RESOLVED, That the American Bar Association adopts the Model Rule on Practice Pending Admission as follows:

ABA Model Rule on Practice Pending Admission

1. A lawyer currently holding an active license to practice law in another U.S. jurisdiction and who has been engaged in the active practice of law for three of the last five years, may provide legal services in this jurisdiction through an office or other systematic and continuous presence for no more than [365] days, provided that the lawyer:

   a. is not disbarred or suspended from practice in any jurisdiction and is not currently subject to discipline or a pending disciplinary matter in any jurisdiction;
   b. has not previously been denied admission to practice in this jurisdiction or failed this jurisdiction’s bar examination;
   c. notifies Disciplinary Counsel and the Admissions Authority in writing prior to initiating practice in this jurisdiction that the lawyer will be doing so pursuant to the authority in this Rule;
   d. submits within [45] days of first establishing an office or other systematic and continuous presence for the practice of law in this jurisdiction a complete application for admission by motion or by examination;
   e. reasonably expects to fulfill all of this jurisdiction’s requirements for that form of admission;
   f. associates with a lawyer who is admitted to practice in this jurisdiction;
   g. complies with Rules 7.1 and 7.5 of the Model Rules of Professional Conduct [or jurisdictional equivalent] in all communications with the public and clients regarding the nature and scope of the lawyer’s practice authority in this jurisdiction; and
   h. pays any annual client protection fund assessment.
2. A lawyer currently licensed as a foreign legal consultant in another U.S. jurisdiction may provide legal services in this jurisdiction through an office or other systematic and continuous presence for no more than [365] days, provided that the lawyer:

   a. provides services that are limited to those that may be provided in this jurisdiction by foreign legal consultants;

   b. is a member in good standing of a recognized legal profession in the foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;

   c. submits within [45] days of first establishing an office or other systematic and continuous presence for the practice of law in this jurisdiction a complete application for admission to practice as a foreign legal consultant;

   d. reasonably expects to fulfill all of this jurisdiction’s requirements for admission as a foreign legal consultant; and

   e. meets the requirements of paragraphs 1(a), (b), (c), (f), (g), and (h) of this Rule.

3. Prior to admission by motion, through examination, or as a foreign legal consultant, the lawyer may not appear before a tribunal in this jurisdiction that requires pro hac vice admission unless the lawyer is granted such admission.

4. The lawyer must immediately notify Disciplinary Counsel and the Admissions Authority in this jurisdiction if the lawyer becomes subject to a disciplinary matter or disciplinary sanctions in any other jurisdiction at any time during the [365] days of practice authorized by this Rule. The Admissions Authority shall take into account such information in determining whether to grant the lawyer’s application for admission to this jurisdiction.

5. The authority in this Rule shall terminate immediately if:

   a. the lawyer withdraws the application for admission by motion, by examination, or as a foreign legal consultant, or if such application is denied, prior to the expiration of [365] days;

   b. the lawyer fails to file the application for admission within [45] days of first establishing an office or other systematic and continuous presence for the practice of law in this jurisdiction;

   c. the lawyer fails to remain in compliance with Paragraph 1 of this Rule;

   d. the lawyer is disbarred or suspended in any other jurisdiction in which the lawyer is licensed to practice law; or

   e. the lawyer has not complied with the notification requirements of Paragraph 4 of this Rule.

6. Upon the termination of authority pursuant to Paragraph 5, the lawyer, within [30] days, shall:

   a. cease to occupy an office or other systematic and continuous presence for the practice of law in this jurisdiction unless authorized to do so pursuant to another Rule;
b. notify all clients being represented in pending matters, and opposing counsel or
cco-counsel of the termination of the lawyer’s authority to practice pursuant to this
Rule;
c. not undertake any new representation that would require the lawyer to be
admitted to practice law in this jurisdiction; and
d. take all other necessary steps to protect the interests of the lawyer’s clients.

7. Upon the denial of the lawyer’s application for admission by motion, by examination, or
as a foreign legal consultant, the Admissions Authority shall immediately notify
Disciplinary Counsel that the authority granted by this Rule has terminated.

