

**AMERICAN BAR ASSOCIATION
HOUSE OF DELEGATES**

**2013 MIDYEAR MEETING
DALLAS, TEXAS
FEBRUARY 11, 2013**

DAILY JOURNAL

<u>RPT NO.</u>	<u>PROPOSED BY</u>	<u>SHORT TITLE</u>	<u>ACTION</u>
<u>10A</u>	NEW YORK STATE BAR ASSOCIATION BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES ILLINOIS STATE BAR ASSOCIATION INDIANA STATE BAR ASSOCIATION NATIONAL CONFERENCE OF FEDERAL TRIAL JUDGES OHIO STATE BAR ASSOCIATION	Urges federal elected officials to adequately fund the federal courts and the Legal Services Corporation as they negotiate deficit reduction with the imminent threat of the implementation of sequestration if they fail.	Approved
<u>100</u>	STANDING COMMITTEE ON MEDICAL PROFESSIONAL LIABILITY TORT TRIAL AND INSURANCE PRACTICE SECTION HEALTH LAW SECTION COMMISSION ON LAW AND AGING SECTION OF REAL PROPERTY, TRUST AND ESTATE LAW	Supports timely and efficient resolution of requests from a claimant or applicable plan for conditional payment reimbursement amounts where Medicare has a right to reimbursement from a recovery by way of settlement, judgment or award for payments made for items and services, and urges Congress and the Department of Health and Human Services to establish reasonable time limits and procedures for responding to such requests.	Approved
<u>101A</u>	SECTION OF INTELLECTUAL PROPERTY LAW SECTION OF SCIENCE AND TECHNOLOGY LAW	Supports the principle that laws of nature, physical phenomena, and abstract ideas are not eligible for patenting as a process under 35 U.S.C. §101, even if they had been previously unknown or unrecognized.	Approved as Revised*
<u>101B</u>	SECTION OF INTELLECTUAL PROPERTY LAW SECTION OF SCIENCE AND TECHNOLOGY LAW	Supports clarification of the standards for finding direct infringement under 35 U.S.C. § 271(a) for a patent directed to a multiple-step process in the fact situation where separate entities collectively, but not individually, perform the required steps of the patented process.	Approved as Revised*

* See Attached

<u>RPT NO.</u>	<u>PROPOSED BY</u>	<u>SHORT TITLE</u>	<u>ACTION</u>
102A	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Approves the <i>Uniform Asset Freezing Orders Act</i> , promulgated by the National Conference of Commissioners on Uniform State Laws in 2012, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Approved
102B	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Approves the <i>Uniform Deployed Parents Custody and Visitation Act</i> , promulgated by the National Conference of Commissioners on Uniform State Laws in 2012, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Approved
102C	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Approves the <i>Uniform Premarital and Marital Agreements Act</i> , promulgated by the National Conference of Commissioners on Uniform State Laws in 2012, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Approved
103	STANDING COMMITTEE ON SPECIALIZATION	Reaccredits the Elder Law Program of the National Elder Law Foundation of Tucson, Arizona, the Legal Malpractice Program of the American Board of Professional Liability Attorneys and the Medical Malpractice Program of the American Board of Professional Liability Attorneys, of Atlanta, Georgia, for additional five-year terms as designated specialty certification programs for lawyers.	Approved
104A	CRIMINAL JUSTICE SECTION STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS STANDING COMMITTEE ON PROFESSIONALISM DEATH PENALTY REPRESENTATION PROJECT SPECIAL COMMITTEE ON HISPANIC LEGAL RIGHTS AND RESPONSIBILITIES NEW YORK STATE BAR ASSOCIATION	Urges Congress to establish an independent federally funded Center for Indigent Defense Services for the purpose of assisting state, local, tribal and territorial governments in carrying out their constitutional obligation to provide effective assistance of counsel for the defense of the indigent accused in criminal, juvenile and civil commitment proceedings.	Approved as Revised*

