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RESOLVED, That the American Bar Association 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.

FURTHER RESOLVED, That the American Bar Association urges Congress and the Department of Health and Human Services, by legislation and/or regulation, to establish reasonable time limits and procedures for responding to requests for conditional payment reimbursements to the Department and taxpayers is timely, and failure by Medicare to timely respond should result in waiver of its right to seek reimbursement.

FURTHER RESOLVED, That the American Bar Association urges the adoption of legislation and/or regulation which establishes the right of appeal and appeals process with respect to any determination for a payment made for an item or service under a primary plan under which the plan, attorney, agent or third party administrator may appeal such determination.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The American Bar Association 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. Towards this end the ABA urges Congress and the Department of Health and Human Services, by legislation and/or regulation, to establish reasonable time limits and procedures for responding to requests for conditional payment reimbursement amounts, which includes appeal rights and procedures, so that payments of settlements, judgments and awards and reimbursement to the Department and taxpayers is timely.

2. Summary of the Issue that the Resolution Addresses

Medicare is often called upon to pay medical bills for beneficiaries injured by third parties that may have insurance to cover the Medicare beneficiaries’ injuries. The Medicare Secondary Payer Act (MSP) was created to ensure that Medicare, and therefore the taxpaying public, is reimbursed for these medical bills that are the primary responsibility of these third parties. The current MSP repayment system is inefficient and slow, to the detriment of the beneficiaries, parties and ultimately the public.

Under the current system, parties in claims and litigation are not provided concrete numbers from Medicare prior to reaching a settlement. It is only after a settlement number is reached that Medicare undertakes the process of determining the reimbursement that it will seek out of that settlement amount. Without concrete numbers, parties often become bogged down in negotiations, and may be unable to settle as a result of the delay in knowing Medicare’s share of the settlement. Parties are either forced to guess at the possible numbers, or continue with litigation. Businesses and insurance companies are held just as much in limbo as the plaintiffs and due to concerns of MSP’s onerous and costly penalties, which can further slow the process as they attempt to deal with the requirements. Further, different administrative Medicare offices give different interpretations, making the guesswork even harder.

Additionally, parties also do not receive finality in their negotiations with Medicare. Medicare currently only gives “conditional” payment figures. This means that if they “find” additional expenses after informing the plaintiff’s attorney of the conditional amount (that they have waited to receive for months), the beneficiaries, parties and/or attorneys may be pursued by Medicare for moneys that have been distributed long ago.

On the defense side of the docket, the current Medicare repayment system requires onerous and unpredictable reporting systems that have caused the insurance and business industry to slow the process of claims handling and settlement to a crawl.
3. **Please Explain How the Proposed Policy Position will address the issue**

The Resolution specifically addresses this issue by urging Congress and the Department of Health and Human Services, by legislation and/or regulation, to create reasonable time limits for responding to requests for conditional payment reimbursement amounts so that payments of settlements, judgments and awards and reimbursement to the Department and taxpayers is timely. Included in the Resolution is the right to appeal determinations related to such conditional payments.

4. **Summary of Minority Views**

The Standing Committee is unaware of any opposition or minority views.
RESOLVED, That the American Bar Association 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;

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

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

(2) the claimed process requires or involves a transformation of matter.

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

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

1. Summary of the Resolution

The resolution calls for the Association to adopt policy relating to determining the scope of subject matter that is eligible for patenting under the Patent Act and judicial interpretations of that Act. The resolution begins with recognition that laws of nature, physical phenomena and abstract ideas are not eligible for patenting as a process, even if they had been previously unknown or unrecognized. The resolution supports the principle that a patent claim limited to a specific application of a law of nature or physical phenomena meets the requirements of Section 101 and that a patent which requires or involves a transformation of matter also meet the requirements of Section 101. Finally, the resolution opposes formulation of a patent eligibility test which adds the criteria for determining patentability under Sections 102 or 103 or the conditions for obtaining a valid patent under Section 112 into the patent eligibility analysis.

2. Summary of the Issue that the Resolution Addresses

On September 24, 2012, the Association for Molecular Pathology et al. filed a petition for writ of certiorari with the Supreme Court to review a decision of the U.S. Court of Appeals for the Federal Circuit that presents the issue that is addressed in the policy. Ass’n for Molecular Pathology v. Myriad Genetics Inc., Case No. 12-398; decision below Ass’n for Molecular Pathology v. U.S. Pat. & Trademark Off., 689 F.3d 1303 (Fed. Cir. 2012). On November 30, the Supreme Court granted a writ of certiorari. The issue addressed in the Resolution is the eligibility for patenting of a process for screening potential cancer therapeutic compounds. The Federal Circuit held the claim at issue to be patent-eligible subject matter under § 101. The petitioner urges reversal of the decision, on grounds that the claim seeks to patent and monopolize the natural biological relationship of growing cells and does not require a transformative step. Petitioner asserts that the claims are directed to laws of nature, which the Supreme Court has held to be ineligible for patenting.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The policy would support the filing of an ABA brief amicus curiae addressing the issue of subject matter patent eligibility generally, the overall means of analysis of patent eligibility compared to the analysis of other conditions required for a valid patent, and eligibility in the specific circumstances presented in this case. The policy would support a brief taking the position that a claim is patent eligible where that claim requires or involves a transformation of matter. The policy also supports a brief differentiating the analysis of patent eligibility under Section 101 and other sections with conditions for obtaining a valid patent including Sections 102, 103, and 112.

4. Summary of Minority Views

None known at this time.
RESOLVED, That the American Bar Association 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, as follows—

(1) no finding of direct infringement can be made absent a finding that at least one entity is liable as a direct infringer, which finding should be based on the totality of the circumstances;

(2) direct infringement may be found on the part of a single entity who does not perform all the steps of a patented process, if such entity directs or controls others who perform all of the process steps that the directing/controlling entity itself does not perform;

(3) direct infringement may be found on the part of multiple entities who act in concert to perform, or to direct or control the performance of, all of the steps of a patented process, as part of a common design or purpose of such entities for carrying out the process;

(4) a finding of direct infringement does not require the finding of an agency relationship or other contractual relationship between the a directing/controlling entity and other entities who are directed by the directing/controlling entities to perform steps of the patented process, and

(5) when a directing/controlling entity is liable as a direct infringer, a directed/controlled entity who is merely acting under the direction or control of the directing/controlling entity will not itself be liable as an infringer.

FURTHER RESOLVED, That the American Bar Association supports the restoration of the common law principle that indirect infringement, through active inducement of infringement under 35 U.S.C. §271(b) or contributory infringement under 35 U.S.C. §271(c), requires a predicate finding of direct infringement by at least one person who is liable as a direct infringer.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution calls for the Association to adopt policy relating to determinations of patent infringement in cases with patent claims for methods or processes that require multiple steps and multiple participants to complete.

2. Summary of the Issue that the Resolution Addresses

Electronically operated, computer-implemented, and Internet-delivered innovations are growing exponentially, and are frequently embodied in patented processes. Inventions that enable online interactive communication and commerce between merchants and service providers and their customers are prime examples.

Recent decisions of the U.S. Court of Appeals for the Federal Circuit unduly circumscribe the circumstances that can support a determination that a claim to such a multiple-step, multiple-actor process patent has been infringed. These panel decisions have ruled that direct infringement liability can only be found if all the acts required to constitute infringement are attributable to one entity who “controls or directs” the others, and that such control or direction can be found only if the entities act together pursuant to an agency relationship or a contractual commitment of one to act on behalf of the other.

3. Please Explain How the Proposed Policy Position will Address the Issue

The Resolution expresses Association support for expansion of the circumstances in which direct infringement can be found when patented processes require more than one party to complete. It also supports restoration of a rule that no finding of indirect patent infringement may be made absent a predicate finding of direct infringement by at least one person.

The Resolution also supports recognition that the requirement direct infringement be established as a predicate for indirect infringement can be met by a showing of direct infringement based upon the collective act of two or more entities.

4. Summary of Minority Views

None known at this time.
RESOLUTION

1 RESOLVED, That the American Bar Association approves the Uniform Asset Freezing Orders Act, 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.
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the ABA approves the Uniform Asset Freezing Orders Act 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.

2. Summary of the Issue that the Resolution Addresses

This Act creates a uniform process for the issuance of asset freezing orders, which are *in personam* orders freezing the assets of a defendant and imposing collateral restraint on non-parties such as the defendant’s bank in order to preserve assets from dissipation, pending judgment.

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

Approval of the Uniform Asset Freezing Orders Act by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

4. Summary of Minority Views

None known.
RESOLVED, That the American Bar Association approves the Uniform Deployed Parents Custody and Visitation Act, 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.
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the ABA approves the Uniform Deployed Parents Custody and Visitation Act 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.

2. Summary of the Issue that the Resolution Addresses

The Uniform Deployed Parents Custody and Visitation Act (UDPCVA) addresses the wide variability in the ways that states handle child custody and visitation issues that arise when service members are deployed. Because of the mobile nature of military service, and because a child’s other parent will often live in or move to a different state than the deployed service member, bringing the child with them, there are many times that these custody issues involve two or more states. Yet different states now apply very different substantive law and court procedures from one another when custody issues arise on a parent’s deployment. The resulting patchwork of rules makes it difficult for the parents to resolve these important issues quickly and fairly, hurts the ability of deploying parents to serve the country effectively, and interferes with the best interest of children.

The UDPCVA provides uniform, expeditious, and fair disposition of cases involving the custody rights of a member of the military. The UDPCVA ensures a proper balance of interests – protecting the rights of the service member, the other parent, and above all the best interest of the children involved.

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

Approval of the Uniform Deployed Parents Custody and Visitation Act by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

4. Summary of Minority Views

None known.
RESOLUTION

RESOLVED, That the American Bar Association approves the Uniform Premarital and Marital Agreements Act, 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.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   That the ABA approves the Uniform Premarital and Marital Agreements Act 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.

2. **Summary of the Issue that the Resolution Addresses**

   Every state has laws addressing the creation and enforcement of divorce-focused premarital agreements, but the standards for regulating those agreements vary greatly from state to state. At the same time, state law regarding enforcement of marital agreements has been far less settled and consistent. Some states have neither case-law nor legislation addressing the creation or enforceability of marital agreements, while other states have enacted varied approaches to guide courts in addressing the issues involved. When applied to both premarital and marital agreements, these discordant standards have created conflicts within the law and further uncertainty about enforcement as couples move from state to state.

   The Uniform Premarital and Marital Agreements Act brings clarity and consistency across a range of agreements between spouses and those who are about to become spouses. The focus is on agreements that purport to modify or waive rights that would otherwise arise at the time of the dissolution of the marriage or the death of one of the spouses.

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

   Approval of the Uniform Premarital and Marital Agreements Act by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

4. **Summary of Minority Views**

   None known.
RESOLVED, That the American Bar Association reaccredit for an additional five-year term the following designated specialty certification programs for lawyers:

- Elder Law program of the National Elder Law Foundation of Tucson, Arizona;
- Legal Malpractice program of the American Board of Professional Liability Attorneys, of Atlanta, Georgia; and
- Medical Malpractice program of the American Board of Professional Liability Attorneys, of Atlanta, Georgia.
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association grant reaccreditation to the Elder Law certification program of the National Elder Law Foundation and to the Legal Malpractice and Medical Malpractice programs of the American Board of Professional Liability Attorneys. These programs have been reviewed under procedures adopted by the Standing Committee on Specialization in accordance with the Standards for the Accreditation of Specialty Certification Programs for Lawyers, adopted by the House of Delegates in February 1993.

2. Summary of the Issue the Resolution Addresses

To respond to a need to regulate certifying organizations, the House of Delegates adopted standards for accreditation of specialty certification programs for lawyers, and delegated to the Standing Committee the task of evaluating organizations that apply to the ABA for accreditation and reaccreditation. This Resolution acquits the Standing Committee’s obligation to periodically review programs that the House of Delegates has accredited and recommend their further reaccreditation or revocation of accreditation.

