RESOLVED, That the American Bar Association urges states’ highest courts and lawyer regulatory authorities to coordinate with their foreign regulatory counterparts and to enter into voluntary arrangements to facilitate the exchange of relevant information, consistent with the jurisdictions’ rules regarding the admission, licensure, disciplinary status and confidentiality of information regarding lawyers licensed in their respective jurisdictions.

FURTHER RESOLVED, That the American Bar Association adopts the Guidelines for an International Regulatory Information Exchange, dated August 2013.
GUIDELINES FOR AN INTERNATIONAL REGULATORY INFORMATION EXCHANGE
(August 2013)

A. Information Exchange

1. **Status:** Given the global mobility of lawyers, Regulatory Authorities in one jurisdiction may need to determine whether a lawyer is authorized to practice or is licensed/admitted and in good standing in another jurisdiction, and that lawyer’s disciplinary history. Regulatory Authorities should identify individuals responsible for sending, receiving and responding to requests for this type of information, and should provide each other with the relevant contact information.

2. **Imposition of Discipline:** Upon the imposition of discipline against a lawyer by any jurisdiction, the Regulatory Authority of the jurisdiction imposing the discipline should, consistent with its rules, provide the following information to its foreign regulatory counterpart(s) in any jurisdiction(s) in which it knows the disciplined lawyer is licensed/admitted or authorized to practice:

   a. The lawyer’s residence and business addresses, telephone number(s), and e-mail address(es);

   b. Dates of licensure/admission, if applicable, in the sending jurisdiction, and a statement as to whether that lawyer is in good standing;

   c. The details regarding the disciplinary proceedings leading to the imposition of discipline against the lawyer, such as the substance of the allegations of misconduct; the date the proceedings were initiated; the date upon which the proceedings were concluded; the caption of the proceedings; any findings made; and the discipline imposed or actions taken in connection with those proceedings; and

   d. A description of the sending jurisdiction’s disciplinary process or the location where such information can be found, as well as any further information that the sending jurisdiction deems appropriate.

As used in this paragraph, “discipline” refers to a sanction imposed by a jurisdiction’s designated Regulatory Authority against a lawyer upon a finding that the lawyer has violated the applicable rules or standards of lawyer ethics or professional conduct. Discipline may include, but is not limited to, disbarment (revocation of license or ability to practice or striking from the roll), resignation with charges pending or in lieu of discipline, suspension (prohibition or restrictions of the right to practice for a period of time), censure, reprimand, admonition, probation, restitution, limitations on practice and assessment of costs.

3. **Other Notification:** Consistent with the jurisdiction’s rules, after the receipt of sufficient information demonstrating that a lawyer has violated the applicable rules or standards of lawyer ethics or professional conduct or is physically or mentally disabled, and poses a
substantial threat of serious harm to the public or to the administration of justice, the Regulatory Authority in possession of such information may provide the following to its foreign counterpart(s) in any jurisdictions in which it knows the lawyer is licensed/admitted or authorized to practice:

a. The lawyer’s residence and business addresses, telephone number(s), and e-mail address(es);

b. Dates of licensure/admission, if applicable, in the sending jurisdiction, and a statement as to whether that lawyer is in good standing; and

c. Documentation of such information in the Regulatory Authority’s possession, the details of any disciplinary proceedings pending against the lawyer, including, but not limited to, the substance of the allegations of misconduct; the date the proceedings were initiated and whether they are still pending; and, for those proceedings that are not still pending and are concluded without the imposition of discipline, the date upon which such proceedings were concluded and information explaining the basis of the decision to conclude the proceedings; and

d. A description of the sending jurisdiction’s disciplinary process or the location where such information can be found, as well as any further information that the sending jurisdiction deems appropriate.

B. Confidentiality

1. Information exchanged between lawyer Regulatory Authorities should be for the purpose of enhancing the protection of clients and the public.

