

**ABA Commission on Ethics 20/20  
August 2012 Proposals**

**Resolution 105A (Confidentiality When Using Technology).** To help lawyers understand how to protect client confidences when using new technology – such as “cloud” computing, tablets, and smartphones – we propose to:

- clarify that lawyers should take reasonable precautions to protect client confidences from inadvertent or unauthorized access or disclosure. (Model Rule 1.6)
- identify the factors that lawyers should consider when determining whether they have taken such reasonable precautions. (Model Rule 1.6)
- clarify a lawyer’s obligations upon receiving inadvertently disclosed confidential information, including information contained in electronic form. (Model Rule 4.4)
- emphasize a lawyer’s duty to keep abreast of changes in relevant technology, including the benefits and risks associated with its use. (Model Rule 1.1)
- clarify that a lawyer has a duty to respond promptly to all “client communications” and not just “telephone calls.” (Model Rule 1.4)
- update the meaning of a “writing” and offer more guidance on the use of screens to account for changes in technology. (Model Rule 1.0)

The Commission is also recommending that the ABA create a user-friendly, regularly updated website with answers to commonly asked questions about technology and confidentiality.

**Resolution 105B (Using Technology for Marketing).** To help lawyers understand how the principles of the advertising rules apply to new forms of Internet-based marketing, such as pay-per-click ads and social networking sites, we propose to:

- offer guidance to lawyers on how to use those forms of marketing without inadvertently creating a prospective client-lawyer relationship. (Model Rule 1.18)
- clarify how the prohibition against paying others for a “recommendation” applies to online lead generation services. (Model Rule 7.2)
- identify when a lawyer’s online communications constitute a “solicitation.” (Model Rule 7.3)

**Resolution 105C (Outsourcing).** Given the extent to which lawyers now outsource legal and law-related services, we propose to:

- emphasize that, when lawyers outsource work to other lawyers, they must reasonably believe that the other lawyers’ services will contribute to the competent and ethical representation of the client. (Model Rule 1.1)

- emphasize that, when lawyers outsource work to nonlawyers, they must make reasonable efforts to ensure that the nonlawyers' services are provided in a manner that is compatible with the lawyer's professional obligations. (Model Rule 5.3)
- remind lawyers that, when they engage in outsourcing, they must not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction. (Model Rule 5.5)

The Commission is also proposing the creation of a website that would keep track of all significant news and developments relating to the ethics of outsourcing and provide up-to-date information about evolving outsourcing practices and the technological changes that make them possible.

**Resolutions 105D-F.** Given the increasing need for lawyers to change jobs and relocate to new jurisdictions, we propose to:

- enable a lawyer to establish a practice in another jurisdiction, subject to strict client and public protection requirements, while the lawyer pursues admission in that jurisdiction through one of the procedures that the jurisdiction authorizes (e.g., admission by motion). (New Model Court Rule on Practice Pending Admission) (**Resolution 105D**)
- allow a lawyer to qualify for admission by motion after 3 years of practice (instead of 5). (Model Rule on Admission by Motion). The Commission is also asking the House of Delegates to adopt a resolution that would encourage jurisdictions that have not adopted the Model Rule on Admission by Motion to do so and urges jurisdictions that have adopted admission by motion procedures to eliminate any restrictions that do not appear in the Model Rule on Admission by Motion. (**Resolution 105E**)
- explain the limited extent to which a lawyer can disclose information to another firm in order to ensure that conflicts of interest are detected before the lawyer is hired or two firms merge. (Model Rule 1.6) (**Resolution 105F**)