

**AMERICAN BAR ASSOCIATION  
HOUSE OF DELEGATES**

**2016 MIDYEAR MEETING  
SAN DIEGO, CALIFORNIA  
FEBRUARY 8, 2016**

**DAILY JOURNAL**

<b><u>RPT NO.</u></b>	<b><u>PROPOSED BY</u></b>	<b><u>SHORT TITLE</u></b>	<b><u>ACTION</u></b>
10A	NEW YORK COUNTY LAWYERS ASSOCIATION CRIMINAL JUSTICE SECTION	Urges the Department of Justice and the Federal Bureau of Prisons to amend their policies with respect to monitoring emails between attorneys and their incarcerated clients to permit attorneys and their incarcerated clients to communicate confidentially via email and thereby maintain the attorney-client privilege.	Approved
10B	NEW JERSEY STATE BAR ASSOCIATION	Supports constitutional equality for women, urges the extension of legal rights, privileges and responsibilities to all persons, regardless of sex, and reaffirms support of and affirmatively act toward the goal of the ratification of the Equal Rights Amendment to the U.S. Constitution.	Approved
100	SECTION OF DISPUTE RESOLUTION SECTION OF HEALTH LAW SECTION OF SCIENCE AND TECHNOLOGY LAW	Urges lawyers and all interested parties to increase the use of alternative dispute resolution (ADR) processes to resolve health care disputes.	Approved as Revised*
101	STANDING COMMITTEE ON PARALEGALS	Grants approval and reapproval to several paralegal education programs, withdraws the approval of three programs at the request of the institutions, and extends the term of approval to several paralegal education programs.	Approved
102	CRIMINAL JUSTICE SECTION	Urges legislatures to review all statutes criminalizing consensual noncommercial sexual conduct, in private and between persons who have the legal capacity to consent, and, to repeal or amend such statutes to criminalize only sexual acts that are nonconsensual, commercial, public, or that involve individuals who lack the legal capacity to consent.	Approved as Revised*

---

\* See Attached

<u>RPT NO.</u>	<u>PROPOSED BY</u>	<u>SHORT TITLE</u>	<u>ACTION</u>
103	SECTION OF INTERNATIONAL LAW STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY STANDING COMMITTEE ON PROFESSIONAL DISCIPLINE TASK FORCE ON INTERNATIONAL TRADE IN LEGAL SERVICES	Amends the black letter of Rule 5.5 of the <i>ABA Model Rules of Professional Conduct</i> and the <i>ABA Model Rule for Registration of In-House Counsel</i> , to include language specifying that the court of highest appellate jurisdiction may, in its discretion, allow foreign in-house lawyers who do not meet the ABA definition of foreign lawyer because they cannot be “members of the bar” to be able to practice as in-house counsel in the U.S. and to be so registered.	Approved as Revised*
104	STANDING COMMITTEE ON SPECIALIZATION	Reaccredits the Civil Pretrial Practice Law program of the National Board of Trial Advocacy of Wrentham, Massachusetts as a designated specialty certification program for lawyers for an additional five-year term.	Approved
105	COMMISSION ON THE FUTURE OF LEGAL SERVICES STANDING COMMITTEE ON PROFESSIONAL DISCIPLINE CRIMINAL JUSTICE SECTION LAW PRACTICE DIVISION STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS STANDING COMMITTEE ON CLIENT PROTECTION	Adopts the <i>ABA Model Regulatory Objectives for the Provision of Legal Services</i> , dated February, 2016 and urges that each state’s highest court, and those of each territory and tribe be guided by the Model Regulatory Objectives when they assess the court’s existing regulatory framework and any other regulation they may choose to develop concerning non-traditional legal service providers.	Approved as Revised and Amended*
106A	SECTION OF ADMINISTRATIVE LAW AND REGULATORY PRACTICE	Urges Congress to amend 5 U.S.C. §552(a)(1) of the Freedom of Information Act (FOIA) to require that when a standard drafted by a private organization is exempted from Federal Register publication because it has been “incorporated by reference” (IBR) into a substantive rule of general applicability, the rulemaking agency must ensure meaningful free public availability of the incorporated text.	Withdrawn
106B	SECTION OF ADMINISTRATIVE LAW AND REGULATORY PRACTICE	Urges Congress to amend the rulemaking provisions of the Administrative Procedure Act.	Approved