2. Disclosure and use of such information is subject to applicable rules and other law.

C. Notice to Lawyer

The Regulatory Authority that sends information about a lawyer to another Regulatory Authority should, if it has the lawyer’s contact information, notify the lawyer of its actions. The Receiving Regulatory Authority, if it has the lawyer’s contact information, should notify the lawyer that it is in receipt of information described in Paragraphs A(2) or (3).

D. Subsequent Action by Receiving Regulatory Authority

1. The receiving Regulatory Authority should acknowledge to the sending Regulatory Authority its receipt of the information described in Paragraph A(2) or (3) above, and may provide any information it considers relevant.

2. The receiving Regulatory Authority should notify the sending Regulatory Authority of any responsive action that it takes.
Introduction:

Globalization has had a significant impact on the legal profession. Today, more lawyers than ever are crossing national borders, virtually and physically, to serve client needs. As discussed in more detail below, the U.S. is the largest legal services exporter in the world and large numbers of U.S.-licensed lawyers are working in offices of U.S. and foreign law firms abroad. Likewise, albeit to a lesser extent, foreign lawyers also travel to the U.S. and increasingly have a physical and virtual presence in this country.

The ABA has adopted numerous Model Rules providing foreign lawyers1 the ability to engage in limited and regulated legal practice in the U.S.2, and also adopted a policy urging the U.S. government to ensure that our lawyers have similar opportunities to operate overseas.3 Whether one sees the presence of foreign lawyers as a positive or a negative, it is a reality, and wherever global commerce is most robust the number of visiting foreign lawyers will increase. As cross-border legal practice continues to grow, lawyer accountability and cooperation in lawyer discipline must be addressed.

A first step toward achieving accountability in a legal practice environment with global mobility is to encourage and facilitate better communication and cooperation among lawyer regulators. As a result, the ABA Standing Committee on Professional Discipline (“Discipline Committee”) and the ABA Task Force on International Trade in Legal Services (“ITILS”) request that the House of Delegates adopt this Resolution that provides a template for state supreme courts and lawyer regulatory authorities (e.g., bar admissions authorities and disciplinary authorities) to coordinate with their foreign regulatory counterparts and to enter into voluntary arrangements to facilitate the exchange of relevant information, consistent with the jurisdictions’ rules regarding the admission, licensure and disciplinary status of lawyers licensed in their respective jurisdictions. Further, the Discipline Committee and ITILS urge the House to adopt the proposed Guidelines for International Regulatory Information Exchange.

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1 A “foreign lawyer”, as long defined in ABA policy (infra note 2), is an individual who 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 are subject to effective regulation and discipline by a duly constituted professional body or a public authority.”

2 In August 2002, the ABA House of Delegates adopted amendments to Rules 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice) and 8.5 (Choice of Law) of the ABA Model Rules of Professional Conduct. The House also reaffirmed the 1993 ABA Model Rule for the Licensing of Legal Consultants (in 2006 it was renamed the Model Rule for the Licensing and Practice of Foreign Legal Consultants) and adopted a new Model Rule for Temporary Practice by Foreign Lawyers. In February 2013, the ABA House of Delegates adopted three Resolutions relating to inbound foreign lawyers. Revised Resolutions 107A and 107B amended Rule 5.5 of the ABA Model Rules of Professional Conduct and the Model Rule for Registration of In-House Counsel to permit foreign lawyers to serve as in-house counsel in the U.S., with restrictions on their ability to provide advice on U.S. law. Resolution 107C amended the ABA Model Rule on Pro Hac Vice Admission to provide judges with guidance about granting such limited and temporary pro hac vice practice authority to foreign lawyers.