3. Explanation of How Proposed Policy Position Will Address Issue

The recommendation addresses the issue by implementing previous House resolutions calling on the ABA to evaluate specialty certification organizations that apply for accreditation and reaccreditation.

4. Summary of Minority Views or Opposition

The Standing Committee on Specialization approved the proposed recommendation unanimously. No opposition has been identified.
RESOLVED, That the American 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.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   This resolution 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.

2. **Summary of the Issue that the Resolution Addresses**
   Public defender services are constitutionally mandated obligations essential to protecting the fundamental rights of any person who is accused of a crime, however, many of these services are severely underfunded. This results in excessive caseloads which threaten the right to effective assistance of counsel.

3. **Please Explain How the Proposed Policy Position will address the issue**
   This resolution would help ensure effective defense services to the indigent accused: 1) by urging Congress to establish a Center for Indigent Defense Improvement in each State and territory requesting such assistance to determine appropriate staffing levels for local indigent defense delivery systems, 2) by certifying compliance when appropriate staffing levels have been met, 3) by providing funding through a grant-in-aid program to provide incentives to make such improvements, 4) by providing technical assistance to public defense programs and local governments to facilitate the regulation and monitoring of any contractual arrangements to provide indigent defense services, and 5) by providing training and other assistance to ensure defense counsel have adequate supporting resources and services to conduct an effective defense.

4. **Summary of Minority Views**
   None are known.
RESOLVED, That the American Bar Association urges federal, state, local, tribal and territorial
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.

FURTHER RESOLVED, That the American Bar Association urges each jurisdiction to educate
the public on the definition of child abuse and neglect within said jurisdiction as well as on how
to recognize abuse and to whom to report the abuse.

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, tribal
and territorial governments to provide civil immunity for good faith reporters of child abuse and
neglect.
EXECUTIVE SUMMARY

1. Summary of the Resolution
   This resolution urges jurisdictions 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. The resolution further urges jurisdictions to educate the public on the definition of child abuse and neglect within the jurisdiction, and how to recognize abuse and to whom to report abuse. It further urges jurisdictions to provide for civil immunities to all reporters of child abuse when making a good faith report to appropriate agencies.

2. Summary of the Issue that the Resolution Addresses
   Recent high-profile cases concerning child abuse and neglect demonstrate the need for more comprehensive mandatory reporting laws to ensure that children and society are protected.

3. Please Explain How the Proposed Policy Position will address the issue
   This resolution would provide structure to concerned parties to make certain that abuse and neglect does not go unreported. The education provision of the resolution increases awareness about the issue in the jurisdiction, while the civil immunity provision would enable potential reporters to feel safe about reporting potential abuse.

4. Summary of Minority Views
   None are known.
RESOLVED, That the American Bar Association urges state, territorial and tribal 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.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   This resolution urges jurisdictions 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 prevent acceptance of more clients than the office can competently and diligently represent.

2. **Summary of the Issue that the Resolution Addresses**
   With increased workload comes the possibility of a public defender breaching the ethical obligation to provide competent and diligent representation, and violating a defendant’s Sixth Amendment right to effective assistance of counsel. Public defender offices across the country are seriously overburdened by excessive caseloads which threaten their ability to provide competent and diligent representation. For example, DOJ statistics found that 73% of county indigent defense systems operate under caseloads which exceed ABA maximum caseload standards. Chief Defenders, who are frequently “at will” public employees often, face the threat or actual fact of retaliation if they attempt to challenge such excessive caseloads.

3. **Please Explain How the Proposed Policy Position will address the issue**
   The resolution would protect Chief Public Defenders from wrongful termination for attempting in good faith to provide competent and diligent representation in accordance with ABA and state bar mandated ethical obligations.

4. **Summary of Minority Views**
   None are known.
AMERICAN BAR ASSOCIATION
CRIMINAL JUSTICE SECTION
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association 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.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
The resolution 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.

2. **Summary of the Issue that the Resolution Addresses**
Prosecutors handle a large percentage of the criminal cases in this country, however, under-funding has resulted in prosecutors falling behind in new and emerging technologies, forensic sciences and ethics. Under-funding also risks public safety and increases the chances of wrongful convictions.

3. **Please Explain How the Proposed Policy Position will address the issue**
Increased federal funding will result in better trained prosecutors who are able to use the latest scientific advances, and better protect the public.

4. **Summary of Minority Views**
None are known.
RESOLVED, That the American Bar Association urges federal, state, territorial, tribal, and local courts to:

(a) Ensure that defense counsel to a criminal or juvenile adjudication of delinquency proceeding investigates the juvenile defendant’s actual immigration status and informs the client about the immigration penalties and/or consequences that may stem from the case, as well as the availability of any relief from possible consequences;

(b) Provide non-U.S. citizen juvenile defendants at the plea colloquy with judicial warnings about the immigration consequences of criminal or delinquency proceedings; and

(c) Ensure that a juvenile’s plea to any offense is knowingly, voluntarily, and intelligently made, specifically considering any direct or indirect immigration consequences or penalties based on the individual’s entry of a plea to an offense.

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

(a) Provide training to judges, prosecutors, criminal defense lawyers, and legal aid lawyers about the immigration consequences of criminal convictions and juvenile adjudications of delinquency and any available relief from such consequences, as set forth by the Supreme Court of the United States in the case Padilla v. Kentucky;

(b) Develop pro bono programs to counsel indigent, non-U.S. citizen juvenile defendants about the immigration consequences of criminal or delinquency proceedings; and

(c) Provide pro bono representation or reduced fee support services to advise indigent, non-U.S. citizen juvenile defendants about the immigration consequences in a particular case.
EXECUTIVE SUMMARY

1. Summary of the Resolution
This resolution urges jurisdictions to ensure that defense counsel inquires and investigates a juvenile defendant’s immigration status and inform the defendant about any possible collateral consequences. It further requires judicial warnings about such consequences and ensures that any juvenile plea is knowingly given and considers any collateral consequences. The resolution further urges providing training to lawyers and judges on potential collateral consequences to non-US citizen juvenile defendants, and develop pro bono counseling and representation programs to non-US citizen juveniles regarding collateral consequences.

2. Summary of the Issue that the Resolution Addresses
For non-U.S. juvenile defendants, criminal and juvenile court proceedings can result in criminal convictions or juvenile adjudications of delinquency, which in turn can lead to immigration penalties or consequences.

3. Please Explain How the Proposed Policy Position will address the issue
The resolution would ensure that non-US citizen juvenile defendants are informed that the proceedings could have immigration consequences, enabling them to make informed decisions about their futures. The resolution would also urge providing programs to help ensure that non-US citizen juveniles are properly informed of any collateral consequences.

4. Summary of Minority Views
None are known.
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 a victim of human trafficking, that individual should:

(a) not be prosecuted for crimes related to their prostitution or other non-violent crimes
that are a direct result of their status as a victim of human trafficking;

(b) be housed 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.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   This Resolution encourages lawmakers to enact laws and regulations and to develop policies that assure that once an individual has been identified as a victim of human trafficking, that individual: should not be prosecuted for crimes related to their prostitution or other non-violent deadly crimes that are a direct result of the individual’s status as a victim of human trafficking; should be housed appropriately; should be provided appropriate protection and should be assured their names and identifying information will not be disclosed to the public.

2. **Summary of the Issue that the Resolution Addresses**
   Currently, victims of human trafficking are being prosecuted for prostitution related crimes and are not being recognized as victims. This is leading to the unjust result of victims being criminalized and being put in potential further harm by detention, or release to their captors.

3. **Please Explain How the Proposed Policy Position will address the issue**
   Legislation that ensures that once an individual has been identified as a victim of human trafficking, they are treated as victims and provided appropriate services, will empower and assist victims begin to rebuild their lives and regain their safety and independence.

4. **Summary of Minority Views**
   None are known.
RESOLVED, That the American Bar Association urges local, state, territorial, tribal and federal governments to enact legislation allowing human trafficking victims charged with prostitution related crimes or other non-violent crimes that are a direct result of their being trafficked to assert an affirmative defense of being a human trafficking victim.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
The Resolution encourages lawmakers to enact legislation allowing human trafficking victims charged with prostitution related crimes or other non-violent crimes to assert an affirmative defense of being a human trafficking victim.

2. **Summary of the Issue that the Resolution Addresses**
Currently, victims of human trafficking are being prosecuted for prostitution and other crimes directly resulting from being a trafficking victim and are not being recognized as victims. This is leading to the unjust result of victims being criminalized and being put in potential further harm by detention, or release to their captors.

3. **Please Explain How the Proposed Policy Position will address the issue**
Enacting legislation that creates the affirmative defense of human trafficking would obligate criminal justice professionals to investigate prostitution-related cases to determine if trafficking exists and would require instituting policies on how to appropriately and effectively identify victims of human trafficking. Legislation establishing the affirmative defense of human trafficking could lead to two significant results. First, victims of human trafficking facing criminal prosecutions can avoid unjust convictions and gain access to social services and benefits to alleviate their plight. Second, identifying victims of human trafficking and obtaining their cooperation can lead law enforcement to their traffickers and possibly result in trafficking rings being shut down.

4. **Summary of Minority Views**
None are known.
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 victims of human trafficking to seek to vacate their criminal convictions, for crimes related to their prostitution or other non-violent crimes 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 victims of human trafficking in vacating convictions for offenses that are a direct result of their trafficking victimization.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   This Resolution urges lawmakers to aid victims of human trafficking by enacting and enforcing laws and policies that permit victims of human trafficking to vacate their criminal convictions for crimes related to prostitution or other non-violent crimes that are a direct result of their trafficking victimization; encourages legal assistance providers to develop pro bono programs to assist victims of human trafficking to vacate convictions for offenses that are a direct result of their trafficking victimization; and calls for lawmakers to help establish and fund programs to assist victims with the process.

2. **Summary of the Issue that the Resolution Addresses**
   Victims of human trafficking have endured horrendous treatment, which will affect them both mentally and physically. The collateral consequences of non-violent crimes that are a direct result of or are a direct result of their trafficking victimization can prevent human trafficking victims from enjoying housing, jobs, loans and education as they attempt to rebuild their lives.

3. **Please Explain How the Proposed Policy Position will address the issue**
   The Resolution will alleviate the collateral consequences of convictions for survivors of human trafficking and establish and ensure funding for programs designed to assist those who are seeking to vacate the convictions of victims that are incident to their trafficking victimization.

4. **Summary of Minority Views**
   None are known.
RESOLVED, That the American Bar Association urges federal, state, local, tribal and territorial 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 victims of human trafficking and enable them to direct victims and their families to social service agencies that offer services and benefits designed to assist victims of human trafficking.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   This Resolution encourages the development and implementation of training programs for judges, prosecutors, defense counsel, law enforcement officers, and other investigators that will enable them to identify victims of human trafficking and enable them to direct victims and their families to social service agencies that offer services and benefits designed to assist victims of human trafficking.

2. **Summary of the Issue that the Resolution Addresses**
   When victims of human trafficking are properly identified, they can be directed to appropriate agencies for assistance; this ensures that victims of human trafficking can access social services and benefits to alleviate their plight, including such information necessary to support the assertion of an affirmative defense. Properly identifying victims of human trafficking and obtaining their cooperation can also lead law enforcement to their traffickers.

3. **Please Explain How the Proposed Policy Position will address the issue**
   By training judges, prosecutors, defense counsel, law enforcement officers, and other investigators to identify victims of human trafficking, those victims are more likely to receive aid and be directed towards appropriate social services.