---

\* See Attached

<u>RPT NO.</u>	<u>PROPOSED BY</u>	<u>SHORT TITLE</u>	<u>ACTION</u>
107	COMMISSION ON DIVERSITY AND INCLUSION 360	Encourages all state, territorial and tribal courts, bar associations and other licensing and regulatory authorities, that have mandatory or minimum continuing legal education requirements (MCLE) to modify their rules to include as a separate credit, programs regarding diversity and inclusion for the legal profession of all persons regardless of race, ethnicity, gender, sexual orientation, gender identity or disabilities, and programs regarding the elimination of bias.	Approved
108A	SECTION OF INTELLECTUAL PROPERTY LAW	Opposes intellectual property laws and agency and court interpretations of intellectual property laws that impose the payment of the government's attorney fees on a party challenging a decision of the United States Patent and Trademark Office in federal district court, unless the statute in question explicitly directs the courts to award attorney fees.	Approved
108B	SECTION OF INTELLECTUAL PROPERTY LAW	Supports interpretation and application of the statutory six-year patent damages period (35 U.S.C. §286) as limiting availability of the judicially created laches defense as a bar to legal damages for patent infringement.	Approved
108C	SECTION OF INTELLECTUAL PROPERTY LAW	Supports the traditional rule that the first sale of patented goods (as opposed to a mere license) by U.S. patent owners or their licensees triggers the defense of patent exhaustion with respect to an allegation of patent infringement related to those goods.	Withdrawn
109	LAW STUDENT DIVISION LAW PRACTICE DIVISION NATIONAL CONFERENCE OF BAR EXAMINERS SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR SENIOR LAWYERS DIVISION TORT TRIAL AND INSURANCE PRACTICE SECTION	Urges the bar admission authorities in each state and territory to adopt expeditiously the Uniform Bar Examination in their respective jurisdictions.	Approved

<u>RPT NO.</u>	<u>PROPOSED BY</u>	<u>SHORT TITLE</u>	<u>ACTION</u>
110	YOUNG LAWYERS DIVISION	Urges the United States Supreme Court to record and make available video recordings of its oral arguments.	Approved
111	COMMISSION ON YOUTH AT RISK COMMISSION ON HOMELESSNESS AND POVERTY SECTION OF HEALTH LAW SECTION OF SCIENCE AND TECHNOLOGY LAW	Urges state, local, territorial and tribal child welfare and juvenile justice agencies to provide adequate resources for assessing and treating emotional and behavioral disorders of children in their custody, including psychosocial and clinical interventions, recreational opportunities and supportive services that can reduce the need for prescribing psychotropic drugs.	Approved
112A	SECTION OF FAMILY LAW SECTION OF REAL PROPERTY, TRUST AND ESTATE LAW SECTION OF SCIENCE AND TECHNOLOGY LAW	Adopts the <i>ABA Model Act Governing Assisted Reproductive Technology Agencies</i> (ART), dated February 2016, which provides model licensing legislation governing ART agencies and recommends consideration and adoption of the Model Act by appropriate governmental agencies and legislatures.	Approved
112B	SECTION OF FAMILY LAW SECTION OF REAL PROPERTY, TRUST AND ESTATE LAW SECTION OF SCIENCE AND TECHNOLOGY LAW	Urges the United States Department of State to seek specific negotiations regarding a possible Hague Convention on private international law concerning children, including international surrogacy arrangements.	Approved
113	STANDING COMMITTEE ON LAWYER REFERRAL AND INFORMATION SERVICE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK AUSTIN BAR ASSOCIATION BROOKLYN BAR ASSOCIATION CINCINNATI BAR ASSOCIATION OREGON STATE BAR SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE STANDING COMMITTEE ON DISASTER RESPONSE AND PREPAREDNESS STANDING COMMITTEE ON GROUP AND PREPAID LEGAL SERVICES LAW PRACTICE DIVISION	Urges courts and legislative bodies to adopt rules or enact legislation to establish an evidentiary privilege for confidential communications between a client and a lawyer referral service for the purpose of retaining a lawyer or obtaining legal advice from a lawyer.	Withdrawn