* See Attached

<u>RPT NO.</u>	<u>PROPOSED BY</u>	<u>SHORT TITLE</u>	<u>ACTION</u>
104A cont'd	SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES YOUNG LAWYERS DIVISION		
104B	CRIMINAL JUSTICE SECTION YOUNG LAWYERS DIVISION	Urges governments to review their mandatory reporting laws for instances of child abuse or neglect to determine what changes, if any, are appropriate to better protect children and to provide appropriate sanctions for abuse and neglect.	Withdrawn
104C	CRIMINAL JUSTICE SECTION STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES SANTA CLARA COUNTY BAR ASSOCIATION YOUNG LAWYERS DIVISION	Urges governments to enact legislation to prohibit the retaliatory discharge of a Chief Public Defender or other head of an indigent defense services provider because of his or her good faith effort to control acceptance of more clients than the office can competently and diligently represent, in accordance with their ethical obligations.	Approved
104D	CRIMINAL JUSTICE SECTION SPECIAL COMMITTEE ON HISPANIC LEGAL RIGHTS AND RESPONSIBILITIES YOUNG LAWYERS DIVISION	Urges the federal government to restore, maintain, and, where appropriate, increase funding to organizations which provide training to state and local prosecutors, to better promote justice, increase public safety, and prevent wrongful convictions.	Approved
104E	CRIMINAL JUSTICE SECTION STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS SPECIAL COMMITTEE ON HISPANIC LEGAL RIGHTS AND RESPONSIBILITIES SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES STANDING COMMITTEE ON FEDERAL JUDICIAL IMPROVEMENTS YOUNG LAWYERS DIVISION COMMISSION ON IMMIGRATION	Urges jurisdictions to ensure that defense counsel inquires and investigates a juvenile defendant's immigration status and informs the defendant about any possible collateral consequences.	Approved as Revised*

* See Attached

<u>RPT NO.</u>	<u>PROPOSED BY</u>	<u>SHORT TITLE</u>	<u>ACTION</u>
104F	CRIMINAL JUSTICE SECTION COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE COMMISSION ON IMMIGRATION SPECIAL COMMITTEE ON HISPANIC LEGAL RIGHTS AND RESPONSIBILITIES SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES ABA REPRESENTATIVES AND OBSERVERS TO THE UNITED NATIONS COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY STANDING COMMITTEE ON FEDERAL JUDICIAL IMPROVEMENTS TASK FORCE ON HUMAN TRAFFICKING GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION YOUNG LAWYERS DIVISION	Urges governments to enact laws and regulations and to develop policies that assure that once an individual has been identified as an adult or minor victim of human trafficking, that individual should not be subjected to arrest, prosecution or punishment for crimes related to their prostitution or other non-violent crimes that are a direct result of their status as an adult or minor victim of human trafficking.	Approved as Revised*
104G	CRIMINAL JUSTICE SECTION COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE COMMISSION ON IMMIGRATION SPECIAL COMMITTEE ON HISPANIC LEGAL RIGHTS AND RESPONSIBILITIES SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES ABA REPRESENTATIVES AND OBSERVERS TO THE UNITED NATIONS COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY TASK FORCE ON HUMAN TRAFFICKING	Urges governments to enact legislation allowing adult or minor human trafficking victims charged with prostitution related offenses or other non-violent offenses that are a direct result of their being trafficked to assert an affirmative defense of being a human trafficking victim.	Approved as Revised*

* See Attached

<u>RPT NO.</u>	<u>PROPOSED BY</u>	<u>SHORT TITLE</u>	<u>ACTION</u>
104G cont'd	GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION YOUNG LAWYERS DIVISION		
104H	CRIMINAL JUSTICE SECTION COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE COMMISSION ON IMMIGRATION SPECIAL COMMITTEE ON HISPANIC LEGAL RIGHTS AND RESPONSIBILITIES ABA REPRESENTATIVES AND OBSERVERS TO THE UNITED NATIONS COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY TASK FORCE ON HUMAN TRAFFICKING GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION YOUNG LAWYERS DIVISION	Urges governments to aid victims of human trafficking by enacting and enforcing laws and policies that permit adult or minor victims of human trafficking to seek to vacate their criminal convictions for offenses related to their prostitution or other non-violent offenses that are a direct result of their trafficking victimization.	Approved as Revised*
104I	CRIMINAL JUSTICE SECTION COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE COMMISSION ON IMMIGRATION SPECIAL COMMITTEE ON HISPANIC LEGAL RIGHTS AND RESPONSIBILITIES SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES ABA REPRESENTATIVES AND OBSERVERS TO THE UNITED NATIONS COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY TASK FORCE ON HUMAN TRAFFICKING	Urges bar associations to develop and implement training programs for judges, prosecutors, defense counsel, law enforcement officers, and other investigators that will enable them to identify adult and minor victims of human trafficking and enable them to direct victims and their families to agencies that offer social and legal services and benefits designed to assist adult and minor victims of human trafficking.	Approved as Revised*