4. **Summary of Minority Views**
   None are known.
RESOLVED, That the American Bar Association urges the Judicial Conference of the United States to amend the Model Grand Jury Charge as follows:

a) Delete paragraph 10 (which now reads: “Furthermore, when deciding whether or not to indict, you should not consider punishment in the event of conviction.”);

b) Revise paragraph 23 (to read: “Frequently, charges are made against more than one person. It will be your duty to examine the evidence as it relates to each person, and to make your finding as to each person. In other words, where charges are made against more than one person, you may indict only those persons who you believe properly deserve indictment. You must remember to consider the charges against each person separately.”); and

c) Revise paragraph 25 (to read: “To return an indictment charging an individual with an offense, it is not necessary that you find that individual guilty beyond a reasonable doubt. You are not a trial jury and your task is not to decide the guilt or innocence of the person charged. Your task is to determine whether the government's evidence as presented to you is sufficient to cause you to conclude that there is probable cause to believe that the person being investigated committed the offense charged. To put it another way, you may vote to indict only where the evidence presented to you is sufficiently strong to warrant a reasonable person’s belief that the person being investigated is probably guilty of the offense charged.”).
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   This resolution recommends changes to three of the Instructions in the Model Grand Jury Charge, which was promulgated by the Judicial Conference of the United States. The three recommendations for changes are as follows: (1) Delete paragraph 10 (which now reads: “Furthermore, when deciding whether or not to indict, you should not consider punishment in the event of conviction.”); (2) Revise paragraph 23 (to read: “Frequently, charges are made against more than one person. It will be your duty to examine the evidence as it relates to each person, and to make your finding as to each person. In other words, where charges are made against more than one person, you may indict only those persons who you believe properly deserve indictment. You must remember to consider the charges against each person separately.”); and (3) Revise paragraph 25 (to read: “To return an indictment charging an individual with an offense, it is not necessary that you find that individual guilty beyond a reasonable doubt. You are not a trial jury and your task is not to decide the guilt or innocence of the person charged. Your task is to determine whether the government's evidence as presented to you is sufficient to cause you to conclude that there is probable cause to believe that the person being investigated committed the offense charged. To put it another way, you may vote to indict only where the evidence presented to you is sufficiently strong to warrant a reasonable person's belief that the person being investigated is probably guilty of the offense charged.”).

2. **Summary of the Issue that the Resolution Addresses**
   Whether federal grand jurors should be instructed as to their responsibilities in the manner proposed by the Resolution to comport with the opinion of the United States Supreme Court in *Vasquez v. Hillery*, 474 U.S. at 263 (1986).

3. **Please Explain How the Proposed Policy Position will address the issue**
   As currently written the Model Grand Jury Charge would appear to suggest that a blanket indictment for all defendants is permissible. This resolution would clarify that the Grand Jury should be instructed to vote separately on each defendant. Additionally, by changing the language in the instruction from “should indict” to “may indict”, the jury is less likely to understand the instruction to mean an inflexible duty to indict. The changes also make clear that the grand jury retains discretion within the Supreme Court’s opinion in *Vasquez v. Hillery*, 474 U.S. 254, 263 (1986), not to indict on a given charge even though the evidence would support a conviction.

4. **Summary of Minority Views**
   None are known.
RESOLVED, That the American Bar Association grant approval to MacCormac College, Paralegal Studies Program, Chicago, IL.

FURTHER RESOLVED, That the American Bar Association reapprove the following paralegal education programs: University of San Diego, Paralegal Program, San Diego, CA; West Los Angeles College, Paralegal Program, Culver City, CA; Community College of Aurora, Paralegal Program, Aurora, CO; Georgetown University, Paralegal Studies Program, Washington, DC; Ball State University, Legal Assistance Program, Muncie, IN; Anne Arundel Community College, Paralegal Studies Program, Arnold, MD; Winona State University, Paralegal Program, Winona, MN; Burlington County College, Paralegal Program, Pemberton, NJ; Hilbert College, Paralegal Studies Program, Hamburg, NY; LaGuardia Community College, Paralegal Studies Program, Long Island City, NY; Schenectady County Community College, Paralegal Studies Program, Schenectady, NY; Trident Technical College, Paralegal Studies Program, Charleston, SC; El Centro College, Paralegal Program, Dallas, TX; and Lakeshore Technical College, Paralegal Program, Cleveland, WI.

FURTHER RESOLVED, That the American Bar Association withdraw the approval of Kaplan College fka Denver Career College, Paralegal Program, Thornton, CO; Syracuse University, Legal Studies Program, Syracuse, NY; and Skagit Valley College, Paralegal Program, Mt. Vernon, WA, at the request of the institutions, as of the adjournment of the 2013 Midyear Meeting of the House of Delegates.

FURTHER RESOLVED, That the American Bar Association extend the terms of approval until the August 2013 Annual Meeting of the House of Delegates for the following programs: Everest College Phoenix, Paralegal Program, Phoenix, AZ; California State University East Bay, Paralegal Studies Program, Hayward, CA; DeAnza College, Paralegal Program, Cupertino, CA; Fullerton College, Paralegal Studies Program, Fullerton, CA; University of California Riverside, Paralegal Certificate Program, Riverside, CA; Manchester Community College, Legal Assistant Program, Manchester, CT; University of Hartford, Paralegal Studies Department, West Hartford, CT; Wesley College, Legal Studies Program, Dover, DE; Miami-Dade College, Paralegal Studies Program, Miami, FL; Valencia College, Legal Assisting Program, Orlando, FL; Gainesville State College—North Campus, Paralegal Studies Program, Gainesville, GA; Des Moines Area Community College, Legal Assistant Program, Des Moines, IA; Illinois Central
College North Campus, Paralegal Program, East Peoria, IL; South Suburban College, Paralegal/Legal Assistant Program, South Holland, IL; Louisiana State University, Paralegal Studies Program, Baton Rouge, LA; Bay Path College, Legal Studies Program, Longmeadow, MA; North Shore Community College, Paralegal Program, Danvers, MA; Suffolk University, Applied Legal Studies Program, Boston, MA; Harford Community College, Paralegal Studies Program, Bel Air, MD; Ferris State University, Legal Studies Program, Big Rapids, MI; Lansing Community College, Paralegal Program, Lansing, MI; Hamline University, Legal Studies Program, St. Paul, MN; Inver Hills Community College, Paralegal Program, Inver Grove Heights, MN; Meredith College, Paralegal Program, Raleigh, NC; Bergen Community College, Paralegal Program, Paramus, NJ; Gloucester County College, Paralegal Program, Sewell, NJ; Truckee Meadows Community College, Paralegal Program, Reno, NV; Marist College, Paralegal Program, Poughkeepsie, NY; Westchester Community College, Paralegal Studies Program, Valhalla, NY; Kent State University, Paralegal Studies Program, Kent, OH; Rhodes State College, Paralegal/Legal Assisting Program, Lima, OH; University of Tulsa, Paralegal Studies Program, Tulsa, OK; Clarion University of Pennsylvania, Paralegal Studies Program, Oil City, PA; Gannon University, Legal Assistant Program, Erie, PA; Peirce College, Paralegal Studies Program, Philadelphia, PA; Pennsylvania College of Technology, Legal Assistant Program, Williamsport, PA; Villanova University, Paralegal Program, Villanova, PA; Roger Williams University, Paralegal Studies Program, Providence, RI; Florence-Darlington Technical College, Legal Assistant/Paralegal Program, Florence, SC; Roane State Community College, Paralegal Studies Program, Harriman, TX; Amarillo College, Paralegal Studies Program, Amarillo, TX; Lone Star College North Harris fka North Harris College, Paralegal Program, Houston, TX; San Jacinto College North, Legal Assistant Program, Houston, TX; Utah Valley University, Department of Legal Studies, Orem, UT; Northern Virginia Community College, Paralegal Studies Program, Alexandria, VA; Highline Community College, Paralegal Program, Des Moines, WA; and Milwaukee Area Technical College, Paralegal Program, Milwaukee, WI.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

The Standing Committee on Paralegals resolve(s) that the House of Delegates grants approval to one paralegal education program, grants reapproval to fourteen programs, withdraws the approval of three programs, and extends the term of approval of forty-seven programs.

2. **Summary of the issue which the Resolution Addresses**

The programs recommended for approval and reapproval in the enclosed report meet the Guidelines for the Approval of Paralegal Education Programs.

3. **An explanation of how the proposed policy position Will Address the Issue**

The programs recommended for approval and reapproval in this report have followed the procedures required by the Association and are in compliance with the Guidelines for the Approval of Paralegal Education Programs.

4. **A summary of any minority views or opposition which have been identified**

No other positions on this resolution have been taken by other Association entities, affiliated organizations or other interested groups.
RESOLVED, That the American Bar Association amends Principles 1(C) through (F), 6(C), 10(C) and 11(A) of the 2005 *Principles for Juries and Jury Trials* dated February 2013.
PRINCIPLE 1–THE RIGHT TO JURY TRIAL SHALL BE PRESERVED

C. Judges and lawyers have a duty to preserve jury trial rights by using procedures that enhance the fairness of jury trials and enable jurors to determine the facts, apply the law, and reach a verdict in every jury trial.

D. In civil cases the right to jury trial may be waived as provided by applicable law, but waiver should neither be presumed nor required where the interests of justice demand otherwise.

D.E. With respect to criminal prosecutions:

1. A defendant’s waiver of the right to jury trial must be knowing and voluntary, joined in by the prosecutor and accepted by the court.

2. The court should not accept a waiver unless the defendant, after being advised by the court of his or her right to trial by jury and the consequences of waiver, personally waives the right to trial by jury in writing or in open court on the record.

3. A defendant may not withdraw a voluntary and knowing waiver as a matter of right, but the court, in its discretion, may permit withdrawal prior to the commencement of trial.

4. A defendant may withdraw a waiver of jury, and the prosecutor may withdraw its consent to a waiver, both as a matter of right, if there is a change of trial judge.

E. F. A quality and accessible jury system should be maintained with budget procedures that will ensure adequate, stable, long-term funding under all economic conditions.

PRINCIPLE 6--COURTS SHOULD EDUCATE JURORS REGARDING THE ESSENTIAL ASPECTS OF A JURY TRIAL

C. Throughout the court of the trial, the court should provide instructions to the jury in plain and understandable language.

1. The court should give preliminary instructions directly following empanelment of the jury that explain the jury’s role, the trial procedures including note-taking and questioning by jurors, the nature of evidence and its evaluation, the issues to be addressed, and the basic relevant legal principles, including the elements of the charges and claims and definitions of unfamiliar legal terms.

2. The court should advise jurors that once they have been selected to serve as jurors or alternates in a trial, they are under an obligation to refrain from talking about the case outside the jury room until the trial is over and the jury has reached a verdict. At the time of such instructions in civil cases, the court may inform the jurors about the
permissibility of discussing the evidence among themselves as contemplated in Standard 13 F, they must consider only the applicable law and evidence presented in court, and must refrain from communicating about the case with anyone outside the jury room until the trial is over and the jury has reached a verdict. This instruction should explain that the ban on outside communication is broad, encompassing not only oral discussions in person or by phone, but also communications through e-mails, texts, Internet postings, blog postings, social media websites like Facebook or Twitter, and any other method for sharing information about the case with another person or gathering information about the case from another person. At the time of such instructions in civil cases, the court may inform the jurors about the permissibility of discussing the evidence among themselves as contemplated in Standard 13 F. The court should also instruct jurors that they must respect the jury process, including the fundamental premise of a fair trial: that each party must have a chance to examine and discuss each item of evidence in the case. Accordingly, jurors must understand that it is critically important they do not themselves investigate the facts of the case, the law governing the case, or the parties, lawyers, or judges in the case. The court should explain that a juror’s duties to avoid communicating about the case outside the jury room and to refrain from independent investigations about the case are extremely important, and that the court has the authority to impose serious punishment upon jurors who violate those duties.

3. The court should give such instructions during the course of the trial as are necessary to assist the jury in understanding the facts and law of the case being tried as described in Standard 13 D.2.

4. Prior to deliberations, the court should give such instructions as are described in Standard 14 regarding the applicable law and the conduct of deliberations.

