

## Public Statements

Subject to the following conditions, a Community steering committee may present views on behalf of its Community in the form of written testimony, a letter to the editor, and expert white paper, an amicus brief, etc. (hereinafter “Public Statement”) that:

- addresses a subject matter within the Community’s special expertise; and
- furthers the Communities program’s values of education and professional development by providing high quality and legally accurate analysis; and (2) reflecting the interests the Community’s membership.

The Public Statement must be approved unanimously by all members of the applicable Community’s steering committee participating in the vote.<sup>1</sup> A steering committee may also agree (subject to the same requirement of unanimous consent) to join the Public Statement of another Community. A Community may sign on to a final Public Statement of another party (including parties outside of the Communities program) provided that such a Public Statement be in sufficiently final form that it will not change substantively after the Community’s steering committee has voted to join it.

If a steering committee has fewer than 5 members voting to approve the public statement, the Communities Committee will determine on a case-by-case basis if the committee may publish a Public Statement, per § II.E.

Steering Committees may publish public statements during the 45-day period from July 1 through August 12, during which time committees typically organize themselves. Notice will be sent to all steering committee members during this period. The steering committee’ Public Statement Designee will receive notice on behalf of the committee once leadership report forms are submitted.

The 10-day review period for statements submitted from July 1 through August 15 may be extended by majority vote of the Communities Committee for a period not to exceed seven (7) additional days to allow for the steering committees to organize. During this review period, the Communities Office will send two communications to all steering committees giving them the opportunity to respond.

Further, all Public Statements must bear the following mandatory disclaimer:

*“The views expressed herein are presented on behalf of the [Name] Community, a voluntary association of individuals, most but not necessarily all of whom are members of the D.C. Bar. The D.C. Bar itself made no monetary contribution to fund the preparation or submission of this [brief or statement]. Moreover, the views expressed herein have been neither approved nor endorsed by the D.C. Bar, its Board of Governors, or its general membership.”*

Nothing in the Public Statements or transmittal documents may contradict this disclaimer.

1. Distribution of Proposed Statements

The Community shall submit the proposed Public Statement to the Director of Communities, along with a one-page summary if the proposed Public Statement is longer than one page, and the full text of any rules, legislation, or governmental policy being commented upon. Except in cases where expedited consideration is necessary (*see* Part II.E.2.c, below), these materials must be submitted to the Director of Communities at least 10 business days before the proposed Public Statement is scheduled for publication. The Communities Committee may, in its discretion, shorten this period, but it may not lengthen it.

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<sup>1</sup> For purposes of determining whether unanimity has been reached, members of the steering committee who abstain or recuse themselves are not considered to be participating in the vote. A member should abstain or recuse himself if the member has a conflict of interest that affects the member's objectivity in performing the member's responsibilities. In recusing or abstaining themselves from participating in the vote, members of the steering committee and members of the community participating in drafting the public statement are encouraged to be mindful of the D.C. Rules of Professional Conduct, particularly Rules 6.4 and 1.7, and the responsibility of a member to disclose when the member knows that the interests of a client, which need not be identified, may be materially benefited.

Within three business days of receiving the Community's submission, the Director of Communities will transmit the one-page summary, the full proposed Public Statement, and any underlying legislation, rules, or governmental policy being commented upon to:

- the Chair, Vice Chair, and members of the Communities Committee; and
- the members of each Community steering committee designated to receive proposed Public Statements.

Distributees may make suggestions to improve the clarity and effectiveness of the proposed Public Statement, or to assure fairness and accuracy in the presentation of the facts underlying or bearing on the proposed Public Statement. Such suggestions should be transmitted directly to the sponsoring Community's steering committee chair with sufficient time to allow for revisions. The sponsoring Community's steering committee has the discretion to accept or reject any such suggestions.

If, after circulation and review, changes in the proposed Public Statement raise a substantially different issue of policy, then the modified proposed Public Statement shall be treated as a new Public Statement under the process described in this section and resubmitted to the Director of Communities.

## 2. Communities Committee Review

### a. Uncontested Public Statement

The Community may issue its Public Statement on the fifth business day after it is distributed, unless at least three members of the Communities Committee have requested in writing that the Director of Communities delay the publication of the proposed Public Statement so that it may be considered by the full Committee. For informational purposes only, a copy of the Public Statement should be transmitted to the President of the D.C. Bar at the same time it is submitted for publication.

### b. Contested Public Statement

If, in accordance with Part II.E.2.a, a timely request is made in writing to the Director of Communities that publication of the proposed Public Statement be delayed so that it may be considered by the Communities Committee, the Community may not issue its proposed Public Statement until the matter has been decided by the Communities Committee. The Chair of the Communities Committee, at his or her discretion, may either place the matter on the agenda to be considered at the Committee's next meeting or poll the members of the Committee by email. If the Chair opts for an email poll and a Committee member requests that the matter be discussed at the next scheduled Committee meeting, the matter shall be placed on the agenda for discussion at its next meeting.

If the Committee determines, by a majority of its members present and participating in the vote, that the proposed Public Statement does not address a subject matter within the Community's special expertise or further the Communities program's values of education and professional development by providing high quality and legally accurate analysis and reflecting the interests of the Community's membership,

then the Community may not issue the proposed Public Statement.<sup>2</sup> On the other hand, if the Committee does not so determine by a majority of its members present and participating in the vote, the Community may issue the Public Statement. For informational purposes only, a copy of the Public Statement should be transmitted to the President of the D.C. Bar at the same time it is submitted for publication.

Nothing in these guidelines is intended to preclude a Community from filing a Public Statement that disagrees with the position taken by a different Community in its Public Statement.

However, any such alternative Public Statement must adhere to the same guidelines for submission and review established in Part II E.

### c. Expedited Procedures

In an emergency situation, defined as the exigencies of court or legislative deadlines or timing issues outside of the Community's control, the Community shall make delivery of the proposed statement, and the full text of any rules, legislation or governmental policy being commented upon to the Communities Committee no later than 12:00 p.m. noon 3 business days before the statement is to be submitted to the judicial, legislative or governmental body. Steering Committees shall communicate initial intent to submit a public statement in advance to the Communities Office and the Communities Committee Chair if expedited review will be requested.

The Chair, Communities Committee, will evaluate and determine requests and decide if the statement qualifies for expedited review. Additionally, the Chair will confirm expedited status with the proposing Community within 1 business day. Review is triggered by the request of the Community of jurisdiction. Should the Chair of the Communities Committee determine that the statement does not qualify for expedited review, the Community may request an emergency meeting with the Chair to reconsider.

In an expedited review process, as with the standard process, the statement will be approved unless at least 3 members of the Communities Committee have requested that the Director of Communities delay the publication of the proposed Public Statement so that it may be considered by the full Committee at its next scheduled meeting.

### 3. Subsequent Oral and Written Statements

Once a Community has issued a Public Statement, members of the Community may make oral statements or give oral testimony based upon the Public Statement. To the extent feasible, any oral statement should include the same disclaimer contained in the Public Statement itself; in any event, no oral statement may undermine or contradict such disclaimer. The Director of Communities shall be kept informed of all such oral statements or testimony.

Also, once a Public Statement has been issued by a Community, the Community is authorized to submit any reasonable or necessary follow-up written comments, if such supplementary comments only repeat or clarify positions already taken in the original approved Public Statement, and if they do not take any new

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<sup>2</sup> For purposes of determining whether a majority has been reached, Committee members who abstain or recuse themselves are not considered to be participating in the vote.

positions on behalf of the Community. Any such written comments should include the same disclaimer contained in the Public Statement itself.

Before submitting any such follow-up written comments, the Community's steering committee must certify in writing to the Director of Communities that the comments take no new positions. A copy of all follow-up comments shall be submitted to the Director of Communities prior to publication.