

**LOUISIANA STATE BAR ASSOCIATION
HOUSE OF DELEGATES
9 a.m. ■ Saturday, January 25, 2014
Renaissance Baton Rouge Hotel**

MINUTES

Mr. Leefe called the meeting to order at 9:40 a.m., which delay was caused by inclement weather.

I. Certification of Quorum by the Secretary

Mr. Grodsky certified that there was a quorum. The roll call is attached as an addendum to these minutes.

II. Recognition of Deceased Members of the House of Delegates

Mr. Leefe asked the House for a moment of silence in memory of Orlando N. Hamilton, Jr. of Oak Grove, who passed away in November at the age of 85. Mr. Hamilton served in the House from 1984/1985 through 1987/1988 and from 1990/1991 through 2009/2010.

III. Reports of Standing Committees of the House *

1. Jeffrey A. Riggs, Liaison Committee Chair (oral report)

Mr. Riggs reported on efforts to foster inter-session communications among House members using Linked In and referred members to the handout which was distributed.

IV. Reports of Officers, Board of Governors, Standing Committees and Sections of the Louisiana State Bar Association *

1. Richard K. Leefe, President

Mr. Leefe gave a brief report on a number of successful programs, including the December 2013 Danube River CLE cruise. He also advised that plans were underway for a program to be held in conjunction with Lafayette's Festival Internationale, scheduled for late April 2014.

2. Joseph L. "Larry" Shea, Jr., President-Elect

Mr. Shea gave a brief report on plans for the Annual Meeting/Summer School and encouraged all to attend.

3. Barry H. Grodsky, Secretary

Mr. Grodsky gave a brief report on the Louisiana Bar Journal, as well as the Committee on the Profession's mentoring program scheduled to start on January 1, 2015. He urged House members to participate.

4. Steven G. "Buzz" Durio, Treasurer

Mr. Durio gave a brief report and advised that the FY 2012/2013 audit had been

completed and the LSBA received another clean audit.

V. Reports of Special Committees of the Louisiana State Bar Association*

There were no additional oral reports. Written reports were distributed via email.

VI. Other Reports*

1. Louisiana Judicial College

Judge John Michael Guidry made a presentation regarding the LJC's mission to educate the judiciary and its need for additional funding to do that effectively. Judge Guidry advised that the LJC would seek approval from the Legislature during the 2014 Session for a dedicated filing fee of .50 on all civil filings, excluding domestic and juvenile. This dedicated fee would be utilized to generate the needed additional funding for LJC.

By the requisite two-thirds vote, the House voted to suspend its Rules to consider Judge Guidry's request to support such a bill in the Louisiana Legislature.

Upon motion by Mr. Abaunza and second by Mr. Kutcher, the House voted to support the funding initiative as presented by the Louisiana Judicial College and to inform the Legislation Committee of its decision.

2. Louisiana Client Assistance Foundation

Louisiana Client Assistance Foundation (LCAF) President Frank X. Neuner, Jr. reported that LCAF pays claims based on recommendations from the LSBA's Client Assistance Fund Committee, which is chaired by David W. Leefe. Mr. Neuner advised that since 2001, the Fund had paid almost \$2 million to 382 claimants. He further advised that there are 56 open claims with potential exposure of \$432,000. He reported that funding for LCAF comes from the Louisiana Outside Counsel Health and Education Foundation (LOCHEF), and that annual contributions from that group are scheduled to continue until 2021. He referred members to the written report for additional information.

VII. Old Business

There was no old business to come before the House.

VIII. Approval of Minutes

Consideration of approval of the Minutes of the June 6, 2013 Meeting of the House of Delegates, held in Destin, Florida.

Upon motion by Robert A. Kutcher and second by Mr. Riggs, the House unanimously approved the minutes as presented.

IX. Elections

Before the elections began, Mr. Leefe advised that Mr. Kutcher would be resigning from the House of Delegates and the Liaison Committee at the conclusion of the June 5 House meeting so that he could be sworn in as LSBA Treasurer. Mr. Leefe further advised that although the HOD Rules allowed the President to fill vacancies on the Committee, he would in June ask the House for a suspension of its Rules so that the House itself could choose someone to serve the remaining year of Mr. Kutcher's term.

1. Election of one member to serve a three-year term on the House of Delegates Liaison Committee, to commence at the conclusion of the 2014 Annual Meeting and end at the conclusion of the 2017 Annual Meeting. This member shall be elected from House of Delegates members representing the 20th through 42nd Judicial Districts.

Mr. Kutcher made the following motion:

“BE IT RESOLVED that Jacob Braud of the 25th Judicial District be elected to the House of Delegates Liaison Committee as a member representing the 20th through 42nd Judicial Districts, for a three year term to commence at the conclusion of the 2014 Annual Meeting and to end at the conclusion of the 2017 Annual Meeting.”

Mr. Pujol made the following motion:

“BE IT RESOLVED that Christopher Bridges of the 23rd Judicial District be elected to the House of Delegates Liaison Committee as a member representing the 20th through 42nd Judicial Districts, for a three year term to commence at the conclusion of the 2014 Annual Meeting and to end at the conclusion of the 2017 Annual Meeting.”

The motion to close the nominations was made and adopted. A hand-count vote was taken and Mr. Braud was declared elected.

2. Election, from the three Liaison Committee members, of a Chair of the House of Delegates Liaison Committee for 2014-2015, whose term will commence at the conclusion of the 2014 Annual Meeting. The Chair of the Liaison Committee is a voting member of the Board of Governors.

“BE IT RESOLVED that Tricia A. Pierre of the 15th Judicial District be elected Chair of the House of Delegates Liaison Committee for a one-year term to commence at the conclusion of the 2014 Annual Meeting and to end at the conclusion of the 2015 Annual Meeting.”

Ms. Pierre was elected by acclamation.

X. Resolutions

Committee Resolutions

1. Resolution from the Rules of Professional Conduct Committee to amend Rule 1.15 of the Rules of Professional Conduct, to require reconciliation of client trust accounts at least monthly, as well as maintenance of such records of the reconciliation(s).

Jack K. Whitehead, Jr. made the following motion, which was seconded by Robert A. Kutcher.

“BE IT RESOLVED, that the resolution from the Rules of Professional Conduct Committee to amend Rule 1.15 of the Rules of Professional Conduct, to require reconciliation of client trust accounts at least monthly, as well as maintenance of such records of the reconciliations(s) be adopted.”

Rules of Professional Conduct Committee Chair Richard C. Stanley reviewed the proposed change and advised that committee felt it was in the best interest of the lawyer and his/her clients for the lawyer’s trust account(s) to be reconciled on a monthly basis. Omar Mason spoke against the proposed change, citing that it would put a burden on solo practitioners. Mr. Whitehead and John F. Robichaux spoke in favor of the resolution.

After a unanimous vote to end the debate, the House voted to approve the resolution.

2. Resolution from the Rules of Professional Conduct Committee to ask the Louisiana Supreme Court to adopt recent ABA changes with regard to:
 - Rule 1.0 – change reference from “email” to “electronic communications”
 - Rule 1.6(b)(7) – regarding confidentiality of information
 - Rule 1.6(c) – regarding confidentiality of information
 - Rule 1.18 – regarding duties to prospective clients
 - Rule 4.4 – regarding respect for rights of third persons
 - Rule 5.3 – regarding responsibilities regarding non-lawyer assistance.

James J. Davidson III made the following motion, which was seconded by Winfield E. Little, Jr.

“BE IT RESOLVED, that the resolution from the Rules of Professional Conduct Committee to ask the Louisiana Supreme Court to amend Rules 1.0, 1.6(b)(7), 1.6(c), 1.18, 4.4, and 5.3 be adopted.”

Rules of Professional Conduct Committee Chair Richard C. Stanley reviewed the proposed changes and advised that they were non-substantive in nature.

Amanda Strickland Stout made the following motion, which was duly seconded:

“BE IT RESOLVED, that Rule 4.4(b) as amended reads as follows (originally proposed changes are underlined; new changes appear in red):

Rule 4.4 Respect for Rights of Third Persons

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
- (b) A lawyer who receives a writing or electronically stored information that, on its face, appears to be subject to the attorney-client privilege or otherwise confidential, under circumstances where it is clear that the writing or electronically stored information was not intended for the receiving lawyer, shall refrain from examining or reading the writing or electronically stored information, promptly notify the sending lawyer, and return the writing or delete the electronically stored information.

After a unanimous vote to end the debate, the House voted to approve the amendment.

After a brief additional discussion, the House voted to approve the motion as amended.

Section Resolution

3. Resolution from ADR Section to amend its Bylaws

Jeffrey A. Riggs made the following motion, which was seconded by Winfield E. Little, Jr.:

“BE IT RESOLVED that the resolution from the ADR Section to amend its Bylaws be adopted.”

ADR Section Chair Paul B. Breaux reviewed the proposed changes, which he advised were unanimously approved by the Section at its annual meeting.

The House unanimously approved the resolution as presented.

Member Resolutions

4. Resolution from Bill of Rights Section Chair Leo C. Hamilton urging the LSBA to:
 - Strengthen its commitment and efforts to improve availability of a full-range of legal services to all citizens of Louisiana;
 - Actively participate in the Louisiana Bar Foundation's Louisiana Campaign to Preserve Legal Aid by establishing specific goals for various groups within the LSBA; and
 - Encourage Louisiana lawyers to expand their pro bono efforts.

Michael W. McKay made the following motion, which was seconded by Joseph L. Shea, Jr.:

“BE IT RESOLVED, that the resolution from Bill of Rights Section Chair Leo C. Hamilton urging the LSBA to: strengthen its commitment and efforts to improve availability of a full-range of legal services to all citizens of Louisiana; actively participate in the Louisiana Bar Foundation's Louisiana Campaign to Preserve Legal Aid by establishing specific goals for various groups within the LSBA; and encourage Louisiana lawyers to expand their pro bono efforts be adopted.”

Bill of Rights Section Chair Leo C. Hamilton reviewed the resolution and advised that the Louisiana Bar Foundation was the second largest funder of Legal Services Corporations in Louisiana.

Mr. Riggs made the following motion, which Mr. Whitehead seconded:

“BE IT RESOLVED, that the second item after the final whereas of the resolution shall read as follows (changes appear in red):

(2) Actively participate in the efforts of the Louisiana Bar Foundation's Louisiana Campaign to Preserve Legal Aid ~~to increase contributions by establishing goals of a 100 percent participation rate by members of the House of Delegates and Board of Governors, 75 percent of Louisiana State Bar Association Section, and a 50 percent participation rate by all lawyers.~~

Mr. McKay spoke against the proposed amendment.

After a unanimous vote to end the debate, the House defeated the motion to amend.

James C. Gulotta, Jr., Mr. Shea and W. Michael Street spoke in favor of the resolution as originally presented.

After a unanimous vote to end debate on the original motion, the House voted to approve the motion.

5. Resolution from 15th Judicial District Delegate Jeffrey A. Riggs and Solo and Small Firm Section Chair Richard W. Martinez urging the Louisiana Supreme Court to adopt proposed Rule 1.19 of the Rules of Professional Conduct regarding preparation of succession plans by lawyers.

Mr. Riggs made the following motion, which was duly seconded:

“BE IT RESOLVED that the resolution urging the Louisiana Supreme Court to adopt proposed Rule 1.19 of the Rules of Professional Conduct regarding preparation of succession plans by lawyers be adopted.”

