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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: In-House Counsel, Pro Hac Vice and Foreign Lawyers

Date: September 4, 2012

The ABA Commission on Ethics 20/20 is pleased to release for comment revised drafts of possible proposals regarding the ability of foreign lawyers to have limited authority to practice in the U.S. The first two documents describe possible amendments to Rule 5.5 of the ABA Model Rules of Professional Conduct (Unauthorized Practice of Law; Multijurisdictional Practice of Law) and to the ABA Model Rule for Registration of In-House Counsel. The third document relates to the ABA Model Rule on Pro Hac Vice Admission. These drafts incorporate helpful suggestions received in response to the Commission's circulation of earlier iterations of these documents.

With regard to foreign in-house counsel, the Commission has decided not to further consider merging the ABA Model Rule for Temporary Practice by Foreign Lawyers into Model Rule 5.5. The attached draft relating to Model Rule 5.5 reflects that decision. Both documents now specify that if a matter involves the law of a U.S. jurisdiction, the foreign in-house counsel's services must be undertaken in consultation with a U.S. lawyer authorized to provide such advice.

The draft of the Pro Hac Vice Rule proposes adding the limited authority for foreign lawyers in a new Section III. In addition, the Commission included additional safeguards for clients, courts, and the public responsive to comments received. They include, but are not limited to:

a. The foreign lawyer may only appear as a co-counsel, alongside a U.S. lawyer or in an advisory or consultative role in the proceeding; and

b. The U.S. lawyer is responsible to the court and the client for the conduct of the proceeding and for independently advising the client on the substantive law of a United States jurisdiction as well as procedural issues. The court may limit the activities of the foreign lawyer or require further action by the U.S. lawyer, such as requiring the U.S. lawyer to sign all pleadings and documents submitted to the court or to other parties, to be present at all depositions and conferences, and to attend all proceedings.

The Commission will decide at its October 25 and 26, 2012 meeting whether to file with the ABA House of Delegates Resolutions on these subjects for consideration by the House at the 2013 ABA Midyear Meeting. To assist the Commission in its deliberations on these issues, please provide comments on these revised drafts to Natalia Vera at natalia.vera@americanbar.org by **October 12, 2012**.