

**Comments submitted by  
Pennsylvania lawyer**

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## COMMENTS

The Outline appears, to me, to be an excellent basis for discussion and examination of the issues to be addressed by the Commission. My comments are minimal:

1. Footnote 5 on page 5 states that it is "as yet uncertain whether the Commission will address what are essentially evidentiary issues relating to the attorney-client privilege and work product doctrine, including matters relating to waivers, or confine itself to issues addressed in the Model Rules." As the Commission is undoubtedly aware, the dividing line between professional responsibility and evidence law is one that is very difficult to draw in the context of privilege. My comment is to encourage the Commission to address the circumstances under which privileges are established, preserved and potentially lost in the context of multijurisdictional (including international) practice. I do not mean to suggest that black-letter rules respecting the substance of these privileges or waiver issues be formulated. I simply suggest that a logical framework for determining the rule of decision (such as by reference to the curial law applicable to the dispute), and disciplinary authority, be considered. It also would be helpful to consider rule-based guidance to lawyers practicing in a multijurisdictional setting. For example, the Commission could consider a "safe harbor" provision to protect lawyers practicing in a multijurisdictional setting when they have taken reasonable steps to establish, invoke and protect any privilege or protection, notwithstanding whether a foreign jurisdiction might ultimately not give effect to such privilege or protection.
2. In view of the primarily state-by-state development of professional responsibility standards, along with the establishment of disciplinary apparatus at the state level, it would be useful for the Commission to consider this fact when determining any new rules for potential adoption. The federal judiciary has adopted a wide variety of methods for addressing professional responsibility matters, usually through local rule, and usually through (at least partial) adoption of the relevant state standards. Moreover, although disciplinary issues sometimes are handled directly by the federal courts, the administrative infrastructure of the federal courts is relatively undeveloped in this respect. Consequently, any consideration of a "federalization" of attorney professional standards (even for a limited purpose) should take this factor into account.