<u>RPT NO.</u>	<u>PROPOSED BY</u>	<u>SHORT TITLE</u>	<u>ACTION</u>
114	SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE COMMISSION ON HOMELESSNESS AND POVERTY	Urges Congress to enact legislation to make permanent the tax deduction for donation of wholesome food inventory as previously codified in Internal Revenue Code section 170(e)(3)(C).	Withdrawn
115A	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Approves the Revised Uniform Athlete Agents Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Approved
115B	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Approves the Revised Uniform Residential Landlord and Tenant Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Approved
115C	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Approves the Uniform Commercial Real Estate Receivership Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Approved
115D	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Approves the Uniform Home Foreclosure Procedures Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Approved
115E	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Approves the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Approved
115F	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Approves the Uniform Trust Decanting Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Approved

<u>RPT NO.</u>	<u>PROPOSED BY</u>	<u>SHORT TITLE</u>	<u>ACTION</u>
116	COMMISSION ON WOMEN IN THE PROFESSION SECTION OF BUSINESS LAW COMMISSION ON DISABILITY RIGHTS COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY	Urges public companies in the United States to diversify their boards to more closely reflect the diversity of society and the workforce in the United States.	Approved
117	NATIONAL NATIVE AMERICAN BAR ASSOCIATION STATE BAR OF SOUTH DAKOTA	Urges bar admission authorities to consider the impact on minority applicants in deciding whether to adopt the Uniform Bar Examination (UBE) in their jurisdiction and to consider including subjects not included on the UBE, particularly Indian Law in each state or territory with sizable American Indian populations or trust land.	Approved
300	HEALTH LAW SECTION	Urges Congress to enact legislation to encompass services provided by advanced practice providers within the locum tenens exception to the prohibition on reassignment of Medicare billing privileges.	Approved

**RESOLUTION**

1 **RESOLVED**, That the American Bar Association urges lawyers and all interested parties  
2 to ~~increase~~ encourage the informed and voluntary use of alternative dispute resolution (ADR)  
3 processes as an effective, efficient and appropriate means to resolve health care disputes.

4

5 **FURTHER RESOLVED**, That the American Bar Association opposes the use of binding forms  
6 of alternative dispute resolution involving patients in medical malpractice disputes, disputes with  
7 private managed health care organizations, or involving residents in disputes with long-term care  
8 facilities or similar health care institutions, unless the parties agree to do so voluntarily and  
9 knowingly after a dispute arises.

ADDITIONS UNDERLINED; DELETIONS STRUCK THROUGH

**RESOLUTION**

1 RESOLVED, That the American Bar Association urges state, territorial, local, and tribal  
2 legislatures to review all statutes criminalizing consensual noncommercial sexual conduct, in  
3 private and between persons who have the legal capacity to consent, and, to repeal or amend  
4 such statutes ~~to criminalize only sexual acts that are nonconsensual, commercial, public, or that~~  
5 ~~involve individuals who lack the legal capacity to consent.~~ to ensure that such conduct is not  
6 made criminal.  
7  
8 FURTHER RESOLVED, That the American Bar Association urges state, territorial, local, and  
9 tribal legislatures to repeal or amend any statutes, regulations, or policies that denigrate persons  
10 who engage in constitutionally protected sexual conduct.