Adrian Nadeau spoke in opposition to the resolution, stating that the Lawyers in Transition Committee had already sent something very similar to the Supreme Court for approval and deemed this resolution unnecessary.

Mr. Riggs advised that his resolution did not require succession plans for lawyers, but merely encouraged them.

Steven G. Durio spoke in favor of the resolution, citing that the Supreme Court was reluctant to approve the resolution previously adopted by the House due to the original resolution’s immunity provision.

Mr. McKay spoke against the resolution, citing that it was a major change from the position previously adopted by the House. He further indicated that the Lawyers in Transition Committee (which submitted the resolution previously approved by the House) believes that lawyer succession plans should be mandatory and that he agrees.

Mr. Stanley spoke against the resolution, indicating that it was his understanding that the original resolution was still under consideration by the Supreme Court and that the House should wait for final disposition on that resolution prior to taking any additional action.

Mickey S. deLaup made a motion to table the resolution, which was seconded by Mr. Kutcher.

The House voted to table the resolution.

XI. Other Business

There being no further business, the meeting was adjourned at 11:35 a.m.

Respectfully Submitted:



Barry H. Grodsky
Secretary

APPROVED BY HOUSE OF DELEGATES
JUNE 5, 2014
DESTIN, FL

ADDENDUM TO 1/25/2014 HOD MINUTES

2013-14 HOUSE OF DELEGATES ATTENDANCE • 2014 MIDYEAR MEETING

FIRST JUDICIAL DISTRICT (14 seats) Parish of Caddo

Claude W. Bookter, Jr.
James L. Fortson, Jr.
PRESENT Stephen Christopher Fortson BY PROXY TO Brad Wilkerson
PRESENT John M. Frazier BY PROXY TO Seth M. Moyers
PRESENT John R. Herzog BY PROXY TO Louis Avallone
W. James Hill III
Richard M. John
Kevin R. Molloy
Jason Michael Nash
Marshall R. Pearce
PRESENT Nyle A. Politz BY PROXY TO Joseph L. “Larry” Shea, Jr.
PRESENT Kenneth Craig Smith, Jr. BY PROXY TO Karelia Stewart
PRESENT Paul L. Wood

SECOND JUDICIAL DISTRICT (3 seats) Parishes of Bienville, Claiborne & Jackson

THIRD JUDICIAL DISTRICT (3 seats) Parishes of Lincoln & Union

\ Cary T. Brown
PRESENT Tyler G. Storms

FOURTH JUDICIAL DISTRICT (11 seats) Parishes of Morehouse & Ouachita

PRESENT Elizabeth J. Guerriero BY PROXY TO William “Mike” Street
Jeffrey D. Guerriero
Paul L. Hurd
PRESENT Charles L. Kincade BY PROXY TO Thomas Hayes, III
PRESENT Ramsey L. Ogg
Alex W. Rankin
Arthur L. Stewart
PRESENT David J. Summersgill, Jr. BY PROXY TO Ashley L. Smith
PRESENT Thomas G. Zentner, Jr.

FIFTH JUDICIAL DISTRICT (3 seats) Parishes of Franklin, Richland, & West Carroll

PRESENT John Clay Hamilton
John Hoychick, Jr.
Ann B. McIntyre

SIXTH JUDICIAL DISTRICT (2 seats) Parishes of East Carroll, Madison & Tensas

PRESENT George F. Fox, Jr.

SEVENTH JUDICIAL DISTRICT (2 seats) Parishes of Catahoula & Concordia

John C. Reeves
Ann S. Siddall

EIGHTH JUDICIAL DISTRICT (1 seat) Parish of Winn

NINTH JUDICIAL DISTRICT (7 seats) Parish of Rapides

Robert L. Beck III
Robert L. Bussey
Charles D. Elliott
Howard B. Gist III
Mark F. Vilar

PRESENT Zebulon M. Winstead

PRESENT Christie C. Wood

TENTH JUDICIAL DISTRICT (2 seats) Parish of Natchitoches

PRESENT Keenan K. Kelly
Charles R. Whitehead, Jr.

ELEVENTH JUDICIAL DISTRICT (1 seat) Parish of Sabine

William Daniel Dyess

TWELFTH JUDICIAL DISTRICT (2 seats) Parish of Avoyelles

Douglas L. Bryan
Dan B. McKay, Jr.

THIRTEENTH JUDICIAL DISTRICT (2 seats) Parish of Evangeline

Timmy J. Fontenot

FOURTEENTH JUDICIAL DISTRICT (9 seats) Parish of Calcasieu

Theresa A. Barnatt
Brian Lee Coody

PRESENT L. Paul Foreman BY PROXY TO Winfield Little, Jr.

PRESENT Thomas L. Lorenzi BY PROXY TO Robert Guillory, Jr.

PRESENT Robert C. McCorquodale

David Daniel Palay, Jr.

Larry E. Pichon

Betty A. Raglin

PRESENT John F. Robichaux

FIFTEENTH JUDICIAL DISTRICT (13 seats) Parishes of Acadia, Lafayette & Vermillion

PRESENT Homer Ed Barousse, Jr. BY PROXY TO Francis X. Neuner, Jr.
Ariel A. Campos, Sr.

PRESENT Dean A. Cole BY PROXY TO Steven G. Durio

PRESENT Kyle L. Gideon BY PROXY TO James J. Davidson, III
Matthew J. Hill, Jr.
Andrew B. Mims
Joseph R. Oelkers III
Barbara A. Olinde
Donovan J. O’Pry II

PRESENT Tricia R. Pierre

PRESENT Jeffrey A. Riggs
Michael D. Skinner
Juliette B. Wade

SIXTEENTH JUDICIAL DISTRICT (8 seats) Parishes of Iberia, St. Martin & St. Mary

Adolph B. Curet III
Eric P. Duplantis
Paul T. Landry
Marsha McNulty
Andrew Reed
Maggie T. Simar
Anne G. Stevens
Dennis R. Stevens

SEVENTEENTH JUDICIAL DISTRICT (5 seats) Parish of Lafourche

David G. Arceneaux
Matthew Ferdinand Block
Annette Marie Fontana

PRESENT Robert M. Pugh
Nicholas J. Zeringue

EIGHTEENTH JUDICIAL DISTRICT (4 seats) Parishes of Iberville, Pointe Coupee & West Baton Rouge

Chad Avery Aguiard

PRESENT Felicia F. Davis
Stephen Philibert Jewell
Francis A. Smith, Jr.

NINETEENTH JUDICIAL DISTRICT (21 seats) Parish of East Baton Rouge

PRESENT B. Scott Andrews

PRESENT Kelly E. Balfour BY PROXY TO Carrie LeBlanc Jones

PRESENT Jesse H. Bankston, Jr.

PRESENT Dana B. Brown BY PROXY TO Kathy Wright

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PRESENT James D. "David" Caldwell, Jr.
PRESENT Jack M. Dampf
PRESENT Juan M. "John" Delgado
PRESENT Michael D. Ferachi BY PROXY TO John Church
PRESENT Frank A. Fertitta
PRESENT C. Kevin Hayes
C. Frank Holthaus
PRESENT Stephen M. Irving BY PROXY TO Larry Murray
PRESENT Jay M. Jalenak, Jr.
PRESENT Michael W. McKay
PRESENT Adrian G. Nadeau
PRESENT Alejandro R. "Al" Perkins BY PROXY TO Julie Baxter
PRESENT Glen R. Petersen
PRESENT Valerie T. Schexnayder
PRESENT Amanda S. Stout
PRESENT David Abboud Thomas BY PROXY TO Grant Guillot
PRESENT Jack K. Whitehead, Jr.

TWENTIETH JUDICIAL DISTRICT (2 seats) Parishes of East Feliciana & West Feliciana

PRESENT Samuel Christopher D'Aquila
PRESENT Michael L. Hughes

TWENTY-FIRST JUDICIAL DISTRICT (9 seats) Parishes of Livingston, St. Helena & Tangipahoa

PRESENT Mary E. Heck Barrios
PRESENT Erik L. Burns
Anthony Todd Caruso
PRESENT Douglas T. Curet
Steven J. Farber
Jay J. Harris
D. Blayne Honeycutt
PRESENT Robert W. Morgan
Carolyn F. Ott

TWENTY-SECOND JUDICIAL DISTRICT (12 seats) Parishes of St. Tammany & Washington

Clayton J. Borne IV
Eric K. Buerger
Roy K. Burns, Jr.
PRESENT William Harvell Burris
PRESENT Olivier Provosty Carriere II BY PROXY TO Michael Holoway
Gordon Timothy Herrin
Robert C. Lehman
PRESENT D'Andrea Vel McMooain-Chatman

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J. Kevin McNary
PRESENT Patrice W. Oppenheim BY PROXY TO Andrew Capitelli
PRESENT Eugene T. Rhee

TWENTY-THIRD JUDICIAL DISTRICT (5 seats) Parishes of Ascension, Assumption & St. James

PRESENT Christopher J. Bridges
Lana O. Chaney
Michael J. Poirrier
PRESENT Timothy E. Pujol
PRESENT Jennifer S. Van Metre

TWENTY-FOURTH JUDICIAL DISTRICT (19 seats) Parish of Jefferson

Allen I. Boudreaux, Jr.
PRESENT Robert J. Caluda BY PROXY TO Mickey deLaup
PRESENT Thomas Christopher Cerullo
PRESENT David L. Colvin BY PROXY TO Thomas H. Peyton
Sandra K. Cosby
PRESENT S. Guy deLaup
Michael R. Delesdernier
PRESENT Paul C. Fleming, Jr.
PRESENT Geralyn P. Garvey BY PROXY TO Richard K. Leefe
PRESENT Christy M. Howley BY PROXY TO Ronald Jung
PRESENT Robert A. Kutcher
Adrian F. LaPeyronnie III
John J. Lee, Jr.
Scott W. McQuaig
Roy A. Raspanti
George B. Recile
PRESENT Thomas F. Schexnayder
PRESENT Mettery I. Sherry, Jr. BY PROXY TO Erin O. Braud
Tina Louise Suggs

TWENTY-FIFTH JUDICIAL DISTRICT (2 seats) Parish of Plaquemine

PRESENT S. Jacob Braud
Dominick Scandurro, Jr.

TWENTY-SIXTH JUDICIAL DISTRICT (6 seats) Parishes of Bossier & Webster

John Zachary Blanchard, Jr.
Ryan E. Gatti
PRESENT Amanda J. Hulett
Patrick R. Jackson
J. Kyle McCotter
Ross E. Shacklette

TWENTY-SEVENTH JUDICIAL DISTRICT (4 seats) Parish of St. Landry

Francis A. Olivier III
John L. Olivier
Jacque B. Pucheu, Jr.
Randy Wagley

TWENTY-EIGHTH JUDICIAL DISTRICT (1 seat) Parish of LaSalle

Steven Paul Kendrick

TWENTY-NINTH JUDICIAL DISTRICT (3 seats) Parish of St. Charles

PRESENT Steven F. Griffith, Sr. BY PROXY TO Paula Ates
Gregory A. Miller
PRESENT Robert L. Raymond BY PROXY TO Monte Mollere

THIRTIETH JUDICIAL DISTRICT (3 seats) Parish of Vernon

D. Wayne Bush
Tony C. Tillman

THIRTY-FIRST JUDICIAL DISTRICT (1 seat) Parish of Jefferson Davis

PRESENT Richard M. Arceneaux

THIRTY-SECOND JUDICIAL DISTRICT (5 seats) Parish of Terrebonne

Charles C. Bourque, Jr.
Sye Joseph Broussard
Kassie L. Hargis
Heather Chapin McAllister
Patricia P. Reeves-Floyd

THIRTY-THIRD JUDICIAL DISTRICT (2 seats) Parish of Allen

Mary Hebert Holmes
Michael Bruce Holmes

THIRTY-FOURTH JUDICIAL DISTRICT (5 seats) Parish of St. Bernard

PRESENT Roberta L. Burns
PRESENT Tracy Helen Duplantier
PRESENT Michael A. Gorbaty
PRESENT Gregory J. Noto
PRESENT Paul A. Tabary III

THIRTY-FIFTH JUDICIAL DISTRICT (1 seat) Parish of Grant

THIRTY-SIXTH JUDICIAL DISTRICT (2 seats) Parish of Beauregard

Elizabeth B. Carr

THIRTY-SEVENTH JUDICIAL DISTRICT (1 seat) Parish of Caldwell

PRESENT Brian E. Frazier BY PROXY TO James Mixon

THIRTY-EIGHTH JUDICIAL DISTRICT (1 seat) Parish of Cameron

Robert James Sheffield, Jr.