* See Attached

<u>RPT NO.</u>	<u>PROPOSED BY</u>	<u>SHORT TITLE</u>	<u>ACTION</u>
104I cont'd	GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION YOUNG LAWYERS DIVISION		
104J	CRIMINAL JUSTICE SECTION COMMISSION ON THE AMERICAN JURY PROJECT COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES YOUNG LAWYERS DIVISION STANDING COMMITTEE ON FEDERAL JUDICIAL IMPROVEMENTS	Urges the Judicial Conference of the United States to amend the Model Grand Jury Charge to clarify that the Grand Jury should be instructed to vote separately on each defendant.	Approved
105	STANDING COMMITTEE ON PARALEGALS	Grants approval and reapproval to several paralegal education programs, withdraws the approval of three programs at the request of the institutions, and extends the term of approval to several paralegal education programs.	Approved
106	COMMISSION ON THE AMERICAN JURY PROJECT CRIMINAL JUSTICE SECTION TORT TRIAL AND INSURANCE PRACTICE SECTION NEW JERSEY STATE BAR ASSOCIATION SECTION OF LITIGATION	Amends Principles 1(C) through (F), 6(C), 10(C) and 11(A) of the 2005 <i>ABA Principles for Juries and Jury Trials</i> , dated February 2013.	Approved

<u>RPT NO.</u>	<u>PROPOSED BY</u>	<u>SHORT TITLE</u>	<u>ACTION</u>
107A	COMMISSION ON ETHICS 20/20 STANDING COMMITTEE ON CLIENT PROTECTION STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY STANDING COMMITTEE ON PROFESSIONALISM STANDING COMMITTEE ON SPECIALIZATION TASK FORCE ON INTERNATIONAL TRADE IN LEGAL SERVICES SECTION OF BUSINESS LAW SECTION OF INTERNATIONAL LAW TORT TRIAL AND INSURANCE PRACTICE SECTION STANDING COMMITTEE ON PROFESSIONAL DISCIPLINE NEW YORK STATE BAR ASSOCIATION YOUNG LAWYERS DIVISION	Amends Rule 5.5(d) of the <i>ABA Model Rules of Professional Conduct (Unauthorized Practice of Law; Multijurisdictional Practice of Law)</i> to permit foreign lawyers to serve as in-house counsel in the U.S., but with the added requirement that foreign lawyers not advise on U.S. law except in consultation with a U.S.-licensed lawyer.	Approved as Revised*
107B	COMMISSION ON ETHICS 20/20 STANDING COMMITTEE ON CLIENT PROTECTION STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY STANDING COMMITTEE ON PROFESSIONALISM STANDING COMMITTEE ON SPECIALIZATION TASK FORCE ON INTERNATIONAL TRADE IN LEGAL SERVICES SECTION OF BUSINESS LAW SECTION OF INTERNATIONAL LAW	Amends the <i>ABA Model Rule for Registration of In-House Counsel</i> to permit foreign lawyers to serve as in-house counsel in the U.S. but with added requirements.	Approved as Revised*

* See Attached

<u>RPT NO.</u>	<u>PROPOSED BY</u>	<u>SHORT TITLE</u>	<u>ACTION</u>
107B cont'd	TORT TRIAL AND INSURANCE PRACTICE SECTION STANDING COMMITTEE ON PROFESSIONAL DISCIPLINE NEW YORK STATE BAR ASSOCIATION YOUNG LAWYERS DIVISION		
107C	COMMISSION ON ETHICS 20/20 STANDING COMMITTEE ON CLIENT PROTECTION STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY STANDING COMMITTEE ON PROFESSIONALISM STANDING COMMITTEE ON SPECIALIZATION TASK FORCE ON INTERNATIONAL TRADE IN LEGAL SERVICES SECTION OF BUSINESS LAW SECTION OF INTERNATIONAL LAW TORT TRIAL AND INSURANCE PRACTICE SECTION NEW YORK STATE BAR ASSOCIATION BEVERLY HILLS BAR ASSOCIATION YOUNG LAWYERS DIVISION	Amends the <i>ABA Model Rule on Pro Hac Vice Admission</i> to provide judges with guidance about whether to grant limited and temporary practice authority to foreign lawyers to appear in U.S. courts.	Approved as Amended*
107D	COMMISSION ON ETHICS 20/20 STANDING COMMITTEE ON CLIENT PROTECTION STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY STANDING COMMITTEE ON PROFESSIONAL DISCIPLINE STANDING COMMITTEE ON PROFESSIONALISM	Amends Model Rule 8.5 of the <i>ABA Model Rules of Professional Conduct</i> to address an increasingly common choice of law problem arising in the context of conflicts of interest.	Approved