3 In August 2002, the ABA House of Delegates adopted a policy urging the United States Trade Representative to seek practice rights for outbound U.S. lawyers equivalent to the practice rights set forth for inbound foreign lawyers in the ABA Model Rule for the Licensing of Legal Consultants (now called the Model Rule for the Licensing and Practice by Foreign Legal Consultants).
There is precedent for the type of voluntary arrangements that the Discipline Committee and ITILS propose. In 2009, the Conference of Chief Justices (“CCJ”) adopted two Resolutions, each with an accompanying “Protocol” designed to promote communication and cooperation among United States Bar Admission and Lawyer Disciplinary Authorities and their counterparts in Australia and the European Union. Both Resolutions stated that, given increased international cross-border practice, “…a system of cooperation between the competent bar admission and lawyer disciplinary bodies of the home jurisdiction (the jurisdiction in which the lawyer has been admitted to the bar) and the host jurisdiction (the jurisdiction in which the lawyer renders cross-border legal services) will increase cross-border legal services and better protect the public; and... an essential part of regulating the practice of foreign lawyers is an ability to verify the qualifications, experience, and professional standing of that lawyer, including the status of any disciplinary proceedings involving that lawyer...”.

In addition, in September 2012 the U.K. Solicitors Regulation Authority (SRA) hosted an inaugural two-day International Conference of Legal Regulators. More than 100 attendees, including “front line” regulators from Australia, Africa, Asia, Canada, the U.S., and the U.K., discussed regulatory developments and challenges in a globalized legal practice environment. U.S. attendees included representatives from the American Bar Association Standing Committee on Professional Discipline, National Conference of Bar Examiners, Conference of Chief Justices, National Organization of Bar Counsel, State Bar of California and the District of Columbia Bar. During the closing session, attendees indicated their interest in continuing their communication and collaboration. A second conference will be held just preceding the 2013 ABA Annual Meeting in San Francisco.

The Discipline Committee and the ITILS understand that there exist larger and more complex issues relating to the ways in which the current U.S. state-based regulatory construct is being stretched by multijurisdictional legal practice developments, both domestic and foreign, as well as other issues relating to access to the U.S. legal services market by foreign lawyers and access to other countries’ legal services markets by U.S. licensed lawyers. The Association and the profession will and should continue to grapple with those issues and work to develop any necessary changes. While the ABA and the profession do so, however, efforts to encourage communication and collaboration among the global regulators of lawyers need not wait. This Resolution and the accompanying proposed Guidelines for an International Regulatory Information Exchange represent a practical and easily implemented first step toward helping U.S. and foreign Regulatory Authorities ensure accountability of lawyers engaged in global


practice, and enhance client and public protection. The Guidelines identify for regulators of the profession the primary issues and topics usefully addressed in a voluntary information exchange arrangement. By adopting the Discipline Committee’s and the ITILS’s proposal, the ABA would retain its leadership role in developing and implementing professional regulatory policy as domestic and foreign Regulatory Authorities are considering these and related issues.

The Global Legal Services Marketplace

As noted in a 2012 ITILS White Paper on International Trade in Legal Services, lawyers are enmeshed in the global economy; “[c]lients travel, lawyers follow those clients, and this has an impact on legal practice and legal regulation.” U.S. Census data as well as data relating to international trade in legal services and law firm demographics supports this statement.

For example, as of 2009, the total foreign-born population in the U.S. was 36,750,000, approximately 12% of the U.S. population. These foreign-born residents have domestic relations issues, property and estate planning matters, and business relationships in their countries of origin or the countries of origin of their spouses or business associates. Similarly, there are increasing numbers of foreign companies with substantial operations in the U.S. as well as U.S. companies with substantial operations abroad.

In 2011, the U.S. exported $7.479 billion in legal services and imported $1.5 billion. The Am Law Global 100 reports that there are more than 40 U.S. firms listed with offices in 5 or more countries. Sixty-seven of the top 100 are American firms, many of them with a significant percentage of their attorneys working in foreign countries. For example, Baker & McKenzie has 4,004 lawyers with offices in 44 countries, and 84% of their lawyers work outside U.S. DLA

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9 ABA Task Force on International Trade in Legal Services, supra note 7, (noting that “[o]ver 3600 foreign businesses from more than 60 countries have established operations in Georgia [alone]”). See also Texas Office of the Governor, Foreign Investment in Texas: The Industries and Countries Leading Current Growth, OFFICE OF THE GOVERNOR RICK PERRY (2013), www.governor.state.tx.us/files/ecodev/Foreign_Investment.pdf (last visited May 2, 2013) (finding that more than 2,000 foreign multinationals have established locations in Texas); Illinois Department of Commerce & Economic Opportunity, Foreign Direct Investment in Illinois, http://www.ildceo.net/dceo/Bureaus/Trade/Foreign_Direct_Investment (last visited May 3, 2013) (noting that foreign direct investment “is a major contributor to the economic vitality of the state… Illinois is home to nearly 1,600 foreign firms with 6,416 locations, employing 323,362 Illinois residents”).


Piper employs 3,746 lawyers with offices in 32 countries; 66% of its lawyers work outside the U.S.\textsuperscript{12}

Logic suggests that an increase in the U.S. of the number of practitioners from other countries and a larger number of U.S. licensed lawyers practicing abroad creates a greater need for the domestic and foreign Regulators of the legal profession to take steps to learn about each other and enhance communication and coordination of information. While experience to date suggests that incidents of misconduct by foreign lawyers in the U.S. and by U.S.-licensed lawyers elsewhere are infrequent, fair and effective regulation of lawyers engaged in the international multijurisdictional practice of law requires that there be ways to ensure accountability for misconduct committed in any jurisdiction where lawyers engage in practice, regardless of licensure. It is better to consider these issues before a regulatory crisis arises. This Resolution facilitates the accomplishment of that goal.

**Explanation of Resolution**

The “Resolved” clause of this Resolution seeks adoption by the House of Delegates of a general policy statement urging state supreme courts and lawyer regulatory authorities (e.g., bar admissions authorities and disciplinary authorities) to coordinate with their foreign regulatory counterparts and to enter into voluntary arrangements to facilitate the exchange of relevant information, consistent with the jurisdictions’ rules, regarding the admission, licensure and disciplinary status of lawyers licensed in their respective jurisdictions. Consistent with their existing regulatory authority, state supreme courts may delegate to their bar admissions or lawyer disciplinary authorities the responsibility to engage in dialogue and develop with their foreign counterparts, for court approval, the logistics of any voluntary information exchange arrangements. To facilitate implementation of this general policy statement, the “Further Resolved” clause seeks adoption of the accompanying proposed Guidelines for an International Regulatory Information Exchange.

Paragraph A(1) of the proposed Guidelines is intended to facilitate the exchange of contact information among the Regulatory Authorities, so that when they require information regarding the admission or licensure status of a foreign lawyer in their jurisdiction, they will know who to contact. In addition, the Discipline Committee is working to enhance its online Directory of Lawyer Disciplinary Agencies by adding the contact information for international disciplinary authorities.

Paragraph A(2) provides guidance regarding the type of information that, upon the imposition of discipline against a lawyer and consistent with its rules, the Regulatory Authority imposing the discipline should exchange with its international counterparts in jurisdictions in which it knows that the disciplined lawyer is licensed/admitted. The Guidelines define what is meant by discipline for purposes of this Paragraph.\textsuperscript{13} For example, the imposition of monetary sanctions

\textsuperscript{12} Id.

against a lawyer by a trial court for violation of discovery practices would not constitute the type of “discipline” contemplated by the Guidelines.

Upon receipt of information about the disciplining of a lawyer, the receiving Regulatory Authorities can determine what action, if any, is appropriate. Of note, Paragraph A(2), does not address, explicitly or implicitly, the related but far more complicated issue of international reciprocal disciplinary enforcement. It addresses only voluntary cooperation and the exchange of information between U.S. and foreign Regulatory Authorities. This is because unlike the U.S., where every jurisdiction has a reciprocal disciplinary enforcement rule (based in whole or in large part upon Rule 22 of the ABA Model Rules for Lawyer Disciplinary Enforcement14), most foreign jurisdictions do not have a reciprocal enforcement regime.

The Discipline Committee and the ITILS do not intend for Regulatory Authorities to have to engage in additional investigation to determine in what jurisdiction(s) the lawyer in question is licensed or admitted. “Knows” when used in Paragraphs A and B in reference to a Regulatory Authority providing information to its counterparts in jurisdictions “in which it knows the disciplined lawyer is licensed/admitted or authorized to practice” conveys no such obligation to investigate. Consistent with the use of the term in the ABA Model Rules of Professional Conduct and the Model Code of Judicial Conduct, “knows” means “actual knowledge of the fact in question.”

The Discipline Committee and the ITILS recognize that there exist state-by-state variations in disciplinary and admission procedures in the U.S. as well as in disciplinary and admission procedures abroad. This is particularly true with regard to rules of confidentiality. There also are jurisdictional differences in data privacy laws. As a result, the Guidelines are intended as a model to be used and adapted as needed; they include several references to a jurisdiction acting in a manner “consistent with its rules” and also include in Paragraph B a statement clarifying that disclosure and use of the information described therein is “subject to applicable rules and other law.”

With respect to Paragraph A(3), the Discipline Committee and the ITILS recognize that there may be rare or emergent situations in which a Regulatory Authority will be in possession of sufficient information demonstrating that a lawyer has violated the applicable rules or standards of lawyer ethics or professional conduct or is physically or mentally disabled, and poses a substantial threat of serious harm to the public or to the administration of justice. In such exceptional circumstances, the Regulatory Authority in receipt of such information may want to notify its foreign counterpart(s) prior to the imposition of any discipline against or completion of other proceedings involving that lawyer in order to protect clients and the public interest as well as the administration of justice. The circumstances may be extreme enough to warrant such notification when a Regulatory Authority is in possession of sufficient information to demonstrate that a lawyer is engaged in the continuing conversion of client funds or has left the jurisdiction and abandoned his clients. The point at which a Regulatory Authority determines

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that it is “in receipt of sufficient information” is a judgment appropriately rendered by that
Regulatory Authority consistent with its already existing rules and procedures. For example,
almost all U.S. jurisdictions have rules to address the type of behavior contemplated by
Paragraph A(3). The term “in receipt of sufficient information” is intended to make clear that
any notification should not occur simply upon receipt of any complaint against the lawyer, but
rather after the Regulatory Authority has evaluated that information and made some
determination about its strength and validity. Again, the exchange of this information is to be
consistent with the sending Regulatory Authority’s rules.

Paragraph C of the proposed Guidelines provides that, in the interest of due process, the lawyer
whose conduct is the subject of notification pursuant to the Guidelines should be provided notice
of its having been sent and received. Such notice is consistent with the standards set forth in the
Model Rules for Lawyer Disciplinary Enforcement.

Conclusion

This Resolution recognizes and addresses professional regulatory needs in a global legal
marketplace. The Discipline Committee and the ITILS respectfully request that the House of
Delegates adopt the Resolution.

Respectfully submitted,

ABA Standing Committee on Professional Discipline
Myles V. Lynk, Chair

ABA Task Force on International Trade in Legal Services
Stephen P. Younger, Chair

August 2013
1. **Summary of Resolution(s).**

In recognition of increasing global mobility of lawyers, this Resolution urges state supreme courts and lawyer regulatory authorities (e.g., bar admissions and disciplinary authorities) to coordinate with their foreign counterparts and to enter into voluntary arrangements to facilitate the exchange of relevant disciplinary and admissions information. To facilitate this collaboration, the Resolution also seeks House of Delegates’ adoption of the attached “Guidelines for an International Regulatory Information Exchange.” The proposed Guidelines identify for regulators the primary issues and topics usefully addressed in a voluntary information exchange arrangement.

2. **Approval by Submitting Entity.**

The Standing Committee on Professional Discipline approved the resolution by conference call on April 23, 2013.

The Task Force on International Trade in Legal Services approved the resolution by conference call on April 23, 2013.

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

No.

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

The Resolution would supplement existing policies supporting, in the domestic context, the exchange of disciplinary information among lawyer regulatory authorities. See, e.g., Rule 17(A) of the ABA Model Rules for Lawyer Disciplinary Enforcement.

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?**

N/A
6. **Status of Legislation.** (If applicable)

N/A

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

The Resolution will be sent to the relevant regulatory authorities and bar associations in every U.S. jurisdiction. It will be shared with national representative groups such as the Conference of Chief Justices, National Conference of Bar Presidents, National Association of Bar Executives, National Conference of Bar Examiners, National Organization of Bar Counsel and Association of Professional Responsibility Lawyers. It will also be used as a basis for discussion with foreign bar associations and regulatory bodies.

8. **Cost to the Association.** (Both direct and indirect costs)

None.

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

None known.

10. **Referrals.**

The Resolution has been circulated to the following entities:

- Section of Legal Education and Admissions to the Bar
- Section of International Law
- Section of Business Law
- Standing Committee on Ethics and Professional Responsibility
- Standing Committee on Professionalism
- Standing Committee on Client Protection
- Standing Committee on Specialization
- Conference of Chief Justices
- National Organization of Bar Counsel
- Association of Professional Responsibility Lawyers
- National Conference of Bar Examiners
11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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EXECUTIVE SUMMARY

1. Summary of the Resolution

In recognition of increasing global mobility of lawyers, this Resolution urges state supreme courts and lawyer regulatory authorities (e.g., bar admissions and disciplinary authorities) to coordinate with their foreign counterparts and to enter into voluntary arrangements to facilitate the exchange of relevant disciplinary and admissions information. To facilitate this collaboration, the Resolution also seeks House of Delegates’ adoption of the attached “Guidelines for an International Regulatory Information Exchange.” The proposed Guidelines identify for regulators the primary issues and topics usefully addressed in a voluntary information exchange arrangement.

2. Summary of the Issue that the Resolution Addresses

Globalization has had a significant impact on the legal profession. Today, more lawyers than ever are crossing national borders, virtually and physically, to serve client needs. The U.S. is the largest legal services exporter in the world and large numbers of U.S.-licensed lawyers are working in offices of U.S. and foreign law firms abroad. Likewise, albeit to a lesser extent, foreign lawyers also travel to the U.S. and increasingly have a physical and virtual presence in this country. The ABA has adopted numerous Model Rules providing foreign lawyers the ability to engage in limited and regulated legal practice in the U.S., and also adopted a policy urging the U.S. government to ensure that our lawyers have similar opportunities to operate overseas. Whether one sees the presence of foreign lawyers as a positive or a negative, it is a reality, and wherever global commerce is most robust, the number of visiting foreign lawyers will increase. As cross-border legal practice continues to grow, lawyer accountability and cooperation in lawyer discipline must be addressed.

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

A first step toward achieving accountability in a legal practice environment with global mobility is to encourage and facilitate better communication and cooperation among lawyer regulators. This Resolution provides a template for state supreme courts and lawyer regulatory authorities (e.g., bar admissions authorities as well as disciplinary authorities) to coordinate with their foreign regulatory counterparts and to enter into voluntary arrangements to facilitate the exchange of relevant information, consistent with the jurisdictions’ rules regarding the admission, licensure and disciplinary status of lawyers licensed in their respective jurisdictions.

4. Summary of Minority Views

While a variety of views were expressed throughout the drafting process, there is no known formal opposition at this time.