THIRTY-NINTH JUDICIAL DISTRICT (1 seat) Parish of Red River

John Q. Davis

FORTIETH JUDICIAL DISTRICT (3 seats) Parish of St. John the Baptist

PRESENT Vercell F. Fiffie
William D. O'Regan III
Richard B. Stricks

FORTY-FIRST JUDICIAL DISTRICT (33 seats) Parish of Orleans

PRESENT Donald R. Abaunza
PRESENT Glenn B. Adams
PRESENT Francis J. Barry, Jr.
PRESENT Ashley L. Belleau BY PROXY TO Omar K. Mason
PRESENT Jack C. Benjamin, Jr. BY PROXY TO Marguerite "Peggy" Adams
Andrew A. Braun
Joseph M. Bruno
PRESENT Derwyn Del Bunton BY PROXY TO William Boggs
Clifford E. Cardone
PRESENT Thomas A. Casey, Jr. BY PROXY TO Cheri Grodsky
PRESENT Jeffrey A. Clayman BY PROXY TO Craig R. Webb
PRESENT Paul B. Deal BY PROXY TO William "Billy" King
PRESENT Richard B. Eason, II BY PROXY TO Eric Barefield
PRESENT William R. Forrester, Jr.
PRESENT Judith A. Gainsburgh BY PROXY TO H. Minor Pipes, III
PRESENT James C. Gulotta, Jr.
PRESENT Philip K. Jones, Jr. BY PROXY TO David W. Leefe
Ryan M. McCabe
PRESENT André J. Mouledoux BY PROXY TO Richard Stanley
PRESENT John H. Musser V BY PROXY TO John H. Musser, IV
Charles M. Pisano
PRESENT Brian P. Quirk BY PROXY TO Kelly Legier
PRESENT Christopher K. Ralston
PRESENT Louis Gravois Schott
Karen Baumgarten Sher
PRESENT Ronald J. Sholes
John A. Stassi II
PRESENT Patrick A. Talley, Jr.

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PRESENT Irving J. Warshauer
PRESENT Edward Dirk Wegmann BY PROXY TO Mark A. Cunningham
Colby F. Wenck
Walter I. Willard
PRESENT Phillip A. Wittmann BY PROXY TO Stephanie Skinner

FORTY-SECOND JUDICIAL DISTRICT (2 seats) Parish of DeSoto

Todd Mitchell Johnson
PRESENT Adrienne D. White

SECTION CHAIRS

Michael P. Arata, Art Entertainment & Sports Law
Richard J. Arsenault, Insurance, Tort, Worker's Comp & Admiralty Law
J. Robert Ates, Civil Law & Litigation
Brian M. Begue, Administrative Law
PRESENT Paul F. Bell, Labor & Employment
PRESENT Paul W. Breaux, Alternative Dispute Resolution
Susan J. Burkenstock, Trusts, Estate, Probate & Immovable Property Law
PRESENT Robert P. Cuccia BY PROXY TO Robert Levy, Family Law
PRESENT Ariel K. DiGiulio, Animal Law
Vanessa M. D'Souza, Intellectual Property
PRESENT Val P. Exnicios, Class Action, Mass Torts & Complex Litigation
Steven J. Farber, Government & Public Law
Gilbert F. Ganucheau, Health Law
Demarcus Gordon, Minority Involvement
Keith B. Hall, Environmental Law
PRESENT Leo C. Hamilton, Bill of Rights
Larry C. Hebert, Mineral Law
Louis C. LaCour, Appellate
Caroline D. Lafourcade,
Lynn Luker, Civil Law & Litigation
Tristan E. Manthey, Bankruptcy Law
Richard W. Martinez, Solo & Small Firm
Alexander M. McIntyre, Antitrust & Trade Regulation
J. Marshall Page III, International Law
Warren A. Perrin, Francophone
Leon J. Reymond III, Corporate & Business Law
H. B. Shreves, Fidelity, Surety & Construction Law
David A. Szwak, Consumer Protection Law
Joseph P. Tynan, Bench & Bar
Michael S. Walsh, Criminal Law
PRESENT Jamie Watts, Public Utility

**RESOLUTION PROPOSED BY THE
RULES OF PROFESSIONAL CONDUCT COMMITTEE
OF THE LOUISIANA STATE BAR ASSOCIATION**

WHEREAS, the LSBA Rules of Professional Conduct Committee ("Committee") is charged as part of its mission, to monitor and evaluate developments in legal ethics and when appropriate to recommend changes to the Louisiana Rules of Professional Conduct; and

WHEREAS, the Committee is comprised of LSBA members from all geographic areas of the state and practice groups;

WHEREAS, the Committee recommends that Rule 1.15 be amended as follows:

SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest-bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer's primary office is situated, if not within Louisiana; or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds, including monthly reconciliations, and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account or obtaining a waiver of those charges, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. The lawyer shall deposit legal fees and expenses into the client trust account consistent with Rule 1.5(f).

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly

distribute all portions of the property as to which the interests are not in dispute.

(F) Every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account shall be personally signed by a lawyer or, in the case of electronic, telephone, or wire transfer, from a client trust account, directed by a lawyer or, in the case of a law firm, one or more lawyers authorized by the law firm. A lawyer shall not use any debit card or automated teller machine card to withdraw funds from a client trust account. On client trust accounts, cash withdrawals and checks made payable to "Cash" are prohibited. A lawyer shall subject all client trust accounts to a reconciliation process at least monthly, and shall maintain records of the reconciliation as mandated by this rule.

NOW THEREFORE BE IT RESOLVED THAT the LSBA House of Delegates approve the recommendation of the LSBA Rules of Professional Conduct Committee regarding Rule 1.15.

NOW THEREFORE BE IT FURTHER RESOLVED THAT the LSBA House of Delegates respectfully refers these recommendations of the LSBA Rules of Professional Conduct Committee to the Supreme Court of Louisiana and recommends approval of same by the Court.

Respectfully submitted:
LSBA Rules of Professional Conduct Committee

Richard C. Stanley, Chair
Daniel A. Cavell
Dane S. Ciolino
Shaun G. Clarke
Bobby J. Delise
Val P. Exnicios
Sam Gregorio
Harry S. Hardin,
III Paul J. Hebert
Christine Lipsey
Ryan M. McCabe
William M. Ross
Leslie J. Schiff
Marta-Ann Schnabel
Joseph L. Shea, Jr., Ad Hoc
Edward Walters, Jr., Ad Hoc
Lauren A. McHugh, Supreme Court
Liaison Charles B. Plattsmier, Disciplinary
Liaison Robert A. Kutcher, Board Liaison

This 11th day of December 2013

APPROVED BY HOUSE OF DELEGATES AND BOARD OF GOVERNORS
JANUARY 25, 2014
BATON ROUGE, LA

**RESOLUTION PROPOSED BY THE
RULES OF PROFESSIONAL CONDUCT COMMITTEE
OF THE LOUISIANA STATE BAR ASSOCIATION**

WHEREAS, the LSBA Rules of Professional Conduct Committee (“Committee”) is charged as part of its mission, to monitor and evaluate developments in legal ethics and when appropriate to recommend changes to the Louisiana Rules of Professional Conduct; and

WHEREAS, the Committee is comprised of LSBA members from all geographic areas of the state and practice groups;

WHEREAS, the Committee appointed an “ABA Revision Subcommittee” to review recent changes to the ABA Model Rules of Professional Conduct. The Subcommittee furnished its recommendations to the Committee. After consideration, the Committee recommends the following changes:

Rule 1.0 – Adopt ABA change

Rule 1.6(b)(7) – Adopt ABA change

Rule 1.6(c) – Adopt ABA change

Rule 1.18 – Adopt ABA change

Rule 4.4 – Adopt ABA change

Rule 5.3 – Adopt ABA change

Attached and labeled “Exhibit A” is a report from the Subcommittee Chair Dane Ciolino addressing the recommended changes and including a redline version of the proposed rule changes and rationale.

The ABA materials in support of the recommended changes are attached and labeled “Exhibit B”.

NOW THEREFORE BE IT RESOLVED THAT the LSBA House of Delegates approve the recommendations of the LSBA Rules of Professional Conduct Committee as set forth above.

NOW THEREFORE BE IT FURTHER RESOLVED THAT the LSBA House of Delegates respectfully refers these recommendations of the LSBA Rules of Professional Conduct Committee to the Supreme Court of Louisiana and recommends approval of same by the Court.

Respectfully submitted,
LSBA Rules of Professional Conduct Committee

Richard C. Stanley, Chair

Daniel A. Cavell
Dane S. Ciolino
Shaun G. Clarke
Bobby J. Delise
Val P. Exnicios
Sam Gregorio
Harry S. Hardin, III
Paul J. Hebert
Christine Lipsey
Ryan M. McCabe
William M. Ross
Leslie J. Schiff
Marta-Ann Schnabel
Joseph L. Shea, Jr., Ad Hoc Member
Edward Walters, Jr., Ad Hoc Member
Lauren A. McHugh, Supreme Court Liaison
Charles B. Plattsmier, Disciplinary Liaison
Robert A. Kutcher, Board Liaison

This 11th day of December, 2013.

**APPROVED BY HOUSE OF DELEGATES AND BOARD OF GOVERNORS
AS AMENDED BELOW
JANUARY 25, 2014
BATON ROUGE, LA**

Amendments to P. 7, Exhibit "A" of Resolution

Rule 4.4 Respect for Rights of Third Persons

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
- (b) A lawyer who receives a writing or electronically stored information that, on its face, appears to be subject to the attorney-client privilege or otherwise confidential, under circumstances where it is clear that the writing or electronically stored information was not intended for the receiving lawyer, shall refrain from examining or reading the writing or electronically stored information, promptly notify the sending lawyer, and return the writing or delete the electronically stored information.

**LSBA Proposed Amendments to the Louisiana Rules of
Professional Conduct (September 2013)**

RULE 1.0. TERMINOLOGY

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

(g) “Partner” denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(h) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) “Reasonably should know” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) “Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(l) “Substantial” when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) “Tribunal” denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment

directly affecting a party's interests in a particular matter.

(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and ~~e-mail~~ electronic communications.

A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

BACKGROUND

The Louisiana Supreme Court adopted this rule on January 21, 2004. It became effective on March 1, 2004, and has not been amended since.

The proposed revision would make the Louisiana rule identical to ABA Model Rule of Professional Conduct 1.0 (as revised by the ABA in 2012) by replacing the term "e-mail" with "electronic communications."

