legal” and will embrace its “primary legal and ethical duty” to serve clients honestly and effectively. Given that compliance with law and the code of legal ethics are mandatory, why is it addressed in this model policy, which is discretionary and can be modified?

One of the purposes of the model policy is to help align the legal profession and its understanding of sustainability with the concept being adopted by corporations and other clients. Public sustainability/social responsibility reports and websites of many companies now include data on compliance with law and ethical standards. So do key sustainability/social responsibility standards and other tools. For example, the model sustainability policy for companies developed by The Conference Board (see FAQ no.5), covers it. So does the ISO 26000 social responsibility guideline standard (2010) (see FAQ 6). Indeed, legal and ethical standards manifest the strongest expectation of stakeholders—so important that serious penalties may result from their breach. For this reason, no law firm can be considered to embrace sustainability or social responsibility if it fails to meet legal and ethical standards even if it conforms to all other model policy provisions. Lawyers know that legal and ethical compliance are absolute requirements and it is obvious that reference to such compliance in a model policy does not change those mandates. Rather than weaken legal and ethical compliance, the Sustainability Framework, which recommends a systematic management approach to meeting the policy, should help raise awareness about and strengthen adherence to such compliance,

10. How can a firm claim to embrace sustainability and social responsibility if it may represent clients who want legal advocacy for their unsustainable practices or plans?

The model policy recognizes that a firm's “primary legal and ethical duty to serve (its) clients honestly and effectively.” Under the model policy, firms also commit to keep their employees aware of sustainability issues and to include consideration of such issues in the advice they provide to clients.

Many firms adopting the policy and sustainability practices have found their services to be particularly attractive to clients who also support a sustainability approach. But this does not mean an endorsing firm must turn away other clients who do not support such an approach, even if the advocacy is contrary to sustainability. In such cases the lawyer's obligation is to provide honest and effective representation in accordance with the rules of law and professional ethics. Such representation supports the legal justice system, which in turn serves as a foundation for democratic, socially responsible societies. But as the policy suggests, lawyers from an endorsing firm should always be

alert to opportunities to inform clients about how pro-sustainability approaches may, in the long run, be in the client's own best interests. Indeed, knowledge about sustainability issues and stakeholder expectations can help improve the quality of legal advice to a wide range of clients.