PRINCIPLE 10–COURTS SHOULD USE OPEN, FAIR AND FLEXIBLE PROCEDURES TO SELECT A REPRESENTATIVE POOL OF PROSPECTIVE JURORS

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C. Exemptions, excuses, and deferrals should be sparingly used.

1. All automatic excuses or exemptions from jury service should be eliminated.

2. Eligible persons who are summoned may be excused from jury service only if:
   a. Their ability to perceive and evaluate information is so impaired that even with reasonable accommodations having been provided, they are unable to perform their duties as jurors and they are excused for this reason by a judge, provided, however, that the court shall make every effort to provide reasonable accommodations for non-English speaking jurors, including the provision of a court-approved translator, to the extent that the use of the translator does not otherwise adversely affect the efficient and fair administration of justice or the conduct of the trial; or
b. Their service would be an undue hardship or they have served on a jury during the two years preceding their summons and they are excused by a judge or duly authorized court official.

3. Deferrals of jury service to a date certain within six months should be permitted by a judge or duly authorized court official. Prospective jurors seeking to postpone their jury service to a specific date should be permitted to submit a request by telephone, mail, in person or electronically. Deferrals should be preferred to excusals whenever possible.

4. Requests for excuses or deferrals and their disposition should be written or otherwise made of record. Specific uniform guidelines for determining such requests should be adopted by the court.

PRINCIPLE 11–COURTS SHOULD ENSURE THAT THE PROCESS USED TO EMPANEL JURORS EFFECTIVELY SERVES THE GOAL OF ASSEMBLING A FAIR AND IMPARTIAL JURY

A. Before voir dire begins, the court and parties, through the use of appropriate questionnaires, should be provided with data pertinent to the eligibility of jurors and to matters ordinarily raised in voir dire, including such background information as is provided by prospective jurors in their responses to the questions appended to the notification and summons considered in Standard 10 D. 1.

1. In appropriate cases, the court should consider using a specialized questionnaire addressing particular issues that may arise. The court should permit the parties to submit a proposed juror questionnaire. The parties should be required to confer on the form and content of the questionnaire. If the parties cannot agree, each party should be afforded the opportunity to submit a proposed questionnaire and to comment upon any proposal submitted by another party.

2. Jurors should be advised of the purpose of any questionnaire, how it will be used and who will have access to the information.

3. All completed questionnaires should be provided to the parties in sufficient time before the start of voir dire to enable the parties to adequately review them before the start of that examination.

4. After trial, jury questionnaires that are not a part of the record should be disposed of to preserve a juror’s privacy, consistent with Principle 7 and the applicable law.
EXECUTIVE SUMMARY

1. Summary of the Resolution
The Resolution amends 4 of the 19 Principles for Juries and Jury Trials previously passed by the House in 2005. The first amendment to Principle 1 reminds judges and lawyers of their affirmative duty to protect and enhance parties’ jury trial rights. The second amendment addresses Principle 6 and instructs jurors that they should not “communicate” rather than merely “talk” about the case and tries to address other issues created by the ubiquity of the use of the internet. The third amendment is to Principle 10 and encourages the inclusion of non-English speaking citizens in the jury pool. The fourth amendment encourages the destruction of juror questionnaires that are not part of the record to protect juror privacy.

2. Summary of the Issue that the Resolution Addresses
1. The decline in the use of jury trials and improving the jury trial experience. 2. The use of the internet and social media by jurors to research the case and to communicate about the trial. 3. The inclusion of non-English speakers in the jury pool. 4. The best practice for the handling of juror questionnaires after trial.

3. Please Explain How the Proposed Policy Position will address the issue
These amendments are needed to address critical issues that have arisen since the Principles were first drafted. Courts have been under strong fiscal and time pressure that can result in diminution of the use of jury trials. In addition the application of the Principles enhances the fairness of the trial. Judges and lawyers are encouraged to protect these rights and to use these procedures. Second, the use of the internet, smart phones and similar technology has expanded exponentially since 2005. Without ever speaking or talking about the case a juror could text friends, post comments about the case on Facebook or other internet sites, and can easily undertake his or her own research. These issues are addressed by these changes. Third, last year the House passed language access standards to make the justice system accessible to the entire population. Being able to fully participate as a juror enhances public support for the justice system where reasonable accommodation can allow non-English speakers to serve. The amendment encourages such participation. Fourth, reluctance to serve as a juror can in part stem from the potential incursions into the privacy of potential jurors as part of the jury selection process. The court should take the necessary steps to protect that privacy to the extent it is able and therefor there is a recommendation that juror questionnaires that are not part of the record be disposed of by the court.

4. Summary of Minority Views
None are known.
RESOLVED, That the American Bar Association amends Rule 5.5 of the ABA Model Rules of Professional Conduct 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 or in a foreign 
jurisdiction, and not disbarred or suspended from practice in any 
jurisdiction or the equivalent thereof, may provide legal services through an 
office or other systematic and continuous presence 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; and, when 
performed by a foreign lawyer and concern the law of this or another U.S. 
jurisdiction, are undertaken in consultation with a U.S. lawyer authorized to 
provide such advice; or
(2) are services that the lawyer is authorized by federal or other law or rule 
to provide in this jurisdiction.
(e) For purposes of paragraph (d), the foreign lawyer must be a member in good 
standing of a recognized legal profession in a 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.

COMMENT

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized 
to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may 
be authorized by court rule or order or by law to practice for a limited purpose or on a restricted 
basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the 
lawyer’s direct action or by the lawyer assisting another person. For example, a lawyer may not 
assist a person in practicing law in violation of the rules governing professional conduct in that 
person’s jurisdiction.
[2] The definition of the practice of law is established by law and varies from one 
jurisdiction to another. Whatever the definition, limiting the practice of law to members of the 
bar protects the public against rendition of legal services by unqualified persons. This Rule does 
not prohibit a lawyer from employing the services of paraprofessionals and delegating functions 
to them, so long as the lawyer supervises the delegated work and retains responsibility for their 
work. See Rule 5.3.
[3] A lawyer may provide professional advice and instruction to nonlawyers whose 
employment requires knowledge of the law; for example, claims adjusters, employees of 
financial or commercial institutions, social workers, accountants and persons employed in 
government agencies. Lawyers also may assist independent nonlawyers, such as 
paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-
related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.
[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).

[5] There are occasions in which a lawyer admitted to practice 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 under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a U.S. or foreign lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer’s services are provided on a “temporary basis” in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be “temporary” even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. Paragraph (d) also applies to lawyers admitted in a foreign jurisdiction. The word “admitted” in paragraphs (c), (d) and (e) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are
associated with that lawyer in the matter, but who do not expect to appear before the court or
administrative agency. For example, subordinate lawyers may conduct research, review
documents, and attend meetings with witnesses in support of the lawyer responsible for the
litigation.

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction
to perform services on a temporary basis in this jurisdiction if those services 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. The lawyer,
however, must obtain admission pro hac vice in the case of a court-annexed arbitration or
mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide
certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably
related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted but are not
within paragraphs (c)(2) or (c)(3). These services include both legal services and services that
nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably
related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted. A variety of
factors evidence such a relationship. The lawyer’s client may have been previously represented
by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which
the lawyer is admitted. The matter, although involving other jurisdictions, may have a
significant connection with that jurisdiction. In other cases, significant aspects of the lawyer’s
work might be conducted in that jurisdiction or a significant aspect of the matter may involve the
law of that jurisdiction. The necessary relationship might arise when the client’s activities or the
legal issues involve multiple jurisdictions, such as when the officers of a multinational
corporation survey potential business sites and seek the services of their lawyer in assessing the
relative merits of each. In addition, the services may draw on the lawyer’s recognized expertise
developed through the regular practice of law on behalf of clients in matters involving a
particular body of federal, nationally-uniform, foreign, or international law. Lawyers desiring to
provide pro bono legal services on a temporary basis in a jurisdiction that has been affected by a
major disaster, but in which they are not otherwise authorized to practice law, as well as lawyers
from the affected jurisdiction who seek to practice law temporarily in another jurisdiction, but in
which they are not otherwise authorized to practice law, should consult the [Model Court Rule on
Provision of Legal Services Following Determination of Major Disaster].

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to
practice in another United States or a foreign jurisdiction, and is not disbarred or suspended from
practice in any jurisdiction, or the equivalent thereof, may establish an office or other systematic
and continuous presence in this jurisdiction for the practice of law, as well as Pursuant to
paragraph (c) of this Rule, a lawyer admitted in any U.S. jurisdiction may also provide legal
services in this jurisdiction on a temporary basis. See also Model Rule on Temporary Practice
by Foreign Lawyers. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is
admitted to practice law in another United States or foreign jurisdiction and who establishes an
office or other systematic or continuous presence in this jurisdiction must become admitted to
practice law generally in this jurisdiction.

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

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education. See Model Rule for Registration of In-House Counsel.

[18] Paragraph (d)(2) recognizes that a U.S. or foreign 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., Model Rule on Practice Pending Admission.

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).

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

1. Summary of the Resolution

Inbound Foreign Lawyers: Model Rule 5.5

The Commission is proposing to amend Rule 5.5(d) of the ABA Model Rules of Professional Conduct (Unauthorized Practice of Law; Multijurisdictional Practice of Law) 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. Notably, the proposed amendments to Model Rule 5.5(d) would not authorize the licensing or full admission of foreign in-house lawyers. The amendments would only provide a limited authority to practice for the foreign lawyer’s employer on matters that do not involve U.S. law, unless the foreign lawyer consults with a U.S. lawyer authorized to provide such advice. The definition of who would qualify under Model Rule 5.5 as a foreign lawyer is also set forth in longstanding ABA policy, including the ABA Model Rule on Licensing and Practice by Foreign Legal Consultants, which state supreme courts have adopted with no adverse consequences.

These proposed amendments respond to the increasing number of foreign companies with substantial operations and offices in the U.S. as well as U.S. companies with substantial foreign operations. These companies routinely encounter legal issues that implicate foreign or international law and want the advice of trusted lawyers from other jurisdictions. These companies often find that this advice can be offered most efficiently and effectively if those lawyers relocate to a corporate office in the U.S. The Commission learned that foreign lawyers (including foreign legal consultants) are already engaged as in-house counsel within the U.S., but are subject to little oversight.

This Resolution is complemented by a separate Resolution to amend the 2008 ABA Model Rule for Registration of In-House Counsel (described below). Model Rule 5.5 provides the authorization for this limited form of practice, and the Model Registration Rule provides the mechanism to regulate these lawyers. The Commission concluded that adding foreign lawyers to both Model Rule 5.5 and the Model Rule for Registration of In-House Counsel has the benefit of ensuring that those lawyers are identifiable, subject to monitoring, and accountable for their conduct.

The changes proposed by the Commission would provide state supreme courts with an approach to this issue that protects clients and the public while allowing global organizational clients to employ in-house foreign lawyers of their choice to work in their U.S. offices. Currently seven jurisdictions have rules permitting foreign in-house counsel, and other jurisdictions are considering doing the same. The Commission’s proposal would ensure greater consistency across jurisdictions on this issue.
2. **Summary of the Issue that the Resolution Addresses**

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 regulatory policies keep pace with social change and the evolution of law practice. In furtherance of this, 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 necessary amendments to and/or new ABA policies.

Globalization continues to transform the legal marketplace, with more clients confronting legal problems that cross jurisdictional lines, more lawyers needing to respond to those client needs by crossing borders (including virtually) and relocating to new jurisdictions. The Commission on Ethics 20/20 reviewed the regulatory framework adopted by the House of Delegates in 2002 at the recommendation of the Commission on Multijurisdictional Practice. Unsurprisingly, in light of the accelerated pace of change and the growing proportion of legal work that involves more than one U.S. or foreign jurisdiction, the Commission found that ethical issues are arising with greater frequency. Courts, lawyers, clients and the public need enhanced guidance to address these issues.