RULE 1.6. CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in

furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services.

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order;
or

(7) to detect and resolve conflicts of interest between lawyers in different firms, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

BACKGROUND

The Louisiana Supreme Court adopted this rule on January 20, 2004. It became effective on March 1, 2004, and has not been amended since.

The proposed amendment would make the Louisiana rule identical to ABA Model Rule of Professional Conduct 1.6 (2003), by including ABA

Model Rule paragraph (b)(7) (which allows disclosures “to detect and resolve conflicts of interest arising from the lawyer’s change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client”), and Model Rule paragraph (c) (which requires a lawyer to “make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client”).

RULE 1.18. DUTIES TO PROSPECTIVE CLIENT

(a) A person who ~~discusses~~ consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has ~~had discussions with~~ learned information from a prospective client shall not use or reveal that information ~~learned in the consultation~~, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

BACKGROUND

The Louisiana Supreme Court adopted this rule on January 21, 2004. It became effective on March 1, 2004, and has not been amended since.

The proposed revisions would make the Louisiana rule identical to ABA Model Rule of Professional Conduct 1.18 (2002), by adopting (1) language from paragraph (a) of the Model Rule which uses the term “consults with a lawyer about” instead of “discusses with a lawyer;” and, language from paragraph (b) of the Model Rule which uses the term “has learned information from a prospective client,” instead of “has had discussions with a prospective client.” The ABA made these changes to reflect that informal “discussions” are not enough for a person to become a “prospective client” of a lawyer. A person must more formally “consult” with a lawyer before becoming a “prospective client.”

RULE 4.4. RESPECT FOR RIGHTS OF THIRD PERSONS

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a writing or electronically stored information that, on its face, appears to be subject to the attorney-client privilege or otherwise confidential, under circumstances where it is clear that the writing or electronically stored information was not intended for the receiving lawyer, shall refrain from examining the writing, promptly notify the sending lawyer, and return the writing.

BACKGROUND

The Louisiana Supreme Court adopted this rule on January 21, 2004. It became effective on March 1, 2004, and has not been amended since. Paragraph (a) of this rule is identical to ABA Model Rule of Professional Conduct 4.4(a) (2002).

Paragraph (b) of this rule departs significantly from ABA Model Rule 4.4(b). In contrast to the model rule—which requires only that the lawyer who receives an inadvertently-sent document notify the sender of that fact—this rule requires a lawyer not only to notify the sender of receipt, but also to refrain from examining the writing and to return it to the sender. *See* Model Rules of Professional Conduct Rule 4.4(b).

The proposed amendment to the Louisiana rule mirrors the ABA's 2012 amendment to the model rule which inserted the term "electronically stored information" in addition to "document."

RULE 5.3. RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

BACKGROUND

The Louisiana Supreme Court adopted this rule on January 21, 2004. It became effective on March 1, 2004, and has not been amended since.

The proposed amendment would make the Louisiana rule identical to ABA Model Rule of Professional Conduct 5.3 (2002), by changing the title of the rule. In 2012, the ABA changed the title of the model rule to "Responsibilities Regarding Nonlawyer Assistance" from "Responsibilities Regarding Nonlawyer Assistants."

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GENERAL INFORMATION FORM

Submitting Entity: ABA Commission on Ethics 20/20

Submitted By: Jamie S. Gorelick and Michael Traynor, Co-Chairs

1. Summary of Resolution.

Resolution 105a: Technology and Confidentiality

- The Commission is proposing to amend Rule 1.6 of the Model Rules of Professional Conduct (Confidentiality of Information) to make clear that a lawyer has an ethical duty to take reasonable measures to protect a client's confidential information from inadvertent disclosure, unauthorized disclosure, and unauthorized access, regardless of the medium used. The Commission concluded that technological change has so enhanced the importance of this duty that it should be identified in the black letter and described in more detail in Comment [16]. The proposal identifies various factors that lawyers need to take into account when determining whether their precautions are reasonable, but makes clear that a lawyer does not violate the Rule simply because information was disclosed or accessed inadvertently or without authority.
- Rule 4.4(b) of the ABA Model Rules of Professional Conduct (Respect for Rights of Third Persons) currently provides that a "lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender." The Commission is proposing to amend Rule 4.4(b) of the Model Rules and its Comment [2] to make clear that electronically stored information, in addition to information existing in paper form, can trigger the notification requirements of Rule 4.4(b) if the lawyer concludes that the information was inadvertently sent. Moreover, the Commission is proposing to define the phrase "inadvertently sent" in Comment [2] to help lawyers understand when the notification obligations in Rule 4.4(b) arise.
- The screening of individual lawyers from access to certain information in a firm must address not only documents, but also electronic information. For this reason, the Commission is proposing to amend Comment [9] of Rule 1.0 of the Model Rules of Professional Conduct (Terminology) to make clear that, when establishing screens to prevent the sharing of information within a firm, the screens should prevent the sharing of both tangible and electronic information. The Commission is also proposing to amend the existing definition of a "writing" in paragraph (n) of Model Rule 1.0 by replacing the word "e-mail" with the phrase "electronic information."

- The Commission is proposing an amendment to Comment [6] of Rule 1.1 of the Model Rules of Professional Conduct (Competence) to make clear that a lawyer's duty of competence, which requires the lawyer to stay abreast of changes in the law and its practice, includes understanding relevant technology's benefits and risks. Comment [6] already implicitly encompasses such an obligation, but it is important to make this duty explicit because technology is such an integral – and yet, at times invisible – aspect of contemporary law practice.
- The last sentence of Comment [4] of Rule 1.4 of the Model Rules of Professional Conduct (Communication) instructs lawyers to respond promptly to client telephone calls. The Commission proposes to update the Comment so that it instructs lawyers to "promptly respond to or acknowledge client communications."

2. Approval by Submitting Entity.

The Commission approved this Resolution and Report at its April 12 -13, 2012 meeting.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this resolution and how would they be affected by its adoption?

The adoption of this Resolution would result in amendments to the ABA Model Rules of Professional Conduct.

5. What urgency exists which requires action at this meeting of the House?

The ABA is the national leader in developing and interpreting standards of legal ethics and professional regulation and has the responsibility to ensure that its Model Rules of Professional Conduct and related policies keep pace with social change and the evolution of law practice. The ABA's last "global" review of the Model Rules and related policies concluded in 2002, with the adoption of the recommendations of the ABA Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000 Commission") and the ABA Commission on Multijurisdictional Practice ("MJP Commission"). The Commission on Ethics 20/20 was appointed in August 2009 to conduct the next overarching review of these policies.

Technology and globalization are transforming the practice of law in ways the profession could not anticipate in 2002, and are giving rise to a variety of new

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ethics issues relating to technology and confidentiality. Resolution 105a, if adopted, would enable the ABA to offer lawyers, clients, and judges the guidance they need to address these increasingly important issues.

6. Status of Legislation. (If applicable)

N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Center for Professional Responsibility will publish any updates to the ABA Model Rules of Professional Conduct and Comments. The Policy Implementation Committee of the Center for Professional Responsibility has in place the procedures and infrastructure to implement any policies proposed by the Ethics 20/20 Commission that are adopted by the House of Delegates. The Policy Implementation Committee and Ethics 20/20 Commission have been in communication in anticipation of the implementation effort. The Policy Implementation Committee has been responsible for the successful implementation of the recommendations of the ABA Ethics 2000 Commission, the Commission on Multijurisdictional Practice and the Commission to Evaluate the Model Code of Judicial Conduct.

8. Cost to the Association. (Both direct and indirect costs)

None.

9. Disclosure of Interest. (If applicable)

10. Referrals.

From the outset, the Ethics 20/20 Commission concluded that transparency, broad outreach and frequent opportunities for input into its work would be crucial. Over the last three years the Commission routinely released for comment to all ABA entities (including the Conference of Section and Division Delegates), state, local, specialty and international bar associations, courts and the public a wide range of documents, including issues papers, draft proposals, discussion drafts, and draft informational reports. The Commission held eleven open meetings where audience members participated; conducted numerous public hearings and roundtables, domestically and abroad; created webinars and podcasts; made CLE presentations; and received and reviewed hundreds of written and oral comments from the bar and the public. To date, the Commission has made more than 100 presentations about its work, including presentations to the Conference of Chief Justices, the ABA House of Delegates, the ABA Board of Governors, the

National Conference of Bar Presidents, numerous ABA entities, as well as local, state, and international bar associations.

All materials were posted on the Commission's website. The Commission created and maintained a listserv for interested persons to keep them apprised of the Commission's activities. There are currently 725 people on that list.

The Commission's process was collaborative. It created seven substantive Working Groups with participants from relevant ABA and outside entities. Included on these Working Groups were representatives of the ABA Standing Committee on Ethics and Professional Responsibility, ABA Standing Committee on Professional Discipline, ABA Standing Committee on Client Protection, ABA Standing Committee on Delivery of Legal Services, ABA Section of International Law, ABA Litigation Section, ABA Section of Legal Education and Admissions to the Bar, ABA Section of Real Property, Trust and Estate Law, ABA Task Force on International Trade in Legal Services, ABA General Practice, Solo and Small Firm Division, ABA Young Lawyers Division, ABA Standing Committee on Specialization, ABA Law Practice Management Section, and the National Organization of Bar Counsel.

11. Contact Name and Address Information. (Prior to the meeting)

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Regulation Counsel
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12. Contact Name and Address Information. (Who will present the report to the House?)

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EXECUTIVE SUMMARY

1. Summary of the Resolution(s)

Resolution 105a: Technology and Confidentiality

- The Commission is proposing to amend Rule 1.6 of the Model Rules of Professional Conduct (Confidentiality of Information) to make clear that a lawyer has an ethical duty to take reasonable measures to protect a client's confidential information from inadvertent disclosure, unauthorized disclosure, and unauthorized access, regardless of the medium used. The Commission concluded that technological change has so enhanced the importance of this duty that it should be identified in the black letter and described in more detail in Comment [16]. The proposal identifies various factors that lawyers need to take into account when determining whether their precautions are reasonable, but makes clear that a lawyer does not violate the Rule simply because information was disclosed or accessed inadvertently or without authority.
- Rule 4.4(b) of the ABA Model Rules of Professional Conduct (Respect for Rights of Third Persons) currently provides that a "lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender." The Commission is proposing to amend Rule 4.4(b) of the Model Rules and its Comment [2] to make clear that electronically stored information, in addition to information existing in paper form, can trigger the notification requirements of Rule 4.4(b) if the lawyer concludes that the information was inadvertently sent. Moreover, the Commission is proposing to define the phrase "inadvertently sent" in Comment [2] to help lawyers understand when the notification obligations in Rule 4.4(b) arise.
- The screening of individual lawyers from access to certain information in a firm must address not only documents, but also electronic information. For this reason, the Commission is proposing to amend Comment [9] of Rule 1.0 of the Model Rules of Professional Conduct (Terminology) to make clear that, when establishing screens to prevent the sharing of information within a firm, the screens should prevent the sharing of both tangible and electronic information. The Commission is also proposing to amend the existing definition of a "writing" in paragraph (n) of Model Rule 1.0 by replacing the word "e-mail" with the phrase "electronic information."
- The Commission is proposing an amendment to Comment [6] of Rule 1.1 of the Model Rules of Professional Conduct (Competence) to make clear that a lawyer's duty of competence, which requires the lawyer to stay abreast of

changes in the law and its practice, includes understanding relevant technology's benefits and risks. Comment [6] already implicitly encompasses such an obligation, but it is important to make this duty explicit because technology is such an integral – and yet, at times invisible – aspect of contemporary law practice.