* See Attached

<u>RPT NO.</u>	<u>PROPOSED BY</u>	<u>SHORT TITLE</u>	<u>ACTION</u>
107D cont'd	STANDING COMMITTEE ON SPECIALIZATION TASK FORCE ON INTERNATIONAL TRADE IN LEGAL SERVICES SECTION OF BUSINESS LAW SECTION OF INTERNATIONAL LAW TORT TRIAL AND INSURANCE PRACTICE SECTION		
108	STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES SOLO, SMALL FIRM AND GENERAL PRACTICE DIVISION LAW PRACTICE MANAGEMENT SECTION STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE STANDING COMMITTEE ON LEGAL ASSISTANCE FOR MILITARY PERSONNEL STANDING COMMITTEE ON GROUP AND PREPAID LEGAL SERVICES COMMISSION ON INTEREST ON LAWYERS' TRUST ACCOUNTS NATIONAL LEGAL AID AND DEFENDER ASSOCIATION AMERICAN JUDICATURE SOCIETY	Encourages practitioners, when appropriate, to consider limiting the scope of their representation, including the unbundling of legal services as a means of increasing access to legal services.	Approved as Amended*

* See Attached

<u>RPT NO.</u>	<u>PROPOSED BY</u>	<u>SHORT TITLE</u>	<u>ACTION</u>
109	SECTION OF BUSINESS LAW NEW YORK STATE BAR ASSOCIATION SECTION OF REAL PROPERTY, TRUST AND ESTATE LAW MASSACHUSETTS BAR ASSOCIATION AMERICAN JUDICATURE SOCIETY DELAWARE STATE BAR ASSOCIATION YOUNG LAWYERS DIVISION	Supports the position that United States Bankruptcy Judges have the authority, upon the consent of all the parties to the proceeding, to hear, determine, and enter final orders and judgments in those proceedings designated as “core” within the meaning of 28 U.S.C. § 157(b) but that may not otherwise be heard and determined by a non-Article III tribunal absent the parties’ consent, as being consistent with and not violative of Article III of the United States Constitution.	Approved as Revised*
110A	SECTION OF ADMINISTRATIVE LAW AND REGULATORY PRACTICE NATIONAL CONFERENCE OF ADMINISTRATIVE LAW JUDGES	Urges the Federal Acquisition Regulatory Council (FAR Council) to promulgate model contract language that focuses on the most significant ethical risks that arise in government contracts as well as the activities most likely to implicate those risks.	Approved as Revised*
110B	SECTION OF ADMINISTRATIVE LAW AND REGULATORY PRACTICE SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES AMERICAN JUDICATURE SOCIETY	Supports efforts to increase disclosure of political and campaign spending and urges Congress to require organizations that are not required to do so by current law as interpreted and applied by the Federal Election Commission to disclose the source of funds used for making electioneering communications and expenditures and the amounts spent.	Approved
300	SECTION OF PUBLIC CONTRACT LAW SECTION OF ADMINISTRATIVE LAW AND REGULATORY PRACTICE	Urges Congress to repeal 28 U.S.C. § 1500 and replace it with a presumptive stay as recommended by the Administrative Conference of the United States.	Approved

* See Attached

RESOLUTION

1 RESOLVED, That the American Bar Association supports the principle that laws
2 of nature, physical phenomena, and abstract ideas are not eligible for patenting as a
3 process under 35 U.S.C § 101, even if they had been previously unknown or
4 unrecognized;

5 FURTHER RESOLVED, That the American Bar Association supports the
6 principle that a process meets the requirements of Section 101 where—

7 (1) the claimed process as a whole, other than a mental process, is limited to a
8 specific application of a law of nature, natural phenomenon, or abstract idea; or

9 (2) the claimed process requires or involves a transformation of matter into a
10 different state or thing.

11 FURTHER RESOLVED, That the American Bar Association supports the
12 principle that the inquiry into subject matter eligibility for patenting under
13 35 U.S.C. § 101 is a separate and distinct requirement for patent eligibility which
14 should be resolved independently from the conditions of patentability under
15 Sections 102 and 103, and the requirements for obtaining a valid patent under
16 Section 112;

17 FURTHER RESOLVED, That the American Bar Association opposes application
18 of a patent eligibility test under Section 101 that imports into the patent eligibility
19 analysis the criteria or analysis for determining patentability addressed by Sections
20 102 and 103, as well as the criteria required for obtaining a valid patent under
21 Section 112.

