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July, 2013

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Available at: https://works.bepress.com/john_dernbach/114/

The growing importance of sustainability to lawyers and the ABA

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Sustainable development has its origins in the conservation and environmental movements in the United States and other countries, and in the laws that were adopted because of those movements. Lawyers in the public and private sectors drafted these laws and worked with clients to implement them. Sustainable development is becoming increasingly important to lawyers and their clients in a world with a growing economy and population in some places, widespread poverty in others, and growing environmental degradation and greenhouse gas emissions. And the ABA, including the Section of Environment, Energy, and Resources (SEER), is keeping step.

Sustainable development in context

Long before the U.N. Conference on Environment and Development (better known as the Earth Summit) in Rio de Janeiro in 1992 brought the term into more common usage, the National Environmental Policy Act of 1969 (NEPA) declared sustainable development to be national policy. NEPA specifically states the national policy “to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans” (42 U.S.C. § 4331(a)).

Sustainability is best understood as a framework (or a perspective, lens, or approach) for the integration or balancing of environmental protection, economic development, and social justice. While these are the three pillars at the core of every sustainability discussion, the term is used in slightly different ways in different contexts. At the international level, where environmental protection and poverty reduction are twin goals, “sustainable development” provides a strong emphasis on the needs of less developed countries. In the business world, the term is usually “sustainable business practices” or the “triple bottom line”—implying that the traditional single economic bottom line must now be reconciled with social and environmental considerations. At the community level, sustainability is used to describe local approaches that focus on quality of life, including “smart growth” in land use planning. In the financial sector, sustainability thinking and activity is organized around the label “ES&G” (Environment, Social, and Governance), a combination that equates to the three pillars of sustainability. To

date, the legal community has effectively participated in the “rule of law” and “good governance” conversations that are fundamental to advancing sustainability. However, given the scope summarized here, it is clear that a broader range of opportunities exists for ABA members in various practice areas to engage in the sustainability dialogue.

ABA resolutions and SEER activities

The American Bar Association House of Delegates has enacted and approved 11 resolutions dating back to 1991 that have continuously reaffirmed the commitment of the ABA to sustainable development. These include, perhaps most prominently, a 2003 resolution (A108) that was prompted by the ABA’s participation in the World Summit on Sustainable Development (WSSD), in Johannesburg, South Africa, in 2002. The 2003 resolution recognized “that good governance and rule of law are essential to achieving sustainable development.” It also encouraged “governments, including U.S. federal, state, local, tribal, and territorial bodies, as well as businesses, nongovernmental organizations, and other entities, to promote sustainable development, including by adopting and implementing appropriate measures with respect to their own facilities and activities.” The concluding sentence in the report accompanying the 2003 resolution captures the ABA’s current position very well: “This resolution is important to the ABA because it positions the ABA to play a significant role in the United States and internationally in supporting efforts to achieve sustainable development, including through partnerships with governments and other entities.”

The ABA participation in WSSD in 2002 and the House of Delegates resolution in 2003 triggered a decade of ABA sustainability activities, especially within SEER. Upon return from Johannesburg, SEER leadership saw the need to reinvigorate and restructure the committee responsible for climate change and sustainable development issues. Now known as the Climate Change, Sustainable Development, and Ecosystems Committee (Committee), it has effectively raised sustainability awareness and literacy in the practicing environmental bar through a wide range of SEER activities, including webinars and Quick Teleconferences, panels at major SEER conferences, a special issue of *Natural Resources & Environment*, and dedicated sustainability roundtables. The Committee has also coordinated a Section-wide sustainability initiative and it has forged alliances with other ABA entities (including the Section of International Law, the Asia Law Initiative, and the former Standing Committee) to present ABA perspectives to external organizations, including the U.S. Department of State. In November 2005, at American University Law School in Washington, D.C., the Committee held the first national conference for lawyers on climate change.

More recent resolutions have built on the foundation of the 2003 resolution, elaborating on the ABA’s commitment to sustainability. For example, in 2008, the ABA House of Delegates urged “the United States government to take a leadership role in addressing the issue of climate change through legal, policy, financial, and educational mechanisms. . . .” The report for the climate change resolution explained that climate change presents not only environmental risks but economic, security, and social risks. The report stated: “To foster sustainable development, the United States should play a leadership role in addressing climate change.” The most recent resolution was adopted by the House of Delegates at its 2012 Mid-Year meeting. That resolution endorsed the Organization for Economic Co-operation

and Development (OECD) Guidelines for Multinational Enterprises. The OECD guidelines call on companies to “[c]ontribute to economic, social and environmental progress with a view to achieving sustainable development.”