- The last sentence of Comment [4] of Rule 1.4 of the Model Rules of Professional Conduct (Communication) instructs lawyers to respond promptly to client telephone calls. The Commission proposes to update the Comment so that it instructs lawyers to “promptly respond to or acknowledge client communications.”

2. Summary of the Issue that the Resolution Addresses

The ABA's last “global” review of the Model Rules of Professional Conduct and related policies concluded in 2002, with the adoption of the recommendations of the ABA Commission on Evaluation of the Rules of Professional Conduct (“Ethics 2000 Commission”) and the ABA Commission on Multijurisdictional Practice (“MJP Commission”). As the national leader in developing and interpreting standards of legal ethics and professional regulation, the ABA has the responsibility to ensure that its Model Rules of Professional Conduct and related policies keep pace with social change and the evolution of law practice. To this end, in August 2009, then-ABA President Carolyn B. Lamm created the Commission on Ethics 20/20 to study the ethical and regulatory implications of globalization and technology on the legal profession and propose changes to ABA policies.

Resolution 105a addresses the ethical issues associated with technology and confidentiality of client information. Advances in technology have enabled lawyers in all practice settings to provide more efficient and effective legal services. Some forms of technology, however, present certain risks, particularly with regard to clients' confidential information. Resolution 105a provides lawyers with more guidance regarding their ethical obligations when using this technology and updates the Model Rules of Professional Conduct to reflect the realities of a digital age. Resolution 105a offers this guidance in a manner that is consistent with the principles that then-ABA President Lamm directed the Commission to follow: protecting the public; preserving the core professional values of the American legal profession; and maintaining a strong, independent, and self-regulated profession.

3. Please Explain How the Proposed Policy Position will address the issue

Resolution 105a updates the Model Rules of Professional Conduct to reflect a lawyer's ethical duties in a digital age. For example, the black letter of Model Rule 1.6(a) does not currently describe what, if any, ethical obligations lawyers have to prevent unauthorized or inadvertent disclosure of, or unauthorized

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access to, confidential client information. Rather, the Rule only instructs lawyers not to "reveal" that information. Thus, the black letter of the Rule does not offer lawyers any guidance regarding their ethical obligations when using technology (e.g., smart phones, laptops, or other mobile devices) to store or transmit confidential information. New paragraph (c) in Rule 1.6 of the Model Rules of Professional Conduct (Confidentiality of Information) and new language in Comment [16] will help lawyers understand their ethical duty to take reasonable measures to protect a client's confidential information. New Comment language would identify various factors that lawyers need to take into account when determining whether their precautions are reasonable but make clear that a lawyer does not violate the Rule simply because information was disclosed or accessed inadvertently or without authority.

Resolution 105a also updates Model Rules 1.0 (Terminology), 1.1 (Competence), 1.4 (Communication), and 4.4 (Respect for Rights of Third Persons) so that lawyers understand how technology is transforming their ethical obligations. For example, the Commission's proposal to amend the Comment to Model Rule 1.1 makes explicit that which has been long implicit in the Rules. Namely, the duty of competence, which requires a lawyer to stay abreast of developments in the law and its practice, encompasses staying abreast of the risks and benefits associated with relevant technology (e.g., how technology used by a lawyer impacts the duty to protect confidential client information).

4. Summary of Minority Views

The Commission is not aware of any organized or formal minority views or opposition to Resolution 105a as of June 1, 2012.

As of June 1, 2012, the following entities have agreed to co-sponsor Resolution 105a relating to Technology and Confidentiality: The ABA Standing Committee on Client Protection, the ABA Standing Committee on Ethics and Professional Responsibility, the ABA Standing Committee on Professionalism, the ABA Standing Committee on Professional Discipline, the ABA Standing Committee on Specialization, and the New York State Bar Association.

From the outset, the Commission on Ethics 20/20 implemented a process that was transparent and open and that allowed for broad outreach and frequent opportunities for feedback. Over the last three years, the Commission routinely released for comment to all ABA entities (including the Conference of Section and Division Delegates), state, local, specialty and international bar associations, courts, regulatory authorities, and the public a wide range of documents, including issues papers, draft proposals, discussion drafts, and draft informational reports. The Commission held eleven open meetings where audience members participated; conducted numerous public hearings and roundtables, domestically and abroad; presented webinars and podcasts; made CLE presentations; received and reviewed more than 350 written and oral

comments from the bar, the judiciary, and the public. To date, the Commission has made more than 100 presentations about its work, including presentations to the Conference of Chief Justices, the ABA House of Delegates, the National Conference of Bar Presidents, numerous ABA entities, as well as local, state, and international bar associations. All materials, including all comments received, have been posted on the Commission's website ([click here](#)). Moreover, the Commission created and maintained a listserv for interested persons to keep them apprised of the Commission's activities. Currently there are 725 participants on the list.

Further, as noted in the General Information Form accompanying this Resolution, the Commission's process was collaborative. It created seven substantive Working Groups with participants from relevant ABA and outside entities.

The Commission is grateful for and took seriously all submissions. The Commission routinely extended deadlines to ensure that the feedback was as complete as possible and that no one was precluded from providing input. The Commission reviewed this input, as well as the written and oral testimony received at public hearings, and made numerous changes in light of this feedback.

Throughout the last three years, the Commission received many supportive submissions as well as submissions that offered constructive comments or raised legitimate concerns. The Commission made every effort to resolve constructive concerns raised, and in many instances made changes based upon them. The Commission's final proposals were shaped by those who participated in this feedback process.

GENERAL INFORMATION FORM

Submitting Entity: ABA Commission on Ethics 20/20

Submitted By: Jamie S. Gorelick and Michael Traynor, Co-Chairs

1. Summary of Resolution(s).

Resolution 105b: Technology and Client Development

- The Commission proposes to clarify when electronic communications give rise to a prospective client-lawyer relationship under Rule 1.18 of the Model Rules of Professional Conduct (Duties to Prospective Client). Model Rule 1.18 currently requires a "discussion" and thus does not capture various Internet-based communications that can, in some situations, give rise to a prospective client relationship. The Commission proposes to replace the word "discussion" with the word "consults" and to include in new Comment [3] language that would give lawyers and clients more guidance as to when a "consultation" occurs under Rule 1.18.
- The Commission is proposing changes to Rule 7.2 of the Model Rules of Professional Conduct (Advertising) to clarify when the prohibition against paying for a "recommendation" is triggered. This prohibition has unclear implications for new forms of Internet-based client development tools, such as pay-per-lead or pay-per-click services. To address this ambiguity, the Commission is proposing amendments to Comment [5] to Model Rule 7.2 that would define a "recommendation" to include communications that endorse or vouch for a lawyer's credentials, abilities, competence, character, or other professional qualities. This definition, along with additional Comment language, would enable lawyers to use new client development tools, while ensuring that the public is not misled and that the restrictions on fee sharing with nonlawyers are observed.
- The Commission proposes to clarify when a lawyer's online communications constitute the type of "solicitations" that are governed by Rule 7.3 of the Model Rules of Professional Conduct (Direct Contact with Prospective Clients). The Commission concluded that lawyers would benefit from a clearer definition of what kinds of communications constitute a "solicitation" and thus fall within the scope of the Rule.
- The Commission is proposing technical changes to a Comment to Model Rule 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law) and a Comment to Model Rule 7.1 (Communications Concerning a Lawyer's Services) that would remove references to "prospective clients." That phrase is a defined term in Model Rule 1.18 and includes a narrower category of people than the Comments to Model Rules 5.5 and 7.1 are intended to cover.

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2. Approval by Submitting Entity.

The Commission approved this Resolution and Report at its April 12 -13, 2012 meeting.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this resolution and how would they be affected by its adoption?

The adoption of this resolution would result in amendments to the ABA Model Rules of Professional Conduct.

5. What urgency exists which requires action at this meeting of the House?

The ABA is the national leader in developing and interpreting standards of legal ethics and professional regulation and has the responsibility to ensure that its Model Rules of Professional Conduct and related policies keep pace with social change and the evolution of law practice. The ABA's last "global" review of the Model Rules and related policies concluded in 2002, with the adoption of the recommendations of the ABA Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000 Commission") and the ABA Commission on Multijurisdictional Practice ("MJP Commission"). The Commission on Ethics 20/20 was appointed in August 2009 to conduct the next overarching review of these policies.

Technology and globalization are transforming the practice of law in ways the profession could not anticipate in 2002, and are giving rise to a variety of new ethics issues relating to technology and client development. Resolution 105b would enable the ABA to offer lawyers, clients, and judges the guidance they need to address these issues.

6. Status of Legislation. (If applicable)

N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Center for Professional Responsibility will publish any updates to the ABA Model Rules of Professional Conduct and Comments. The Policy Implementation Committee of the Center for Professional Responsibility has in place the procedures and infrastructure to implement any policies proposed by the Ethics 20/20 Commission that are adopted by the House of Delegates. The

Policy Implementation Committee and Ethics 20/20 Commission have been in communication in anticipation of the implementation effort. The Policy Implementation Committee has been responsible for the successful implementation of the recommendations of the ABA Ethics 2000 Commission, the Commission on Multijurisdictional Practice and the Commission to Evaluate the Model Code of Judicial Conduct.

8. Cost to the Association. (Both direct and indirect costs)

None.

9. Disclosure of Interest. (If applicable)

10. Referrals.

From the outset, the Ethics 20/20 Commission concluded that transparency, broad outreach and frequent opportunities for input into its work would be crucial. Over the last three years the Commission routinely released for comment to all ABA entities (including the Conference of Section and Division Delegates), state, local, specialty and international bar associations, courts and the public a wide range of documents, including issues papers, draft proposals, discussion drafts, and draft informational reports. The Commission held eleven open meetings where audience members participated; conducted numerous public hearings and roundtables, domestically and abroad; created webinars and podcasts; made CLE presentations; and received and reviewed hundreds of written and oral comments from the bar and the public. To date, the Commission has made more than 100 presentations about its work, including presentations to the Conference of Chief Justices, the ABA House of Delegates, the ABA Board of Governors, the National Conference of Bar Presidents, numerous ABA entities, as well as local, state, and international bar associations.

All materials were posted on the Commission's website. The Commission created and maintained a listserv for interested persons to keep them apprised of the Commission's activities. There are currently 725 people on that list.

The Commission's process was collaborative. It created seven substantive Working Groups with participants from relevant ABA and outside entities. Included on these Working Groups were representatives of the ABA Standing Committee on Ethics and Professional Responsibility, ABA Standing Committee on Professional Discipline, ABA Standing Committee on Client Protection, ABA Standing Committee on Delivery of Legal Services, ABA Section of International Law, ABA Litigation Section, ABA Section of Legal Education and Admissions to the Bar, ABA Section of Real Property, Trust and Estate Law, ABA Task Force on International Trade in Legal Services, ABA General Practice, Solo and Small Firm Division, ABA Young Lawyers Division, ABA Standing Committee on

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Specialization, ABA Law Practice Management Section, and the National Organization of Bar Counsel.