These proposed amendments to Model Rule 5.5 respond to the increasing number of foreign companies with substantial operations and offices in the U.S. as well as U.S. companies with substantial foreign operations. These companies routinely encounter legal issues that implicate foreign or international law and want the advice of trusted lawyers from other jurisdictions. These companies often find that this advice can be offered most efficiently and effectively if those lawyers relocate to a corporate office in the U.S. The Commission learned that foreign lawyers (including foreign legal consultants) are already engaged as in-house counsel within the U.S., but are subject to little oversight.

The Commission’s proposal is consistent with following guiding principles that then ABA President Lamm directed the Commission to follow: 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**

The proposed resolution, if adopted, will provide necessary guidance to the profession that will allow lawyers to meet the ethical and regulatory challenges posed by globalization, as well as take advantage of the opportunities for the ethical delivery of legal services. The proposed changes to Model Rule 5.5 (and the separate Resolution to amend the Model Rule for Registration of In-House Counsel) will allow entity clients to meet their needs with counsel of their choice, while ensuring that foreign in-house counsel are identifiable, subject to monitoring, and accountable for their conduct. The proposal is also appropriately limiting because they only provide a limited authority to practice for the foreign lawyer’s employer on matters that do not involve U.S. law, unless
the foreign lawyer consults with a U.S. lawyer authorized to provide such advice. Notably, the proposed amendments to Model Rule 5.5(d) would not authorize the licensing or full admission of foreign in-house lawyers.

4. **Summary of Minority Views**

From the outset, the Commission on Ethics 20/20 committed to and implemented a process that was transparent, open, and provided broad outreach and frequent opportunities for input into its work. Inherent in any undertaking of this scope and complexity is the recognition that there will be disagreements about the approach to issues as well as the substance of proposals. That said, with the exception of concerns by only some ABA members the Commission was not aware of any organized or formal minority views or opposition at the time the Resolution and Report were filed.
RESOLVED, That the American Bar Association amends the ABA Model Rule for Registration of In-House Counsel as follows (insertions underlined, deletions struck through):

Model Rule for Registration of In-House Counsel

GENERAL PROVISIONS:

A. A lawyer who is admitted to the practice of law in another United States jurisdiction or is a foreign lawyer, who is employed as a lawyer and has a continuous presence in this jurisdiction by an organization, the business of which is lawful and consists of activities other than the practice of law or the provision of legal services, and who has a systematic and continuous presence in this jurisdiction as permitted pursuant to Rule 5.5(d)(1) of the Model Rules of Professional Conduct, the business of which is lawful and consists of activities other than the practice of law or the provision of legal services, shall register as in-house counsel within [180 days] of the commencement of employment as a lawyer or if currently so employed then within [180 days] of the effective date of this Rule, by submitting to the [registration authority] the following:

1) A completed application in the form prescribed by the [registration authority];
2) A fee in the amount determined by the [registration authority];
3) Documents proving admission to practice law and current good standing in all jurisdictions, U.S. and foreign, in which the lawyer is admitted to practice law; if the jurisdiction is foreign and the documents are not in English, the lawyer shall submit an English translation and satisfactory proof of the accuracy of the translation; and
4) An affidavit from an officer, director, or general counsel of the employing entity attesting to the lawyer’s employment by the entity and the capacity in which the lawyer is so employed, and stating that the employment conforms to the requirements of this Rule.
For purposes of this Rule, a “foreign lawyer” is a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.

SCOPE OF AUTHORITY OF REGISTERED LAWYER:

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

   1. The registered lawyer is authorized to provide legal services to the entity client or its organizational affiliates, including entities that control, are controlled by, or are under common control with the employer, and for employees, officers and directors of such entities, but only on matters directly related to their work for the entity and only to the extent consistent with Rule 1.7 of the Model Rules of Professional Conduct [or jurisdictional equivalent provision in the jurisdiction]; and

   2. The registered lawyer shall not:

      a. Except as otherwise permitted by the rules of this jurisdiction, appear before a court or any other tribunal as defined in Rule 1.0(m) of the Model Rules of Professional Conduct [or jurisdictional equivalent]; or

      b. Offer or provide legal services or advice to any person other than as described in paragraph B.1., or hold himself or herself out as being authorized to practice law in this jurisdiction other than as described in paragraph B.1.; and

      c. If a foreign lawyer, provide advice on the law of this or another U.S. jurisdiction except in consultation with a U.S. lawyer authorized to provide such advice.

PRO BONO PRACTICE:

C. Notwithstanding the provisions of paragraph B above, a lawyer registered under this section Rule is authorized to provide pro bono legal services through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically authorized in this jurisdiction.

OBLIGATIONS:

D. A lawyer registered under this section Rule shall:

   1. Pay an annual fee in the amount of $_____________;  

   2. Pay any annual client protection fund assessment;

   3. Fulfill the continuing legal education requirements that are required of active members of the bar in this jurisdiction;

   4. Report within [___] days to the jurisdiction the following:

      a. Termination of the lawyer’s employment as described in paragraph BA.4.;

      b. Whether or not public, any change in the lawyer’s license status in another jurisdiction, whether U.S. or foreign, including by the lawyer's resignation;
Whether or not public, any disciplinary charge, finding, or sanction concerning the lawyer by any disciplinary authority, court, or other tribunal in any jurisdiction, U.S. or foreign.

LOCAL DISCIPLINE:

E. A registered lawyer under this section Rule shall be subject to the [jurisdiction’s Rules of Professional Conduct], [jurisdiction’s Rules of Lawyer Disciplinary Enforcement], and all other laws and rules governing lawyers admitted to the active practice of law in this jurisdiction. The [jurisdiction’s disciplinary counsel] has and shall retain jurisdiction over the registered lawyer with respect to the conduct of the lawyer in this or another jurisdiction to the same extent as it has over lawyers generally admitted in this jurisdiction.

AUTOMATIC TERMINATION:

F. A registered lawyer’s rights and privileges under this Rule section automatically terminate when:

1. The lawyer’s employment terminates;
2. The lawyer is suspended or disbarred from practice in any jurisdiction or any court or agency before which the lawyer is admitted, U.S. or foreign; or
3. The lawyer fails to maintain active status in at least one jurisdiction, U.S. or foreign.

REINSTATEMENT:

G. A registered lawyer whose registration is terminated under paragraph F.1. above, may be reinstated within [xx] months of termination upon submission to the [registration authority] of the following:

1. An application for reinstatement in a form prescribed by the [registration authority];
2. A reinstatement fee in the amount of $_____________;
3. An affidavit from the current employing entity as prescribed in paragraph A.4.

SANCTIONS:

H. A lawyer under this Rule who fails to register shall be:

1. Subject to professional discipline in this jurisdiction;
2. Ineligible for admission on motion in this jurisdiction;
3. Referred by the [registration authority] to the this [jurisdiction’s bar admissions authority]; and
4. Referred by the [registration authority] to the disciplinary authority of the jurisdictions of licensure, U.S. and/or foreign.
EXECUTIVE SUMMARY

1. Summary of the Resolution

Inbound Foreign Lawyers: Model Rule for Registration of In-House Counsel

The Commission is proposing amendments to the 2008 ABA Model Rule for Registration of In-House Counsel to permit foreign lawyers to serve as in-house counsel in the U.S., but with the added requirements. One notable requirement is that the foreign lawyers not advise on U.S. law except in consultation with a U.S.-licensed lawyer. The proposed amendments would not authorize the licensing or full admission of foreign in-house lawyers. The Commission is suggesting only a limited and necessary practice authorization for qualified foreign in-house lawyers and a method to ensure they are identifiable, accountable and subject to monitoring.

These proposed amendments respond to the increasing number of foreign companies with substantial operations and offices in the U.S. as well as U.S. companies with substantial foreign operations. These companies routinely encounter legal issues that implicate foreign or international law and want the advice of trusted lawyers from other jurisdictions. These companies often find that this advice can be offered most efficiently and effectively if those lawyers relocate to a corporate office in the U.S. The Commission learned that foreign lawyers (including foreign legal consultants) are already engaged as in-house counsel within the U.S., but are subject to little oversight.

As stated above, the amendments would only provide a limited authority to practice for the foreign lawyer’s employer on matters that do not involve U.S. law, unless the foreign lawyer consults with a U.S. lawyer authorized to provide such advice. The definition of who would qualify as a foreign lawyer is also set forth in longstanding ABA policy, including the ABA Model Rule on Licensing and Practice by Foreign Legal Consultants, which state supreme courts have adopted with no adverse consequences.

The proposed amendments to the Model Rule for Registration of In-House Counsel also would ensure that foreign in-house counsel are subject to the professional conduct rules of the jurisdiction where they are employed, contribute to the client protection fund, are subject to sanctions if they fail to register or do not comply with the professional conduct rules, and comply with continuing legal education requirements. Their employer would have to attest to their compliance with these requirements, and the lawyers could be referred to appropriate authorities in their home jurisdictions of registration and licensure in the event of a violation.

This Resolution complements a separate Resolution to amend Rule 5.5 of the ABA Model Rules of Professional Conduct. The amendments to Model Rule 5.5 would provide the authorization for this limited form of practice, and the changes to the Model Registration Rule provide the mechanism to regulate these lawyers. The Commission concluded that adding foreign lawyers to both Model Rule 5.5 and the Model Rule for
Registration of In-House Counsel has the benefit of ensuring that those lawyers are identifiable, subject to monitoring, and accountable for their conduct.

The changes proposed by the Commission would provide state supreme courts with an approach to this issue that protects clients and the public while allowing global organizational clients to employ in-house foreign lawyers of their choice to work in their U.S. offices. Currently, seven jurisdictions have rules permitting foreign in-house counsel, and other jurisdictions are considering doing the same. The Commission’s proposal would ensure greater consistency across jurisdictions on this issue.

2. **Summary of the Issue that the Resolution Addresses**

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 regulatory policies keep pace with social change and the evolution of law practice. In furtherance of this, 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 necessary amendments to and/or new ABA policies.

Globalization continues to transform the legal marketplace, with more clients confronting legal problems that cross jurisdictional lines, more lawyers needing to respond to those client needs by crossing borders (including virtually) and relocating to new jurisdictions. The Commission on Ethics 20/20 reviewed the regulatory framework adopted by the House of Delegates in 2002 at the recommendation of the Commission on Multijurisdictional Practice. Unsurprisingly, in light of the accelerated pace of change and the growing proportion of legal work that involves more than one U.S. or foreign jurisdiction, the Commission found that ethical issues are arising with greater frequency. Courts, lawyers, clients and the public need enhanced guidance to address these issues.

These proposed amendments to the Model Rule for Registration of In-House Counsel respond to the increasing number of foreign companies with substantial operations and offices in the U.S. as well as U.S. companies with substantial foreign operations. These companies routinely encounter legal issues that implicate foreign or international law and want the advice of trusted lawyers from other jurisdictions. These companies often find that this advice can be offered most efficiently and effectively if those lawyers relocate to a corporate office in the U.S. The Commission learned that foreign lawyers (including foreign legal consultants) are already engaged as in-house counsel within the U.S., but are subject to little oversight.

The Commission’s proposal is consistent with following guiding principles that then ABA President Lamm directed the Commission to follow: 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**

The proposed resolution of the Commission on Ethics 20/20, if adopted, will provide necessary guidance to the profession that will allow lawyers to meet the ethical and regulatory challenges posed by globalization, as well as take advantage of the opportunities for the ethical delivery of legal services. The Commission’s proposal will allow entity clients to meet their needs with counsel of their choice. The separately filed proposed amendments to Model Rule 5.5 provide the authorization for this carefully limited form of practice by foreign in-house counsel, and the changes to the Model Registration Rule provide the mechanism to regulate these lawyers. The Commission’s proposal has the benefit of ensuring that those lawyers are identifiable, subject to monitoring, and accountable for their conduct. The proposal are also appropriately limiting because they only provide a limited authority to practice for the foreign lawyer’s employer on matters that do not involve U.S. law, unless the foreign lawyer consults with a U.S. lawyer authorized to provide such advice. The proposed amendments to the Model Registration Rule would **not** authorize the licensing or full admission of foreign in-house lawyers.

