

TIMELINE FOR HOUSE OF DELEGATES' CONSIDERATION
OF ABA COMMISSION ON ETHICS 20/20 PROPOSALS

Click [here](#) for a more detailed summary of the Commission's work.

August 2012

Technology (confidentiality). Key proposals include:

- Amendments to Model Rule 1.6 (Duty of Confidentiality) to address a lawyer's ethical obligations to protect a client's confidences from inadvertent disclosure and unauthorized access.
- Amendments to Model Rule 4.4 (Respect for Rights of Third Persons) to clarify a lawyer's obligations upon receiving inadvertently disclosed confidential information in electronic form.
- Amendments to Model Rule 1.1 (Competence) to emphasize a lawyer's duty to keep abreast of changes in technology, including the benefits and risks associated with its use.

Technology (marketing). Key proposals include:

- Amendments to Model Rule 1.18 (Duties to Prospective Client) to clarify when electronic communications give rise to a prospective client-lawyer relationship.
- Amendments to Model Rule 7.2 (Advertising) to address how the prohibition against paying others for a "recommendation" applies to Internet-based client development tools.
- Amendments to Model Rule 7.3 (Direct Contact with Prospective Clients) to clarify when a lawyer's online communications constitute "solicitations" that are governed by the Rule.

Outsourcing. Key proposals include:

- Amendments to Model Rule 1.1 (Competence) to clarify that lawyers have an obligation under the Rule to make reasonable efforts to ensure that the work outsourced to lawyers is performed competently and contributes to the overall competent and ethical representation of the client. A new Comment identifies the relevant factors to consider when assessing whether those efforts have been reasonable.
- Amendments to Model Rule 5.3 to underscore that lawyers should make reasonable efforts to ensure that nonlawyers outside the firm provide their services in a manner that is compatible with the lawyer's own professional obligations, including the lawyer's obligation to protect client information. The changes also alert lawyers that they have an obligation to give appropriate instructions to nonlawyers outside the firm when retaining or directing those nonlawyers.

Uniformity/Mobility Issues. Key proposals include:

- Amendments to [Model Rule 1.6 \(Confidentiality of Information\)](#) that explain the ethical considerations associated with the disclosure of confidential client information to detect and prevent conflicts of interest, such as when lawyers move to another firm or when firms merge.
- A new Model Court Rule on [Practice Pending Admission](#) that would enable a lawyer licensed in one jurisdiction to establish a systematic and continuous presence in a new jurisdiction while diligently pursuing admission in the new jurisdiction through one of the procedures that the

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jurisdiction authorizes (e.g., admission by motion or passage of that jurisdiction's bar examination).

- Amendments to the [ABA Model Rule on Admission by Motion](#) that would reduce the time in practice requirement from 5 years to 3 years and a resolution urging jurisdictions that have not adopted this Model Rule to do so without additional restrictions, such as reciprocity requirements.

February 2013

Inbound Foreign Lawyers. Key proposals still out for comment:

- Amendments to [Model Rule 5.5 \(Unauthorized Practice of Law; Multijurisdictional Practice\)](#) that would incorporate the provisions of the 2002 ABA Model Rule for Temporary Practice by Foreign Lawyers to encourage increased implementation of this ABA policy by state supreme courts.
- Amendments that would include foreign lawyers within the [ABA Model Rule on Pro Hac Vice Admission](#), with appropriate regulatory safeguards. Many courts, including the Supreme Court of the United States, already permit this type of admission.
- Amendments that would allow foreign lawyers (like U.S. lawyers) to work as [in-house counsel](#) in a jurisdiction where they are not admitted, provided such services are limited to the organizational client (employer) and its affiliates.

Alternative Law Practice Structures (choice of law). Key proposals still out for comment:

- Amendments to Model Rule 1.5 (Fees) that would clarify that a lawyer can divide a legal fee with another firm that has nonlawyer partners and owners.
- Amendments to Model Rule 5.4 that would allow a lawyer who is practicing in the office of a law firm where nonlawyer fee sharing is not permitted to share fees with nonlawyers in the same firm who are located in another office where such fee sharing is permissible.

Alternative Law Practice Structures (nonlawyer fee sharing)

- The Commission has eliminated from consideration outside nonlawyer ownership of law firms, publicly traded law firms, and multidisciplinary practices.
- The Commission continues to study whether to propose a change to Model Rule 5.4 (Professional Independence of a Lawyer) to permit a form of nonlawyer ownership that is similar to (but more restrictive than) what has existed in the District of Columbia for more than 20 years.

Uniformity/Choice of Law. Proposal still out for comment:

- Amendments to the Comments to [Model Rule 1.7 \(Conflict of Interest: Current Clients\)](#) that would permit, under limited circumstances, lawyers and clients to agree to be bound by the conflict of interest rules of a particular jurisdiction.