11. Contact Name and Address Information. (Prior to the meeting)

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EXECUTIVE SUMMARY1. Summary of the Resolution(s)**Resolution 105b: Technology and Client Development**

- The Commission proposes to clarify when electronic communications give rise to a prospective client-lawyer relationship under Rule 1.18 of the Model Rules of Professional Conduct (Duties to Prospective Client). Model Rule 1.18 currently requires a "discussion" and thus does not capture various internet-based communications that can, in some situations, give rise to a prospective client relationship. The Commission proposes to replace the word "discussion" with the word "consults" and to include in new Comment [3] language that would give lawyers and clients more guidance as to when a "consultation" occurs under Rule 1.18.
- The Commission is proposing changes to Rule 7.2 of the Model Rules of Professional Conduct (Advertising) to clarify when the prohibition against paying for a "recommendation" is triggered. This prohibition has unclear implications for new forms of internet-based client development tools, such as pay-per-lead or pay-per-click services. To address this ambiguity, the Commission is proposing amendments to Comment [5] to Model Rule 7.2 of the Model Rules of Professional Conduct that would define a "recommendation" to include communications that endorse or vouch for a lawyer's credentials, abilities, competence, character, or other professional qualities. This definition, along with additional Comment language, would enable lawyers to use new client development tools, while ensuring that the public is not misled and that the restrictions on fee sharing with nonlawyers are observed.
- The Commission proposes to clarify when a lawyer's online communications constitute the type of "solicitations" that are governed by Rule 7.3 of the Model Rules of Professional Conduct (Direct Contact with Prospective Clients). The Commission concluded that lawyers would benefit from a clearer definition of what kinds of communications constitute a "solicitation" and thus fall within the scope of the Rule.
- The Commission is proposing technical changes to a Comment to Model Rule 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law) and a Comment to Model Rule 7.1 (Communications Concerning a Lawyer's Services) that would remove references to "prospective clients." That phrase is a defined term in Model Rule 1.18 and includes a narrower category of people than the Comments to Model Rules 5.5 and 7.1 are intended to cover.

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2. Summary of the Issue that the Resolution Addresses

The ABA's last "global" review of the Model Rules of Professional Conduct and related policies concluded in 2002, with the adoption of the recommendations of the ABA Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000 Commission") and the ABA Commission on Multijurisdictional Practice ("MJP Commission"). As the national leader in developing and interpreting standards of legal ethics and professional regulation, the ABA has the responsibility to ensure that its Model Rules of Professional Conduct and related policies keep pace with social change and the evolution of law practice. To this end, in August 2009, then-ABA President Carolyn B. Lamm created the Commission on Ethics 20/20 to study the ethical and regulatory implications of globalization and technology on the legal profession and propose changes to ABA policies.

Resolution 105b offers lawyers guidance regarding their ethical obligations when using new technology to market their services. The Resolution offers this guidance in a manner that is consistent with the principles that then-ABA President Lamm directed the Commission to follow: protecting the public; preserving the core professional values of the American legal profession; and maintaining a strong, independent, and self-regulated profession

3. Please Explain How the Proposed Policy Position will address the issue

The Commission determined that, although no new restrictions on lawyer advertising are necessary, the existing Rules do not have clear implications for new forms of client development. Proposed Resolution 105b, if adopted, will provide lawyers with more guidance about how they can use new forms of marketing to disseminate information about themselves and their services, while protecting the public from false or misleading communications.

For example, the Commission proposes to clarify when electronic communications give rise to a prospective client-lawyer relationship under Rule 1.18 of the Model Rules of Professional Conduct (Duties to Prospective Client). Model Rule 1.18 currently requires a "discussion" and does not capture various internet-based communications that can, in some situations, give rise to a prospective client relationship. The Commission proposes to replace the word "discussion" with the word "consults" and to include in new Comment [3] language that would give lawyers and clients more guidance as to when a "consultation" occurs under Rule 1.18.

The Resolution also updates several other Model Rules to reflect the changing nature of the technology that lawyers use for client development. Currently, Model Rule 7.2(b) of the Model Rules of Professional Conduct (Advertising) provides that a lawyer typically cannot provide anything of value to someone for recommending the lawyer's services. This prohibition has unclear implications

for new forms of Internet-based client development tools, such as pay-per-lead or pay-per-click services. To address this ambiguity, the Commission is proposing amendments to Comment [5] to Rule 7.2 of the Model Rules of Professional Conduct that would define a "recommendation" to include communications that endorse or vouch for a lawyer's credentials, abilities, competence, character, or other professional qualities. This definition, along with additional Comment language, would enable lawyers to use new client development tools, while ensuring that the public is not misled and that the restrictions on fee sharing with nonlawyers are observed.

The Commission is also proposing amendments to Rule 7.3 of the Model Rules of Professional Conduct (Direct Contact with Prospective Clients) to clarify when a lawyer's online communications constitute "solicitations" and are thus governed by the Rule.

4. Summary of Minority Views

The Commission is not aware of any organized or formal minority views or opposition to Resolution 105b as of June 1, 2012.

As of June 1, 2012, the following entities have agreed to co-sponsor Resolution 105b relating to Technology and Confidentiality: The ABA Standing Committee on Client Protection, the ABA Standing Committee on Ethics and Professional Responsibility, the ABA Standing Committee on Professionalism, the ABA Standing Committee on Professional Discipline, the ABA Standing Committee on Specialization, and the New York State Bar Association.

From the outset, the Commission on Ethics 20/20 implemented a process that was transparent and open and that allowed for broad outreach and frequent opportunities for feedback. Over the last three years, the Commission routinely released for comment to all ABA entities (including the Conference of Section and Division Delegates), state, local, specialty and international bar associations, courts, regulatory authorities, and the public a wide range of documents, including issues papers, draft proposals, discussion drafts, and draft informational reports. The Commission held eleven open meetings where audience members participated; conducted numerous public hearings and roundtables, domestically and abroad; presented webinars and podcasts; made CLE presentations; received and reviewed more than 350 written and oral comments from the bar, the judiciary, and the public. To date, the Commission has made more than 100 presentations about its work, including presentations to the Conference of Chief Justices, the ABA House of Delegates, the National Conference of Bar Presidents, numerous ABA entities, as well as local, state, and international bar associations. All materials, including all comments received, have been posted on the Commission's website ([click here](#)). Moreover, the Commission created and maintained a listserv for interested persons to

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keep them apprised of the Commission's activities. Currently there are 725 participants on the list.

Further, as noted in the General Information Form accompanying this Resolution, the Commission's process was collaborative. It created seven substantive Working Groups with participants from relevant ABA and outside entities.

The Commission is grateful for and took seriously all submissions. The Commission routinely extended deadlines to ensure that the feedback was as complete as possible and that no one was precluded from providing input. The Commission reviewed this input, as well as the written and oral testimony received at public hearings, and made numerous changes in light of this feedback.

Throughout the last three years, the Commission received many supportive submissions as well as submissions that offered constructive comments or raised legitimate concerns. The Commission made every effort to resolve constructive concerns raised, and in many instances made changes based upon them. The Commission's final proposals were shaped by those who participated in this feedback process.

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GENERAL INFORMATION FORM

Submitting Entity: ABA Commission on Ethics 20/20

Submitted By: Jamie S. Gorelick and Michael Traynor, Co-Chairs

1. Summary of Resolution(s).

Resolution 105c: Outsourcing

- The Commission is proposing new Comments to Rule 1.1 of the Model Rules of Professional Conduct (Competence) to identify the factors that lawyers need to consider when retaining lawyers in a different firm to assist on a client's matter. The factors emphasize the importance of ensuring that the retained lawyers contribute to the competent and ethical representation of the client.
- The Commission is proposing amendments to the title of, and Comments to, Rule 5.3 of the Model Rules of Professional Conduct to address issues relating to the retention of nonlawyers outside the firm. To reflect the increasingly important role of automated nonlawyer assistance, such as "cloud computing" services, the title of the Rule will change from "Responsibilities Regarding Nonlawyer Assistants" to "Responsibilities Regarding Nonlawyer Assistance." Moreover, the Comments will emphasize 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 Commission is proposing amendments to Comment [1] to Rule 5.5 of the Model Rules of Professional Conduct (Unauthorized Practice of Law; Multijurisdictional Practice of Law) that would make clear that lawyers cannot engage in outsourcing in a manner that would facilitate the unauthorized practice of law.

2. Approval by Submitting Entity.

The Commission approved this Resolution and Report at its April 12 -13, 2012 meeting.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this resolution and how would they be affected by its adoption?

The adoption of these resolutions would result in amendments to the ABA Model Rules of Professional Conduct.

5. What urgency exists which requires action at this meeting of the House?

The ABA is the national leader in developing and interpreting standards of legal ethics and professional regulation and has the responsibility to ensure that its Model Rules of Professional Conduct and related policies keep pace with social change and the evolution of law practice. The ABA's last "global" review of the Model Rules and related policies concluded in 2002, with the adoption of the recommendations of the ABA Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000 Commission") and the ABA Commission on Multijurisdictional Practice ("MJP Commission"). The Commission on Ethics 20/20 was appointed in August 2009 to conduct the next overarching review of these policies.

Technology and globalization are transforming the practice of law in ways the profession could not anticipate in 2002. One aspect of this transformation has been the extent to which lawyers now outsource legal and nonlegal services. The Commission found that the Model Rules currently offer lawyers limited guidance regarding their ethical obligations in this increasingly important context.

6. Status of Legislation. (If applicable)

N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Center for Professional Responsibility will publish any updates to the ABA Model Rules of Professional Conduct and Comments. The Policy Implementation Committee of the Center for Professional Responsibility has in place the procedures and infrastructure to implement any policies proposed by the Ethics 20/20 Commission that are adopted by the House of Delegates. The Policy Implementation Committee and Ethics 20/20 Commission have been in communication in anticipation of the implementation effort. The Policy Implementation Committee has been responsible for the successful implementation of the recommendations of the ABA Ethics 2000 Commission, the Commission on Multijurisdictional Practice and the Commission to Evaluate the Model Code of Judicial Conduct.

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8. Cost to the Association. (Both direct and indirect costs)

None.

9. Disclosure of Interest. (If applicable)

10. Referrals.

From the outset, the Ethics 20/20 Commission concluded that transparency, broad outreach and frequent opportunities for input into its work would be crucial. Over the last three years the Commission routinely released for comment to all ABA entities (including the Conference of Section and Division Delegates), state, local, specialty and international bar associations, courts and the public a wide range of documents, including issues papers, draft proposals, discussion drafts, and draft informational reports. The Commission held eleven open meetings where audience members participated; conducted numerous public hearings and roundtables, domestically and abroad; created webinars and podcasts; made CLE presentations; and received and reviewed hundreds of written and oral comments from the bar and the public. To date, the Commission has made more than 100 presentations about its work, including presentations to the Conference of Chief Justices, the ABA House of Delegates, the ABA Board of Governors, the National Conference of Bar Presidents, numerous ABA entities, as well as local, state, and international bar associations.

All materials were posted on the Commission's website. The Commission created and maintained a listserv for interested persons to keep them apprised of the Commission's activities. There are currently 725 people on that list.

The Commission's process was collaborative. It created seven substantive Working Groups with participants from relevant ABA and outside entities. Included on these Working Groups were representatives of the ABA Standing Committee on Ethics and Professional Responsibility, ABA Standing Committee on Professional Discipline, ABA Standing Committee on Client Protection, ABA Standing Committee on Delivery of Legal Services, ABA Section of International Law, ABA Litigation Section, ABA Section of Legal Education and Admissions to the Bar, ABA Section of Real Property, Trust and Estate Law, ABA Task Force on International Trade in Legal Services, ABA General Practice, Solo and Small Firm Division, ABA Young Lawyers Division, ABA Standing Committee on Specialization, ABA Law Practice Management Section, and the National Organization of Bar Counsel.