8. The Court, in its discretion, may extend the time limits set forth in this Rule for good
cause shown.

Comment
[1] This Rule recognizes that a lawyer admitted in another jurisdiction may need to
relocate to or commence practice in this jurisdiction, sometimes on short notice. The admissions
process can take considerable time, thus placing a lawyer at risk of engaging in the unauthorized
practice of law and leaving the lawyer’s clients without the benefit of their chosen counsel. This
Rule closes this gap by authorizing the lawyer to practice in this jurisdiction for a limited period
of time, up to 365 days, subject to restrictions, while the lawyer diligently seeks admission. The
practice authority provided pursuant to this Rule commences immediately upon the lawyer’s
establishment of an office or other systematic and continuous presence for the practice of law.
[2] Paragraph 1(f) requires a lawyer practicing in this jurisdiction pursuant to the
authority granted under this Rule to associate with a lawyer who is admitted to practice law in
this jurisdiction. The association between the incoming lawyer and the lawyer licensed in this
jurisdiction is akin to that between a local lawyer and a lawyer practicing in a jurisdiction on a
temporary basis pursuant to Model Rule of Professional Conduct 5.5(c)(1).
[3] While exercising practice authority pursuant to this Rule, a lawyer cannot hold out to
the public or otherwise represent that the lawyer is admitted to practice in this jurisdiction. See
Model Rule of Professional Conduct 5.5(b)(2). Because such a lawyer will typically be assumed
to be admitted to practice in this jurisdiction, that lawyer must disclose the limited practice
authority and jurisdiction of licensure in all communications with potential clients, such as on
business cards, websites, and letterhead. Further, the lawyer must disclose the limited practice
authority to all potential clients before agreeing to represent them. See Model Rules 7.1 and
7.5(b).
[4] The provisions of paragraph 5 (a) through (d) of this Rule are necessary to avoid
prejudicing the rights of existing clients or other parties. Thirty days should be sufficient for the
lawyer to wind up his or her practice in this jurisdiction in an orderly manner.

FURTHER RESOLVED, That the American Bar Association amends the black letter and
Comment to Rule 5.5 of the ABA Model Rules of Professional Conduct dated August 2012, as
follows (insertions underlined, deletions struck through):
Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that provide legal services in this jurisdiction that:

(1) are provided to the lawyer’s employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

Comment

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which
includes statute, court rule, executive regulation or judicial precedent. See, e.g., The ABA Model Rule on Practice Pending Admission.

... [21] Paragraphs (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.
REPORT

The ABA Commission on Ethics 20/20 has examined how globalization and technology are transforming the legal marketplace and fueling cross-border practice. In studying these developments, the Commission has reviewed the existing regulatory framework governing multijurisdictional practice and lawyer mobility and produced several Resolutions and Reports. The Resolutions accompanying this Report contain proposals that are designed to address the ethics and regulatory issues associated with a lawyer’s establishment of a practice in a new jurisdiction.

The Commission is proposing adoption of a new standalone ABA Model Rule on Practice Pending Admission, which would be cross-referenced in Rule 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law) of the Model Rules of Professional Conduct. The new Model Rule on Practice Pending Admission would enable lawyers to practice in a new jurisdiction while the lawyer actively pursues admission through one of the procedures that the jurisdiction authorizes, such as admission by motion or passage of that jurisdiction’s bar examination.

This proposal recognizes the reality that, in today’s legal services marketplace, a lawyer licensed in one U.S. jurisdiction may need to relocate to a new U.S. jurisdiction, sometimes on short notice, and that the admissions process in the new jurisdiction can take considerable time. Subject to numerous restrictions to protect clients and the public, the new Model Rule is designed to permit the relocating lawyer to practice in the new jurisdiction in the interim, thus affording clients their choice of counsel and giving lawyers the ability to practice without the risk of engaging in the unauthorized practice of law. The Commission is also proposing conforming amendments to Rule 5.5 of the ABA Model Rules of Professional Conduct (Unauthorized Practice of Law; Multijurisdictional Practice of Law) that are designed to alert lawyers to the practice authority afforded by the new Model Rule on Practice Pending Admission.

I. Model Rule on Practice Pending Admission

Technological and economic changes have produced an increase in cross-border practice, revealing an important gap in the practice authority granted by Model Rule 5.5(d). That gap affects an increasing number of lawyers who have found it necessary to quickly establish a practice in a jurisdiction where they are not otherwise admitted. For example, a lawyer may need to relocate in order to accommodate the needs of a client who has moved to a new jurisdiction. Or the lawyer may receive a job opportunity in a jurisdiction other than the jurisdiction of original licensure or be transferred to another jurisdiction, often requiring relocation within a very short timeframe. Lawyers also frequently have to relocate due to changes in personal circumstances, such as the relocation of a spouse or domestic partner due to military deployment or other professional opportunities. In sum, lawyers increasingly need to relocate during their careers, often more than once and frequently without much notice.

1 In February 2012, the ABA House of Delegates recognized the frequent relocation needs of lawyers who are the spouses of deployed military personnel by adopting new policies designed to ease barriers to their ability to practice in new jurisdictions. ABA Resolution 108 (Feb. 2012), http://www.abanow.org/wordpress/wp-content/files_flutter/13285629012012mm108.pdf.
The Commission found and heard that, despite the increasing need to relocate, the admissions process for these lawyers can take considerable time. For example, the admission by motion process requires an applicant to complete and submit a lengthy application that requires personal and professional information that can take weeks or months to compile. The process typically requires a lawyer to obtain proof of licensure from the lawyer’s home jurisdiction, submit evidence of a passing score on the Multistate Professional Responsibility Examination, and accumulate substantial personal and professional information in order to satisfy the character and fitness requirements of the jurisdiction. If the lawyer does not qualify for admission by motion (e.g., the lawyer has not satisfied the durational practice requirements), the lawyer will need to sit for the jurisdiction’s bar examination, which is administered only twice per year.

The Commission found that this time consuming process can adversely affect lawyers’ ability to represent their existing clients effectively and can have adverse consequences on lawyers’ careers in a marketplace that requires an increasing amount of cross-border practice. Thus, the Commission concluded that, assuming procedural safeguards are put in place, these relocating lawyers should be permitted to establish a continuous and systematic presence for the practice of law in the new jurisdiction for a limited time (not to exceed 365 days) while diligently pursuing formal admission. The proposed new standalone Model Rule on Practice Pending Admission, if adopted, would authorize this form of practice.

A Comment to the Model Rule makes clear that the 365 day time period begins to toll immediately upon the lawyer’s establishment of an office or other systematic and continuous presence for the practice of law in the jurisdiction. This would prevent the lawyer from using the 45 day period within which to file an application for admission as additional time in which to practice there. At the same time, however, the Commission also recognized that it may be necessary to extend the 365 day limit if (for reasons outside of the lawyer’s control) the bar admission process takes longer than one year. To address that issue, the Commission has included a paragraph that provides that, for good cause shown by the applicant, the Court may, in its discretion, extend the time limits set forth in the Model Rule.

The proposed new Model Rule on Practice Pending Admission also includes a separate section that allows a foreign lawyer already licensed in one U.S. jurisdiction as a foreign legal consultant to continue practicing as a foreign legal consultant in another U.S. jurisdiction while an application to become a foreign legal consultant is pending in that new U.S. jurisdiction. It is important to note that this provision does not create any practice authority for foreign lawyers beyond what the Model Rules have already long allowed (e.g., rules relating to licensing and practice by foreign legal consultants and rules governing whether foreign lawyers can sit for a particular jurisdiction’s bar examination). The section merely provides (subject to important limitations) that a foreign lawyer who is already admitted in a U.S. jurisdiction as a foreign legal consultant may continue to practice as such while their application for that form of admission is pending in another U.S. jurisdiction.

The Commission’s proposal in this regard is not without precedent. The District of Columbia allows out-of-state lawyers to practice law from a principal office located in the District of Columbia for a period not to exceed 360 days during the pendency of a person’s first application for admission to the District of Columbia Bar. The Commentary to that Rule states

2 D.C. CT. OF APPEALS R. 49(c)(8) (Limited Duration Supervision By D.C. Bar Member) http://www.dcappeals.gov/decourts/docs/rule49.pdf.
that it is designed to provide a one-time grace period for out-of-state lawyers who are moving their principal office to the District of Columbia. Missouri also has a similar procedure, 3 and New York recently adopted a similar provision for in-house lawyers. 4 The Commission inquired about and did not learn of any problems caused by these provisions.

The Commission nevertheless concluded that, to ensure that lawyers do not abuse the proposed exception or use this privilege in ways that would put the public at risk, numerous restrictions and limitations are appropriate. First, in order to qualify to practice pursuant to this new Model Rule, the lawyer must have been engaged in the active practice of law for three of the last five years. This time in practice requirement is consistent with the practice requirement in the newly amended Model Rule for Admission by Motion and would prevent a newly admitted lawyer (e.g., one who has passed the bar examination in a state with a very high bar passage rate) from using the new Model Rule to establish a practice in another jurisdiction (e.g., a jurisdiction with a very low bar passage rate), while studying for and waiting for the results of the bar examination in that other jurisdiction.

Second, the lawyer must not be disbarred or suspended from practice in any jurisdiction and must not currently be subject to discipline or be the subject of a pending disciplinary matter in any jurisdiction.

Third, the lawyer must not have been previously denied admission to practice in the jurisdiction (e.g., due to a failure to satisfy the jurisdiction’s character and fitness requirements) or previously failed the jurisdiction’s bar examination. This requirement is designed to ensure that a lawyer does not use the authority to practice under the Model Rule on Practice Pending Admission to circumvent a prior denial of the right to practice in the jurisdiction. For example, if a lawyer fails the bar examination in one jurisdiction and passes it in another, the lawyer cannot establish a practice in the former jurisdiction while waiting to re-take that jurisdiction’s bar examination.

The Commission considered whether a failure of the jurisdiction’s bar exam should be disqualifying for only a limited period of time (e.g., five years), but concluded that a cap would allow a lawyer who failed the jurisdiction’s bar examination (and whose competence was, therefore, previously called into question in that jurisdiction) to engage in the practice of law in that jurisdiction without having completed a thorough vetting process, like admission by motion.

Fourth, the lawyer must notify Disciplinary Counsel and the licensing authority in writing that the lawyer is taking advantage of the practice authority in the Model Rule on Practice Pending Admission. This requirement is intended to ensure that the disciplinary and licensing authorities are aware of the lawyer’s presence and intention to establish an ongoing practice in the jurisdiction under the Rule.

Fifth, the lawyer must submit an application for admission by motion, examination, or as a foreign legal consultant within [45] days of first providing legal services. 5 The purpose of this

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5 Registration as in-house counsel is not listed because Rule 5.5(d)(1) already provides authority for lawyers to practice as in-house counsel in a jurisdiction without being fully admitted to practice there. Although some jurisdictions require these
requirement is to ensure that a lawyer is serious about applying for admission in the new jurisdiction and applies promptly upon arriving there. The time frame is placed in brackets so that a jurisdiction can tailor it according to the particular needs of that jurisdiction.

Sixth, the lawyer must have a reasonable expectation that the lawyer will fulfill all of the jurisdiction’s requirements for admission. This requirement is analogous to Rule 5.5(c)(2), which permits a lawyer to practice temporarily in a jurisdiction in connection with a litigation matter if the lawyer “reasonably expects to be . . . authorized” to appear before a tribunal in that jurisdiction.

Seventh, the lawyer must associate with a lawyer who is licensed to practice in the jurisdiction. This requirement is designed to ensure that the incoming lawyer has the ability to consult with a lawyer who is licensed in the jurisdiction regarding any issues that may require knowledge of distinctly local laws or procedures. This requirement is similar to the requirement in Rule 5.5(c)(1), which permits an out-of-state lawyer to practice temporarily in the jurisdiction if the lawyer associates with a lawyer who is admitted in the jurisdiction. The Commission was reluctant to impose a stricter requirement, such as a requirement to be directly supervised by a lawyer who is admitted in the jurisdiction, because of the particular obstacles such a requirement would impose on solo practitioners. In particular, in-state lawyers may be reluctant to directly supervise a lawyer from another jurisdiction who is not in the same office, because of the administrative difficulties associated with supervising a lawyer in a different law office. For these reasons, the Commission concluded that the “association” requirement, which has worked well in the context of temporary practice under Rule 5.5(c)(1), is an adequate safeguard in the context of the Model Rule on Practice Pending Admission as well.

Eighth, Paragraph 4 provides that the lawyer taking advantage of the practice authority conferred by the Model Rule must immediately notify Disciplinary Counsel and the Admissions Authority if, at any time during the [365] days of practice, the lawyer becomes subject to a disciplinary matter or disciplinary sanctions are imposed upon the lawyer in any other jurisdiction. Under those circumstances, the Admissions Authority must take that information into account in determining whether to grant the lawyer’s application for admission or (as explained below) whether to terminate the lawyer’s right to continue practicing pursuant to the new Model Rule.

Ninth, Paragraph 5 provides that the practice authority terminates immediately under a number of circumstances. For example, it terminates if the lawyer withdraws the application for admission or the application is denied before the expiration of the 365 day period (e.g., the application for admission by motion is denied or the lawyer fails the jurisdiction’s bar exam).
examination), or if the lawyer fails to file an application for admission within 45 days. Similarly, the practice authority terminates immediately if the lawyer fails to remain in compliance with the requirements of Paragraph 1 of the Model Rule or if the lawyer, after commencing practice, is subsequently suspended or disbarred in any other jurisdiction where the lawyer is admitted to practice or fails to comply with the notification requirements of Paragraph 4 of the Model Rule.

Tenth, upon denial of the application for admission, Paragraph 7 provides that the Admissions Authority must notify Disciplinary Counsel that the authority granted pursuant to the Rule has terminated. Concurrently, pursuant to Paragraph 6, the lawyer must stop practicing in the jurisdiction unless authorized to do so pursuant to another Rule; notify all clients being represented in pending matters in the jurisdiction, as well as opposing counsel or co-counsel, that the lawyer’s practice authority has terminated; and not undertake any new representation that would require the lawyer to be admitted to practice law in the jurisdiction. These requirements are analogous to the client protection measures in Rule 27 (“Notice to Clients, Adverse Parties, and Other Counsel”) of the ABA Model Rules for Lawyer Disciplinary Enforcement applicable to lawyers disbarred, placed on inactive status due to disability or suspended for more than six months.

Eleventh, a Comment to the proposed Model Rule would remind lawyers about their obligations under Rule 5.5(b)(2). In particular, the clear import of Rule 5.5(b)(2) is that a lawyer who practices in a jurisdiction pursuant to the authority contained in the Model Rule on Practice Pending Admission cannot “hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.” The proposed new Comments would remind lawyers of this restriction and emphasize that, to avoid misleading potential clients, lawyers also have to disclose their limited practice authority and jurisdiction of licensure in all communications with potential clients, such as on business cards, websites, and letterhead, and explicitly disclose the lawyer’s limited authority to all potential clients before agreeing to represent them.

Finally, Paragraph 3 makes clear that the practice authority does not extend to appearances before a tribunal. The lawyer would have to obtain pro hac vice admission in order to appear before a tribunal in that jurisdiction.

II. Conforming Amendment to Model Rule 5.5(d)

The Commission first recommends that Rule 5.5(d) be amended to clarify the purpose of the paragraph. Rule 5.5(d) was intended (and has been interpreted) to permit a lawyer, under limited circumstances, to establish an office or other systematic and continuous presence for the practice of law in a jurisdiction where the lawyer is not otherwise admitted to practice. Except for those limited circumstances, an out-of-state lawyer must become admitted to practice law generally in the jurisdiction in order to establish an office or engage in any other systematic or continuous practice of law there. The Commission concluded that the prefatory language in Rule 5.5(d) is not sufficiently clear in this regard and that the prefatory language should state explicitly that paragraph (d) is intended to explain when a lawyer may “provide legal services through an office or other systematic and continuous presence” in the jurisdiction.

To help alert lawyers to the new practice authority in the Model Rule on Practice Pending Admission, the Commission also proposes to amend the black letter of Model Rule 5.5(d)(2) to
emphasize that lawyers can practice in another jurisdiction on a systematic and continuous basis as long as another “rule” so provides. Comment [18] to Rule 5.5 would then make an explicit cross-reference to the proposed Model Rule on Practice Pending Admission.

III. Conclusion

Globalization, changes in technology, and client demands have fueled an increase in cross-border practice as well as a related need for lawyers to relocate to new jurisdictions. The Resolutions accompanying this Report are intended to permit lawyers to respond to these developments, while providing adequate safeguards for clients and the public. Accordingly, the Commission respectfully requests that the House of Delegates adopt the proposed amendments set forth in the accompanying Resolutions.

Respectfully submitted,

Jamie S. Gorelick and Michael Traynor, Co-Chairs
ABA Commission on Ethics 20/20

August 2012
105D

GENERAL INFORMATION FORM

Submitting Entity: ABA Commission on Ethics 20/20

Submitted By: Jamie S. Gorelick and Michael Traynor, Co-Chairs

1. Summary of Resolution(s).

Resolution 105d: Model Rule on Practice Pending Admission

- The Commission’s proposal recognizes that, in today’s legal marketplace, a lawyer licensed in one U.S. jurisdiction may need to relocate to a new U.S. jurisdiction, sometimes on short notice, and that the admissions process in the new jurisdiction may take considerable time. Subject to numerous restrictions designed to protect clients and the public, the proposed new Model Rule on Practice Pending Admission will permit the relocating lawyer to practice in the new jurisdiction in the interim, thus affording clients their choice of counsel and giving lawyers the ability to practice without the risk of engaging in the unauthorized practice of law.

- The Commission is also proposing conforming amendments to Rule 5.5 of the ABA Model Rules of Professional Conduct (Unauthorized Practice of Law; Multijurisdictional Practice of Law) that are designed to alert lawyers to the practice authority afforded by the new Model Rule on Practice Pending Admission.

2. Approval by Submitting Entity.

The Commission approved this Resolution and Report at its April 12-13, 2012 meeting.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this resolution and how would they be affected by its adoption?

In addition to the creation of a new ABA Model Rule, the adoption of this Resolution would require amendments to the ABA Model Rules of Professional Conduct and the ABA Model Rule on Admission by Motion (see Resolution 105e).
5. **What urgency exists which requires action at this meeting of the House?**

The ABA is the national leader in developing and interpreting standards of legal ethics and professional regulation and has the responsibility to ensure that its Model Rules of Professional Conduct and related policies keep pace with social change and the evolution of law practice. The ABA’s last “global” review of the Model Rules and related policies concluded in 2002, with the adoption of the recommendations of the ABA Commission on Evaluation of the Rules of Professional Conduct (“Ethics 2000 Commission”) and the ABA Commission on Multijurisdictional Practice (“MJP Commission”). The Commission on Ethics 20/20 was appointed in August 2009 to conduct the next overarching review of these policies.

Resolution 105d recognizes that, in today’s legal services marketplace, a lawyer licensed in one U.S. jurisdiction may need to relocate to a new U.S. jurisdiction, sometimes on short notice, and that the admissions process in the new jurisdiction can take considerable time. Subject to numerous restrictions that are designed to protect clients and the public, the new Model Rule will permit the relocating lawyer to practice in the new jurisdiction in the interim, thus affording clients their choice of counsel and giving lawyers the ability to practice without the risk of engaging in the unauthorized practice of law. The Commission is also proposing conforming amendments to Rule 5.5 of the ABA Model Rules of Professional Conduct (Unauthorized Practice of Law; Multijurisdictional Practice of Law) that are designed to alert lawyers to the practice authority afforded by the new Model Rule on Practice Pending Admission.

6. **Status of Legislation.** (If applicable)

N/A

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

The Center for Professional Responsibility will publish any updates to the ABA Model Rules of Professional Conduct and Comments, and also will publish electronically the new Model Rule on Practice Pending Admission. The Policy Implementation Committee of the Center for Professional Responsibility has in place the procedures and infrastructure to implement any policies proposed by the Ethics 20/20 Commission that are adopted by the House of Delegates. The Policy Implementation Committee and Ethics 20/20 Commission have been in communication in anticipation of the implementation effort. The Policy Implementation Committee has been responsible for the successful implementation of the recommendations of the ABA Ethics 2000 Commission, the Commission on Multijurisdictional Practice and the Commission to Evaluate the Model Code of Judicial Conduct.
8. **Cost to the Association.** (Both direct and indirect costs)

None.

9. **Disclosure of Interest.** (If applicable)

10. **Referrals.**

    From the outset, the Ethics 20/20 Commission concluded that transparency, broad outreach and frequent opportunities for input into its work would be crucial. Over the last three years the Commission routinely released for comment to all ABA entities (including the Conference of Section and Division Delegates), state, local, specialty and international bar associations, courts and the public a wide range of documents, including issues papers, draft proposals, discussion drafts, and draft informational reports. The Commission held eleven open meetings where audience members participated; conducted numerous public hearings and roundtables, domestically and abroad; created webinars and podcasts; made CLE presentations; and received and reviewed hundreds of written and oral comments from the bar and the public. To date, the Commission has made more than 100 presentations about its work, including presentations to the Conference of Chief Justices, the ABA House of Delegates, the ABA Board of Governors, the National Conference of Bar Presidents, numerous ABA entities, as well as local, state, and international bar associations.

    All materials were posted on the Commission’s website. The Commission created and maintained a listserv for interested persons to keep them apprised of the Commission’s activities. There are currently 725 people on that list.

    The Commission’s process was collaborative. It created seven substantive Working Groups with participants from relevant ABA and outside entities. Included on these Working Groups were representatives of the ABA Standing Committee on Ethics and Professional Responsibility, ABA Standing Committee on Professional Discipline, ABA Standing Committee on Client Protection, ABA Standing Committee on Delivery of Legal Services, ABA Section of International Law, ABA Litigation Section, ABA Section of Legal Education and Admissions to the Bar, ABA Section of Real Property, Trust and Estate Law, ABA Task Force on International Trade in Legal Services, ABA General Practice, Solo and Small Firm Division, ABA Young Lawyers Division, ABA Standing Committee on Specialization, ABA Law Practice Management Section, and the National Organization of Bar Counsel.
11. **Contact Name and Address Information.** (Prior to the meeting)

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12. **Contact Name and Address Information.** (Who will present the report to the House?)

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1. Summary of the Resolution(s)

Resolution 105d: Model Rule on Practice Pending Admission

- The Commission’s proposal recognizes that, in today’s legal marketplace, a lawyer licensed in one U.S. jurisdiction may need to relocate to a new U.S. jurisdiction, sometimes on short notice, and that the admissions process in the new jurisdiction may take considerable time. Subject to numerous restrictions designed to protect clients and the public, the proposed new Model Rule on Practice Pending Admission will permit the relocating lawyer to practice in the new jurisdiction in the interim, thus affording clients their choice of counsel and giving lawyers the ability to practice without the risk of engaging in the unauthorized practice of law.

- The Commission is also proposing conforming amendments to Rule 5.5 of the ABA Model Rules of Professional Conduct (Unauthorized Practice of Law; Multijurisdictional Practice of Law) that are designed to alert lawyers to the practice authority afforded by the new Model Rule on Practice Pending Admission.

2. Summary of the Issue that the Resolution Addresses

The ABA’s last “global” review of the Model Rules of Professional Conduct and related policies concluded in 2002, with the adoption of the recommendations of the ABA Commission on Evaluation of the Rules of Professional Conduct (“Ethics 2000 Commission”) and the ABA Commission on Multijurisdictional Practice (“MJP Commission”). As the national leader in developing and interpreting standards of legal ethics and professional regulation, the ABA has the responsibility to ensure that its Model Rules of Professional Conduct and related policies keep pace with social change and the evolution of law practice. To this end, in August 2009, then-ABA President Carolyn B. Lamm created the Commission on Ethics 20/20 to study the ethical and regulatory implications of globalization and technology on the legal profession and propose changes to ABA policies.

Technology and globalization are transforming the legal marketplace, with more clients confronting legal problems that cross jurisdictional lines and more lawyers needing to respond to those clients’ needs by crossing borders (including virtually) or relocating to new jurisdictions. Lawyers also must relocate their practices to a new jurisdiction for other reasons, including employment opportunities for themselves or for a family member. For this reason, in February 2012, the ABA House of Delegates adopted new policies designed to ease
admissions barriers for lawyers who are the spouses of deployed military personnel.

Resolution 105d builds on that recent House action and responds to similar changes affecting all lawyers and their clients by proposing a new Model Rule on Practice Pending Admission. The various protections and limitations identified in the Model Rule ensure that the new practice authority is consistent with the principles that have guided the Commission’s work: protecting the public; preserving the core professional values of the American legal profession; and maintaining a strong, independent, and self-regulated profession.

3. Please Explain How the Proposed Policy Position will address the issue

Technological and economic changes have produced an increase in cross-border practice, revealing an important gap in the practice authority granted by Model Rule of Professional Conduct 5.5(d) (Unauthorized Practice of Law; Multijurisdictional Practice of Law). That gap affects an increasing number of lawyers who have found it necessary to establish a practice in a jurisdiction where they are not otherwise admitted. The Commission found and heard that, despite the increasing need to relocate, the admissions process for these lawyers can take considerable time. The Commission found that this time-consuming process can adversely affect lawyers’ ability to represent their existing clients effectively and can have unnecessary adverse consequences on lawyers’ careers in a marketplace that requires an increasing amount of cross-border practice.

The proposed Model Rule on Practice Pending Admission, if adopted, will address this gap by providing a framework, replete with safeguards to protect clients and the public, that allows lawyers to establish a continuous and systematic presence for the practice of law in a new jurisdiction for a limited time (not to exceed 365 days) while diligently pursuing formal admission there.

Numerous safeguards are built into the Model Rule. For example, in order to qualify to practice pursuant to this new Model Rule, the lawyer must have been engaged in the active practice of law for three of the last five years and cannot have been disbarred or suspended or currently be the subject of a pending disciplinary proceeding in any jurisdiction. The lawyer also must not have previously been denied admission in the new jurisdiction and must submit an application for admission in the new jurisdiction within [45] days of first providing legal services. Other protections include, but are not limited to, a requirement that the lawyer associate with a lawyer licensed to practice in the jurisdiction and that the lawyer notify the Disciplinary Counsel and Bar Admissions Authority that the lawyer intends to practice there pursuant to this limited authority.

The proposed new Model Rule on Practice Pending Admission also includes a separate section that allows a foreign lawyer already licensed in one U.S.
jurisdiction as a foreign legal consultant to continue practicing as a foreign legal consultant in another U.S. jurisdiction while an application to become a foreign legal consultant is pending in that new U.S. jurisdiction. This provision does not create any practice authority for foreign lawyers beyond what the Model Rules and ABA policy have already long allowed (e.g., rules relating to licensing and practice by foreign legal consultants and their limited scope of practice requirements, and rules governing whether foreign lawyers can sit for a particular jurisdiction’s bar examination). The section merely provides (subject to important limitations) that a foreign lawyer who is already admitted in a U.S. jurisdiction as a foreign legal consultant may continue to practice as such while their application for that form of admission is pending in another U.S. jurisdiction.

The Commission’s proposal in this regard is not without precedent. The District of Columbia allows out-of-state lawyers to practice law from a principal office located in the District of Columbia for a period not to exceed 360 days during the pendency of a person’s first application for admission to the District of Columbia Bar. Missouri also has a similar Rule for Temporary Practice by Lawyers Applying for Admission to the Missouri Bar.

The Commission is also proposing conforming amendments to the Comment to Model Rule 5.5 of the ABA Model Rules of Professional Conduct (Unauthorized Practice of Law; Multijurisdictional Practice of Law). If the House of Delegates adopts the new Model Rule on Practice Pending Admission, this new policy will need to be referenced in the Comment to Model Rule 5.5 to alert lawyers to the practice authority it authorizes.

4. Summary of Minority Views

The Commission is not aware of any organized or formal minority views or opposition to Resolution 105d as of June 1, 2012.

As of June 1, 2012, the following entities have agreed to co-sponsor Resolution 105d relating to Technology and Confidentiality: The ABA Standing Committee on Client Protection, the ABA Standing Committee on Ethics and Professional Responsibility, the ABA Standing Committee on Professionalism, the ABA Standing Committee on Specialization, and the New York State Bar Association.

From the outset, the Commission on Ethics 20/20 implemented a process that was transparent and open and that allowed for broad outreach and frequent opportunities for feedback. Over the last three years, the Commission routinely released for comment to all ABA entities (including the Conference of Section and Division Delegates), state, local, specialty and international bar associations, courts, regulatory authorities, and the public a wide range of documents, including issues papers, draft proposals, discussion drafts, and draft informational reports. The Commission held eleven open meetings where audience members participated; conducted numerous public hearings and
roundtables, domestically and abroad; presented webinars and podcasts; made CLE presentations; received and reviewed more than 350 written and oral comments from the bar, the judiciary, and the public. To date, the Commission has made more than 100 presentations about its work, including presentations to the Conference of Chief Justices, the ABA House of Delegates, the National Conference of Bar Presidents, numerous ABA entities, as well as local, state, and international bar associations. All materials, including all comments received, have been posted on the Commission’s website (click here). Moreover, the Commission created and maintained a listserv for interested persons to keep them apprised of the Commission’s activities. Currently there are 725 participants on the list.

Further, as noted in the General Information Form accompanying this Resolution, the Commission’s process was collaborative. It created seven substantive Working Groups with participants from relevant ABA and outside entities.

The Commission is grateful for and took seriously all submissions. The Commission routinely extended deadlines to ensure that the feedback was as complete as possible and that no one was precluded from providing input. The Commission reviewed this input, as well as the written and oral testimony received at public hearings, and made numerous changes in light of this feedback.

Throughout the last three years, the Commission received many supportive submissions as well as submissions that offered constructive comments or raised legitimate concerns. The Commission made every effort to resolve constructive concerns raised, and in many instances made changes based upon them. The Commission's final proposals were shaped by those who participated in this feedback process.