The ABA approved a delegation to participate in the United Nations Conference on Sustainable Development in Rio de Janeiro in June 2012, which was held 20 years after the original Earth Summit. Among other things, the ABA delegates blogged from the conference to provide updates and insight into developments.

Expanding sustainability activities

SEER continues and is expanding a variety of sustainability activities that it initiated after the 2003 resolution was adopted. The ABA, in partnership with U.S. Environmental Protection Agency (EPA), created the ABA-EPA Law Office Climate Challenge, a program to encourage law offices to conserve energy and resources, as well as to reduce emissions of greenhouse gases and other pollutants. The ABA-EPA Law Office Climate Challenge was endorsed by the ABA House of Delegates in 2009. The Section also developed the ABA SEER Sustainability Framework for Law Organizations, in which a law organization commits to take steps over time toward sustainability.

SEER now offers conference participants the option of purchasing carbon offsets to account for the carbon impact of their travel. Carbon offsets help pay for methane recovery, wind energy, or other projects through Native Energy, a carbon offset provider. The additional conference fee for carbon offsets also helps fund the One Million Trees Project. Since the One Million Trees project began in 2009, SEER has sponsored plantings at each of its major events, and more than 40,000 trees have been planted. Many of SEER’s award programs include sustainability as a specific criterion in the judging of award applications. SEER is increasing the number of books, other publications, Quick Teleconferences, online resources, and other educational materials that it provides concerning sustainability. In addition, committee newsletters, *Trends*, and *The Year in Review* are now exclusively available electronically.

To be sure, SEER is not the only ABA voice on sustainability. The Section of International Law’s sustainability-related activities include partnership in the Global Forum for Law, Justice, and Development, a new initiative intended to support the legal and institutional foundation for sustainable development. The ABA’s Law Practice Management Section provides online resources for “the sustainable law firm.” Other ABA sections, including the Section of State and Local Government Law and the Section of Real Property, Trust and Estate Law, are producing books, teleconferences, and other information on a variety of sustainability topics. Although not widely known, operations in ABA headquarters in Chicago are based on a commitment to environmental stewardship. Bar associations in California, Pennsylvania, and Massachusetts have adopted model sustainability programs for law organizations. Oregon Lawyers for a Sustainable Future has published its own model sustainability policy for law offices.

Looking ahead

Current ABA efforts promise to take sustainability activities to a new level. A pending 2013 House of Delegates resolution and report will facilitate a broader range of activities, both internal to the ABA and in collaboration with other key domestic and international players in the sustainability dialogue.

Going forward, lawyers will need to become involved in an even broader range of sustainability issues. Clients in business, industry, government, and nongovernmental organizations are increasingly committed to sustainability and increasingly expect their lawyers to have the same commitment and understanding. These clients are driven by many motives, including reputation, cost saving, anticipation of future regulation, profitability, new market opportunities, and moral or ethical concerns about the impact of their actions on present or future generations. Younger lawyers, who represent the future of the legal profession, often understand these issues better than the partners who would hire them. The transition to sustainability in both governmental and private sector decision making is inevitable, and will profoundly affect the legal profession.

Indeed, the report accompanying the ABA House of Delegate's 2003 resolution made clear that sustainability is important not only to environmental lawyers but all lawyers:

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-functional approach...that integrates a variety of legal specialties, including environmental, labor, property, tax, corporate, finance, international trade, and risk management.

It is important for lawyers to raise sustainability issues with clients at appropriate times, and to be able to give them useful advice not only on legal compliance but also on options that sustainability and sustainability tools can provide for them. A major challenge is to create and develop tools that lawyers can use to assist clients. These include financing instruments for renewable energy and energy efficiency, third-party certification agreements, and the like. In addition, a new generation of laws is needed to achieve sustainability on new and broader issues, including but not limited to climate change, biodiversity, and environmentally sustainable economic development. With growing vigor, SEER and the ABA are addressing both the challenges and the opportunities of sustainability.