11. Contact Name and Address Information. (Prior to the meeting)

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EXECUTIVE SUMMARY

1. Summary of the Resolution(s)

Resolution 105(c): Outsourcing

- The Commission is proposing new Comments to Rule 1.1 of the Model Rules of Professional Conduct (Competence) to identify the factors that lawyers need to consider when retaining lawyers in a different firm to assist on a client's matter. The factors emphasize the importance of ensuring that the retained lawyers contribute to the competent and ethical representation of the client.
- The Commission is proposing amendments to the title of, and Comments to, Rule 5.3 of the Model Rules of Professional Conduct to address issues relating to the retention of nonlawyers outside the firm. To reflect the increasingly important role of automated nonlawyer assistance, such as "cloud computing" services, the title of the Rule will change from "Responsibilities Regarding Nonlawyer Assistants" to "Responsibilities Regarding Nonlawyer Assistance." Moreover, the Comments will emphasize 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 Commission is proposing amendments to Comment [1] of Rule 5.5 of the Model Rules of Professional Conduct (Unauthorized Practice of Law; Multijurisdictional Practice of Law) to make clear that lawyers cannot engage in outsourcing in a manner that would facilitate the unauthorized practice of law.

2. Summary of the Issue that the Resolution Addresses

The ABA's last "global" review of the Model Rules of Professional Conduct and related policies concluded in 2002, with the adoption of the recommendations of the ABA Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000 Commission") and the ABA Commission on Multijurisdictional Practice ("MJP Commission"). As the national leader in developing and interpreting standards of legal ethics and professional regulation, the ABA has the responsibility to ensure that its Model Rules of Professional Conduct and related policies keep pace with social change and the evolution of law practice. To this end, in August 2009, then-ABA President Carolyn B. Lamm created the Commission on Ethics 20/20 to study the ethical and regulatory implications of globalization and technology on the legal profession and propose changes to ABA policies.

Technology and globalization are transforming the practice of law. One aspect of this transformation is that legal and nonlegal work can be, and often is, disaggregated. The outsourcing of work, both domestically and internationally, as a means to provide clients with competent and cost-effective services is not new, but it is occurring with greater frequency due to technological change and increased globalization.

The Commission found that the Model Rules currently offer lawyers limited guidance regarding their ethical obligations in this increasingly important context. Resolution 105c, if adopted, will provide that guidance and do so in a manner that is consistent with the principles that then-ABA President Lamm directed the Commission to follow: protecting the public; preserving the core professional values of the American legal profession; and maintaining a strong, independent, and self-regulated profession.

3. Please Explain How the Proposed Policy Position will address the issue

Resolution 105c, if adopted, will give lawyers who decide to engage in outsourcing more guidance regarding their ethical obligations.

The Commission's proposed new Comments [6] and [7] to Rule 1.1 of the Model Rules of Professional Conduct (Competence) identify the factors that lawyers need to consider when retaining lawyers in another firm to assist on a client's matter. The factors emphasize the importance of ensuring that the retained lawyers contribute to the competent and ethical representation of the client.

The Commission's proposed amendments to Rule 5.3 are designed to give lawyers more guidance regarding the retention of outside nonlawyers. The proposed new Comments identify the factors that lawyers need to consider when outsourcing work to nonlawyers and emphasize that lawyers should make reasonable efforts to ensure that those nonlawyers 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 last sentence of Comment [3] emphasizes that lawyers have an obligation to give appropriate instructions to nonlawyers outside the firm when retaining or directing those nonlawyers and that the lawyer's instructions must be reasonable under the circumstances.

Comment [4] recognizes that clients frequently direct lawyers to use particular nonlawyer service providers. In such situations, Comment [4] provides that lawyers ordinarily should consult with their clients to determine how the outsourcing arrangement should be structured and who will be responsible for monitoring the performance of the nonlawyer services.

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Finally, the Commission is proposing amendments to Comment [1] to Rule 5.5 of the Model Rules of Professional Conduct (Unauthorized Practice of Law; Multijurisdictional Practice of Law) that would make clear that lawyers cannot engage in outsourcing in a manner that would facilitate the unauthorized practice of law.

4. Summary of Minority Views

The Commission is not aware of any organized or formal minority views or opposition to Resolution 105c as of June 1, 2012.

As of June 1, 2012, the following entities have agreed to co-sponsor Resolution 105c relating to Technology and Confidentiality: The ABA Standing Committee on Client Protection, the ABA Standing Committee on Ethics and Professional Responsibility, the ABA Standing Committee on Professionalism, the ABA Standing Committee on Professional Discipline, the ABA Standing Committee on Specialization, and the New York State Bar Association.

From the outset, the Commission on Ethics 20/20 implemented a process that was transparent and open and that allowed for broad outreach and frequent opportunities for feedback. Over the last three years, the Commission routinely released for comment to all ABA entities (including the Conference of Section and Division Delegates), state, local, specialty and international bar associations, courts, regulatory authorities, and the public a wide range of documents, including issues papers, draft proposals, discussion drafts, and draft informational reports. The Commission held eleven open meetings where audience members participated; conducted numerous public hearings and roundtables, domestically and abroad; presented webinars and podcasts; made CLE presentations; received and reviewed more than 350 written and oral comments from the bar, the judiciary, and the public. To date, the Commission has made more than 100 presentations about its work, including presentations to the Conference of Chief Justices, the ABA House of Delegates, the National Conference of Bar Presidents, numerous ABA entities, as well as local, state, and international bar associations. All materials, including all comments received, have been posted on the Commission's website ([click here](#)). Moreover, the Commission created and maintained a listserv for interested persons to keep them apprised of the Commission's activities. Currently there are 725 participants on the list.

Further, as noted in the General Information Form accompanying this Resolution, the Commission's process was collaborative. It created seven substantive Working Groups with participants from relevant ABA and outside entities.

The Commission is grateful for and took seriously all submissions. The Commission routinely extended deadlines to ensure that the feedback was as complete as possible and that no one was precluded from providing input. The

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Commission reviewed this input, as well as the written and oral testimony received at public hearings, and made numerous changes in light of this feedback.

Throughout the last three years, the Commission received many supportive submissions as well as submissions that offered constructive comments or raised legitimate concerns. The Commission made every effort to resolve constructive concerns raised, and in many instances made changes based upon them. The Commission's final proposals were shaped by those who participated in this feedback process.

GENERAL INFORMATION FORM

Submitting Entity: ABA Commission on Ethics 20/20

Submitted By: Jamie S. Gorelck and Michael Traynor, Co-Chairs

1. Summary of Resolution(s).

Resolution 105(f): Conflicts Detection

- The Commission is proposing to amend Rule 1.6 of the Model Rules of Professional Conduct (Confidentiality of Information) to codify ABA Formal Opinion 09-455. This codification will provide lawyers with limited authority to disclose discrete categories of information to another firm to ensure that conflicts of interest are detected before the lawyer is hired or two firms merge. The proposal reflects the reality that these disclosures are already taking place and need to be properly regulated. By providing that regulation, the proposal provides more, rather than less, protection for client confidences and addresses an important issue that is arising with increasing frequency in a modern legal marketplace.
- The Commission is also proposing a change to Comment [7] to Rule 1.17 of the Model Rules of Professional Conduct (Sale of Law Practice) because that Comment addresses conceptually similar issues.

2. Approval by Submitting Entity.

The Commission approved this Resolution during a meeting via conference call on May 1, 2012.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this resolution and how would they be affected by its adoption?

The adoption of these resolutions would result in amendments to the ABA Model Rules of Professional Conduct.

5. What urgency exists which requires action at this meeting of the House?

The ABA is the national leader in developing and interpreting standards of legal ethics and professional regulation and has the responsibility to ensure that its Model Rules of Professional Conduct and related policies keep pace with social

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change and the evolution of law practice. The ABA's last "global" review of the Model Rules and related policies concluded in 2002, with the adoption of the recommendations of the ABA Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000 Commission") and the ABA Commission on Multijurisdictional Practice ("MJP Commission"). The Commission on Ethics 20/20 was appointed in August 2009 to conduct the next overarching review of these policies.

Technology and globalization are transforming the practice of law in ways the profession could not anticipate in 2002, such as by facilitating lawyer mobility. The Commission found that this increased mobility has produced a number of ethics-related questions, including the following: To what extent can lawyers in different firms disclose confidential information to each other to detect conflicts of interest that might arise when lawyers consider an association with another firm, two or more firms consider a merger, or lawyers consider the purchase of a law practice? Although there are ethics opinions, including a Formal Opinion of the ABA's Standing Committee on Ethics and Professional Responsibility that address this question, the Commission concluded that the Model Rules of Professional Conduct do not clearly address this issue and that lawyers and firms would benefit from more guidance in this important area.

6. Status of Legislation. (If applicable)

N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Center for Professional Responsibility will publish any updates to the ABA Model Rules of Professional Conduct and Comments. The Policy Implementation Committee of the Center for Professional Responsibility has in place the procedures and infrastructure to implement any policies proposed by the Ethics 20/20 Commission that are adopted by the House of Delegates. The Policy Implementation Committee and Ethics 20/20 Commission have been in communication in anticipation of the implementation effort. The Policy Implementation Committee has been responsible for the successful implementation of the recommendations of the ABA Ethics 2000 Commission, the Commission on Multijurisdictional Practice and the Commission to Evaluate the Model Code of Judicial Conduct.

8. Cost to the Association. (Both direct and indirect costs)

None

9. Disclosure of Interest. (If applicable)

10. Referrals.

From the outset, the Ethics 20/20 Commission concluded that transparency, broad outreach and frequent opportunities for input into its work would be crucial. Over the last three years the Commission routinely released for comment to all ABA entities (including the Conference of Section and Division Delegates), state, local, specialty and international bar associations, courts and the public a wide range of documents, including issues papers, draft proposals, discussion drafts, and draft informational reports. The Commission held eleven open meetings where audience members participated; conducted numerous public hearings and roundtables, domestically and abroad; created webinars and podcasts; made CLE presentations; and received and reviewed hundreds of written and oral comments from the bar and the public. To date, the Commission has made more than 100 presentations about its work, including presentations to the Conference of Chief Justices, the ABA House of Delegates, the ABA Board of Governors, the National Conference of Bar Presidents, numerous ABA entities, as well as local, state, and international bar associations.

All materials were posted on the Commission's website. The Commission created and maintained a listserve for interested persons to keep them apprised of the Commission's activities. There are currently 725 people on that list.

The Commission's process was collaborative. It created seven substantive Working Groups with participants from relevant ABA and outside entities. Included on these Working Groups were representatives of the ABA Standing Committee on Ethics and Professional Responsibility, ABA Standing Committee on Professional Discipline, ABA Standing Committee on Client Protection, ABA Standing Committee on Delivery of Legal Services, ABA Section of International Law, ABA Litigation Section, ABA Section of Legal Education and Admissions to the Bar, ABA Section of Real Property, Trust and Estate Law, ABA Task Force on International Trade in Legal Services, ABA General Practice, Solo and Small Firm Division, ABA Young Lawyers Division, ABA Standing Committee on Specialization, ABA Law Practice Management Section, and the National Organization of Bar Counsel.