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED

RESOLUTION

- 1 RESOLVED, That the American Bar Association supports clarification of the standards for
2 finding direct infringement under 35 U.S.C. §271(a) for a patent directed to a multiple-step
3 process in the fact situation where separate entities collectively, but not individually, perform the
4 required steps of the patented process, as follows—
- 5 ~~(1) no finding of direct infringement can be made absent a finding that at least one entity is liable~~
6 ~~as a direct infringer, which finding should be based on the totality of the circumstances;~~
- 7 ~~(2)~~ (1) direct infringement may be found on the part of a single entity who does not perform all
8 the steps of a patented process, if such entity directs or controls others who perform all of the
9 process steps that the directing/controlling entity itself does not perform;
- 10 ~~(3)~~ (2) direct infringement may be found on the part of multiple entities who act in concert to
11 perform, or to direct or control the performance of, all of the steps of a patented process, as
12 part of a common design or purpose of such entities for carrying out the process;
- 13 ~~(4)~~ (3) a finding of direct infringement under (1) or (2) does not require the finding of an agency
14 relationship or other contractual relationship between the entities ~~a directing/controlling~~
15 ~~entity and other entities who are directed by the directing/controlling entities to perform steps~~
16 ~~of the patented process;~~ and
- 17 ~~(5)~~ (4) an ~~when a directing/controlling entity is liable as a direct infringer, a directed/controlled~~
18 entity who is merely acting under the direction or control of the directing/controlling entity
19 will not itself be liable as an infringer.
- 20 FURTHER RESOLVED, That the American Bar Association supports the requirement
21 ~~restoration of the common law principle~~ that indirect infringement, through active inducement
22 of infringement under 35 U.S.C. §271(b) or contributory infringement under 35 U.S.C. §271(c),
23 requires a predicate finding of direct infringement by at least one entity ~~person~~ who is liable as a
24 direct infringer.

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED

RESOLUTION

1 RESOLVED, That the American Bar Association urges Congress to establish
2 an independent federally funded Center for Indigent Defense Services for the
3 purpose of assisting state, local, tribal and territorial governments in carrying out their
4 Constitutional obligation to provide effective assistance of counsel for the defense of the indigent
5 accused in criminal, juvenile, and civil commitment proceedings, and to appropriate sufficient
6 funds for the Center to successfully carry out its mission.

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED

RESOLUTION

1 RESOLVED, That the American Bar Association urges federal, state, territorial, tribal,
2 and local courts to:

- 3
- 4 (a) Ensure that defense counsel ~~to~~ for a juvenile in a criminal or juvenile adjudication of
5 delinquency proceeding
- 6 1. inquires and investigates the juvenile defendant's actual immigration status and informs
7 the client about the immigration penalties and/or consequences that may stem from the
8 case, ~~the varying consequences that may flow from different dispositions of the case, and~~
9 as well as the availability of any relief from possible consequences; and
10 2. seeks, when practicable, to minimize adverse immigration consequences, according to the
11 best interests of the client.
- 12
- 13 (b) Provide Inform non-U.S. citizen juvenile defendants as early as possible in the court process,
14 but in all cases at the plea colloquy, of their right to advise regarding the immigration
15 penalties and/or consequences that may stem from the case, the varying consequences that
16 may flow from different dispositions of the case and the availability of any relief from
17 possible consequences ~~with judicial warnings about the immigration consequences of~~
18 ~~criminal or delinquency proceedings;~~ and
- 19
- 20 (c) Ensure without infringing attorney-client privilege and without inquiring into the juvenile's
21 immigration status unless alienage is an element of the charge, that a juvenile's plea to any
22 offense is knowingly, voluntarily, and intelligently made, and that the juvenile is aware of the
23 right to obtain and has had the opportunity to obtain advice regarding the immigration
24 penalties and/or consequences that may stem from the case, the varying consequences that
25 may flow from different dispositions of the case, and the availability of any relief from
26 possible consequences, ~~specifically considering any direct or indirect immigration~~
27 ~~consequences or penalties based on the individual's entry of a plea to an offense.~~

28

29 FURTHER RESOLVED, That the American Bar Association urges legal service organizations,
30 federal, state, and local bar associations, and other legal assistance providers to:

- 31
- 32 ~~(a)~~ Provide training to judges, prosecutors, criminal defense lawyers, and legal aid lawyers about
33 the immigration consequences of criminal of criminal convictions and juvenile adjudications
34 of delinquency and any available relief from such consequences, and in the duty of defense
35 attorneys to fully address immigration consequences in their representation of juveniles; and
36 ~~as set forth by the Supreme Court of the United States in the case *Padilla v. Kentucky*;~~
- 37
- 38 ~~(b)~~ ~~Develop pro bono programs to counsel indigent, non-U.S. citizen juvenile defendants about~~
39 ~~the immigration consequences of criminal or delinquency proceedings; and~~
- 40
- 41 (b) Support efforts to provide necessary resources to defense counsel and defender agencies and
42 organizations to provide their noncitizen juvenile clients effective legal representation that
43 effectively and competently discharges their duty to fully address immigration consequences in
44 their representation of juveniles.
- 45
- 46 ~~(c)~~ ~~Provide pro bono representation or reduced fee support services to advise indigent, non-U.S.~~
47 ~~citizen juvenile defendants about the immigration consequences in a particular case.~~

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED

104F Revised

RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, tribal and territorial governments to enact laws and regulations and to develop policies that assure that once an individual has been identified as an adult or minor victim of human trafficking, that individual should:

- (a) not be ~~prosecuted~~ subjected to arrest, prosecution or punishment for crimes related to their prostitution or other non-violent crimes that are a direct result of their status as an adult or minor victim of human trafficking;
- (b) be offered ~~housing~~ in circumstances appropriate for a victim;
- (c) be provided appropriate protection, to include the individual's family, if a threat to safety exists from the person or persons responsible for the trafficking or others; and
- (d) be assured that their names and identifying information will not be disclosed to the public.

