

AMERICAN BAR ASSOCIATION
Adopted by the House of Delegates
August 7-8, 2006

RESOLVED, That the American Bar Association recommends that applicable federal, state and territorial rules and statutes governing civil procedure be amended or adopted to protect from discovery draft expert reports and communications between an attorney and a testifying expert relating to an expert's report, as follows:

- (i) an expert's draft reports should not be required to be produced to an opposing party;
- (ii) communications, including notes reflecting communications, between an expert and the attorney who has retained the expert should not be discoverable except on a showing of exceptional circumstances;
- (iii) nothing in the preceding paragraph should preclude opposing counsel from obtaining any facts or data the expert is relying on in forming his or her opinion, including that coming from counsel, or from otherwise inquiring fully of an expert into what facts or data the expert considered, whether the expert considered alternative approaches or into the validity of the expert's opinions.

FURTHER RESOLVED, That the American Bar Association recommends that, until federal, state and territorial rule and statutory amendments are adopted, counsel should enter voluntary stipulations protecting from discovery draft expert reports and communications between attorney and expert relating to an expert's report.