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EXECUTIVE SUMMARY1. Summary of the Resolution(s)**Resolution 105(f): Conflicts Detection**

- The Commission is proposing to amend Rule 1.6 of the Model Rules of Professional Conduct (Confidentiality of Information) to codify ABA Formal Opinion 09-455. This codification will provide lawyers with limited authority to disclose discrete categories of information to another firm to ensure that conflicts of interest are detected before the lawyer is hired or two firms merge. The proposal reflects the reality that these disclosures are already taking place and need to be properly regulated. By providing that regulation, the proposal provides more, rather than less, protection for client confidences and addresses an important issue that is arising with increasing frequency in a modern legal marketplace.
- The Commission is also proposing a change to Comment [7] to Rule 1.17 of the Model Rules of Professional Conduct (Sale of Law Practice) because that Comment addresses conceptually similar issues.

2. Summary of the Issue that the Resolution Addresses

The ABA's last "global" review of the Model Rules of Professional Conduct and related policies concluded in 2002, with the adoption of the recommendations of the ABA Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000 Commission") and the ABA Commission on Multijurisdictional Practice ("MJP Commission"). As the national leader in developing and interpreting standards of legal ethics and professional regulation, the ABA has the responsibility to ensure that its Model Rules of Professional Conduct and related policies keep pace with social change and the evolution of law practice. To this end, in August 2009, then-ABA President Carolyn B. Lamm created the Commission on Ethics 20/20 to study the ethical and regulatory implications of globalization and technology on the legal profession and propose changes to ABA policies.

Technology and globalization are transforming the practice of law in ways the profession could not anticipate in 2002, such as by facilitating lawyer mobility. The Commission found that this increased mobility has produced a number of ethics-related questions, including the following: To what extent can lawyers in different firms disclose confidential information to each other to detect conflicts of interest that might arise when lawyers consider an association with another firm, two or more firms consider a merger, or lawyers consider the purchase of a law practice? Although there are ethics opinions, including a Formal Opinion of the ABA's Standing Committee on Ethics and Professional Responsibility that

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address this question, the Commission concluded that the Model Rules of Professional Conduct do not clearly address this issue and that lawyers and firms would benefit from more guidance in this important area.

Resolution 105f provides a doctrinal basis for, and places appropriate limitations on, disclosures of confidential information that are made to detect and resolve conflicts of interest. The Resolution ensures that these disclosures occur in a manner that is consistent with the principles that have guided the Commission's work: protecting the public; preserving the core professional values of the American legal profession; and maintaining a strong, independent, and self-regulated profession.

3. Please Explain How the Proposed Policy Position will address the Issue

Resolution 105f, if adopted, would codify what has long been common practice and acknowledged as essential in ethics opinions and seminal scholarly writings on the subject: Lawyers must have the ability to disclose limited information to lawyers in other firms in order to detect and prevent conflicts of interest. By codifying existing authority and practices, and by expressly regulating and carefully limiting the scope of these disclosures, the proposed amendments would ensure that the legal profession provides more, rather than less, protection for client confidences. Moreover, the proposed changes would offer valuable guidance to lawyers and firms regarding an issue that they are increasingly encountering due to changes in the legal marketplace.

The Commission concluded that the proposed authority to disclose information in new black letter Model Rule 1.6(b)(7), although necessary, must be carefully limited and regulated to ensure client protection. For example, new language in Comment [13] of the Rule would make clear that any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited disclosure, however, is not permissible, absent informed client consent, if it would "compromise the attorney-client privilege or otherwise prejudice the client." Comment [13] further explains that any disclosures should occur only after substantive discussions regarding the possible new relationship have occurred and reminds lawyers that they must not use or reveal the information that they receive pursuant to a conflicts-checking process, except to determine whether a conflict would arise from the possible relationship. All of these limitations are drawn from Formal Opinion 09-455.

New Comment language also reminds lawyers that they may have fiduciary duties to their current firms that are independent of the ethical responsibilities described in the Model Rules of Professional Conduct.

Proposed amendments to Comment [7] of Model Rule 1.17 (Sale of a Law Practice) address conceptually similar ethical obligations that arise during the sale of a law practice. The Commission concluded that, in light of the proposed changes to Model Rule 1.6 described above, Comment [7] to Rule 1.17 should be updated to reflect the content of the Rule 1.6 proposal and that Comment [7] should contain a cross-reference to the proposed new Model Rule 1.6(b)(7).

4. Summary of Minority Views

The Commission is not aware of any organized or formal minority views or opposition to Resolution 105f as of June 1, 2012.

As of June 1, 2012, the following entities have agreed to co-sponsor Resolution 105f relating to Conflicts Detection: The ABA Standing Committee on Client Protection, the ABA Standing Committee on Ethics and Professional Responsibility, the ABA Standing Committee on Professionalism, the ABA Standing Committee on Professional Discipline, the ABA Standing Committee on Specialization, and the New York State Bar Association.

From the outset, the Commission on Ethics 20/20 implemented a process that was transparent and open and that allowed for broad outreach and frequent opportunities for feedback. Over the last three years, the Commission routinely released for comment to all ABA entities (including the Conference of Section and Division Delegates), state, local, specialty and international bar associations, courts, regulatory authorities, and the public a wide range of documents, including issues papers, draft proposals, discussion drafts, and draft informational reports. The Commission held eleven open meetings where audience members participated; conducted numerous public hearings and roundtables, domestically and abroad; presented webinars and podcasts; made CLE presentations; received and reviewed more than 350 written and oral comments from the bar, the judiciary, and the public. To date, the Commission has made more than 100 presentations about its work, including presentations to the Conference of Chief Justices, the ABA House of Delegates, the National Conference of Bar Presidents, numerous ABA entities, as well as local, state, and international bar associations. All materials, including all comments received, have been posted on the Commission's website ([click here](#)). Moreover, the Commission created and maintained a listserve for interested persons to keep them apprised of the Commission's activities. Currently there are 725 participants on the list.

Further, as noted in the General Information Form accompanying this Resolution, the Commission's process was collaborative. It created seven substantive Working Groups with participants from relevant ABA and outside entities.

The Commission is grateful for and took seriously all submissions. The Commission routinely extended deadlines to ensure that the feedback was as

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complete as possible and that no one was precluded from providing input. The Commission reviewed this input, as well as the written and oral testimony received at public hearings, and made numerous changes in light of this feedback.

Throughout the last three years, the Commission received many supportive submissions as well as submissions that offered constructive comments or raised legitimate concerns. The Commission made every effort to resolve constructive concerns raised, and in many instances made changes based upon them. The Commission's final proposals were shaped by those who participated in this feedback process.

**RESOLUTION PROPOSING TO AMEND
BYLAWS OF THE ALTERNATIVE DISPUTE RESOLUTION SECTION**

WHEREAS, the Alternative Dispute Resolution Section of the Louisiana State Bar Association held its Annual Meeting on October 18, 2013; and

WHEREAS, at that meeting the Section voted unanimously to amend its Bylaws to allow for meetings via telephone and/or transmitting votes and other information via email or other electronic media.

NOW THEREFORE BE IT RESOLVED that the House of Delegates approve the following amendments to the ADR Section Bylaws:

**ARTICLE V
THE COUNCIL**

Section 5. Members of the Council shall vote in person when present at a meeting of the Council, *or by voice vote when the meeting of the Council is being held via telephone conference.* When members contemplate absence, they may communicate their votes on any proposition to the Secretary-Treasurer and have them counted with the same effect as *if* cast personally at such meeting. *In the event the Council is required to take action on a matter between Council meetings, the transmission of the proposal to the Council members via email or other electronic media, and their respective votes via email or other electronic media, will have the same force and effect as if the proposal and votes occurred during a regular Council meeting.*

Section 6. The Chairman of the Section may submit or cause to be submitted in writing to each of the members of the Council any proposition upon which the Council may be authorized to act, and the members of the Council may vote such propositions as submitted, by communicating their vote thereon, in writing over their respective signatures, *or by voice vote if participating via telephone, or via email or other electronic means* to the Secretary Treasurer *an officer of the Council*, who shall record upon the minutes each proposition so submitted, when, how and at whose request same was submitted, and the vote of each member of the Council thereon, and keep a file, *physical or electronic*, of such written and signed votes. If the votes of a majority of the members of the Council so recorded shall be in favor of such a proposition, or if such majority shall be against such proposition, such majority vote shall constitute the binding action of the Council. The Council of the Section may take action in the name of the Section whenever proposals are brought before the Council for an expression of views and recommendations to the Board of Governors of the Association.

Respectfully submitted:
LSBA ADR Section

Paul W. Breaux, Chair

**UNANIMOUSLY APPROVED BY HOUSE OF DELEGATES AND BOARD OF GOVERNORS
JANUARY 25, 2014
BATON ROUGE, LA**

House of Delegates Resolution 2014

Resolution in Support of Louisiana Campaign to Preserve Civil Legal Aid

WHEREAS, providing equal access to justice and high quality legal representation to all Louisiana citizens is central to the mission of the Louisiana State Bar;

WHEREAS, equal access to justice plays an important role in the perception of fairness of the justice system;

WHEREAS, programs providing civil legal aid to low-income Louisianans are a fundamental component of the Bar's effort to provide such access;

WHEREAS, civil legal aid programs in Louisiana have sustained a significant drop in state and federal funding and poverty in Louisiana has increased significantly over the last 6 years causing more Louisianans to be in need of civil legal aid, as demonstrated by the following facts:

- (1) Interest rates on Lawyers Trust Account (IOLTA) funds have declined 74 percent between 2007 and 2011, resulting in unavoidable cuts in IOLTA funding for legal services for the poorest citizens;
- (2) Legal Services Corporation (LSC), the largest single donor nationally for civil legal aid, has seen funding per eligible client drop by almost 60 percent over the past decade;
- (3) Louisiana's civil legal aid programs have lost more than a third of their LSC funding over the last five years;
- (4) Louisiana's poverty rates are among the nation's highest, 19.9 percent compared to 15.9 percent nationally. Nearly one in five Louisianans lived in poverty last year, the third highest rate in the nation. That includes more than 300,000 children, 28 percent; the fourth highest rate in the nation.

WHEREAS, declines in funding combined with Louisiana's high poverty rate overwhelm the limited staff and resources of civil legal aid offices, which undermine the ability of low-income citizens to access the civil justice system, burden state agencies and resources and place Louisiana's already challenged legal aid system in crisis;

WHEREAS, assistance from the Louisiana State Bar and the legal community is critical to maintaining and developing resources that will provide low-income Louisiana citizens meaningful access to the justice system;

WHEREAS, the Louisiana State Bar Association and Louisiana Bar Foundation, together with other key Louisiana legal service organizations, have united to launch and promote a statewide effort, the *Louisiana Campaign to Preserve Civil Legal Aid*. The mission of the Campaign is to spread awareness and increase the resources available to address the critical need for civil legal aid in Louisiana.

RESOLVED, that the Louisiana State Bar:

- (1) Strengthen its commitment and ongoing efforts to improve the availability of a full range of legal services to all citizens of our state, through the development and maintenance of adequate support and funding for civil legal services programs for low-income Louisiana citizens.
- (2) Actively participate in the efforts of the Louisiana Bar Foundation's **Louisiana Campaign to Preserve Civil Legal Aid** to increase contributions by establishing goals of a 100 percent participation rate by members of the House of Delegates and Board of Governors, 75 percent of Louisiana State Bar Sections, and a 50 percent participation rate by all lawyers.
- (3) Encourage Louisiana lawyers to support civil legal services programs through enhanced pro bono work.

Respectfully Submitted,

Leo C. Hamilton, Bar No. 1399
Chair, LSBA Bill of Rights Section

APPROVED BY HOUSE OF DELEGATES AND BOARD OF GOVERNORS
JANUARY 25, 2014
BATON ROUGE, LA