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED

RESOLUTION

1 RESOLVED, That the American Bar Association amends the black letter of Rule 5.5 of the ABA  
2 Model Rules of Professional Conduct as follows (insertions underlined, deletions ~~struck through~~):

3  
4 **RULE 5.5: UNAUTHORIZED PRACTICE OF LAW;  
5 MULTIJURISDICTIONAL PRACTICE OF LAW**  
6

7 ...

8 (d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and  
9 not disbarred or suspended from practice in any jurisdiction or the equivalent  
10 thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws  
11 of a foreign jurisdiction, may provide legal services through an office or other systematic  
12 and continuous presence in this jurisdiction that:

13  
14 (e) For purposes of paragraph (d), ~~only~~,

15  
16 (i) –the foreign lawyer must be a member in good standing of a recognized legal  
17 profession in a foreign jurisdiction, the members of which are admitted to practice as  
18 lawyers or counselors at law or the equivalent, and ~~the foreign lawyer or foreign in-house~~  
19 ~~counsel must be are~~ subject to effective regulation and discipline by a duly constituted  
20 professional body or a public authority, or,

21 (ii) the person otherwise lawfully practicing as an in-house counsel under the laws of a  
22 foreign jurisdiction must in its discretion, be otherwise authorized to practice under this  
23 rule by, in the exercise of its discretion, [this highest court of appellate this jurisdiction]  
24 to practice in this jurisdiction as an in-house counsel.  
25

26 FURTHER RESOLVED, That the American Bar Association amends the ABA Model Rule for  
27 Registration of In-House Counsel and the Commentary (deletions ~~struck through~~,  
28 additions underlined), dated February 2016.

29  
30 **Model Rule for Registration of In-House Counsel**

31  
32 GENERAL PROVISIONS:

33 ...

34 1)

35 For purposes of this Rule, a “foreign lawyer” is a member in good standing of a  
36 recognized legal profession in a foreign jurisdiction, the members of which are admitted  
37 to practice as lawyers or counselors at law or the equivalent and subject to effective  
38 regulation and discipline by a duly constituted professional body or a public  
39 authority. For purposes of this Rule—only, the [state’s highest court of appellate  
40 jurisdiction] may, in its discretion, allow a lawyer lawfully practicing as in-house counsel  
41 in a foreign jurisdiction who does not meet the above requirements to register as an in-  
42 house counsel after consideration of other criteria, including the lawyer’s legal education,  
43 references, and experience.

...  
44

# 105 Revised and Amended

## RESOLUTION

1 RESOLVED, That the American Bar Association adopts the ABA Model Regulatory Objectives  
2 for the Provision of Legal Services, dated February, 2016.

### **ABA Model Regulatory Objectives for the Provision of Legal Services**

- 3  
4  
5  
6 A. Protection of the public  
7 B. Advancement of the administration of justice and the rule of law  
8 C. Meaningful access to justice and information about the law, legal issues, and the civil and  
9 criminal justice systems  
10 D. Transparency regarding the nature and scope of legal services to be provided, the  
11 credentials of those who provide them, and the availability of regulatory protections  
12 E. Delivery of affordable and accessible legal services  
13 F. Efficient, competent, and ethical delivery of legal services  
14 G. Protection of privileged and confidential information  
15 H. Independence of professional judgment  
16 I. Accessible civil remedies for negligence and breach of other duties owed, ~~and~~  
17 disciplinary sanctions for misconduct, and advancement of appropriate preventive or  
18 wellness programs.  
19 J. Diversity and inclusion among legal services providers and freedom from discrimination  
20 for those receiving legal services and in the justice system  
21  
22

23 FURTHER RESOLVED, That the American Bar Association urges that each state's highest  
24 court, and those of each territory and tribe, be guided by the ABA Model Regulatory Objectives  
25 for the Provision of Legal Services when they assess the court's existing regulatory framework  
26 and any other regulations they may choose to develop concerning non-traditional legal service  
27 providers.

28 FURTHER RESOLVED, That nothing contained in this Resolution abrogates in any manner  
29 existing ABA policy prohibiting non lawyer ownership of law firms or the core values adopted  
30 by the House of Delegates.

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED