

GUIDELINES FOR PUBLIC STATEMENTS BY THE COLLEGE AND ITS FELLOWS

The College may from time to time wish to publish a statement that reflects the official position of the College. Official positions of the College shall be limited to matters that impact the Mission of the College.

Recognizing that decisions on particular statements will require case-specific review and approval by the Executive Committee or the Board, these Guidelines are designed to provide guidance with respect to public statements.

1. Official Statements of the College. The College may from time to time wish to publish a statement that reflects the official position of the College. Official positions of the College shall be limited to matters that impact the core missions of the College set out in Section 1.1 of the Bylaws.

Although not included among our core missions, collegiality is as important as any of those missions, and no statements should be made which unduly threaten our collegiality by taking a position on one side of a matter of genuine and divisive controversy. That does not mean that a single Fellow or small group of Fellows should be given veto power. A case in point is the official position taken by the College that it disfavors the election of judges. That position is clearly within our core mission; it is a sound position. But it is not a universally held position – many Fellows legitimately disagree. The Board of Regents made the reasoned assessment that a position against judicial elections was so fundamental to our mission that the statement should be issued, despite the existence of less than unanimous support among the Fellows. It is easy to see other issues that could arise where the calculus would be different. While election/merit selection is an area of disagreement, it is a calm disagreement. Take a more emotional issue, like whether we should have the death penalty, and it would be harder for the Board to conclude that the College should take a position at odds with a strongly held minority view.

It is for that reason that official positions require, except in limited emergencies, the thoughtful deliberation of the Board. No official statement should be made unless approved by the Board of Regents after reasonable notice and opportunity for discussion, except, in rare circumstances, where the nature of the statement is time-sensitive and it is impractical to obtain Board consent, in which case the statement may be issued upon unanimous approval of the Executive Committee (“EC”).

2. Amicus Briefs. It is the Policy of the College to file amicus briefs only where its position or argument can add something of significance not otherwise available to the parties. The decision to seek leave to file an amicus brief shall be approved by the Board. If approved, the Board shall designate one or more Fellows to liaise with amicus counsel.

3. General Committee Statements. General Committees may make statements that fall within their mandates. For example, the Federal Civil Procedure Committee may – in fact should – comment on proposed changes to the Federal Rules. Committee statements should be drafted to clearly reflect that they express the views of the *Committee*, not the College. And although the statement will be the Committee’s, no statement should be made until the Committee’s Regent and the EC have had an

opportunity for comment and approval. If there is dissent among the Committee members on the substance of the statement, that fact should be clearly flagged for the attention of the Regent and EC and consideration should be given to expressing the minority view in the statement.

4. State and Province Committee Statements. Statements by State and Province Committees should follow the same guidelines, but, in general, no statement should be made such as “the Fellows of the State of Illinois take the position that . . . “ unless it is literally true – that is, that every Fellow in the State has agreed. It will be rare that a Committee will be able to achieve unanimous consent, so better language will be something like “The members of the Illinois State Committee take the position that . . . “ A caution: the EC is far more likely to sign off on a General Committee statement with a dissent than a divided State/Province Committee statement. In a General Committee, the dissent will be limited to a few individuals. But State/Province Committee members are representatives of the entire State or Province – so the dissenters may and likely do represent a wider group.

5. Statements by Individual Fellows. So long as there is no suggestion that the College endorses the statement of an individual or group of individual Fellows, there is nothing wrong with factually stating that a person happens to be a Fellow. For example, there is nothing wrong with a Fellow mentioning that fact in the byline of a published article such as

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– especially if, as in this example, the Fellow writes well.