

2010-2011

**CO-CHAIR**

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

**CO-CHAIR**

Michael Traynor  
3131 Eton Ave.  
Berkeley, CA 94705

**MEMBERS**

Professor Stephen Gillers  
New York, NY

Jeffrey B. Golden  
London, United Kingdom

George W. Jones, Jr.  
Washington, DC

Hon. Elizabeth B. Lacy  
Richmond, VA

Judith A. Miller  
Washington, DC

Hon. Kathryn A. Oberly  
Washington, DC

Roberta Cooper Ramo  
Albuquerque, NM

Herman Joseph Russomanno  
Miami, FL

Professor Theodore Schneyer  
Tucson, AZ

Professor Carole Silver  
Bloomington, IN

Kenneth W. Starr  
Waco, TX

Frederic S. Ury  
Fairfield, CT

Hon. Gerald W. VandeWalle  
Bismarck, ND

**LIAISONS**

**ABA Board of Governors**  
Carolyn B. Lamm  
Washington, DC

Kenneth G. Standard  
New York, NY

**ABA Center for Professional  
Responsibility**  
Donald B. Hilliker  
Chicago, IL

**ABA Task Force on International Trade  
in Legal Services**

Professor Robert E. Lutz, II  
Los Angeles, CA

**ABA Standing Committee on Ethics and  
Professional Responsibility**

Philip H. Schaeffer  
New York, NY

**ABA Young Lawyers Division**

Youshea A. Berry

**COMMISSION REPORTERS**

Andrew M. Perlman, Chief Reporter  
Boston, MA

Paul D. Paton  
Sacramento, CA

Anthony Sebok  
New York, NY

W. Bradley Wendel  
Ithaca, NY

**CENTER FOR PROFESSIONAL  
RESPONSIBILITY**

Jeanne P. Gray, Director

Ellyn S. Rosen, Commission Counsel  
(312) 988-5311

Marcia Kladder, Policy & Program Director  
(312) 988-5326

Natalia Vera, Senior Paralegal  
(312) 988-5328

Kimley Grant, Regulation Paralegal  
(312) 988-5319

**AMERICAN BAR ASSOCIATION**

**ABA Commission on Ethics 20/20**

321 N. Clark Street  
Chicago, IL 60654-7598  
Phone: (312) 988-5311  
Fax: (312) 988-5280  
Website: [www.abanet.org/ethics2020](http://www.abanet.org/ethics2020)

**To: ABA Entities, Courts, Bar Associations (state, local, specialty and international), Law Schools, and Individuals**

**From: Jamie S. Gorelick and Michael Traynor, Co-Chairs  
ABA Commission on Ethics 20/20**

**Re: For Comment: Initial Draft Proposals on Outsourcing,  
Confidentiality Related Technology Issues, and Limited Practice  
Authorization for Inbound Foreign Lawyers**

**Date: May 2, 2011**

The ABA Commission on Ethics 20/20 was created in August 2009 to examine the ethical and regulatory impact of advancing technology and increasing globalization on the legal profession and to make recommendations, where appropriate, to the ABA House of Delegates. The Commission has been meeting regularly as a whole and in Working Groups, holding public hearings and round-table discussions, gathering and researching data, broadly vetting issues and ideas within and outside the Association, and deliberating for more than a year and a half. It is pleased to release its first round of initial proposals. They address outsourcing, confidentiality-related ethics issues arising from lawyers' use of technology, and issues relating to inbound foreign lawyers.

The Commission intends to release proposals with regard to the remaining issues on its agenda no later than September 2011 to ensure that there is adequate time for feedback by the profession and the public on those proposals as well. The Commission will submit to the ABA House of Delegates final versions of its proposals in May 2012 for House deliberation at the August 2012 ABA Annual Meeting. In the meantime, the Commission seeks and welcomes feedback so that it can consider comments and suggestions and revise its proposals and reports as necessary.

The Commission, which consists of a diverse group of lawyers from small and large law firms, in-house counsel, judges, and academics, arrived at these initial proposals via consensus. The Commission also had the benefit of receiving input from its liaisons and Working Group members from various ABA and outside entities, as well as from many people who commented on Issues Papers and Discussion Drafts. The Commission and its Working Groups review and consider all submissions, and they have informed their discussions and deliberations and influenced the content of the proposals. The Commission is grateful to those of you who provided comments to date, and encourages continued feedback on the Commission's efforts.

The Commission's proposals are grounded in the core values of the legal profession and reflect an effort to explain how those core values apply to modern law practice, which is increasingly driven by technology and globalization. In this regard, the Commission's proposals are more evolutionary than revolutionary.

As noted above, the initial proposals concern outsourcing, confidentiality issues arising from technology, and limited practice authorization for inbound foreign lawyers. With regard to outsourcing, the Commission is proposing amendments to the Comments to Model Rules of Professional Conduct 1.1 (Competence), 5.3 (Responsibilities Regarding Nonlawyer Assistants), and 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice). The Commission's objective is to offer lawyers clearer guidance regarding their ethical obligations when using lawyers and nonlawyers outside the firm, whether domestically or outside the United States.

The Commission's technology proposals are designed to give lawyers more guidance regarding their confidentiality-related obligations when using technology. Specifically, the Commission is proposing amendments to the Comments to Model Rules 1.0(k) (Definition of Screening) and 1.1 (Competence) and to the black letter of Model Rules 1.6 (Confidentiality of Information), and 4.4 (Respect for Rights of Third Persons). The Commission plans to release proposals relating to lawyers' use of technology for marketing purposes by July 2011.

Finally, the draft initial proposals relating to inbound foreign lawyers recognize the reality that clients need and want lawyers from other countries to be able to represent them in the U.S. for limited purposes. The proposed changes to the ABA Model Rule for Registration of In-House Counsel and Model Rule for Pro Hac Vice Admission are crafted to recognize this reality by providing opportunity for such limited practice authority with appropriate regulatory safeguards. The proposed amendments to Model Rule 5.5 account for these changes and also merge the provisions of the ABA Model Rule for Temporary Practice by Foreign Lawyers (Foreign FIFO) into Model Rule 5.5.

Responses to these initial proposals should be submitted **by July 15, 2011**, to Senior Research Paralegal Natalia Vera at [natalia.vera@americanbar.org](mailto:natalia.vera@americanbar.org) or by fax at 312/988-5280.

Please do not hesitate to contact Ms. Vera at the email address above or at 312/988-5328 if you have any questions.

***Responses may be posted to the Commission's website.***