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Professional Responsibility Committee:

Committee Chair:
Charlie McCallum
Warner Norcross & Judd LLP

Editor-in-Chief:
Brian T. Sumner
Alcoa Inc.

Complete Editorial Board

Announcements:

- Letter from the Committee Chair
  Dear Committee Members,
  I look forward to seeing many of you at the 2012 Annual Meeting in Chicago, August 3-5 (click here for more information about the Annual Meeting). Please plan to attend our program on "Embracing Conflicts: Ethical Issues in Being the Lawyer for the Deal" on Saturday morning, August 4, and our Committee meeting Sunday afternoon, August 5. We will discuss possible 2012 Fall and 2013 Spring Meeting programs at our Committee meeting. Please give me your suggestions for program topics/speakers. We are also looking for a Chair for the Law Firm Counsel Project as well as a Webmaster, a Meetings/Programs Director, and a Membership/Diversity Director. Let me know if you are interested. All of our Subcommittees are now under active leadership. This would be an excellent time for you to get involved in one or more of them. We have the following Subcommittees:
  - Ethics 20/20 (Rew Goodenow, Chair): With the able assistance of Bob Creamer, this Subcommittee has been monitoring and will continue to monitor, the work of the Ethics 20/20 Commission. This Subcommittee will help keep Section members informed of the Commission's work, and will help assemble comments on the Commission's work in process.
  - Ethics and Professional Responsibility in Transactional and Counseling Practice (Greg Duhl, Chair): The Model Rules focus more on the litigation and the dispute resolution practice than on the transactional and counseling practice. This Subcommittee will develop structure and content for ethics in that context.
  - Information Technology Issues in Ethics & Professional Responsibility (Juliet Moringiello, Chair): Ethics 20/20 has focused attention on the implications of existing and emerging technologies for ethics and professional responsibility. This Subcommittee, working closely with the Section's Cyberspace Law Committee, will track and seek to guide legal development in this arena.
  - Multinational Ethics and Professional Responsibility (Jim Tallon, Chair): Many law firms and law departments have become multinational in composition and operation. Even more have become deeply involved in the transnational practice, as have solo and small firm practitioners as well. This Subcommittee will help lead the evolution of ethics and professional responsibility in a global context.
  - Professional Responsibilities of Securities Lawyers (Sy Lorne, Chair): Capital markets and capital formation continue to be at the core of modern business formation and growth. This Subcommittee will monitor and offer
comments on the development of the law regarding the duties of lawyers as gatekeepers and public citizens vis-
à-vis their duties to clients.

- SCEPR Liaison (Bob Creamer, Chair): The ABA Standing Committee on Ethics and Professional Responsibility (SCEPR) continues to play a critical role in the evolution and development of ethics and professional responsibility. This Subcommittee will monitor and comment on the work of SCEPR, and will work with other Section Committees to bring to SCEPR's attention areas of business law in which a SCEPR Formal Opinion or a change in the Model Rules would be in the best interest of the public and the profession.

If you have colleagues who you think might be, or should be, interested in any aspect of the work of the Professional Responsibility Committee, please encourage them to join. If they are not already members of the Section, or of the ABA, we will be happy to acquaint them with the benefits of membership.

Charlie McCallum

- **Annual Meeting Committee Events**
  - **CLE Program "Embracing Conflicts: the Lawyer for the Deal"** - Saturday, August 4, from 10:30 a.m. to 12:30 p.m., in the Chicago Ballroom A/B (Chicago Marriott Downtown, 5th floor).
  - **Committee Leadership Meeting** - Sunday, August 5, from 9:00 a.m. to 10:00 a.m., in the Kansas City Room (Chicago Marriott Downtown, 5th floor).
  - **Full Committee Meeting** - Sunday, August 5, from 10:30 a.m. to 12:30 p.m., in the Chicago Ballroom C (Chicago Marriott Downtown, 5th floor).

- **Committee Appointments**
  - Juliet Morigiello has been appointed Chair of a new Subcommittee on Information Technology Issues in Ethics and Professional Responsibility. Juliet will also be the Committee's Director of Technology and liaison to the Section's Technology Committee.
  - Greg Duhi has been appointed Chair of a new Subcommittee on Ethics and Professional Responsibility in Transactional and Counseling Practice.
  - Ed Fleischman, Bill Freivogel, Geoff Hazard, Rebecca Lambeth, Sy Lorne, Bob Mundheim, and Lucian Pera have been appointed to the Committee's Board of Advisors.

- **Appointment of Stephen Giller as a Business Law Section Advisor**
  - Stephen Giller, the Elihu Root Professor of Law at the New York University School of Law, has been named a Business Law Section Advisor. His two-year term will begin at the conclusion of the Annual Meeting in August. A distinguished legal ethicist and the author of a leading casebook on professional responsibility, Prof. Giller was awarded the prestigious Michael Franck Award by the ABA Center for Professional Responsibility in 2011. Prof. Giller is a member of the ABA Ethics 20/20 Commission and previously served as a member of the ABA Multijurisdictional Practice Commission. He will become the fourth member of the Professional Responsibility Committee's leadership to have been appointed as a Business Law Section Advisor, joining Bob Mundheim, Geoff Hazard, and Ed Fleischman.

- **Ethics 20/20 Update**
  - This spring, the Ethics 20/20 Commission finalized its proposals to the House of Delegates at the Annual Meeting. By way of background, the Commission released its revised draft proposals in February (available [here](http://www.abanet.org/cgibin/et/2020ProposalRelease.html)). The Committee developed comments on the Commission's revised draft proposals relating to technology and confidentiality, technology and client development, outsourcing, and confidentiality and the detection of conflicts. The Section Council endorsed the Committee's comments, which were transmitted to the Commission. You may review the Section's comment letter [here](http://www.abanet.org/cgibin/et/2020CommentLetter.html). The Commission followed up with the Committee in a letter response (available [here](http://www.abanet.org/cgibin/et/2020CommentLetterResponse.html)) and released its final proposals, which the Commission explained in an [Introduction & Overview](http://www.abanet.org/cgibin/et/2020FinalProposalOverview.html):
    - Technology & Confidentiality
    - Technology & Client Development
    - Outsourcing
    - Practice Pending Admission
    - Admission by Motion
    - Model Rule 1.6 (Detection of Conflicts of Interest)
  - The House of Delegates will consider these proposals at the Annual Meeting. Visit the Commission's [homepage](http://www.abanet.org/cgibin/et/) for additional background and resources.

- **Electronic Attorney-Client Communications**
  - A recent article by Rebecca Bolin, a Resident Fellow at the Yale Law School Information Society Project, raises concerns about the use of electronic means for attorney-client communications. Specifically, the article discusses the dated and uncertain legal foundation for the privilege protecting such communications, the risk of waivers of privacy protections due to internet provider policies, and unrelated disclosure by third parties. You can find the article [here](http://www.abanet.org/cgibin/et/2020ElectronicAttorneyClientCommunications.html).

- **Use of Technology for Investigative Purposes**

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**Featured Content:**
Technology raises different concerns in the investigations context, as noted in a recent article by Shane Witnov of Fenwick & West LLP. The proliferation of information available publicly and semi-publicly (that is, on a public website but restricted to "friends," "connections," and the like) has led to new ways to mine data about adversaries, witnesses, jurors, and other parties. This article addresses the ethical and legal parameters governing the collection of information by lawyers and their investigations through such media, including the use of undercover techniques and subterfuge to gain access to semi-public information. You can find the article here.

- **Lawyers' Mobility, Lateral and International**
  Another change parrelling the evolution of the use of technology in the law is the mobility of lawyers. Two species of this trend were explored in articles developed for programs held at the Section's Spring Meeting. First, Bob Mundheim explains the risks inherent in lateral mobility and ways of mitigating those risks. You can find the article here. Second, Sy Lorne elaborates on the issues surrounding the absence of a regulatory framework that effectively addresses the realities of non-U.S. licensed lawyers "practicing law" - physically or virtually - in the United States. You can find the article here.

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**In the News:**

- **Misconduct: Duties of Disclosure and Supervision**
  In February, the long-running saga involving Maine law firm Verrill Dana LLP came to a close following a review by Maine's highest court. The matter involved a partner who had allegedly been embezzling money from his trusts and estates clients and raised questions about the supervisory and reporting duties of law firms and their management committees when they discover significant misconduct. Hinshaw & Culbertson LLP prepared a detailed overview of the litigation, available here.

- **Relationships with Foreign Entities with Non-Lawyer Owners and Managers**
  In March, the New York State Bar Association Committee on Ethics issued Opinion 911, which addressed whether New York lawyers could enter into a business relationship with a foreign entity organized under foreign law that permits entities with non-lawyer owners and managers to provide legal services, under which business relationship the New York lawyers would establish a New York office where they would represent New York clients. The NYSBA Committee on Ethics opined that such a business relationship was not permitted under New York's professional conduct rules. You may review Opinion 911 here and Professor Stephen Gillers's commentaries on the opinion here and on the broader issues related to cross-border practice here.

- **Ninth Circuit Rejects Selective Waiver**
  In April, the Ninth Circuit has joined the vast majority of federal appellate courts rejecting the selective waiver doctrine. In this matter (In re Pacific Pictures Corp. et al.), a lawyer disclosed attorney-client privileged content in connection with a government investigation and then asserted the privilege over the same content vis-à-vis private parties. The court's reasoning focused on the policy behind the privilege: to encourage candid communication between attorney and client. You will find the opinion here.

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