

AMERICAN BAR ASSOCIATION

State and Local Government Law

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January 29, 2009

Jamie S. Gorelick
Wilmer Hale
1875 Pennsylvania Ave., N.W.
Washington, DC 20006

VIA E-MAIL

Michael Traynor
3131 Eton Ave.
Berkeley, CA 94606

Dear Ms. Gorelick & Mr. Traynor:

Initially, thank you for the opportunity to comment on the issues outlined by the ABA Commission on Ethics 20/20 (the "Commission"). These comments are submitted on behalf of the Ethics Committee for the ABA State and Local Government Law Section ("Section"). We look forward to working with the Commission and providing additional comments as you work through these very important and timely issues. We commend your efforts to review the Model Rules of Professional Conduct. So you will know, these comments are in no way a comprehensive response to all the issues raised, but represent our initial observations to your early efforts.

Our Section is comprised of government lawyers and lawyers in private practice that either represent government or primarily work before government. Accordingly, we have a somewhat different perspective on some of the issues raised in the Commission's outline. Our primary goal in submitting these initial comments is to ask that the Commission, as it reviews and considers these issues, be mindful of the impacts that any suggested changes to the Model Rules may have on the government lawyer's practice. For example, in considering the impact of technology and social networking issues, one must also consider these issues from the government lawyer's perspective. Indeed, not only are these issues governed by the existing Model Rules or applicable local rules, but also the government lawyer must be mindful of the applicable public records and open government rules and regulations. While the increase in technology is a wonderful thing, it has its own set of complications for the government lawyer as we work to ensure the protection of client interest while at the same time complying with those public records laws.

Another important component of your outline that merits comment is the review of confidentiality rules. This is an especially tricky issue for the government lawyer as we

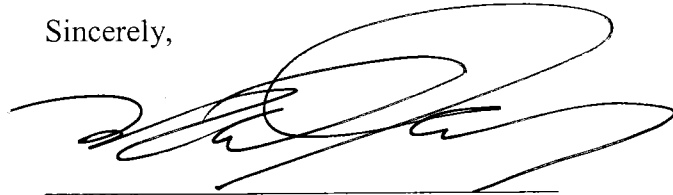
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determine who the actual client is and what information is confidential in light of the public record and open government issues mentioned above. While the Commission will initially be addressing this issue from a more global perspective, i.e. practicing in multiple state and national jurisdictions, there may be some impact on the government lawyer as well that should also be considered. Similarly, the issues regarding conflicts of interest need to be considered from the standpoint of government lawyers. Such lawyers represent the public interest and may be appropriately subject to greater scrutiny for conflicts. Any consideration given to more flexible conflicts rules in the context of international practice should acknowledge the need for strict standards for public lawyers to maintain confidence in state and local governments.

As with many of the other issues raised in your memo, we will surely have additional Chair comments and input as the Commission moves forward through the evaluation process. Again, thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Donaldson", written over a horizontal line.

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