4. **Summary of Minority Views**

From the outset, the Commission on Ethics 20/20 committed to and implemented a process that was transparent, open, and provided broad outreach and frequent opportunities for input into its work. Inherent in any undertaking of this scope and complexity is the recognition that there will be disagreements about the approach to issues as well as the substance of proposals. That said, with the exception of concerns by only some ABA members the Commission was not aware of any organized or formal minority views or opposition at the time the Resolution and Report were filed.
RESOLVED, That the American Bar Association amends the ABA Model Rule on Pro Hac Vice Admission and Appendix A as follows (insertions underlined, deletions struck through):

ABA Model Rule on Pro Hac Vice Admission

I. Admission In Pending Litigation Before A Court Or Agency
   A. Definitions
      1. An “out-of-state” lawyer is a person not admitted to practice law in this state but who is admitted in another state or territory of the United States or of the District of Columbia, and not disbarred or suspended from practice in any jurisdiction.
      2. An out-of-state lawyer is “eligible” for admission pro hac vice if that lawyer:
         a. lawfully practices solely on behalf of the lawyer’s employer and its commonly owned organizational affiliates, regardless of where such lawyer may reside or work; or
         b. neither resides nor is regularly employed at an office in this state; or
         c. resides in this state but (i) lawfully practices from offices in one or more other states and (ii) practices no more than temporarily in this state, whether pursuant to admission pro hac vice or in other lawful ways.
      3. A “client” is a person or entity for whom the out-of-state lawyer has rendered services or by whom the lawyer has been retained prior to the lawyer’s performance of services in this state.
      4. An “alternative dispute resolution” (“ADR”) proceeding includes all types of arbitration or mediation, and all other forms of alternative dispute resolution, whether arranged by the parties or otherwise.
      5. “This state” refers to [state or other U.S. jurisdiction promulgating this Rule]. This Rule does not govern proceedings before a federal court or federal agency located in this state unless that body adopts or incorporates this Rule.
B. Authority of Court or Agency To Permit Appearance By Out-of-State Lawyer

1. Court Proceeding. A court of this state may, in its discretion, admit an eligible out-of-state lawyer retained to appear in a particular proceeding pending before such court to appear pro hac vice as counsel in that proceeding.

2. Administrative Agency Proceeding. If practice before an agency of this state is limited to lawyers, the agency may, using the same standards and procedures as a court, admit an eligible out-of-state lawyer who has been retained to appear in a particular agency proceeding to appear as counsel in that proceeding pro hac vice.

C. In-State Lawyer's Duties. When an out-of-state lawyer appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the in-state lawyer, or in an advisory or consultative role, the in-state lawyer who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the in-state lawyer to advise the client of the in-state lawyer's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the out-of-state lawyer.

D. Application Procedure

1. Verified Application. An eligible out-of-state lawyer seeking to appear in a proceeding pending in this state as counsel pro hac vice shall file a verified application with the court where the proceeding litigation is filed. The application shall be served on all parties who have appeared in the case and the [Disciplinary Counsel lawyer regulatory authority]. The application shall include proof of service. The court has the discretion to grant or deny the application summarily if there is no opposition.

2. Objection to Application. The [Disciplinary Counsel lawyer regulatory authority] or a party to the proceeding may file an objection to the application or seek the court’s imposition of conditions to its being granted. The [Disciplinary Counsel lawyer regulatory authority] or objecting party must file with its objection a verified affidavit containing or describing information establishing a factual basis for the objection. The [Disciplinary Counsel lawyer regulatory authority] or objecting party may seek denial of the application or modification of it. If the application has already been granted, the [Disciplinary Counsel lawyer regulatory authority] or objecting party may move that the pro hac vice admission be withdrawn.

3. Standard for Admission and Revocation of Admission. The courts and agencies of this state have discretion as to whether to grant applications for admission pro hac vice. An application ordinarily should be granted unless the court or agency finds reason to believe that such admission:
   a. may be detrimental to the prompt, fair and efficient administration of justice,
   b. may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent,
c. one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk, or
d. the applicant has engaged in such frequent appearances as to constitute regular practice in this state.

4. Revocation of Admission. Admission to appear as counsel pro hac vice in a proceeding may be revoked for any of the reasons listed in Section I.D.3 above.

E. Verified Application and Fees:
1. Required Information. An application shall state the information listed on Appendix A to this Rule. The applicant may also include any other matters supporting admission pro hac vice.
2. Application Fee. An applicant for permission to appear as counsel pro hac vice under this Rule shall pay a non-refundable fee as set by the [court or other proper authority lawyer regulatory authority] at the time of filing the application. The [court or other proper authority] shall determine for what purpose or purposes these fees shall be used.
3. Exemption for Pro Bono Representation. An applicant shall not be required to pay the fee established by I.E.2 above if the applicant will not charge an attorney fee to the client(s) and is:
   a. employed or associated with a pro bono project or nonprofit legal services organization in a civil case involving the client(s) of such programs; or
   b. involved in a criminal case or a habeas proceeding for an indigent defendant.
4. Lawyers’ Fund for Client Protection. Upon the granting of a request to appear as counsel pro hac vice under this Rule, the lawyer shall pay any required assessments to the lawyers’ fund for client protection. This assessment is in addition to the application fee referred to in Section (E)(2) above.

F. Authority of the [Disciplinary Counsel Lawyer Regulatory Authority], the and Court: Application of Ethical Rules of Professional Conduct, Rules of Disciplinary Enforcement Discipline, Contempt, and Sanctions
1. Authority Over Out-of-State Lawyer and Applicant.
   a. During pendency of an application for admission pro hac vice and upon the granting of such application, an out-of-state lawyer submits to the authority of the courts and the jurisdiction of [Disciplinary Counsel lawyer regulatory authority] of this state for all conduct arising out of or relating in any way to the application or proceeding in which the out-of-state lawyer seeks to appear, regardless of where the conduct occurs. The applicant or out-of-state lawyer who has obtained pro hac vice admission in a proceeding submits to this authority for all that lawyer’s conduct (i) within the state while the proceeding is pending or (ii) arising out of or relating to the application or the proceeding. An applicant or out-of-state lawyer who has pro hac vice authority for a proceeding may be disciplined in the same manner as an in-state lawyer.
b. The court’s and the Disciplinary Counsel’s lawyer regulatory authority’s authority includes, without limitation, the court’s and the Disciplinary Counsel’s lawyer regulatory authority’s rules of professional conduct, rules of disciplinary enforcement, contempt and sanctions orders, local court rules, and court policies and procedures.

2. Familiarity With Rules. An applicant shall become familiar with all applicable the rules of professional conduct, rules of disciplinary enforcement of the lawyer regulatory authority, local court rules, and policies and procedures of the court before which the applicant seeks to practice.

II. Out-of-State Proceedings, Potential In-State and Out-of-State Proceedings, and All ADR

A. In-State Ancillary Proceeding Related to Pending Out-of-State Proceeding. In connection with proceedings pending outside this state, an out-of-state lawyer admitted to appear in that proceeding may render in this state legal services regarding or in aid of such proceeding.

B. Consultation by Out-of-State Lawyer

1. Consultation with In-State Lawyer. An out-of-state lawyer may consult in this state with an in-state lawyer concerning the in-state’s lawyer’s client’s pending or potential proceeding in this state.

2. Consultation with Potential Client. At the request of a person in this state contemplating a proceeding or involved in a pending proceeding, irrespective of where the proceeding is located, an out-of-state lawyer may consult in this state with that person about that person’s possible retention of the out-of-state lawyer in connection with the proceeding.

C. Preparation for In-State Proceeding. On behalf of a client in this state or elsewhere, the out-of-state lawyer may render legal services in this state in preparation for a potential proceeding to be filed in this state, provided that the out-of-state lawyer reasonably believes he is eligible for admission pro hac vice in this state.

D. Preparation for Out-of-State Proceeding. In connection with a potential proceeding to be filed outside this state, an out-of-state lawyer may render legal services in this state for a client or potential client located in this state, provided that the out-of-state lawyer is admitted or reasonably believes the lawyer is eligible for admission generally or pro hac vice in the jurisdiction where the proceeding is anticipated to be filed.

E. Services Rendered Outside This State for In-State Client. An out-of-state lawyer may render legal services while the lawyer is physically outside this state when requested by a client located within this state in connection with a potential or pending proceeding filed in or outside this state.

F. Alternative Dispute Resolution (“ADR”) Procedures. An out-of-state lawyer may render legal services in this state to prepare for and participate in an ADR procedure regardless of where the ADR procedure is expected to take or actually takes place.

G. No Solicitation. An out-of-state lawyer rendering services in this state in compliance with this Rule or here for other reasons is not authorized by anything in this Rule to hold out to the public or otherwise represent that the lawyer is
admitted to practice in this jurisdiction. Nothing in this Rule authorizes out-of-state lawyers to solicit, advertise, or otherwise hold themselves out in publications as available to assist in litigation in this state.

H. Temporary Practice. An out-of-state lawyer will only be eligible for admission pro hac vice or to practice in another lawful way only on a temporary basis.

I. Authorized Services. The foregoing services may be undertaken by the out-of-state lawyer in connection with a potential proceeding in which the lawyer reasonably expects to be admitted pro hac vice, even if ultimately no proceeding is filed or if pro hac vice admission is denied.

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

A. A foreign lawyer is a person admitted in a non-United States jurisdiction and who is a member of a recognized legal profession in that 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, and who is not disbarred, suspended or the equivalent thereof from practice in any jurisdiction.

B. The definitions of “client” and “state” in paragraphs I(A)(3) and (5) are incorporated by reference in this Paragraph III.

C. A court or agency of this state may, in its discretion, admit a foreign lawyer in a particular proceeding pending before such court or agency to appear pro hac vice as co-counsel or in an advisory or consultative role in that proceeding with an in-state lawyer, provided that the in-state lawyer is responsible to the client, responsible for the conduct of the proceeding, responsible for independently advising the client on the substantive law of a United States jurisdiction and procedural issues in the proceeding, and for advising the client whether the in-state lawyer’s judgment differs from that of the foreign lawyer.

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

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

F. In addition to the factors listed in paragraph I(D)(3) above, a court or agency in ruling on an application to admit a foreign lawyer pro hac vice, or in an advisory or consultative role, may weigh the following factors:

1. the legal training and experience of the foreign lawyer including in matters similar to the matter before the court or agency;

2. the extent to which the matter will include the application of:

   a. the law of the jurisdiction in which the foreign lawyer is admitted or
b. international law or other law with which the foreign lawyer has a demonstrated expertise;

3. the foreign lawyer’s familiarity with the law of a United States jurisdiction applicable to the matter before the court or agency;

4. the extent to which the foreign lawyer’s relationship and familiarity with the client or with the facts and circumstances of the matter will facilitate the fair and efficient resolution of the matter;

5. the foreign lawyer’s English language ability; and

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

The out-of-state or foreign lawyer’s verified application for admission pro hac vice shall include:

1. the applicant’s residence and business address, telephone number(s), and e-mail address(es);

2. the name, address, and telephone number(s), and e-mail address(es) of each client sought to be represented;

3. the U.S. and foreign jurisdictions in, and agencies and courts before which the applicant has been admitted to practice, the contact information for each, and the respective period(s) of admission;

4. the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear pro hac vice in this state within the preceding two years and the date of each application;

45. a statement as to whether the applicant (a) within the last [five (5)] years has been denied admission pro hac vice in any jurisdiction, U.S. or foreign, including this state, (b) has ever had admission pro hac vice revoked in any jurisdiction, U.S. or foreign, including this state, or (c) has otherwise ever formally been disciplined or sanctioned by any court or agency in any jurisdiction, U.S. or foreign, including this state. If so, specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings; A certified copy of the written finding or order shall be attached to the application. If the written finding or order is not in English, the applicant shall submit an English translation and satisfactory proof of the accuracy of the translation.

56. whether any formal, written disciplinary proceeding has ever been brought against the applicant by a disciplinary counsel or analogous foreign regulatory authority in any other jurisdiction within the last [five (5)] years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated, which, if any, of the proceedings are still pending, and, for those proceedings that are not still pending, the dates upon which the proceedings were finally concluded; the style caption of the proceedings; and the findings made and actions taken in connection with those proceedings; including exoneration from any charges. A certified copy of any written finding or order shall be attached to the application. If the written order or findings is not in English, the applicant shall submit an English translation and satisfactory proof of the accuracy of the translation.

67. whether the applicant has been held formally in contempt or otherwise sanctioned by any court in a written order in the last [five (5)] years for disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court’s rulings; (A copy of the written order or
transcript of the oral rulings shall be attached to the application. If the written finding or order is not in English, the applicant shall submit an English translation and satisfactory proof of the accuracy of the translation); 7. the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear pro hac vice in this state within the preceding two years; the date of each application; and the outcome of the application; 8. an averment as to the applicant’s familiarity with the rules of professional conduct, rules of disciplinary enforcement of the lawyer regulatory authority, local or agency rules, and court policies and procedures of the court or agency before which the applicant seeks to practice; 9. the name, address, telephone number(s), e-mail address(es), and bar number of the active member in good standing of the bar of this state who will sponsor supports the applicant’s pro hac vice request, who shall appear of record together with the out-of-state lawyer, and who shall remain ultimately responsible to the client as set forth in Paragraph C of this Rule; and 10. for applicants admitted in a foreign jurisdiction, an averment by the in-state lawyer referred to in Paragraph 9 above and by the lawyer admitted in a foreign jurisdiction that, if the application for pro hac vice admission is granted, service of any documents by a party or Disciplinary Counsel upon that foreign lawyer shall be accomplished by service upon the in-state lawyer or that in-state lawyer’s agent.

Optional: the applicant’s prior or continuing representation in other matters of one or more of the clients the applicant proposes to represent and any relationship between such other matter(s) and the proceeding for which applicant seeks admission.

Optional: any special experience, expertise, or other factor deemed to make it particularly desirable that the applicant be permitted to represent the client(s) the applicant proposes to represent in the particular cause.
EXECUTIVE SUMMARY

1. Summary of the Resolution

Inbound Foreign Lawyers: Pro Hac Vice Authority

The Commission seeks to amend the ABA Model Rule on Pro Hac Vice Admission to provide judges with guidance about whether to grant limited and temporary practice authority to foreign lawyers to appear in U.S. courts.

There are increasing instances in which litigation in U.S. courts involves issues related to international or foreign law. There are also increasing instances in which foreign entities or individuals find themselves in U.S. courts. One consequence is that litigants occasionally seek to retain foreign lawyers who can assist U.S. counsel on relevant issues. These clients may feel the need for help from a lawyer who knows the client’s operations, or their domestic, estate or property issues abroad. A foreign lawyer may also have knowledge about a country’s laws, language, and customs that may help U.S. courts, lawyers, and juries better understand a litigant’s position.

The ABA Model Rule on Pro Hac Vice Admission currently provides judges no guidance about granting such limited and temporary practice authority to foreign lawyers. The ABA Commission on Ethics 20/20 concluded that this omission should be addressed to give judges such guidance when they exercise their discretion to authorize foreign lawyers to appear pro hac vice.

This proposal has ample precedent. A form of pro hac vice admission for non-U.S. lawyers is already permitted in at least fifteen states and is allowed in the U.S. Supreme Court. Numerous federal courts also have rules or other authority that permit foreign lawyers to be specially admitted to appear before them in a particular matter. Notably, the Commission has not learned of any resulting difficulties.

The Conference of Chief Justices has endorsed in principle the Commission’s proposal. On July 28, 2010, after reviewing an early draft of the Commission’s proposal, the Conference adopted a Resolution urging the ABA House of Delegates to add foreign lawyers in the “carefully limited” manner suggested by the Commission to the Model Rule on Pro Hac Vice Admission.

As the Conference suggested, the Commission is proposing numerous restrictions on the pro hac vice authorization for foreign lawyers. The Commission’s proposal lists factors – well beyond those applicable to a U.S. licensed lawyer seeking to appear pro hac vice – to guide a judge in determining whether to grant a foreign lawyer’s application and, if so, how to determine the scope of the practice authority. These factors include, but are not limited to, the legal training and experience of the foreign lawyer, the foreign lawyer’s familiarity with the law of the jurisdiction applicable to the matter, the extent to which the foreign lawyer’s relationship and familiarity with the client or the matter will
facilitate the fair and efficient resolution of the litigation, and the foreign lawyer’s English language facility. The foreign lawyer also bears the burden of demonstrating to the judge and to local counsel (who must support that application) that he or she satisfies the conditions for such authorization. Disciplinary Counsel and an opposing litigant may object to the application.

The foreign lawyer could only appear as a co-counsel or in an advisory or consultative role, alongside an in-state lawyer and only for purposes of that particular proceeding. Moreover, the in-state lawyer would be responsible to the court and the client for the conduct of the proceeding, for independently advising the client on the substantive law and procedural issues of a United States jurisdiction, and for advising the client whether the in-state lawyer’s judgment differs from that of the foreign lawyer. The Commission believes that these conditions and limitations, as well as others described below, provide abundant protection to the courts, litigants, and the public.

By adopting the Commission’s proposal, the ABA would retain its leadership role in setting the standards for pro hac vice admissions, just as additional jurisdictions are considering this and related issues. Moreover, the Commission’s proposal would foster greater uniformity and ensure that jurisdictions adopt appropriate, and carefully limited, rules on the role of foreign lawyers in U.S. courts.

2. Summary of the Issue that the Resolution Addresses

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 regulatory policies keep pace with social change and the evolution of law practice. In furtherance of this, 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 necessary amendments to and/or new ABA policies.

Globalization continues to transform the legal marketplace, with more clients confronting legal problems that cross jurisdictional lines, more lawyers needing to respond to those client needs by crossing borders (including virtually) and relocating to new jurisdictions. The Commission on Ethics 20/20 reviewed the regulatory framework adopted by the House of Delegates in 2002 at the recommendation of the Commission on Multijurisdictional Practice. Unsurprisingly, in light of the accelerated pace of change and the growing proportion of legal work that involves more than one U.S. or foreign jurisdiction, the Commission found that ethical issues are arising with greater frequency. Courts, lawyers, clients and the public need enhanced guidance to address these issues.

For example, there are increasing instances in which litigation in U.S. courts involves issues related to international or foreign law. There are also increasing instances in which foreign entities or individuals find themselves in U.S. courts. One consequence is that litigants occasionally seek to retain foreign lawyers who can assist U.S. counsel on relevant issues. The ABA Model Rule on Pro Hac Vice Admission currently provides
judges no guidance about granting such limited and temporary practice authority to foreign lawyers. The ABA Commission on Ethics 20/20 concluded that, consistent with ample and existing precedent in state and federal courts, this omission should be addressed to give judges in all jurisdictions such guidance when they exercise their discretion to authorize foreign lawyers to appear pro hac vice.

The Commission’s proposal is consistent with following guiding principles that then ABA President Lamm directed the Commission to follow: 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

The proposed resolution of the Commission on Ethics 20/20, if adopted, will provide necessary guidance to the profession that will allow lawyers to meet the ethical and regulatory challenges posed by globalization, as well as take advantage of the opportunities for the ethical delivery of legal services. By adopting the Commission’s proposal, the ABA would retain its leadership role in setting the standards for pro hac vice admissions.

As noted above, the ABA Model Rule on Pro Hac Vice Admission currently provides judges no guidance about granting such limited and temporary practice authority to foreign lawyers. The Commission’s proposal, drawing on ample precedent, provides judges with that guidance when they exercise their discretion to authorize foreign lawyers to appear pro hac vice. Moreover, the Commission’s proposal would foster greater uniformity and ensure that jurisdictions adopt appropriate, and carefully limited, rules on the role of foreign lawyers in U.S. courts.

The Commission’s proposal lists factors – well beyond those applicable to a U.S. licensed lawyer seeking to appear pro hac vice – to guide a judge in determining whether to grant a foreign lawyer’s application and, if so, how to determine the scope of the practice authority. These factors include, but are not limited to, the legal training and experience of the foreign lawyer, the foreign lawyer’s familiarity with the law of the jurisdiction applicable to the matter, the extent to which the foreign lawyer’s relationship and familiarity with the client or the matter will facilitate the fair and efficient resolution of the litigation, and the foreign lawyer’s English language facility. The foreign lawyer also bears the burden of demonstrating to the judge and to local counsel (who must support that application) that he or she satisfies the conditions for such authorization. Disciplinary Counsel and an opposing litigant may object to the application.

The foreign lawyer could only appear as a co-counsel or in an advisory or consultative role, alongside an in-state lawyer and only for purposes of that particular proceeding. Moreover, the in-state lawyer would be responsible to the court and the client for the conduct of the proceeding, for independently advising the client on the substantive law and procedural issues of a United States jurisdiction, and for advising the client whether the in-state lawyer’s judgment differs from that of the foreign lawyer. The Commission
believes that these conditions and limitations provide abundant protection to the courts, litigants, and the public.

4. **Summary of Minority Views**

From the outset, the Commission on Ethics 20/20 committed to and implemented a process that was transparent, open, and provided broad outreach and frequent opportunities for input into its work. Inherent in any undertaking of this scope and complexity is the recognition that there will be disagreements about the approach to issues as well as the substance of proposals. That said, with the exception of concerns by only some ABA members the Commission was not aware of any organized or formal minority views or opposition at the time the Resolution and Report were filed.
RESOLVED, That the American Bar Association amends Model Rule 8.5 of the ABA Model Rules of Professional Conduct as follows (insertions underlined, deletions struck through):

**Rule 8.5 Disciplinary Authority; Choice Of Law**

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer’s conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer’s conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer’s conduct will occur.
COMMENT

Disciplinary Authority

[1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction’s disciplinary findings and sanctions will further advance the purposes of this Rule. See Rules 6 and 22, ABA Model Rules for Lawyer Disciplinary Enforcement. A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.5(a) appoints an official to be designated by this Court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer’s conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer’s conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] When a lawyer’s conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer’s conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer’s conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.
respect to conflicts of interest, in determining a lawyer's reasonable belief under paragraph (b)(2), a written agreement between the lawyer and client that reasonably specifies a particular jurisdiction as within the scope of that paragraph may be considered if the agreement was obtained with the client's informed consent confirmed in the agreement.

[6] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[7] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.
EXECUTIVE SUMMARY

1. Summary of the Resolution

Choice of Rule Agreements and Conflicts of Interest

The Commission proposes to add new language to Comment [5] of Model Rule 8.5 (Choice of Law) to address an increasingly common choice of law problem arising in the context of conflicts of interest. The new language would state that, with regard to Rule 8.5(b)(2), lawyers and clients are permitted to specify a particular jurisdiction as within the scope of Rule 8.5(b)(2) for purposes of interpreting the phrase “predominant effect.”

The Commission has studied how globalization is transforming the practice of law and producing a wide range of new ethical issues. One important change caused by globalization is that clients are increasingly asking their lawyers to handle matters that implicate multiple jurisdictions, both within the United States and abroad. The Commission heard from lawyers who are regularly retained on these matters and learned that they confront a variety of ethics-related choice of law problems that are particularly acute in the conflicts of interest context.

Conflicts-related choice of law issues can arise in many situations, but they are especially difficult to resolve when a lawyer’s representation of a client involves a matter that relates to several U.S. or foreign jurisdictions simultaneously. The Commission heard from lawyers who report that, while such matters are pending, lawyers (or their firms) may be asked to handle an unrelated matter for a new client. That matter could be accepted without the consent of the first client, perhaps with a screen, if the conflict rules of one jurisdiction apply, but not if the rules of another jurisdiction do.

Today, in order to determine which jurisdiction’s conflict of interest rules apply to the first client, the lawyer may have to determine the jurisdiction where the lawyer’s conduct has its “predominant effect” under Rule 8.5(b)(2). This determination may be difficult when the lawyer’s work affects multiple jurisdictions, as is often (and increasingly) the case. This lack of clarity does not reflect a flaw in Rule 8.5(b)(2). Choice of law analyses are often fact-intensive, making answers difficult to determine. This unavoidable uncertainty, however, can leave clients, lawyers, and law firms with insufficient guidance about which jurisdiction’s conflict rules are applicable in commonly encountered situations.

The Commission’s proposed solution is one that is commonly used in other contexts where choice of law principles do not – and cannot – yield definitive answers: the use of choice of law agreements. In particular, the Commission’s proposal would add new language to Comment [5] of Model Rule 8.5 that, “...With respect to conflicts of interest, in determining a lawyer's reasonable belief under paragraph (b)(2), a written agreement between the lawyer and client that reasonably specifies a particular jurisdiction as within
the scope of that paragraph may be considered if the agreement was obtained with the client's informed consent confirmed in the agreement.”

The Commission concluded that these agreements should be subject to several limitations. First, such agreements should only be used in the context of conflicts of interest; they should not be used to specify the rules of a jurisdiction on other issues, such as the duty of confidentiality. Second, the proposed Comment specifies that the agreement should be “written” and that the client’s “informed consent” should be confirmed in the written agreement. Third, the Commission concluded that, unlike choice of law agreements in ordinary contracts, a Rule 8.5(b)(2) agreement raises distinct concerns in light of the nature of the lawyer-client relationship and the deference afforded to the regulatory authority of courts over lawyers. For this reason, the proposed Comment makes clear that such agreements may merely be “considered” (rather than binding) in determining where the “predominant effect” of the lawyer’s work on a matter should be deemed to have occurred.

2. Summary of the Issue that the Resolution Addresses

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 regulatory policies keep pace with social change and the evolution of law practice. In furtherance of this, 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 necessary amendments to and/or new ABA policies.

Globalization continues to transform the legal marketplace, with more clients confronting legal problems that cross jurisdictional lines, more lawyers needing to respond to those client needs by crossing borders (including virtually) and relocating to new jurisdictions. The Commission on Ethics 20/20 reviewed the regulatory framework adopted by the House of Delegates in 2002 at the recommendation of the Commission on Multijurisdictional Practice. Unsurprisingly, in light of the accelerated pace of change and the growing proportion of legal work that involves more than one U.S. or foreign jurisdiction, the Commission found that ethical issues are arising with greater frequency. The Commission heard from lawyers who are regularly retained on these matters and learned that they confront a variety of ethics-related choice of law problems that are particularly acute in the conflicts of interest context.

As noted above, in order to determine which jurisdiction’s conflict of interest rules apply under Model Rule 8.5, the lawyer may have to determine the jurisdiction where the lawyer’s conduct has its “predominant effect” under Rule 8.5(b)(2). This determination may be difficult when the lawyer’s work affects multiple jurisdictions. This unavoidable uncertainty, however, can leave clients, lawyers, and law firms with insufficient guidance about which jurisdiction’s conflict rules are applicable in commonly encountered situations. The Commission’s proposal to add language to the Comment to Model Rule 8.5 regarding the use of choice of rule agreements addresses this issue.
The Commission’s proposal is consistent with following guiding principles that then ABA President Lamm directed the Commission to follow: 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**

The proposed resolutions of the Commission on Ethics 20/20, if adopted, will provide necessary guidance to the profession that will allow lawyers to meet the ethical and regulatory challenges posed by globalization, as well as take advantage of the opportunities for the ethical delivery of legal services.

The Commission’s proposal to add new language to Comment [5] of Model Rule 8.5 (Choice of Law) addresses an increasingly common choice of law problem arising in the context of conflicts of interest. The new language would state that, with regard to Rule 8.5(b)(2), lawyers and clients are permitted to specify a particular jurisdiction as within the scope of Rule 8.5(b)(2) for purposes of interpreting the phrase “predominant effect.” The Commission’s proposed solution is one that is commonly used in other contexts where choice of law principles do not — and cannot — yield definitive answers.

These agreements would be subject to several client protective limitations. Such agreements could only be used in the context of conflicts of interest; they should not be used to specify the rules of a jurisdiction on other issues, such as the duty of confidentiality. The proposed Comment specifies that the agreement should be “written” and that the client’s “informed consent” should be confirmed in the written agreement. The proposed Comment also makes clear that such agreements may merely be “considered” (rather than binding) in determining where the “predominant effect” of the lawyer’s work on a matter should be deemed to have occurred.

4. **Summary of Minority Views**

From the outset, the Commission on Ethics 20/20 committed to and implemented a process that was transparent, open, and provided broad outreach and frequent opportunities for input into its work. Inherent in any undertaking of this scope and complexity is the recognition that there will be disagreements about the approach to issues as well as the substance of proposals. That said, with the exception of concerns by only some ABA members the Commission was not aware of any organized or formal minority views or opposition at the time the Resolution and Report were filed.
RESOLVED, That the American Bar Association encourage practitioners to consider limiting the scope of their representation, including the unbundling of legal services, when appropriate, as a means of increasing access to legal services.

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

FURTHER RESOLVED, That the American Bar Association encourage and support the efforts of national, state, tribal, local and territorial bar associations, the judiciary and court administrations, and those providing legal services to increase public awareness of the availability of limited scope representation as an option to help meet the legal needs of the public.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges the American Bar Association to encourage practitioners to consider limiting the scope of their representation, including the unbundling of legal services, when appropriate as a means of increasing access to legal services. The resolution also urges the ABA to encourage national, state, tribal, local and territorial bar associations, the judiciary and court administrations and CLE providers to take efforts to assure that such representation is carried out with full understanding and recognition of professional obligations and that the Association encourage efforts by bar associations, the judiciary and court administrations, and those providing legal services to make the public better aware of the availability of such services as an option.

2. Summary of the Issue that the Resolution Addresses

A growing trend of self-representation has revealed a need for self-help alternatives to facilitate access to competent legal services. While limited scope representation is a cost-effective solution, research has demonstrated that many people who would benefit from such services are not aware of the option. Additionally, practitioners lack clear guidance on how to effectively provide limited scope representation.

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

This resolution supports the implementation of greater measures to broaden public awareness and provide clarity to practitioners on the propriety of limited scope representation.

4. Summary of Minority Views

None.
RESOLVED, That the American Bar Association supports the position that United States Bankruptcy Judges have the authority: (1) upon the express consent of all the parties to the proceeding, to hear, determine, and enter final orders and judgments in those proceedings that, while they may be among those designated as “core” within the meaning of 28 U.S.C. § 157(b), may not 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, and (2) to determine in the appropriate case and in the first instance whether such consent is necessary, as a matter of law, in order for the courts to render a final determination on the matter or matters in question.
EXECUTIVE SUMMARY

1. **Summary of the Resolution:** The proposed resolution supports the position that United States Bankruptcy Judges have the authority: (1) upon the express consent of all the parties to the proceeding, to hear, determine, and enter final orders and judgments in those proceedings that, while they may be among those designated as “core” within the meaning of 28 U.S.C. § 157(b), may not 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.

2. **Summary of the Issue which the Resolution addresses:** The Supreme Court’s decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011), created a category of core proceedings requiring Article III adjudication that was not contemplated by the statutory regime of bankruptcy court authority set forth in 28 U.S.C. § 157(b). The uncertainty created by *Stern* is increasing costs and delay in many bankruptcy cases, threatening to overburden district court judges with bankruptcy litigation.

3. **Please Explain How the Proposed Policy Position will address the issue:** The proposed resolution expresses the ABA’s view that, while not explicitly stated in the statute, a bankruptcy judge may constitutionally adjudicate such proceedings in the same manner as they adjudicate non-core proceedings—upon the express consent of the parties. The resolution is intended to facilitate the administration of justice in the bankruptcy courts by reducing uncertainty and decreasing the number of bankruptcy proceedings transferred to district courts.

4. **Summary of any minority views:** None known.
RESOLVED, That the American Bar Association urges the Federal Acquisition Regulatory 
Council (FAR Council) to promulgate, for use in contracts posing a high risk of either personal 
conflicts of interest or misuse of certain non-public information, 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; 

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

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

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

1. Summary of the Resolution

In keeping with a recent recommendation from the Administrative Conference of the United States, the resolution urges the Federal Acquisition Regulatory Council to issue model language for use in contracts posing a high risk of either personal conflicts of interest or misuse of certain non-public information, which would subject contractor employees to new restrictions analogous to those that apply to federal employees. In addition, the Resolution also urges that expert advisory committees that are organized and managed by agency contractors be subject to the same ethical requirements that would apply if they were organized and managed by the agency.

2. Summary of the Issue that the Resolution Addresses

Federal employees must comply with extensive limitations on conflicts of interest, gifts, post-employment contacts with the government, and the like. With limited exceptions, none of these ethical constraints apply to the employees of government contractors. Yet in many areas government contractors outnumber actual government employees, and the two are often functionally indistinguishable.

3. Please Explain How the Proposed Policy Position will Address the Issue

The resolution proposes that with respect to conflicts of interest and potential misuse of non-public information, employees of government contractors be subject to the same ethical rules as federal employees.

4. Summary of Minority Views

The Section of Public Contract Law had reservations about the ACUS recommendation on which this Report and Resolution are based. These were expressed in a Blanket Authority letter submitted to ACUS in June 2011. The letter did not contest the substance of the proposal, but did argue that it was redundant and burdensome in light of other existing and planned legal requirements. The two Sections have been in contact.

The Section of Public Contract Law encouraged this Section to more specifically reference the FAR language in the 2011 final rule on personal conflicts of interest and non-public information, which is limited to contractor employees performing acquisition activities closely related to inherently governmental functions. As a result, this resolution distinguishes the ACUS recommendation from the 2011 FAR Council final rule and other regulatory activity.
RESOLVED, That the American Bar Association supports efforts to increase disclosure of political and campaign spending and urges Congress to require organizations that are not already required to do so by current law as interpreted and applied by the Federal Election Campaign Act to disclose (a) the source of funds used for making electioneering communications and independent expenditures as defined in federal campaign finance law, subject to such reasonable threshold limits as may be necessary to avoid infringing on any implicated Constitutional interests such as the right of free association, and (b) the amounts spent for such communications and expenditures, in public disclosure reports filed with the Federal Election Commission according to requirements under the Federal Election Campaign Act and regulations thereunder that are applied consistently without respect to the nature of the entity making the communication.
EXECUTIVE SUMMARY

a) Summary of the Resolution

The resolution urges Congress to mandate consistent disclosure of all political expenditures and contributions by all entities, regardless of type or tax status.

b) Summary of the Issues that the Resolution Addresses

The Supreme Court left intact, and emphasized the importance of, disclosure requirements for political spending when crafting its *Citizens United* decision. However, by leveraging the unique status of 501(c)(4) organizations, which can spend some portion of their funds on political activity without having to publicly disclose their donors, political groups are able to hide the sources of much political speech. Relatedly, other political organizations organized under Section 527 of the IRS code do not disclose their donors and expenditures in a uniform and useful fashion.

c) An explanation of how the proposed policy position will address the issue

New legislation would require all groups making campaign expenditures to report such activity to the Federal Election Commission for public disclosure in a consistent manner. Such requirements would not contradict the First Amendment holdings contained in *Citizens United*; they would simply mandate transparency, which the Court itself saw as a crucial aspect of an effective campaign finance regime.

d) Summary of Minority Views

None known.