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED

104G Revised

RESOLUTION

RESOLVED, That the American Bar Association urges local, state, territorial, tribal and federal governments to enact legislation allowing adult or minor human trafficking victims charged with prostitution related ~~crimes~~ offenses or other non-violent ~~crimes~~ offenses that are a direct result of their being trafficked to assert an affirmative defense of being a human trafficking victim.

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED

RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, tribal, and territorial governments to aid victims of human trafficking by:

- a) Enacting and enforcing laws and policies that permit adult or minor victims of human trafficking to seek to vacate their criminal convictions, for ~~crimes~~ offenses related to their prostitution or other non-violent ~~crimes~~ offenses that are a direct result of their trafficking victimization; and
- b) Establishing and ensuring funding for programs designed to assist human trafficking victims who are seeking to vacate such convictions.

FURTHER RESOLVED, That the American Bar Association urges legal service organizations, state and local bar associations, law school clinics, and other legal assistance providers to develop pro bono programs and provide pro bono representation to assist adult or minor victims of human trafficking in vacating convictions for offenses that are a direct result of their trafficking victimization.

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED

RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, tribal and territorial bar associations, working with judges, lawyers and other professionals with subject matter expertise in human trafficking, to develop and implement training programs for judges, prosecutors, defense counsel, law enforcement officers, immigration officials, civil attorneys and other investigators that will enable them to identify adult and minor victims of human trafficking, ~~and~~ enable them to direct victims and their families to ~~social-service~~ agencies that offer social and legal services and benefits designed to assist adult or minor victims of human trafficking and enable them to communicate effectively with adult and minor victims who have experienced trauma.

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED

RESOLUTION

1 **RESOLVED**, That the American Bar Association amends Rule 5.5 of the ABA Model
 2 **Rules of Professional Conduct** as follows (insertions underlined, deletions ~~struck through~~):

3
 4 **RULE 5.5: UNAUTHORIZED PRACTICE OF LAW;**
 5 **MULTIJURISDICTIONAL PRACTICE OF LAW**
 6

7 ...

8 (d) A lawyer admitted in another United States jurisdiction or in a foreign
 9 jurisdiction, and not disbarred or suspended from practice in any
 10 jurisdiction or the equivalent thereof, may provide legal services through an
 11 office or other systematic and continuous presence in this jurisdiction that:

12 (1) are provided to the lawyer's employer or its organizational affiliates; ~~and~~
 13 are not services for which the forum requires pro hac vice admission; ~~and, when~~
 14 performed by a foreign lawyer and requires advice on ~~concern~~ the law of this or
 15 another U.S. jurisdiction or of the United States, such advice shall be based upon the
 16 advice of a ~~are undertaken in consultation with a U.S.~~ lawyer who is duly licensed
 17 and authorized by the jurisdiction to provide such advice; or

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

20 (e) For purposes of paragraph (d), the foreign lawyer must be a member in good
 21 standing of a recognized legal profession in a foreign jurisdiction, the members of
 22 which are admitted to practice as lawyers or counselors at law or the equivalent,
 23 and are subject to effective regulation and discipline by a duly constituted
 24 professional body or a public authority.

25
 26 **COMMENT**

27 ...

28
 29 [16] Paragraph (d)(1) applies to a U.S. or foreign lawyer who is employed by a client
 30 to provide legal services to the client or its organizational affiliates, i.e., entities that control, are
 31 controlled by, or are under common control with the employer. This paragraph does not
 32 authorize the provision of personal legal services to the employer's officers or employees. The
 33 paragraph applies to in-house corporate lawyers, government lawyers and others who are
 34 employed to render legal services to the employer. The lawyer's ability to represent the
 35 employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of
 36 the employer and does not create an unreasonable risk to the client and others because the
 37 employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's
 38 work. To further decrease any risk to the client, when advising on the domestic law of a United
 39 States jurisdiction or on the law of the United States, the foreign lawyer authorized to practice
 40 under paragraph (d)(1) of this Rule needs to base that advice on the advice of a lawyer licensed
 41 and authorized by the jurisdiction ~~consult with a U.S. lawyer authorized~~ to provide it that advice.
 42

...
 43
 44 **DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED**
 45 **(ADDITIONAL REVISIONS ARE SHADED AND WILL APPEAR ON THE SCREEN)**

RESOLUTION

1 **RESOLVED, That the American Bar Association amends the ABA Model Rule for**
2 **Registration of In-House Counsel as follows (insertions underlined, deletions ~~struck~~**
3 **through):**

4
5 **Model Rule for Registration of In-House Counsel**

6
7 ...
8
34 **SCOPE OF AUTHORITY OF REGISTERED LAWYER:**

35 B. A lawyer registered under this ~~section~~ Rule shall have the rights and privileges otherwise
36 applicable to members of the bar of this jurisdiction with the following restrictions:

- 37 1. The registered lawyer is authorized to provide legal services to the entity client or
38 its organizational affiliates, including entities that control, are controlled by, or are
39 under common control with the employer, and for employees, officers and
40 directors of such entities, but only on matters directly related to their work for the
41 entity and only to the extent consistent with Rule 1.7 of the Model Rules of
42 Professional Conduct [or jurisdictional equivalent ~~provision in the jurisdiction~~];
43 and
- 44 2. The registered lawyer shall not:
 - 45 a. Except as otherwise permitted by the rules of this jurisdiction, appear
46 before a court or any other tribunal as defined in Rule 1.0(m) of the
47 Model Rules of Professional Conduct [or jurisdictional equivalent]; ~~or~~
 - 48 b. Offer or provide legal services or advice to any person other than as
49 described in paragraph B.1., or hold himself or herself out as being
50 authorized to practice law in this jurisdiction other than as described in
51 paragraph B.1.; and
 - 52 c. If a foreign lawyer, provide advice on the law of this or another U.S.
53 jurisdiction or of the United States except ~~in consultation with a U.S.~~ on
54 the basis of advice from a lawyer who is duly licensed and authorized to
55 provide such advice.

56
57 ...
DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED
(ADDITIONAL REVISIONS ARE SHADED AND WILL APPEAR ON THE SCREEN)

Litigation Amendment to 107C

RESOLUTION

1 RESOLVED, That the American Bar Association amends the ABA Model Rule on Pro Hac
2 Vice Admission and Appendix A as follows (insertions underlined, deletions ~~struck~~
3 ~~through~~):

4
5 ABA Model Rule on Pro Hac Vice Admission

6
7 ...

8
9 III. Admission of Foreign Lawyer in Pending Litigation Before a Court or Agency

10
11 ...

12
13 C. A court or agency of this state may, in its discretion, admit a foreign lawyer in a
14 particular proceeding pending before such court or agency to appear pro hac vice ~~as co-~~
15 ~~counsel or in an advisory or consultative~~ in a defined role ~~as a lawyer, advisor or consultant~~
16 in that proceeding with an in-state lawyer, provided that the in-state lawyer is responsible
17 to the client, responsible for the conduct of the proceeding, responsible for independently
18 advising the client on the substantive law of a United States jurisdiction and procedural
19 issues in the proceeding, and for advising the client whether the in-state lawyer's judgment
20 differs from that of the foreign lawyer. See paragraph III(E).

21 ~~———— D. The court or agency, in its discretion, may limit the activities of the foreign~~
22 ~~lawyer or require further action by the in-state lawyer, including but not limited to,~~
23 ~~requiring the in-state lawyer to sign all pleadings and other documents submitted to the~~
24 ~~court or to other parties, to be present at all depositions and conferences among counsel,~~
25 ~~and to attend all proceedings before the court or agency.~~

26 ~~———— E.D. In addition to the factors listed in paragraph I(D)(3) above, a court or agency~~
27 ~~in ruling on an application to admit a foreign lawyer pro hac vice, as a lawyer, advisor or~~
28 ~~consultant ~~or in an advisory or consultative role, may~~ shall weigh ~~the following~~ factors,~~
29 ~~including:~~

30 ...

31 6. the extent to which it is possible to define the scope of the foreign lawyer's
32 authority in the matter as described in paragraph III-~~(E)(F)~~ so as to facilitate
33 its fair and efficient resolution, including by a limitation on the foreign
34 lawyer's authority to advise the client on the law of a United States
35 jurisdiction except in consultation with the in-state lawyer.

36 ~~———— D.E. The court or agency shall limit the activities of the foreign lawyer or require~~
37 ~~further action by the in-state lawyer, as appropriate in its discretion in light of paragraph~~

Litigation Amendment to 107C

38 III(D). It may, for example, require the in-state lawyer to sign all pleadings and other
39 documents submitted to the court or to other parties, to be present at all depositions and
40 conferences among counsel, or to attend all proceedings before the court or agency.

41 ~~E.F.~~ The provisions of Section I, paragraphs (D), (E), and (F) and Section II,
42 paragraphs (G) and (H), applicable to out-of-state lawyers, also apply to foreign lawyers
43 for purposes of the requirements of Paragraph III of this Rule.

...

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED
(ADDITIONAL REVISIONS ARE SHADED AND WILL APPEAR ON THE SCREEN)

Gerstman Amendment to 108

RESOLUTION

1 RESOLVED, That the American Bar Association encourages practitioners, when appropriate,
2 to consider limiting the scope of their representation, including the unbundling of legal services;
3 ~~when appropriate,~~ as a means of increasing access to legal services.
4

5 FURTHER RESOLVED, That the American Bar Association encourages and supports the
6 efforts of national, state, tribal, local and territorial bar associations, the judiciary and court
7 administrations, and CLE providers to take measures to assure that practitioners who limit the
8 scope of their representation do so with full understanding and recognition of their professional
9 obligations.
10

11 FURTHER RESOLVED, That the American Bar Association encourages and supports the
12 efforts of national, state, tribal, local and territorial bar associations, the judiciary and court
13 administrations, and those providing legal services to increase public awareness of the
14 availability of limited scope representation as an option to help meet the legal needs of the
15 public.

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED

RESOLUTION

1 RESOLVED, That the American Bar Association supports the position that United States
2 Bankruptcy Judges have the authority: (1) upon the ~~express~~ consent of all the parties to the
3 proceeding, to hear, determine, and enter final orders and judgments in those proceedings that,
4 while they may be among those designated as “core” within the meaning of 28 U.S.C. § 157(b),
5 may not otherwise be heard and determined by a non-Article III tribunal absent the parties’
6 consent, as being consistent with and not violative of Article III of the United States
7 Constitution, and (2) to determine in the appropriate case and in the first instance whether such
8 consent is necessary, as a matter of law, in order for the courts to render a final determination on
9 the matter or matters in question.

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED

RESOLUTION

1 RESOLVED, That the American Bar Association ~~urges~~ supports the action by the Federal
2 Acquisition Regulatory Council (FAR Council) ~~to~~in promulgateing, ~~for use in contracts posing a~~
3 ~~high risk of either~~ in response to the FY2009 National Defense Authorization Act, the 2011 rule
4 on preventing personal conflicts of interest ~~or misuse of certain non-public information, for~~
5 contractor employees performing acquisition functions, which includes model contract language
6 that focuses on the activities likely to give rise to such conflicts in such contracts, as well as the
7 ~~most significant ethical risks that arise in government contracts as well as the activities most~~
8 ~~likely to implicate those risks~~such conflicts present;
9

10 FURTHER RESOLVED, That the American Bar Association encourages the FAR Council,
11 consistent with the FY2013 National Defense Authorization Act, to consider extending such
12 model personal conflict of interest contract language to contracts in which employees perform
13 other high risk functions closely associated with inherently governmental functions;
14

15 FURTHER RESOLVED, That the American Bar Association encourages the Administrator for
16 Federal Procurement Policy to consider requiring contractors subject to such model contract
17 language to certify that they have taken appropriate steps to comply with its requirements;
18

19 FURTHER RESOLVED, That the American Bar Association supports the FAR Council's action
20 in proposing, for use in contracts posing a high risk of misuse of certain non-public information,
21 model contract language that focuses on the activities likely to give rise to such misuse in such
22 contracts, as well as the significant risks such misuse presents, and urges the FAR Council to
23 complete that rulemaking;
24

25 FURTHER RESOLVED, That the American Bar Association ~~urges~~ supports the FAR Council's
26 action to encourage agencies to include the model Federal Acquisition Regulation (FAR)
27 provisions in contracting actions involving procurements that pose risks of personal conflicts of
28 interest ~~and procurements that pose risks of contractor disclosure or misuse of non-public~~
29 ~~information;~~
30

31 FURTHER RESOLVED, That the American Bar Association supports the FAR Council's action
32 in proposing to encourage agencies to include model FAR provisions in contracting actions
33 involving procurements that pose risks of contractor disclosure or misuse of non-public
34 information, and urges the FAR Council to complete that rulemaking;
35

36 FURTHER RESOLVED, That the American Bar Association encourages the FAR Council to
37 consider a provision requiring contractors to train their employees on recognizing personal
38 conflict of interest risks and the misuse of certain non-public information.
39

40 FURTHER RESOLVED, That the American Bar Association ~~supports~~ encourages the FAR
41 Council to consider proposing model FAR provisions that prohibit agencies from using
42 contractors to establish and manage scientific or technical advisory committees without requiring
43 such contractors to apply to prospective and actual members of such committees the same ethical
44 requirements that would apply if such individuals were special government employees; and

110A Revised

45
46 FURTHER RESOLVED, That the American Bar Association urges agencies not covered by the
47 FAR to consider using or modifying the model FAR provisions when negotiating contracts for
48 activities likely to implicate significant ethical risks.

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED