

**Strategic Planning Meeting**  
**Date: Friday, January 22, 2010**  
**9 am to 3 pm**  
**This is an in-person planning session**

Northern Nevada Bar Center  
9456 Double R Blvd. Suite B  
Reno, NV 89521-5977

Conference phone: 1-866-210-7083 1043736#

Staff Contact:  
Kristina Marzec, Executive Director  
702-321-2690 (Cellular)  
[kristinam@nvbar.org](mailto:kristinam@nvbar.org)



Nevada Supreme Court Access to Justice Commission  
Strategic Planning Meeting  
Date: Friday, January 22, 2010  
9 am to 3 pm  
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## Agenda

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### a. IOLTA campaign

- i. Joint Report by NLF/ALPS and SBN on status of transition plan
- ii. Review and coordinate appointment process of NLF Board under amended rule 216
- iii. Discuss and approve fixed rate benchmark under Rule 217 for first half of 2010
- iv. Discussion and clarification of cooperative implementation of the IOLTA Campaign going forward

### b. Communication, Marketing, and Lawyer Recognition

- i. Market new IOLTA rule
  - Mass mailing to membership
  - SBN Website
  - NLF Website
  - Articles in Bar Journals
  - E-news
  - CLEs and other professional meetings
- ii. ATJC Needs Brochure
  - Utilize the first Standardized Reporting due from the providers in January to prepare a needs statement
- iii. Website
  - Continue to populate NevadaLawHelp.Org
  - Develop a new website dedicated just for the Commission as the recognized statewide source for ATJC
- iv. Develop an overall marketing plan for 2010
- v. Inaugural ATJC statewide awards October 2010 (in concert with Professionalism Summit)
- vi. Pro Bono week

### c. Fundraising and Development

*This has been voted "on hold" by the development committee and NLF pending disposition of the NLF's organizational structure. Given recent circumstances, we should be able to move forward in 2010.*

- i. Lawyer recruitment and Retention
  - Loan repayment assistance program
  - Fellowships
  - Retirement/benefits/salary enhancement
- ii. Statewide Fundraising Plan

### d. Statewide Service Delivery Issues

- i. Strategic planning for statewide delivery

- professional consultant has been suggested; would require funding; timeline
- ii. Rural Courts legal services delivery
  - Presentation at limited jurisdiction meeting
  - Publication of new resource brochure, including rurals
  - Outreach to community centers and libraries
  - Continued work on connectivity and technology issues
  - Service development
  - Provider communication with judges and court staff in rurals
- iii. Large and Medium Law Firm meetings 2010
  - Schedule and identify Commission participants
- iv. Self-Help Centers
  - Standardized Forms
  - Coordinate with Supreme Court Library Commission
  - Coordination among programs for optimal service development
  - Technology
  - Coordination with ATJC website initiative
- v. Expanding the Emeritus Program
  - Work with ABA to help grow the program-current efforts have not netted desired robust results.
- e. Organizational Structure**
  - i. Composition of Commission
    - Director to prepare ADKT for rule change to SCR 15, or memo?
    - Further discussion required at Strategic Planning or done deal?
  - ii. Official By-laws and Rules of Order
  - iii. Establish framework for NLF as ATJC fundraising arm given passage of 216 amendments
    - ATJC should have a liaison to new expanded NLF Board to coordinate fundraising efforts specific to commission
  - iv. Composition and revitalization of Committees
    - Letters to 50 and 100 Hour club volunteers north and south
    - Letters to Committees and Sections of SBN
  - v. Diversified working groups-importance of
- f. Rule Changes**
  - i. Suggestions from Commissioners, esp. providers and judges, on rule changes that would assist access to justice
  - ii. Rule 6.1 and Mandatory Reporting (continued from 2009)
  - iii. Rule 216- changes beyond expansion of NLF Board
    - Defining authorized recipients of IOLTA
    - Issues surrounding Senior Programs
    - Language dealing with sanction moneys under the rule
  - iv. Housekeeping- conformity in references to NLF vs. designated tax exempt foundation throughout rules
  - v. Cy Pres
  - vi. Court posted fees
  - vii. Jurisdiction of justice court in eviction matters
- g. Administrative Matters**
  - i. Set Commission meetings for 2010
    - One in-person meeting

IOLTA  
&  
NEVADA LAW FOUNDATION

## **Access to Justice Commission, State Bar of Nevada, and Nevada Law Foundation: Coordinated Efforts**

The Supreme Court of Nevada Access to Justice Commission (ATJC), the State Bar of Nevada (SBN), and Nevada Law Foundation (NLF) coordinate efforts on the endeavors outlined in this document (among others). These three entities will seek feedback and counsel from each other prior to action or decision-making related to items listed below (and others as appropriate) through Board meetings and email and phone communication.

1. **Attorney compliance with Supreme Court of Nevada Rule 217 (IOLTA Rule).**  
See "IOLTA Rule Compliance Timeline" below.

2. **IOLTA revenue enhancement through interest rate negotiation with financial institutions.**

ATJC and NLF both engage in IOLTA revenue enhancement through negotiations with financial institutions to raise interest rates on IOLTAs. These efforts will be coordinated between the two entities in the following manner:

- a. In 2010, ATJC, through its banking committee, will negotiate with Well Fargo, Bank of America, US Bank, Bank of Nevada, and Nevada State Bank. ATJC will use information gleaned by NLF in its IOLTA data management and materials created by NLF as appropriate.
- b. NLF, through its management organization and its IOLTA Committee, will negotiate with all other IOLTA financial institutions.
- c. Both entities will report on materials used in negotiation and on results of negotiations at NLF Board of Trustees meetings and through email and phone communication.

3. **Fundraising endeavors designed to bolster access to justice efforts in Nevada or aimed at Nevada's legal community.**

ATJC and NLF both engage in fundraising endeavors aimed at Nevada's legal community to promote and benefit access to justice efforts in Nevada. These efforts will be coordinated between the two entities in the following manner:

- a. Upon appointment of new Board members to the NLF Board of Trustees, NLF will create a Fundraising Committee. The Fundraising Committee Chair will be the liaison to the ATJC, will serve as an *ex officio* member of the ATJC Fundraising Committee, and will ensure that NLF fundraising efforts are coordinated with fundraising efforts of the ATJC.
- b. ATJC will inform the NLF Fundraising Committee Chair of ATJC fundraising efforts.
- c. Bi-yearly, ATJC and the NLF Fundraising Committee will meet to discuss fundraising plans to promote and benefit access to justice efforts in Nevada.

**4. Appointments to NLF Board of Trustees.**

Supreme Court of Nevada Rule 216 requires that the designated bar foundation recipient of IOLTA funds be composed of twenty-one members. NLF is currently the designated bar foundation. Twelve additional members will be appointed to the NLF Board by June 30, 2010:

- a. The Board of Governors of SBN will appoint four attorneys and two lay persons for one-year terms.
- b. The Supreme Court of Nevada will appoint four attorneys and two lay persons for two-year terms.
- c. By March 31, 2010, the NLF will provide to the SBN and Supreme Court a Board of Trustees job description, and an analysis of needed skills, law firm size, practice area, and geographic representation for use by the Boards in making their appointments.
- d. SBN and the Supreme Court will make their appointments by May 31, 2010 to allow NLF to orient new members before the NLF Board meeting in July 2010.

**5. Communications to members (see "IOLTA Rule Compliance Timeline" below)**

SBN develops a communications plan to inform members of the rule changes and approved financial institutions including:

- a. Publishing article in Nevada Lawyer, authored by ATJC co-chairs and others
- b. Management of an IOLTA website page on nvbar.org
- c. Development of marketing mailer to members
- d. Regular broadcasts in E-newsletter
- e. Updates to website with financial institutions
- f. Submissions of submits articles to Communiqué and Writ
- g. Development of information for use at member events

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**6. Improvements to the rules related to Interest On Lawyers Trust Accounts**

(IOLTAs). Each entity may suggest an improvement to the rules to the ATJC. The ATJC will place suggestions on their Board agendas, will notify all entities listed here of the suggested change, and will allow the suggesting entity to explain the change at the Board meeting. Current potential changes are as follows:

- a. Defining authorized recipients of IOLTA funds (ATJC)
- b. Senior Programs (ATJC)
- c. Sanction moneys under the Rule (ATJC)
- d. Housekeeping: conformity in references to NLF vs. designated tax exempt foundation (ATJC)
- e. Change the compliance language in 217, including the following (NLF):
  - i. Flush language: "A member of the ... which is ~~in compliance~~ deemed by the Nevada Law Foundation for "designated tax-exempt foundation" to meet the requirements set forth in ~~with~~ the following provisions:"

ATJC-SBN-NLF: Coordinated Efforts  
IOLTA Rule Compliance Timeline

- ii. 217.6: "List of ~~Complying~~ **Approved** Financial Institutions.  
The designated ... which meet the requirements set forth in subsections 2, 4, and 5 above."
- iii. 217.7: "The amendments ...begin monitoring **banking compliance financial institutions that meet the requirements set forth in this rule** within thirty days..."
- f. Change insurance requirement in 217.1 (NLF): "An interest-bearing trust account ... located in Nevada, ~~and insured and covered by insurance administered by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation-National Credit Union Administration,~~ or other ..."
- g. Require monthly reporting in 217.5(a)(i) (NLF): "remit interest ... standard accounting practice ~~at least quarterly~~ **monthly**, to ..."
- h. Require electronic reporting in 217.5(a)(ii) (NLF): "transmit with each remittance in an electronic format to be specified by the Nevada Law Foundation [or "designated tax-exempt entity"] a statement ..."
- i. Require additional reporting items from financial institutions in 217.5(a)(ii): (NLF) "... a statement showing the name of the member of the state bar, ~~or~~ and the member's law firm for whom the remittance is sent (and the rate of interest applied), the account number for each account, the average amount on deposit for each account, the rate and type of interest or dividends remitted, the amount and type of charges or fee deducted, if any, and the average account balance for the monthly period for which the report is made; and"

## IOLTA Rule Compliance Timeline

The following tables describe the activities required to monitor attorney compliance with Supreme Court of Nevada Rule 217 (IOLTA Rule).

### 1. NLF compiles a list of financial institutions that meet the requirements set forth in the IOLTA Rule.

| <i>Actions Required</i>  | <i>Responsible party(ies)</i> | <i>Timeline</i>                                  |
|--|-------------------------------|--|
| Provide preliminary list <sup>1</sup> of "IOLTA-ready" financial institutions <sup>2</sup> to the Bar                                  | Kim McKelvey to Kim Farmer    | January 15, 2010                                 |
| Provide preliminary list of financial institutions currently meeting one of two minimum interest rate requirements <sup>3</sup>        | Kim McKelvey to Kim Farmer    | January 15, 2010                                 |
| Determine third interest rate requirement  | ATJC to Kim McKelvey          | January 22, 2010                                 |
| Notify Nevada attorneys about IOLTA Rule change <sup>4</sup>   | State Bar of Nevada           | February 2010 / June 2010 / September 2010       |
| Send intent letter to financial institutions <sup>5</sup>  | Kim McKelvey                  | February 1, 2010                                 |
| Provide updated lists of financial institutions intending to meet <sup>6</sup> or meeting the interest rate and reporting requirements | Kim McKelvey to Kim Farmer    | By March 31, 2010; first of the month thereafter |

<sup>1</sup> The preliminary list of "IOLTA-ready" financial institutions will include only those institutions that currently hold IOLTAs and meet the requirements set forth in section 1 of the IOLTA Rule.

<sup>2</sup> "IOLTA-ready" financial institutions meet the requirements set forth in 217.1.

1. A bank, credit union, or savings and loan association
2. Authorized by federal or state law to do business in Nevada
3. Located in Nevada
4. Insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation [note: Federal Savings and Loan Insurance Corporation was abolished in 1989; the FDIC currently administers the Depositor Insurance Fund, the insurance fund for banks and savings and loan associations] [note: FDIC does not insure credit unions; credit union insurance is administered by the National Credit Union Administration]
5. Or other financial institution approved by the State Bar pursuant to Rule 78.5.

<sup>3</sup> Minimum interest requirements available on January 15, 2010: 217.2(a) and 217.2(b).

<sup>4</sup> Lists to be provided by website posting, information from the *Nevada Lawyer*, and email.

<sup>5</sup> See attached ("Financial Institution Intent Letter \_ IOLTA-Holding Institution") letter to be sent to institutions currently holding IOLTAs.

<sup>6</sup> List to include date by which each financial institution intends to meet the interest rate and reporting requirements.

|   |                            |   |
|---|----------------------------|---|
| Provide and update complete list <sup>7</sup> of "IOLTA-ready" financial institutions to the Bar          | Kim McKelvey to Kim Farmer | By March 31, 2010; quarterly thereafter |
| Post lists <sup>8</sup> related to the IOLTA Rule <sup>9</sup>  | Kim Farmer                 | By April 1, 2010                        |
| Provide list of financial institutions meeting the interest rate and reporting requirements <sup>10</sup> | Kim McKelvey to Kim Farmer | By July 1, 2010                         |

## 2. The Bar provides IOLTA information from license fee statements to NLF.

| <i>Actions Required</i>   | <i>Responsible party(ies)</i> | <i>Timeline</i>        |
|---|-------------------------------|------------------------|
| Coordinate data transfer of IOLTA information from license fee statements <sup>11</sup> | Kim Farmer and Kim McKelvey   | Yearly: Feb. 15-Mar. 1 |
| Electronically transfer data from Bar to NLF  | Kim Farmer to Kim McKelvey    | Yearly: April 1-15     |

## 3. NLF provides a list of attorneys not in compliance with the IOLTA Rule.

| <i>Actions Required</i>  | <i>Responsible party(ies)</i> | <i>Timeline</i>         |
|--|-------------------------------|-------------------------|
| Determine IOLTA-eligible financial institutions <sup>12</sup>              | Kim McKelvey                  | Yearly: by Mar. 1       |
| Compile list of attorneys without IOLTAs                                   | Kim McKelvey                  | Yearly: April 15-May 14 |
| Compile list of attorneys with IOLTAs in ineligible financial institutions | Kim McKelvey                  | Yearly: April 15-May 14 |
| Provide list of attorneys not in compliance to Bar <sup>13</sup>           | Kim McKelvey to Kim Farmer    | Yearly: May 15          |
| Send letter to attorneys who are not in compliance <sup>14</sup>           | Kim Farmer                    | Yearly: by June 30      |

<sup>7</sup> Complete list of "IOLTA-ready" financial institutions will be all Nevada financial institutions meeting the requirements set forth in the Rule.

<sup>8</sup> Three lists to be posted:

1. List of "IOLTA-ready" financial institutions
2. List of financial institutions that currently meet the requirements from 217.2(a)-(c) and 217.5
3. List of financial institutions that intend to meet the requirements.

<sup>9</sup> Lists posted on SBN website and provided to ATJC.

<sup>10</sup> List of financial institutions actually meeting the interest rate and reporting requirements.

<sup>11</sup> To include attorney name, attorney address (to avoid confusion with attorneys with same name), law firm name, law firm address, IOLTA financial institution name, IOLTA financial institution address for branch office (street AND P.O., city, state, zip), and IOLTA account number.

<sup>12</sup> See Table 1.

<sup>13</sup> 2010 list to include attorneys without IOLTAs only. 2011 list to include attorneys without IOLTAs and attorneys with IOLTAs in ineligible institutions.

<sup>14</sup> Letter to include waiver form described in 217.3.

#### 4. Bar and NLF share updates on IOLTA information.

| <i>Actions Required</i>  | <i>Responsible party(ies)</i>  | <i>Timeline</i>     |
|--|--|---------------------|
| Bar collects information on new attorneys' IOLTAs and changes to attorneys' IOLTAs through new attorney applications, online forms and other reporting documents, <sup>15</sup>  | Kim Farmer   | Ongoing             |
| Bar sends updates on attorneys' IOLTAs to NLF  | Kim Farmer to Kim McKelvey   | As requested by NLF |
| NLF monitors changes to attorney compliance (financial institution no longer eligible, attorney removes IOLTA)   | Kim McKelvey   | Monthly             |
| <i>Financial institutions no longer eligible</i> <ul style="list-style-type: none"> <li>NLF gives 30 day notice to financial institutions no longer eligible to hold IOLTAs</li> <li>NLF provides Bar with 30 day notice of attorneys whose financial institutions are no longer eligible</li> <li>Bar sends notice to affected attorneys</li> </ul> | Kim McKelvey to Kim Farmer<br><br>Kim McKelvey to Kim Farmer<br><br>Kim Farmer |                     |

#### 5. Bar Marketing Plan to Members.

| <i>Actions Required</i>  | <i>Responsible party(ies)</i> | <i>Timeline</i>   |
|--|-------------------------------|---|
| Bar publishes articles in Nevada Lawyer<br>March 2010 publication authored by ATJC co-chairs<br>September 2010 publication | Kristin<br>Kristina Marzec    | March<br>September  |
| Bar develops IOLTA website for members   | Kim Farmer                    | January   |
| Bar promotes IOLTA in regular e-newsletter broadcasts  | Kim Farmer                    | January;<br>February; March;<br>June; September;<br>November;<br>December |
| Bar submits articles to Communiqué and Writ  | Kristina Marzec               | March, April,<br>September,<br>October                                    |
| Bar develops one page flyer for use at member meetings   | Kim Farmer                    | March   |

<sup>15</sup> Form posted on SBN website; NLF website posts link to SBN website/form.

NLF Letterhead

<Financial Institution>

Attn: <First Name> <Last Name>, <Title>

<Address>

<State, City, Zip>

February 1, 2010

Dear <Mr./Ms.> <Last Name>,

On December 16, 2009 the Supreme Court of Nevada amended Supreme Court Rule 217, which monitors Interest On Lawyers Trust Accounts (IOLTAs) ("IOLTA Rule"). The IOLTA Rule requires all attorneys in Nevada to hold an IOLTA at an approved financial institution (please go to [section of SBN website] to view the complete IOLTA Rule). **The changes in the IOLTA Rule may affect <Financial Institution>'s ability to hold IOLTAs.**

According to the IOLTA Rule, approved financial institutions are banks, credit unions, and savings and loan associations authorized to do business in Nevada, located in Nevada, and insured by the FDIC or NCUA.

In addition, approved financial institutions must meet the interest rate and reporting requirements set forth in the IOLTA Rule.

*Interest Rate Requirement:*

According to Rule 217,

The rate of interest payable upon any interest-bearing trust account shall meet one of the following minimum standards:

- (a) The 30-day LIBOR minus .50 percent, or, the Federal Discount Rate plus .50 percent, whichever is greater; or
- (b) Equal to the Federal Fund Target Rate, or, the Federal Discount Rate plus .50 percent, whichever is greater; or
- (c) Equal to or greater than a flat interest rate, which rate shall be reviewed and approved by the Access to Justice Commission twice annually and made public at least thirty days prior to the effective date [this rate was set and posted on January 22, 2010, at \_\_\_\_\_].

*Reporting Requirements:*

Approved financial institutions will send monthly remittances and report to the Nevada Law Foundation, in accordance with the following requirements:

- a. Monthly reports will be "in an electronic format to be specified by the Nevada Law Foundation"
- b. Reports will include the following items for each IOLTA:
  - i. Name of each attorney and law firm
  - ii. Account number
  - iii. Average amount on deposit for each account
  - iv. Rate and type of interest or dividends remitted
  - v. Amount and type of charges or fee deducted (fees and charges are not allowed in the IOLTA Rule)
  - vi. The average account balance for month

These requirements are synopsized on a spreadsheet found at [section of NLF website].

The State Bar of Nevada will begin posting a list of financial institutions intending to meet the requirements set forth in the IOLTA Rule on April 1, 2010. To be posted on this list, <Financial Institution> must fill out a notice of intent to meet the interest rate and reporting requirements *no later than March 15, 2010*. You can fill out the notice of intent online at [section of NLF website].

On July 1, 2010, the State Bar of Nevada will post a list of financial institutions complying with the IOLTA Rule requirements. To be posted on this list, <Financial Institution> must meet the interest rate requirements of the IOLTA Rule, and must submit an electronic report meeting the IOLTA Rule requirements before June 30, 2010.

We value <Financial Institution>'s ongoing partnership with the legal community through the IOLTA Program. For more information, please contact the Nevada Law Foundation at [nvlawfoundation@aol.com](mailto:nvlawfoundation@aol.com).

Sincerely,

David McElhinney, President  
Nevada Law Foundation

**Financial Institution Notice of Intent: IOLTA**

[Sample -- will not be included in the mailing, but will be available (form-fillable) online]

<Financial Institution>

Attn: <Name>

<Address>

<State, City, Zip>

President/CEO \_\_\_\_\_

Contact Name (for matters related to remittance reports) \_\_\_\_\_

Title \_\_\_\_\_

Email \_\_\_\_\_

<Financial Institution> agrees to meet the minimum interest rate requirement set forth in Supreme Court of Nevada Rule 217, no later than May 1, 2010, by providing the following interest rate on IOLTAs (check one):

\_\_\_\_\_ The 30-day LIBOR minus .50 percent, or, the Federal Discount Rate plus .50 percent, whichever is greater; or

\_\_\_\_\_ Equal to the Federal Fund Target Rate, or, the Federal Discount Rate plus .50 percent, whichever is greater; or

\_\_\_\_\_ Equal to or greater than a flat interest rate, which rate shall be reviewed and approved by the Access to Justice Commission twice annually and made public at least thirty days prior to the effective date (indicate interest rate here: \_\_\_\_\_).

In addition, <Financial Institution> agrees to meet the reporting requirements set forth in Supreme Court of Nevada Rule 217, and will begin remitting monthly electronic reports in the appropriate format no later than June 30, 2010.

Signature \_\_\_\_\_ Date \_\_\_\_\_

## **Position Title: Member, Board of Directors, Nevada Law Foundation**

### ***Function***

- Provide governance to the organization, represent it to the community, and accept the ultimate legal authority for it.
- Fulfill Board member tenure.
- Regularly attend Board meetings, preferably in person.
- Join one or more committees and regularly attend committee meetings.
- Respond to all Board-related requests within 2 business days.
- Thoroughly review information provided in advance of meetings.
- Advocate for the work of NLF.

### ***Duties:***

#### ***Planning***

- Periodically assess the environment and approve NLF's strategy in relation to it.
- Annually review and approve NLF's operational plans for accomplishing its long-range goals.
- Review and approve NLF's long-range goals.
- Approve major policies.

#### ***Organization***

- Hire, contract with, monitor, appraise, advise, support, reward, and, when necessary, change staff or contractual entities.
- Ensure that the status of organizational strength and human resource planning is equal to the requirements of the long-range goals.
- Propose a slate of potential Board members and fill vacancies as needed.
- Provide direction to appointing entities on attributes of potential Board members.
- Annually review the performance of the Board and its committees and take steps to improve performance.
- Annually review the performance of Board members toward the Board's responsibilities for the long-range goals and take steps to improve their performance.
- Participate in fundraising endeavors.

#### ***Operations***

- Review the results achieved by staff and contractual entities as compared with NLF's philosophy, annual and long-range goals, and the performance of similar institutions.
- Monitor IOLTA data maintenance, IOLTA revenue enhancement activities, and fundraising activities for efficiency and efficacy.
- Determine if NLF's financial structure is adequate for its current needs and its long-range strategy.
- Provide candid and constructive criticism, advice, and comments.
- Approve major actions of NLF, such as capital expenditures and major program and service changes.

#### ***Finances and Audit***

- Annually review and approve NLF's budget.
- Ensure that the Board and its committees are adequately and currently informed - through reports and other methods - of the condition of NLF and its operations.
- Ensure that published reports properly reflect the operating results and financial condition of NLF.
- Ascertain that Board, staff and contractual entities have established appropriate policies to define and identify conflicts of interest throughout NLF, and diligently administer and enforce those policies.
- Appoint independent auditors subject to approval by members.
- Review compliance with relevant material laws affecting NLF.

BRENNAN CENTER  
REQUEST FOR SUPPORT  
LSC

  
print

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Message 1 of 22 in (Strategic Planning)

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**Date** Friday, January 15, 2010 at 8:26 AM  
**From** Robert Echols <echols@suscom-maine.net> [ Add To Contacts ] [ Spam ]  
**To** kristinam@nvbar.org  
**CC**  
**Subject** [ATJ List] Sign-on letter in support of bill to reauthorize the Legal Services Corporation  
**Attachments** CAJA Ltr to Congress.doc [ save to documents ]  
Civil Access to Justice Act of 2009- one-pager.pdf [ save to documents ]  
**Status** ➔ This message has been forwarded

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Friends,

The Brennan Center for Justice is circulating a letter of support for the federal "Civil Access to Justice Act," which would reauthorize the Legal Services Corporation, authorize funding up to \$750 million annually, and lift many of the current restrictions.

They are seeking support from state Access to Justice commissions and other organizations to demonstrate broad-based support for the bill. Initial signers of the letter, in addition to the Brennan Center, are the ACLU, the National Legal Aid and Defender Association, the UAW International and National Association of Legal Services Workers, and the Center for Law and Social Policy. A broad group non-profits and funders have signed earlier versions of the this letter in the past.

The text of the letter is at <http://www.brennancenter.org/page/-/Justice/CLS/CAJALetter.pdf>

A one-pager on the bill is at <http://www.brennancenter.org/page/-/Justice/CLS/CAJAOnePager.pdf>

If your commission is willing to sign onto the letter, or if you have questions, please contact Emily Savner at the Brennan Center, [SavnerE@exchange.law.nyu.edu](mailto:SavnerE@exchange.law.nyu.edu).

Bob

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You are subscribed as kristinam@nvbar.org  
[EasyUnsubscribe \(by email\)](#) | [My Settings](#)

Jan XX, 2010

Dear Senators and Members of Congress:

We write to urge your support for the *Civil Access to Justice Act of 2009* (S.718, H.R. 3764), an Act that would reauthorize and revitalize the Legal Services Corporation (LSC), the backbone of our nation's civil legal aid system. LSC is a non-profit corporation created by Congress in 1974. Funded by the federal government, LSC grants money to local legal services programs in every state, which, in turn, assist low-income families with the civil legal issues they may face – protecting spouses and children from domestic violence, fighting predatory lenders, saving homes from foreclosure, ensuring child support payments, and helping seniors and the disabled obtain necessary benefits.

LSC is in need of revitalization. Severely underfunded, LSC reports that more than half of all eligible clients who seek legal help from LSC-funded programs are turned away due to insufficient resources. Additionally, LSC-funded programs' ability to help their clients is hampered by outdated restrictions, imposed in the mid-1990s.

The *Civil Access to Justice Act* would reauthorize LSC for the first time in over 30 years and would expand access to justice for the poor during this time of extraordinary need. The bill would: 1) expand access to justice by authorizing \$750 million in annual funding for LSC, the level necessary to return to the high water mark for funding reached in 1981, the last time a minimum level of access to LSC services was achieved; 2) lift a number of overreaching restrictions that prevent LSC grantees from most efficiently and effectively serving their clients; and 3) improve oversight and governance of LSC.

As the nation continues to reel from the economic crisis, civil legal aid has never been more important. More and more of our nation's families are turning to the courts with pressing civil legal needs, and both individuals and society suffer when these issues are left unresolved, or resolved unfavorably. With the courts and legal aid programs now overwhelmed, Congress must act to help low-income individuals access and navigate the courts, which oftentimes is only possible with the help of a legal aid lawyer.

The *Civil Access to Justice Act* goes a long way toward renewing our promise to "equal justice for all" and ensuring that our neighbors are able to obtain the services they need to meaningfully access the courts. Please support this legislation to reauthorize and revitalize LSC.

Sincerely,

American Civil Liberties Union

Brennan Center for Justice at NYU School  
of Law

00016

Center for Law and Social Policy

National Legal Aid & Defender Association

UAW International and Local 2320, the  
National Organization of Legal Services  
Workers

# *Civil Access to Justice Act of 2009*

S. 718, H.R. 3764

As the nation continues to reel from the economic crisis, civil legal aid has never been more important. More low-income families need legal help, but drastic funding cuts have prevented them from getting the help they need.

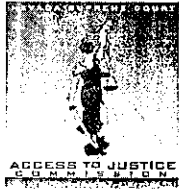
The Legal Services Corporation (LSC), a non-profit corporation created by Congress in 1974, is the backbone of our nation's civil legal aid system. Each year, Congress funds LSC, which in turn grants money to local legal services programs in every state. Legal services programs assist low-income families by protecting spouses and children from domestic violence, fighting predatory lenders, saving homes from foreclosure, ensuring child support payments, and helping seniors and the disabled obtain necessary benefits.

LSC is in need of revitalization. Severely underfunded, LSC reports that more than half of all eligible clients who seek legal help from LSC-funded programs are turned away due to insufficient resources. Outdated restrictions, imposed in the mid-1990s, hamper LSC-funded programs' ability to help their clients. The *Civil Access to Justice Act* (similar versions were sponsored by Sen. Harkin (D-IA) and Rep. Bobby Scott (D-VA)) would reauthorize LSC for the first time in over 30 years and would expand access to justice to the poor during this time of extraordinary need. The bill would:

- **Expand access to justice by authorizing more funds.** In FY 2010, LSC is funded at \$420 million, of which around 94%, or over \$394 million, will be granted to local programs. This funding level falls short of the high-water mark reached in 1981, when real funding was around \$750 million and the last time federal funding was estimated to provide a minimum level of access to legal aid nationwide. In order to restore minimum access, the bill authorizes a \$750 million funding level.
- **Lift many of the overreaching restrictions that prevent LSC grantees from most efficiently and effectively assisting their clients.** The bill removes restrictions on grantees' non-LSC dollars, thus allowing local programs to determine how best to spend their money, in accordance with all of their funders' wishes, while also reducing duplicative spending and inefficiency. Restrictions currently attached to funding for LSC limit the tools LSC-funded legal aid lawyers can use when representing their clients. These tools – including participating in class action lawsuits and conducting advocacy on behalf of their clients before legislative and administrative bodies – can be essential to best addressing clients' needs. Restrictions in place today also prohibit certain groups of people from qualifying for federally funded legal aid, including categories of legal immigrants and people in prison who have civil legal issues that must be addressed so they may successfully reenter society. The *Civil Access to Justice Act* rolls back the most onerous of the restrictions on federal funds, allowing LSC grantees to once again use these key legal tools and better assist more of those in need. The bill maintains the prohibition on using any funds to support abortion-related litigation. The bill also keeps intact the restrictions prohibiting the use of federal funds to support litigation on behalf of prisoners with some types of claims and undocumented immigrants, with minor but important exceptions for victims of domestic violence, torture, and trafficking (who are eligible under current law) and certain disaster victims.
- **Improve oversight and governance of LSC.** This legislation modernizes corporate practices to address the governance and oversight concerns of the Government Accountability Office (GAO).

**Please support the *Civil Access to Justice Act of 2009*. Make the promise of “equal justice for all” ring true.**

# CALENDAR



## MEMORANDUM

From: Kristina Marzec  
To: Access to Justice Commission  
Date: January 22, 2010  
Re: Commission Calendar 2010



As you will recall for 2009, we set the four quarterly meetings at once. This worked particularly well and I would like to do this again for 2010 to allow for maximum availability and attendance. Based solely on the Supreme Court's master calendar (which is already mostly full), I propose the following dates for consideration:

### **Second Quarter**

**April 1, 2, 7, 8, 9, 12, 26, 27**

### **Third Quarter**

**July 14, 15, 16, 22, 23**

### **Fourth Quarter**

**Oct- 1, 6, 7, 8, 21, 22**

### **LOCATIONS**

The legal service providers would like to have one *everyone in person* meeting annually. If approved, my suggestion is the State Bar annual convention for the years it is held in Nevada. For the other years, rotate between the South and the North.

Because 2010 is an out-of-state year for the convention, I propose the in-person meeting mid-year in July at the Northern Nevada Bar Center.

The remaining three meetings would continue to be video-conferenced in Reno, Carson City, Las Vegas, and newly-added Fourth Judicial District.



print

Message 1 of 6186 in (In-Box)

Date Wednesday, January 20, 2010 at 1:31 PM  
 From Kristina Marzec <kristinam@nvbar.org> [ Add To Contacts ] [ Spam ]  
 To kristinam@nvbar.org  
 CC  
 Subject Fwd: 2010 National Pro Bono Celebration  
 Attachments image001.jpg [ save to documents ]

**From:** National Planning Committee Chair, Mark I. Schickman [mailto:schickman@freelandlaw.com]  
**Sent:** Wednesday, January 13, 2010 2:33 PM  
**To:** Kristina Marzec  
**Subject:** 2010 National Pro Bono Celebration



## 2010 National Pro Bono Celebration

***Start Planning NOW***

***~~ October 24-30, 2010 ~~***

Immediately following the 2009 Celebration the ABA Standing Committee on Pro Bono and Public Service surveyed its many constituents – those who participated in the 2009 Celebration and those who did not – to assess whether to go forward with the National Pro Bono Celebration on an annual basis and, if so, during what week. The results are in and the overwhelming consensus was to go forward each year during the last week of October. A clear message from the survey results was that, regardless of the dates, with early notice and promotional assistance groups will do all they can to make it work.

In the next few weeks the Celebration website – [www.celebrateprobono.org](http://www.celebrateprobono.org) – will be updated with new resources, materials, ideas and other tools that will help you move forward with your 2010 Celebration planning. The revamped website will make available additional planning tips; more samples of proclamations, press releases and op-eds; categorized access to last year's

**Celebration events; an upgraded Celebration store and much more.**  
**The Pro Bono Committee learned many lessons from the inaugural National Pro Bono Celebration, two of particular importance. First, work together whenever possible. Those groups who coordinated their activities, and planned and scheduled collaboratively, reported having the most overall success. Second, and a corollary to the first, is to be diversified in your planning in the context of what your community needs. Is recruitment a priority? Training? Client service through clinics? Reviewing and assessing your program, court and community pro bono needs will result in a more dynamic overall Celebration.**  
**Thank you, in advance, for celebrating pro bono in 2010.**

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**Phone:** 312/988-6147  
**Email:** [powerb@staff.abanet.org](mailto:powerb@staff.abanet.org)  
**Online:** [www.abanews.org](http://www.abanews.org)

### White House Recognizes Lawyers as National Pro Bono Week Concludes

CHICAGO, Nov. 3, 2009 – The first American Bar Association National Pro Bono Celebration week exceeded expectations and received recognition from the White House. In a letter dated Oct. 30, 2009, President Barack Obama noted, "Pro bono lawyers work tirelessly to break down barriers to opportunity and justice, volunteering countless hours to provide critical legal services to our most vulnerable citizens."

At final count, the ABA Pro Bono Celebration week, Oct. 25 – 31, saw nearly 600 events across the country, with activities in nearly every state.

Planning for the celebration began in early 2008, when Mark Schickman, chair of the National Pro Bono Celebration Week and former chair of the ABA Standing Committee on Pro Bono and Public Service, began sharing his vision for a time to recognize the volunteer legal work that lawyers contribute for the benefit of their communities.

"We are gratified that President Obama recognized the work done by lawyers to help our society's most vulnerable members. We are also pleased by the response from the legal community," said Schickman. "Throughout the country, law firms hosted events to recruit more lawyers to take on pro bono projects, state and local bar associations offered legal clinics, and law schools presented discussions on such topics as domestic violence and bankruptcy."

The legal profession in the United States is among the very few that calls on its members to make a difference in their communities through pro bono work, with the majority of this country's lawyers reporting spending an average of 40 hours each year providing free legal work for people of limited means.

"The success of this year's inaugural celebration has provided an outstanding platform as we plan for future celebrations," said A. Michael Pratt, chair of the ABA Standing Committee on Pro Bono and Public Service. "This celebration helps to elevate the work of our committee and to advance the level of pro bono work performed by lawyers all over the country. We thank Mark Schickman for his vision and leadership."

With nearly 400,000 members, the American Bar Association is the largest voluntary professional membership organization in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law.

- 30 -

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# ORGANIZATIONAL STRUCTURE

# **IN THE SUPREME COURT OF THE STATE OF NEVADA**

**IN THE MATTER OF THE CREATION OF THE NEVADA SUPREME COURT  
ACCESS TO JUSTICE COMMISSION.**

**ADKT 394**

## **ORDER CREATING THE NEVADA SUPREME COURT ACCESS TO JUSTICE COMMISSION AND ADOPTING RULE 15 OF THE SUPREME COURT RULES**

WHEREAS, the Honorable Robert E. Rose, Chief Justice of the Nevada Supreme Court, and the Honorable Nancy A. Becker, Justice of the Nevada Supreme Court, have petitioned this court on its administrative docket to adopt a rule creating the Nevada Supreme Court Commission on Access to Justice; and

WHEREAS, this court agrees with the petition's allegations regarding the importance of access to justice in a democratic society; the lack of sufficient access to justice for thousands of Nevada citizens of limited means despite the efforts of numerous public and private organizations, attorneys, and other individuals; the critical need for statewide strategic planning and coordination of efforts to expand services and improve access to justice; and the effectiveness of supreme court commissions on access to justice created in other jurisdictions to respond to similar challenges; and

WHEREAS, it therefore appears to this court that amendment of the Supreme Court Rules is warranted to establish a permanent Supreme Court Commission on Access to Justice; accordingly,

IT IS HEREBY ORDERED that new Rule 15 of the Supreme Court Rules shall be adopted and shall read as set forth in Exhibit A.

IT IS FURTHER ORDERED that this new rule shall be effective immediately. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dis-

semination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendment.

Dated this 15th day of June, 2006.

BY THE COURT

ROBERT E. ROSE, *Chief Justice*

NANCY A. BECKER  
*Associate Justice*

A. WILLIAM MAUPIN  
*Associate Justice*

MARK GIBBONS  
*Associate Justice*

MICHAEL L. DOUGLAS  
*Associate Justice*

JAMES W. HARDESTY  
*Associate Justice*

RON D. PARRAGUIRRE  
*Associate Justice*

## EXHIBIT A

### NEW RULE 15 OF THE SUPREME COURT RULES

#### *Rule 15. Commission on Access to Justice.*

1. *Creation, purpose.* The supreme court shall appoint a commission on access to justice. The commission shall:

(a) *Assess current and future needs for civil legal services for persons of limited means in Nevada.*

(b) *Develop statewide policies designed to support and improve the delivery of legal services.*

(c) *Improve self-help services and opportunities for proper person litigants and increase pro bono activities.*

(d) *Develop programs to increase public awareness of the impact that limited access to justice has on other government services and on society.*

(e) *Investigate the availability of and pursue increased public and private financing to support legal services organizations and other efforts to provide legal services to persons of limited means.*

(f) *Recommend legislation or rules affecting access to justice to the supreme court.*

2. *Composition.* The access to justice commission shall be composed of the chief justice of the supreme court or the chief justice's designate and the following members, to be appointed by the supreme court to four-year terms:

(a) *One district judge each from the Second and the Eighth Judicial District Courts. At least one of those judges must be assigned to the family division of the district court.*

(b) *One additional district judge to be selected from the First, Third, Fourth, Fifth, Sixth, Seventh, or Ninth Judicial District Courts.*

(c) *One limited jurisdiction judge, who shall serve as liaison to the Nevada Judges Association.*

(d) *One representative designated by the Nevada Attorney General.*

(e) *One representative each from the City of Las Vegas Senior Citizens Law Project, Clark County Legal Services/Pro Bono Project, the Eighth Judicial District Pro Bono Foundation, Nevada Legal Services, Volunteer Attorneys for Rural Nevadans/Domestic Violence Project, the Washoe Access to Justice Foundation, the Washoe County Senior Law Project, and Washoe Legal Services/Pro Bono Project.*

(f) *One representative each from the Clark County Bar Association, the State Bar of Nevada, and the Washoe County Bar Association.*

(g) *One representative from the clinical program at the William S. Boyd School of Law of the University of Nevada, Las Vegas.*

(h) *Two persons who are not members of the legal profession. The commission may appoint nonvoting members, including, but not limited to, judges and representatives from other direct service providers, county bar associations, and neighborhood pro bono projects.*

3. *Meetings.* The commission shall meet at least semi-annually and shall have additional meetings, as the commission deems appropriate. The commission may form separate subcommittees to address specific issues.

H

| Access to Justice Commission<br>July 2009 |            |               |  |   |          |                                  |
|---|------------|---------------|--|---|----------|----------------------------------|
| Last                                      | First      | Title         | Position   | Rule Slot   | SCR 15\$ | Email                            |
| Abbott                                    | Kimberly   |               | Pro Bono Project Director  | Legal Aid Center of Southern Nevada   | 2(e)     | kabbott@lacs.org                 |
| Bradshaw                                  | James      |               |  | State Bar Board of Governors  | 2(f)     | jbradshaw@Mcdonaldcarano.com     |
| Cooney                                    | Valerie    |               | Executive Director   | Volunteer Attorneys for Rural Nevadans  | 2(e)     | vcooney@vnm.org                  |
| Desmond                                   | John       |               |  | Washoe County Bar   | 2(f)     | jpd@jonesvargas.com              |
| Doherty                                   | Frances    | Hon.          |  | Second Judicial District Court/<br>Family Court                                 | 2(a)     | frances.doherty@washoecourts.us  |
| Douglas                                   | Michael    | Justice       | Commission Co-Chair  | Supreme Court of Nevada   | 2        | mdouglas@nvcourts.nv.gov         |
| Elcano                                    | Paul       |               | Executive Director   | Washoe Legal Services   | 2(e)     | pelcano@ashoelegalservices.org   |
| Goff                                      | Betsy      | Hon.          |  | Eighth Judicial District Court  | 2(a)     | GonzalezE@clarkcountycourts.us   |
| Gonzalez                                  | James      | Chief Justice | Commission Co-Chair  | Supreme Court of Nevada   | 2        | jhardesty@nvcourts.nv.gov        |
| Johnson                                   | Anna Marie |               | Executive Director   | Nevada Legal Services   | 2(e)     | ajohnson@nslaw.net               |
| Kandt                                     | W. Brett   |               |  | Office of the Attorney General  | 2(d)     | bkandt@ag.nv.gov                 |
| Nielsen                                   | Ernest     |               |  | Washoe Co. Senior Law Project   | 2(e)     | enielsen@washoecounty.us         |
| Puccinelli                                | Andrew     | Hon.          |  | Fourth Judicial District Court/Rural rep  | 2(b)     | apuccinelli@elkocountynv.net     |
| Thronson                                  | David      | Professor     |  | UNLV Boyd Law School  | 2(g)     | David.thronson@unlv.edu          |
| Vogel                                     | Sheri Cane |               | Executive Director   | Senior Citizens Law Project   | 2(e)     | svogel@lasvegasnevada.gov        |
| Warden                                    | Tom        |               | Vice President,<br>Community Relations<br>The Howard Hughes<br>Corporation | Layperson 1   | 2(h)     |                                  |
|   |            |               |  |   |          | twarden@ggdp.com                 |
| Steinheimer                               | Connie     | Hon.          |  | Defunct slot- Washoe Access to Justice<br>Foundation                            | 2(e)     | judge.steinheimer@washoecourt.us |
|   |            |               |  | Defunct slot-Eight Judicial Pro Bono<br>Foundation                              | 2(e)     |                                  |
| Vacant                                    |            |               |  | Clark County Bar  | 2(f)     |                                  |
| Vacant                                    |            |               |  | Limited Jurisdiction Judge:<br>Liaison to Nevada Judges Association<br>15(2)(c) | 2(c)     |                                  |
| Vacant                                    |            |               |  | Layperson 2   | 2(h)     |                                  |
| Marzec                                    | Kristina   |               | Commission Ex. Dir.  | Staff   | 2        | kristinam@nvbar.org              |



## MEMORANDUM

From: Kristina Marzec  
To: Access to Justice Commission  
Date: January 22, 2010  
Re: Rule 15: Commission Composition, final recommendations

At the last Commission meeting, the Commission approved changes to Rule 15 as follows.

### **Draft 5**

#### **Rule 15. Commission on Access to Justice.**

1. **Creation, purpose.** The supreme court shall appoint a commission on access to justice. The commission shall:

(a) Assess current and future needs for civil legal services for persons of limited means in Nevada.

(b) Develop statewide policies designed to support and improve the delivery of legal services.

(c) Improve self-help services and opportunities for proper person litigants and increase pro bono activities.

(d) Develop programs to increase public awareness of the impact that limited access to justice has on other government services and on society.

(e) Investigate the availability of and pursue increased public and private financing to support legal services organizations and other efforts to provide legal services to persons of limited means.

(f) Recommend legislation or rules affecting access to justice to the supreme court.

2. **Composition.** The access to justice commission shall be staffed by an executive director and composed of the chief justice of the supreme court or the chief justice's designate and the following members, to be appointed by the supreme court to four-year terms:

(a) One district judge each from the Second and the Eighth Judicial District Courts. At least one of those judges must be assigned to the family division of the district court.

(b) One additional district judge to be selected from the First, Third, Fourth, Fifth, Sixth, Seventh, or Ninth Judicial District Courts.

(c) One limited jurisdiction judge, who shall serve as liaison to the Nevada Judges Association.

(d) One representative designated by the Nevada Attorney General.

(e) One representative each from the City of Las Vegas Senior Citizens Law Project, [Clark County Legal Services/Pro Bono Project] Legal Aid Center of Southern Nevada/ Pro Bono Project, [the Eighth Judicial District Pro Bono Foundation] the designated tax exempt foundation pursuant to SCR 216, Nevada Legal Services, Volunteer Attorneys for Rural Nevadans/Domestic Violence Project, [the Washoe Access to Justice Foundation,] the Washoe County Senior Law Project, and Washoe Legal Services/Pro Bono Project.

(f) One representative each from the Clark County Bar Association, the State Bar of Nevada **Board of Governors, the State Bar of Nevada Young Lawyers Section,** and the Washoe County Bar Association.

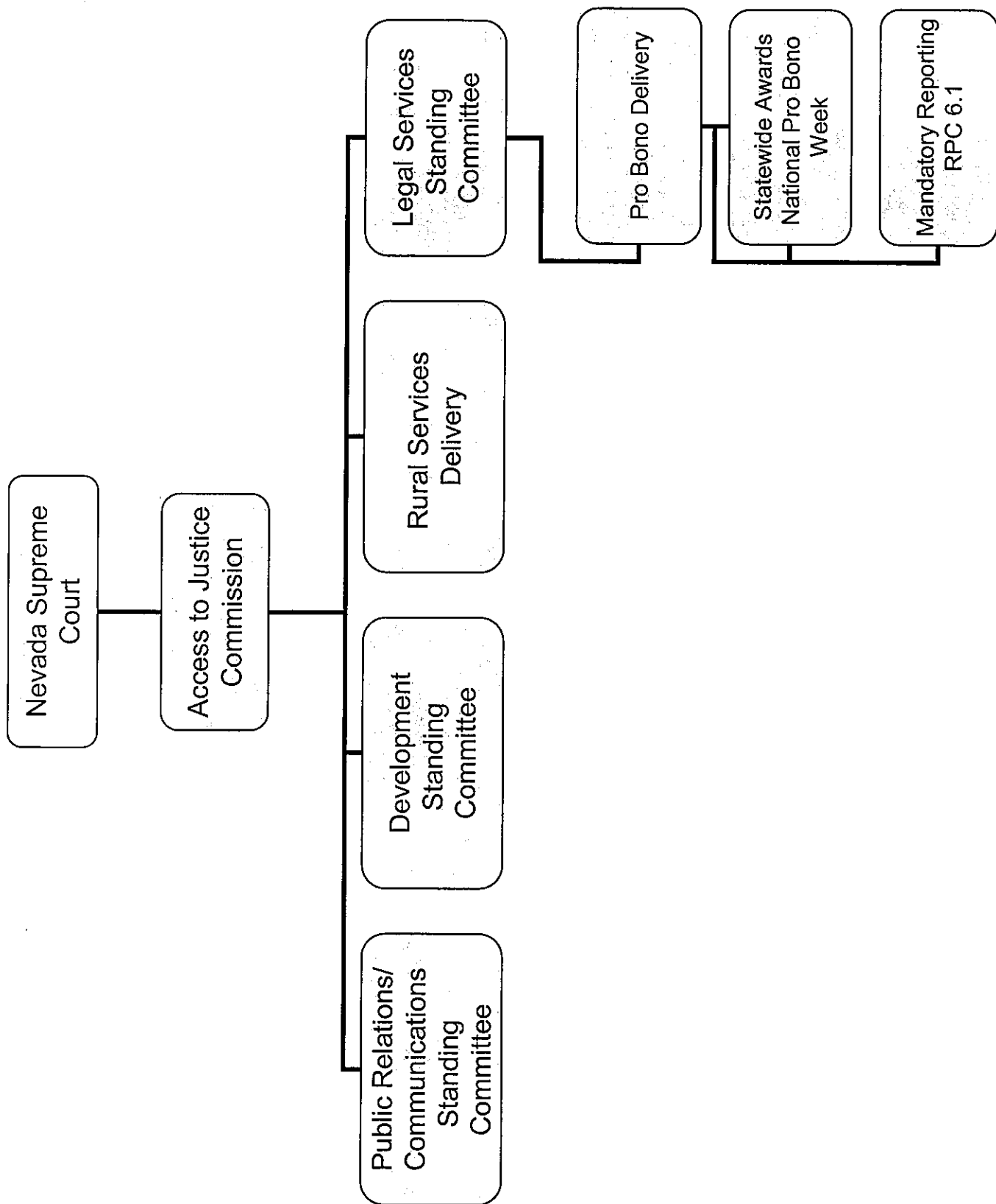
(g) **One student representative of the Public Interest Law Association and [Ø]one faculty** representative from ~~[the clinical program at]~~ the William S. Boyd School of Law of the University of Nevada, Las Vegas, **designated by the Dean. Individual appointments under this subsection may be rotated in less than four year terms.**

(h) Two persons who are not members of the legal profession[-]

(i) **Three at-large representatives. Appointments under this subsection may be rotated in less than four year terms as the Commission deems necessary and proper to facilitate diversity and fulfill the Commission's purpose.**

The commission may appoint nonvoting members, including, but not limited to, judges and representatives from other direct service providers, county bar associations, and neighborhood pro bono projects.

3. **Meetings.** The commission shall meet at least semi-annually and shall have additional meetings, as the commission deems appropriate. The commission may form separate subcommittees to address specific issues.





## NEVADA SUPREME COURT ACCESS TO JUSTICE COMMISSION

The Supreme Court Access to Justice Commission is seeking lawyers to participate on Committees which are part of this Commission. Participation will be by appointment only. AJC is seeking lawyers who have the time and interest in the work of the AJC. No prior experience working on a local or state committee is required. The AJC requires an eagerness to help those less fortunate in Nevada get access to the courts and the legal system.

The AJC was created to:

- 1) Assess current and future needs for civil legal services for persons of limited means in Nevada.
- 2) Develop statewide policies designed to support and improve the delivery of legal services.
- 3) Improve self-help services and opportunities for proper person litigants and increase pro bono activities.
- 4) Develop programs to increase public awareness of the impact that limited access to justice has on other government services and on society.
- 5) Investigate the availability of and pursue increased public and private financing to support legal services organizations and other efforts to provide legal services to persons of limited means.
- 6) Recommend legislation or rules affecting access to justice to the Supreme Court.

Under SCR 15, the Access to Justice Commission directly creates and appoints its committees. At present, there is no minimum or maximum membership and appointments are made as deemed necessary and proper. The Co-Chairs, Chief Justice Hardesty and Justice Michael Douglas, have deemed expansion of all Committees to be appropriate at this time and therefore will be making appointments in the next quarter. The Commission may also add new Committees and/or working groups, and consider expansion of the Commission itself, in future.

| Communications   | Development  | Legal Services Delivery   | Rural Services Delivery  |
|--|--|---|--|
| <b>Focus</b>   |  |   |  |
| marketing and communication of Commission programs and initiatives to the membership and the public where appropriate                        | develop viability of funding for new programs, or identify potential sources of future funding from existing sources for Commission initiatives and programs               | state-wide delivery of civil legal services, recognition programs for pro bono programs and attorneys, and outreach to the legal community on emergent issues. This Committee is generally intended for legal services professionals currently involved in part of the continuum of care for civil legal aid in Nevada. | New committee, Feb 2009. Anticipated focus will be on the provision of legal services to rural communities, with emphasis on technology- based solutions and increased pro bono lawyer participation. This group will work closely with the existing AOC Rural Court Technology project. |
| <b>Current projects</b>  |  |   |  |
| Needs Assessment<br>Marketing;<br>Public Interest<br>Lecture Series;<br>Recruitment and Retention;<br>Mandatory Reporting; Website expansion | Loan Assistance<br>LRAP;<br>Division of Aging<br>Funding concerns;<br>Court Posted Fees :<br>Real Estate Escrow Funds;<br>Recruitment/Retention;<br>Fellowship;<br>Cy Pres | Pro Bono Recognition<br>National Pro Bono Week; mandatory reporting;<br>Statewide Award;<br>Emeritus;<br>Self Help; Standardized Forms;<br>Standardized Reporting (provider statistics);<br>Law Firm initiatives  | Prepare Legal Resources Brochure for the Rurals<br><br>Work with AOC Technology in Courts project: obtain update<br><br>Attend Lmted. Juris. Judges meeting in Jan   |

**NEVADA SUPREME COURT ACCESS TO JUSTICE**  
**STANDING COMMITTEES**  
Updated Dec 2009

**RURAL SERVICES DELIVERY** *est. April 2009*

**Justice Douglas- Chair**

**Amber Candelaria**

**Valerie Cooney**

Judge Dahl

Judge Davis

Judge Dory

Judge Fletcher

Anne Heck (AOC)

**Anna Johnson**

Judge Lane

Judge Maslach

John McCormick (AOC)

Sheryl Overstreet (AOC)

Judge Papez

**Judge Puccinelli**

Judge Wagner

Judge Wambolt

**COMMUNICATIONS**

Needs Assessment Marketing

Public Interest Lecture Series

Recruitment and Retention

    LRAP- Development

    Fellowships- LSD

    Benefits and Salaries- LSD

Mandatory Reporting

Website

**David Thronson**

**Judge Gonzalez**

**Kimberly Abbott**

**Brett Kandt**

**Judge Doherty**

Christine Smith

William Heavilin

Trevor Hayes

**Scott Roedder- ex officio**

**DEVELOPMENT**

IOLTA comparability/minimum standards

LRAP

Recruitment/Retention

    2009 Fellowship- Thronson

    LRAP- work group Lynn, Anna, Valerie

    Retirement/benefits/salaries- Paul

Deferred to 2010:

    Cy Pres-Paul

    Division of Aging Funding concerns

    Court Posted Fees

        Nye County

    Real Estate Escrow Funds

**Ernie Nielsen**

**Paul Elcano**

**Valerie Cooney**

Nancy Becker  
**Anna Johnson**  
**James Bradshaw**  
**Tom Warden**  
Lynn Etkins  
Suzy Baucum  
David Thronson

### **LEGAL SERVICES DELIVERY**

Pro Bono Recognition  
    Pro Bono Week- also with Communications  
    State Wide Award- Renee  
    Nevada Lawyer  
Emeritus- Kimberly  
Self Help  
    Standardized Forms-Justice Douglas, Chair, Supreme Court Library Commission  
    Hotlines, continuum of care issues  
Standardized Reporting (provider statistics)  
Law Firm initiatives

**Paul Elcano (ED)**  
**Sugar Vogel (ED)**  
**John Desmond**  
**Kimberly Abbott**  
**Judge Steinheimer**  
**AnnaMarie Johnson (ED)**  
**Ernie Nielsen (ED)-Chair**  
**Valerie Cooney (ED)**  
**Judge Puccinelli**  
**Barbara Buckley (ED)**  
Lynn Etkins  
Odessa Ramirez  
Renee Kelly  
Christopher Reade  
Amber Candelaria  
James Berschtold  
Steven McDonald

### **FUND DISTRIBUTION**

TBD

**\*\*Bold = Current ATJ Commission members.**

**North Carolina Access to Justice Commission**  
**Mission, Bylaws and Principles Document**  
Revised 8/11/06

**Article I. Mission and Authority**

In order to expand access to civil legal representation for people of low income and modest means in North Carolina, the North Carolina Supreme Court, by order dated November 3, 2005, created the North Carolina Equal Access to Justice Commission.

**Article II. Members**

**Section 2.01 Number and Appointment**

The Commission shall be comprised of 25 members representing the legal community. The number of members and the representative organizations are specified in the Order establishing this Commission. The current membership includes:

| Membership   | Number of Members |
|--|-------------------|
| Supreme Court  | 1                 |
| Court of Appeals                                       | 1                 |
| Superior Court   | 1                 |
| District Court   | 1                 |
| Clerk of Court or Administrative Office of the Courts  | 1                 |
| North Carolina Bar Association                         | 2                 |
| North Carolina State Bar                               | 2                 |
| IOLTA  | 1                 |
| Voluntary Bar Associations                             | 3                 |
| Philanthropy Community                                 | 1                 |
| Business Community                                     | 2                 |
| Legal Aid of North Carolina                            | 2                 |
| NC Justice Center                                      | 1                 |
| Legal Services Community (unrestricted organization)   | 1                 |
| Client Community                                       | 1                 |
| Governor of North Carolina                             | 1                 |
| President Pro Tempore                                  | 1                 |
| Speaker of the North Carolina House of Representatives | 1                 |

**Section 2.02 Qualifications**

Members of this Commission shall be residents of North Carolina with a demonstrated interest in access to justice and shall be appointed according to the Court order establishing this Commission.

**Section 2.03 Terms of Office**

Terms of office shall be three years commencing on the date of the first meeting of the Commission. In order to provide continuity in the membership of the Commission, the terms for which the Commission's initial members are appointed shall expire on the dates set forth below. Governmental appointments expiration dates coincide with the

expiration of the appointing person's term of office or with the member's term of office, whichever comes first.

|                |           |
|----------------|-----------|
| April 30, 2007 | Class I   |
| April 30, 2008 | Class II  |
| April 30, 2009 | Class III |

#### Section 2.04 Resignation

Any member may resign by sending a written notice of resignation to the Executive Director of the Commission. The resignation shall be effective on the date of the notice unless an effective date thereto is stated in such notice.

#### Section 2.05 Vacancies

If a vacancy on the Commission occurs, the Chair may request the appointing organization to designate another appointee.

### **III. Meetings and Rules of Procedure**

#### Section 3.01 Regular Meetings

The Commission shall meet at least four times per year at such dates, times and locations as the Chair shall determine. Meetings will be announced at least 4 weeks in advance of meetings with notice to each member.

#### Section 3.02 Special Meetings

Special meetings of the Commission may be called by or at the request of the Chair or any seven or more Commission members. The person calling any special meeting shall give no less than 5 days' prior notice stating the purpose of the meeting by personal delivery, first class mail, electronic transmission or facsimile to the address of each member noted in the official records of the Commission.

#### Section 3.03 Action and Quorum

At all Commission meetings, fifteen (15) shall constitute a quorum for the transaction of business. Voting may be in person, by proxy, by letter or by telephone. Action shall be deemed official if approved by a majority (50% plus one person).

#### Section 3.04 Action by Consent

Any action which may be taken at a meeting of members may be taken without a meeting through a consent in writing describing such action and executed by three-fifths (3/5ths) of all members entitled to vote.

#### Section 3.05. Amendment of Bylaws

These by-laws may be amended by the affirmative vote of three-fifths (3/5ths) of the Commissioners present, assuming a quorum is present, at any meeting of the Commission.

### **IV. Officers**

#### Section 4.01 Officers

The officers of the Commission shall be a chairman, an executive director, a vice chair, a secretary and a treasurer. The Commission's chair will be the Chief Justice or her designee. The vice chair, secretary and treasurer shall be elected by the Commission on recommendation of the Chair.

#### Section 4.02 Chair

The Chair is the official spokesperson of the Commission and shall preside at all Commission meetings.

#### Section 4.03 Vice Chair

The Vice Chair shall perform the duties and exercise the powers of the Chair in her absence or inability to perform. The Vice Chair will also perform other such duties as assigned by the Chair.

#### Section 4.04 Secretary

The Secretary is responsible for the minutes and other records of the Commission. The Secretary shall also assume other responsibilities as assigned by the Chair.

#### Section 4.05 Treasurer

The Treasurer shall chair the Finance Committee and shall be responsible for the financial records of the Commission.

#### Section 4.06 Executive Director

The executive director shall be responsible for supervisory and administrative responsibilities, including, but not limited to, compiling research, identifying alliances for the Commission's work, overseeing the overall work of the Commission and its committees and project and shall be responsible for fund development of the Commission. The Executive Director is appointed by the Chief Justice.

### **V. Research, Programs and Projects**

**Section 5.01 Research.** The Executive Director will provide assistance to Commission members for the management of research projects. The Executive Director may work with other organizations, including local law schools and universities, to facilitate her work.

#### Section 5.02 Programs

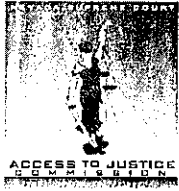
From time to time, the Commission will develop programs to educate the legal community and the public, generally. Each year, the Commission will review the current programs to determine their feasibility and necessity.

#### Section 5.03 Projects

From time to time, the Commission will engage in specific projects which will involve Commission members and others invited to participate in the Commission's work. These projects may rely upon the expertise and resources of the organizations represented on the Commission.

#### Section 5.04 Committees

There will be two standing committees of the Commission, the Executive Committee and the Finance Committee. The Executive Committee will be responsible for the overall management of the Commission and its activities. The Finance Committee is responsible for fund development for the Commission. Other committees may be added as needed based upon the research, project or program needs of the Commission and at the discretion of the Chair. Except as otherwise provided in section 4.03, the members of all committees will be appointed by the chair of the Commission.



## MEMORANDUM

From: Kristina Marzec  
To: Access to Justice Commission  
Date: October 9, 2009  
Re: Rules of Order

Justice Douglas will be leading discussion on the Rules of Order for Commission meetings. Up to this point, Commission meetings have been somewhat informal in nature.

As we continue to grow and evolve, this is a good point to stop and evaluate the efficacy of our process and look to the best practices as we move forward.

For background and refresher purposes only, I have provided below the top 20 questions posed to Robert's Rules of Order and the answers thereto.

These questions were derived from *Robert's Rules of Order Newly Revised In Brief*.

1. Is it true that the president can vote only to break a tie?
2. Can ex-officio members vote, and are they counted in determining whether a quorum is present?
3. Is it true that, once a quorum has been established, it continues to exist no matter how many members leave during the course of the meeting?
4. In determining the result of a vote, what constitutes a majority?
5. Can we round to the nearest number in computing the result of a vote?
6. Do abstention votes count?
7. What is a vote of no confidence?
8. How do you deal with a "friendly amendment"?
9. Isn't it true that a member who has a conflict of interest with respect to a motion cannot vote on the motion?
10. Should proxy votes be counted?
11. Must debate on a motion stop immediately as soon as any member calls the question?
12. Isn't it always in order to move to table a motion to the next meeting?

13. Can something be defeated by adopting a motion to table it?
14. How can I get an item on the agenda for a meeting?
15. Isn't it necessary to summarize matters discussed at a meeting in the minutes of that meeting in order for the minutes to be complete?
16. If minutes of a previous meeting are corrected, are the corrections entered in the minutes of the meeting at which the corrections were made?
17. Can votes be taken in an executive session?
18. Is it possible to withdraw a resignation after it has been submitted?
19. Can we hold our board meetings by conference telephone call?
20. How can we get rid of officers we don't like before their term is up?

***Question 1:***

**Is it true that the president can vote only to break a tie?**

***Answer:***

No, it is not true that the president can vote only to break a tie. If the president is a member of the assembly, he or she has exactly the same rights and privileges as all other members have, including the right to make motions, speak in debate and to vote on all questions. However, the impartiality required of the presiding officer of an assembly (especially a large one) precludes exercising the right to make motions or debate while presiding, and also requires refraining from voting except (i) when the vote is by ballot, or (ii) whenever his or her vote will affect the result.

When will the chair's vote affect the result? On a vote which is not by ballot, if a majority vote is required and there is a tie, he or she may vote in the affirmative to cause the motion to prevail. If there is one more in the affirmative than in the negative, he or she can create a tie by voting in the negative to cause the motion to fail. Similarly, if a two-thirds vote is required, he or she may vote either to cause, or to block, attainment of the necessary two thirds. [RONR (10th ed.), p. 392-93; see also Table A, p.190 of *RONR In Brief*.]

***Question 2:***

**Can ex-officio members vote, and are they counted in determining whether a quorum is present?**

***Answer:***

"Ex officio" is a Latin term meaning "by virtue of office or position." Ex-officio members of boards and committees, therefore, are persons who are members by virtue of some other office or position that they hold. For example, if the bylaws of an organization provide for a Committee on Finance consisting of the treasurer and three other members appointed by the president, the treasurer is said to be an ex-officio member of the finance committee, since he or she is automatically a member of that committee by virtue of the fact that he or she holds the office of treasurer.

Without exception, ex-officio members of boards and committees have exactly the same rights and privileges as do all other members, including, of course, the right to vote. There are,

however, two instances in which ex-officio members are not counted in determining the number required for a quorum or in determining whether or not a quorum is present. These two instances are:

1. In the case of the president, whenever the bylaws provide that the president shall be an ex-officio member of all committees (except the nominating committee); and
2. If the ex-officio member is not a member, officer, or employee of the society (for example, when the governor of a state is made ex officio a member of a private college board).

Again, however, it should be emphasized that in these instances the ex-officio member still has all of the rights and privileges of membership, including the right to vote. [RONR (10th ed.), p. 466-67; p. 480, l. 18-27.]

***Question 3:***

**Is it true that, once a quorum has been established, it continues to exist no matter how many members leave during the course of the meeting?**

***Answer:***

No. Once a quorum at a meeting has been established, the continued presence of a quorum is presumed to exist only until the chair or any other member notices that a quorum is no longer present. If the chair notices the absence of a quorum, he or she should declare this fact, at least before taking any vote or stating the question on any new motion. Any member noticing the apparent absence of a quorum can and should make a *Point of Order* to that effect whenever another person is not speaking. It is dangerous to allow the transaction of substantive business to continue in the absence of a quorum. Although a Point of Order relating to the absence of a quorum is generally not permitted to affect prior action, if there is clear and convincing proof no quorum was present when business was transacted, the presiding officer can rule that business invalid (subject to appeal). [RONR (10th ed.), p. 337-38; see also p. 12-13 of RONR In Brief.]

***Question 4:***

**In determining the result of a vote, what constitutes a majority?**

***Answer:***

The word "majority" in this context means, simply, *more than half*. The use of any other definition, such as 50 percent plus one, is apt to cause problems. Suppose in voting on a motion 17 votes are cast, 9 in favor and 8 opposed. Fifty percent of the votes cast is 8 1/2, so that 50 percent plus one would be 9 1/2. Under such an erroneous definition of a majority, one might say that the motion was not adopted because it did not receive fifty percent plus one of the votes cast, although it was, quite clearly, passed by a majority vote. [RONR (10th ed.), p. 387; see also p. 66 of RONR In Brief.]

***Question 5:***

**Can we round to the nearest number in computing the result of a vote? For example, since two thirds of 101 is 67.3333, will 67 affirmative votes out of 101 votes cast meet the requirement of a two-thirds vote?**

***Answer:***

No. The requirement of a two-thirds vote means at least two thirds. As a consequence, nothing

less will do. If 101 votes are cast, 67 affirmative votes are not at least two thirds. It is less than two thirds, and will not suffice. [RONR (10th ed.), p. 388.]

***Question 6:***

**Do abstention votes count?**

***Answer:***

The phrase "abstention votes" is an oxymoron, an abstention being a refusal to vote. To abstain means to refrain from voting, and, as a consequence, there can be no such thing as an "abstention vote."

In the usual situation, where either a majority vote or a two-thirds vote is required, abstentions have absolutely no effect on the outcome of the vote since what is required is either a majority or two thirds of the votes cast. On the other hand, if the vote required is a majority or two thirds of the members present, or a majority or two thirds of the entire membership, an abstention will have the same effect as a "no" vote. Even in such a case, however, an abstention is not a vote. [RONR (10th ed.), p. 387, l. 7-13; p. 388, l. 3-6; p. 390, l. 13-24; see also p.66 of RONR In Brief.]

***Question 7:***

**What is a vote of no confidence?**

***Answer:***

The term "vote of no confidence" is not used or defined anywhere in RONR, and there is no mention of any motion for such a vote. However, this does not mean that an assembly cannot adopt a motion, if it wishes, expressing either its confidence or lack of confidence in any of its officers or subordinate boards or committees. Any such motion would simply be a main motion, and would have no effect other than to express the assembly's views concerning the matter. A vote of "no confidence" does not - as it would in the British Parliament - remove an officer from office.

***Question 8:***

**How do you deal with a "friendly amendment"?**

***Answer:***

On occasion, while a motion is being debated, someone will get up and offer what he or she terms a "friendly amendment" to the motion, the maker of the original motion will "accept" the amendment, and the chair will treat the motion as amended. This is wrong. Once a motion has been stated by the chair, it is no longer the property of the mover, but of the assembly. Any amendment, "friendly" or otherwise, must be adopted by the full body, either by a vote or by unanimous consent.

If it appears to the chair that an amendment (or any other motion) is uncontroversial, it is proper for the chair to ask if there is "any objection" to adopting the amendment. If no objection is made, the chair may declare the amendment adopted. If even one member objects, however, the amendment is subject to debate and vote like any other, regardless of whether its proposer calls it "friendly" and regardless of whether the maker of the original motion endorses its adoption. [RONR (10th ed.), p. 154.]

**Question 9:**

**Isn't it true that a member who has a conflict of interest with respect to a motion cannot vote on the motion?**

**Answer:**

Under the rules in RONR, no member can be compelled to refrain from voting simply because it is perceived that he or she may have some "conflict of interest" with respect to the motion under consideration. If a member has a direct personal or pecuniary (monetary) interest in a motion under consideration not common to other members, the rule in RONR is that he *should not* vote on such a motion, but even then he or she cannot be *compelled* to refrain from voting. [RONR (10th ed.), p. 394, l. 15-25.]

**Question 10:**

**Should proxy votes be counted?**

**Answer:**

A "proxy" is a means by which a member who expects to be absent from a meeting authorizes someone else to act in his or her place at the meeting. Proxy voting is not permitted in ordinary deliberative assemblies unless federal, state or other laws applicable to the society require it, or the bylaws of the organization authorize it, since proxy voting is incompatible with the essential characteristics of a deliberative assembly. As a consequence, the answers to any questions concerning the correct use of proxies, the extent of the power conferred by a proxy, the duration, revocability, or transferability of proxies, and so forth, must be found in the provisions of the law or bylaws which require or authorize their use. [RONR (10th ed.), p. 414-15.]

**Question 11:**

**Must debate on a motion stop immediately as soon as any member calls the question?**

**Answer:**

It is a fairly common misconception that, after debate has continued for some time, if any member shouts out "Question!" or "I call the question!", debate must immediately cease and the chair must put the pending question to a vote. This is simply not the case. Any member who wishes to force an end to debate must first obtain the floor by being duly recognized to speak by the chair, and must then move the *Previous Question*. Such a motion must be seconded, and then adopted by a two-thirds vote, or by unanimous consent. It is not in order to interrupt a speaker with cries of "Question" or "Call the Question," and even if no one is speaking, it is still necessary to seek recognition. [RONR (10th ed.), p. 193-94; see also p 35-37 of RONR In Brief.]

**Question 12:**

**Isn't it always in order to move to table a motion to the next meeting?**

**Answer:**

This question confuses the motion to *Lay on the Table* with the motion to *Postpone to a Certain Time*. The purpose of the motion to *Lay on the Table* is to enable an assembly, by majority vote and without debate, to lay a pending question aside temporarily in order to take up something else of immediate urgency. In ordinary societies it is rarely needed, and hence seldom in order. [RONR (10th ed.), p. 201-210; see also p. 127 of RONR In Brief.]

**Question 13:**

**Can something be defeated by adopting a motion to table it?**

**Answer:**

This is a common violation of fair procedure. Such a motion is not in order, because it would permit debate to be suppressed by a majority vote, and only a two-thirds vote can do that. The proper use of the motion to *Lay on the Table* is stated in the answer to Question 12, immediately above. [RONR (10th ed.), p. 207-209.]

How can something be defeated without a direct vote on it?

Before debate on an original (ordinary substantive) main motion has begun you may raise an *Objection to Consideration of [the] Question*, which is undebatable and can suppress the main question by a two-thirds vote against consideration. [RONR (10th ed.), p. 209, l. 1-4; p. 258-61; see also p. 129 of *RONR In Brief*.]

If debate on the main motion has begun and you want to get rid of that motion without a direct vote on it, use the motion to *Postpone Indefinitely*. That motion requires only a majority vote, but until it is adopted, it leaves the main question open to debate. [RONR (10th ed.), p. 121-24; see also p. 126 of *RONR In Brief*.] If you feel that it is undesirable that debate take place, move the *Previous Question* immediately after moving to *Postpone Indefinitely*. If adopted by a two-thirds vote, this motion will cause an immediate vote on the motion to *Postpone Indefinitely* without further debate. [RONR (10th ed.), p. 189-201.]

**Question 14:**

**How can I get an item on the agenda for a meeting?**

**Answer:**

For a proposed agenda to become the official agenda for a meeting, it must be adopted by the assembly at the outset of the meeting. At the time that an agenda is presented for adoption, it is in order for any member to move to amend the proposed agenda by adding any item which the member desires to add, or by proposing any other change.

It is wrong to assume, as many do, that the president "sets the agenda." It is common for the president to prepare a proposed agenda, but that becomes binding only if it is adopted by the full assembly, perhaps after amendments as just described. [RONR (10th ed.), p. 363, l. 8-20; see also p. 16 of *RONR In Brief*.]

**Question 15:**

**Isn't it necessary to summarize matters discussed at a meeting in the minutes of that meeting in order for the minutes to be complete?**

**Answer:**

Not only is it not necessary to summarize matters discussed at a meeting in the minutes of that meeting, it is improper to do so. Minutes are a record of what was done at a meeting, not a record of what was said. [RONR (10th ed.), p. 451, l. 25-28; see also p. 146 of *RONR In Brief*.]

**Question 16:**

**If minutes of a previous meeting are corrected, are the corrections entered in the minutes of the meeting at which the corrections were made?**

**Answer:**

If corrections to minutes are made at the time when those minutes are originally submitted for approval, such corrections are made in the text of the minutes being approved. The minutes of the meeting at which the corrections are made should merely indicate that the minutes were approved "as corrected."

If it becomes necessary to correct minutes after they have initially been approved, such correction can be made by means of the motion to *Amend Something Previously Adopted*. In this event, since the motion to *Amend Something Previously Adopted* is a main motion, the exact wording of that motion, whether adopted or rejected, should be entered in the minutes of the meeting at which it was considered. [RONR (10th ed.), p. 452, l. 12-15; p. 458, l. 10-16; see also p.151 of *RONR In Brief*.]

**Question 17:**

**Can votes be taken in an executive session?**

**Answer:**

Yes, votes can be taken in executive session. Proceedings in an executive session are secret, but are not restricted in any other way. [RONR (10th ed.), p. 92-93.]

**Question 18:**

**Is it possible to withdraw a resignation after it has been submitted?**

**Answer:**

A resignation is a *Request to Be Excused from a Duty*. It may be withdrawn in the same manner as any motion may be withdrawn - that is to say, before the proposed resignation has been placed before the assembly by the chair stating the question on its acceptance, it may be withdrawn without the consent of the assembly, but it may not be withdrawn without permission of the assembly once it has been placed before the assembly for its approval. [RONR (10th ed.), p. 277-80; 283-85.]

**Question 19:**

**Can we hold our board meetings by conference telephone call?**

**Answer:**

You may hold board meetings by conference telephone call only if your bylaws specifically authorize you to do so. If they do, such meetings must be conducted in such a way that all members participating can hear each other at the same time, and special rules should be adopted to specify precisely how recognition is to be sought and the floor obtained during such meetings. [RONR (10th ed.), p. 482, l. 28, to p. 483, l. 5; see also p. 159 of *RONR In Brief*.]

It should be noted in this connection that the personal approval of a proposed action obtained from a majority of, or even all, board members separately is not valid board approval, since no meeting was held during which the proposed action could be properly debated. If action is taken by the board on the basis of individual approval, such action must be ratified by the board at its

next regular meeting in order to become an official act. [RONR (10th ed.), p. 469, l. 24, to p. 470, l. 2.]

***Question 20:***

**How can we get rid of officers we don't like before their term is up?**

***Answer:***

It depends. If the bylaws just state a fixed term for the officer, such as "two years," or if they say the officer serves for a specified term "*and* until [the officer's] successor is elected" (or words to that effect), then the group must use formal disciplinary proceedings, which involve the appointment of an investigating committee, preferral of charges by such a committee, and the conduct of a formal trial. The procedure is complex, and should be undertaken only after a careful review of Chapter XX of RONR.

On the other hand, if the bylaws state a term for the office but add "or until [the officer's] successor is elected," or contain other wording explicitly indicating that the officer may be removed before the term expires, then the election can be rescinded (see Chapter 7 of RONR In Brief) and a successor then elected for the remainder of the term.

Of course, if the bylaws themselves establish a procedure for removal from office, that procedure must be followed. [RONR (10th ed.), p. 642-43.]

ABA ETHICS 20/20  
COMMISSION

**AMERICAN BAR ASSOCIATION**

**ABA Commission on Ethics 20/20**

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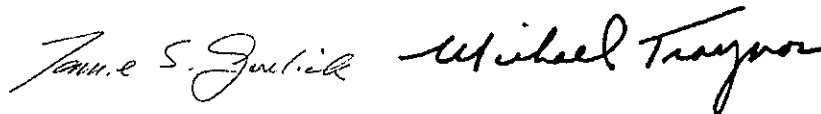
November 19, 2009

On behalf of the ABA Commission on Ethics 20/20, we are pleased to provide for your review and comment the attached Preliminary Issues Outline. The Commission expects that the number and nature of subjects in the Outline will change as its work progresses and comments are received. Particular phraseology and the order in which subjects are listed are not intended to connote any prioritization of or Commission position on issues, nor is consideration of other topics omitted intended to be foreclosed.

We would appreciate receiving comments via e-mail at [ethics2020@staff.abanet.org](mailto:ethics2020@staff.abanet.org) by **December 31, 2009**. The Commission will post on its website all written comments received. Please advise us if you request that your submission be posted without attribution. The Commission will consider comments at its February 4, 2010 meeting in Orlando, Florida.

If you have any questions about the Outline or the Commission's work, please contact Commission Counsel Ellyn S. Rosen at [rosenc@staff.abanet.org](mailto:rosenc@staff.abanet.org).

Sincerely,



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

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**ABA Commission on Ethics 20/20**

**Preliminary Issues Outline**

**November 19, 2009**

**Introduction**

In the United States, the highest court of each state and the District of Columbia has the authority to regulate lawyers within its borders. In 1908, the American Bar Association, concerned with the standards of the legal profession and the low esteem in which it was held by the general public, promulgated the Canons of Professional Ethics, a set of aspirational principles for law practice that the states were free to, and in the majority of cases did, adopt. The latter half of the 20<sup>th</sup> Century saw the promulgation by the ABA of successively less aspirational and more rule-based models of professional regulation – the 1969 Model Code of Professional Responsibility and the 1983 Model Rules of Professional Conduct, as periodically amended (the “Model Rules”). All states except California have adopted the Model Rules with some variations, although California has adopted selected language from the Model Rules.

As the national leader in developing and interpreting standards of legal ethics and professional regulation, the ABA endeavors to ensure that the Model Rules keep pace with societal change and the evolution of the practice of law and that other sources of professional regulation, including court rules and statutes do so as well. The accelerating pace of technological innovation and the increase in globalized law practice raise serious questions about whether existing ethical rules and regulatory structures adequately address the realities and challenges of 21<sup>st</sup> Century law practice. With respect to technology, the profession faces not merely the proliferation of personal computing, e-mail, “smart-phone” technology, enhanced personal digital assistants, and the internet, but the likelihood that on the horizon is a potential new or second internet as well as technologies that cannot now be fully anticipated. As for globalization, already the profession is encountering the competitive and ethical implications of U.S. lawyers and law firms seeking to represent American and foreign clients abroad and foreign lawyers seeking access to the U.S. legal market.

In August 2009, ABA President Carolyn B. Lamm created the ABA Commission on Ethics 20/20. The Commission is to conduct a plenary review and assessment of the

Model Rules and other sources of lawyer regulation in the context of the aforementioned trends, including legal practice developments in other countries. The Commission's work will be guided by three principles: protecting the public, preserving core professional values of the American legal profession, and maintaining a strong, independent, and self-regulated profession.<sup>1</sup>

The Commission will work transparently and collaboratively and will promote education on these subjects for the legal profession and the public. The Commission will engage the judiciary, the bar (including state, local, international, and specialty bar associations), and the public in framing issues for consideration, and enlist their support in crafting suitable recommendations that will benefit clients and the public, strengthen the ability of the legal profession to meet the challenges facing it, and maintain those core principles that guide its work. The Commission has a website, [www.abanet.org/ethics2020](http://www.abanet.org/ethics2020) and a general discussion list serve that interested individuals can subscribe to via the website. Notice of the Commission's meetings, public hearings, roundtables and educational programs is also available on the website.

Of particular note is the breadth of this project. The Commission will focus on ethical and regulatory issues affecting the entire spectrum of legal work -- from what some call "Big Law" to individual, quintessentially local practice (*e.g.*, criminal defense, wills, and matrimonial law). At its first meeting on September 24-25, 2009, the Commission began to identify critical issues. Subject to continuing modification and possible additions, the Commission identified three overlapping areas of inquiry: (1) issues that arise because U.S. lawyers are regulated by states but work increasingly across state and international borders; (2) issues that arise in light of current and future advances in technology that enhance virtual cross-border access; and (3) particular ethical issues raised by changing technology. A detailed preliminary outline follows this Introduction.

### **Preliminary Issues**

Initially, the Commission has identified the following issues for consideration and study. This "issues outline" is preliminary only and will continue to evolve. The Commission expects that, during its tenure, the number and nature of the subjects on this outline will change as the work progresses. The use of this format and particular phraseology is not intended to connote any prioritization of or position on the issues identified below, nor is

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<sup>1</sup> The Model Rules have retained the "self-regulation" terminology. However, the U.S. legal profession is primarily regulated by each states' highest court of appellate jurisdiction, with appropriate involvement of the bar. The ABA Commission on Evaluation of Disciplinary Enforcement (the McKay Commission) found regulation by the judicial branch to be superior to regulation by the legislative or executive branches of government in the state regulatory scheme that exists. LAWYER REGULATION FOR A NEW CENTURY: REPORT OF THE COMMISSION ON EVALUATION OF DISCIPLINARY ENFORCEMENT (1992), [http://www.abanet.org/cpr/reports/mckay\\_report.html](http://www.abanet.org/cpr/reports/mckay_report.html).

consideration of omitted issues intended to be foreclosed. The Commission welcomes and encourages constructive comments and suggestions on the current version of this document and on future iterations.

**I. Issues That Arise Because U.S. lawyers are Regulated by States but Work Increasingly Across State and International Borders**

**A. Regulations Governing Admission to Practice**

**1. Admission of U.S. Lawyers to Practice in Other Countries**

The Commission will study approaches adopted in representative foreign jurisdictions with respect to admission of lawyers from outside those jurisdictions generally and U.S. lawyers in particular.

**2. Admission of Foreign Lawyers to Practice in the U.S.**

- Model Rule 5.5 (c), which authorizes multijurisdictional practice of law by U.S. lawyers, does not include temporary practice by foreign lawyers. The ABA adopted a separate Model Rule for Temporary Practice by Foreign Lawyers.<sup>2</sup> Most jurisdictions that have adopted Model Rule 5.5 have not, however, adopted the corollary foreign temporary practice rule. Should the ABA amend Model Rule 5.5 to include lawyers from outside the U.S.? Should the scope of authority be the same for them as for U.S. lawyers?
- The ABA does not currently have a policy regarding practice and registration of foreign lawyers practicing in-house in the U.S. Should the ABA adopt such a policy?
- Should the ABA adopt a Model Rule for *Pro Hac Vice* Admission of Foreign Lawyers?<sup>3</sup>

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<sup>2</sup> See Report 201J, American Bar Association Commission on Multijurisdictional Practice, Report to the House of Delegates (2002), available at <http://www.abanet.org/cpr/njp/201j.pdf>.

<sup>3</sup> A recent report by a Special Committee on International Issues of the ABA Section of Legal Education and Admissions to the Bar, relating to the admission of foreign law graduates and lawyers, observes that the ABA currently lacks policies relating to foreign in-house counsel and *pro hac vice* admission of foreign lawyers. See, <http://www.abanet.org/legaled/home.html>.

### **3. What are the Pros and Cons of Proposals for State-Based National Licensure?**

#### **B. Outsourcing**

Legal process outsourcing is increasing both in amount and in the sophistication of the outsourced work. Are there ethical issues or other policy positions that the Commission should explore regarding outsourcing that are not addressed in Formal Opinion 08-451 of the Standing Committee on Ethics and Professional Responsibility?<sup>4</sup>

#### **C. Conflicts of Interest**

##### **1. The Current Model Rules**

- In view of the trends of substantial growth in law firm size, mergers and consolidations of such firms, and the emergence of many “global” law firms, Model Rule 1.7 (Conflict of Interest—Current Clients) should be re-examined. In many instances, this Rule is more stringent than other countries’ conflicts rules. While some caselaw and secondary authority may recognize that it is appropriate to have different standards for sophisticated clients than for clients who rarely use lawyers, the Commission will examine whether and how this can and should be translated into ABA policy.
- In the same context of growth and globalization of law firms, the Commission will study the utility and ongoing feasibility of imputed disqualification rules such as Model Rule 1.10.

##### **2. Best Practices**

How have multinational firms coped with the issues presented by the current Model Rules and the regulatory disparities among nations in which they practice? For example, what contractual, choice of law, and choice of forum approaches are they using?

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<sup>4</sup> See generally ABA Comm. on Ethics and Prof’l Responsibility, Formal Op. 451 (2008), available at <http://www.abanet.org/cpr/docs/08451.pdf>. The ABA Section of International Law has a Legal Process Outsourcing Task Force that is also studying the issue. Its web site is <http://www.abanet.org/dch/committee.cfm?com=IC100123>.

## **D. Confidentiality**

### **1. Model Rule 1.6**

- U.S. confidentiality rules, based on Model Rule 1.6, generally allow lawyers to disclose confidential information in certain circumstances, both with and without their clients' permission. Model Rule 1.6 differs from rules in other countries where, in some instances, lawyers are forbidden to make disclosures even with client consent. Other countries' rules may require disclosure in circumstances when Model Rule 1.6 requires confidentiality. Other laws, such as European Union privacy and data protection regimes, also have an impact on lawyer confidentiality. How can these differences be addressed for those lawyers or firms that practice across international borders?
- Similar variations have from time to time bedeviled wholly U.S. practice where lawyers are admitted, or law firms practice, in multiple states in which the applicable versions of Rule 1.6 impose differing, and sometimes irreconcilable, obligations.

### **2. Inadvertent Disclosure and Waiver**

- In the United States, there are unresolved issues regarding inadvertent disclosure and waiver of privilege.
- Given varying rules in other countries, the problems of inadvertent disclosure and waiver of privilege may be exacerbated.<sup>5</sup>

## **E. Choice of Law**

Does Model Rule 8.5, which was written with domestic U.S. practice most in mind, adequately address global legal practice? Should it be made clear (where it may now be ambiguous) that Rule 8.5 applies equally to foreign lawyers who, permissibly or not, render legal services in the U.S.?

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<sup>5</sup> It is as yet uncertain whether the Commission will address what are essentially evidentiary issues relating to the attorney-client privilege and work product doctrine, including matters relating to waivers, or confine itself to issues addressed in the Model Rules.

## **F. Alternative Business Structures**

Alternative business structures (*e.g.*, law practices with non-lawyer managers/owners, multidisciplinary practices or incorporated or publicly traded law firms) in other countries raise ethical and regulatory questions for U.S. lawyers and law firms of all sizes employed, associated, or otherwise doing business with these entities and their clients.

- How are U.S. law firms and lawyers coping with these concerns? Do the Model Rules need to be amended to take account of those structures? Alternatively, are there best practices that the Commission should recommend?
- How can core principles of client and public protection be satisfied while simultaneously permitting U.S. lawyers and law firms to participate on a level playing field in a global legal services marketplace that includes the increased use of one or more forms of alternative business structures?

## **G. Law Firm or Entity Regulation**

- With the exception of New York and New Jersey, U.S. jurisdictions regulate individual lawyers, not law firms. The concept of regulating law firms (in addition to regulating individual lawyers) is being embraced in other countries as a method of increasing client and public protection. With U.S. lawyers and law firms increasingly engaging in multijurisdictional practice on an interstate and international basis, should the U.S. model be revised to provide for entity regulation and discipline? Are there good reasons to do so even without regard to experience abroad?
- Other countries have developed more proactive (as opposed to reactive) systems of lawyer and law firm regulation as a means of increasing client and public protection and accountability for law firms that have non-lawyer owners or managers, multidisciplinary practices, or public shareholders (*e.g.*, Australia). Should a similar model be considered for the United States regardless of how the question whether or not to permit alternative business structures is resolved?

## **H. International Arbitration**

Do the Model Rules adequately address ethical issues relating to international arbitration? What, for example, should be the ethical rules that govern a U.S.

lawyer engaged in an arbitral proceeding in another country where the governing law is not U.S. law? Should it matter whether the lawyer's client is or is not a U.S. person or entity? .

## **II. Issues That Arise in Light of Current and Future Advances in Technology That Enhance Virtual Cross-Border Access**

### **A. Whether the Model Rules Unnecessarily Impede a Lawyer or Law Firm's Ability to Employ New Technologies in Representing Clients**

The Commission will study ways in which technology enables lawyers and law firms to represent clients in a multijurisdictional practice better or in a more efficient or cost-effective manner that may be precluded or inhibited by the Model Rules in their current form.

### **B. Protection of Clients**

- "Virtual law firms" are emerging with increased frequency. In theory, the lawyers who participate in such arrangements are skilled, experienced, and competent. Do existing UPL, ethics, and disciplinary rules adequately address this new practice paradigm?
- The Commission will study whether there should be different standards applicable to providing advice on law that is uniform nationwide, such as federal or international law. For example, lawyers and law firms in Washington, D.C. routinely advise clients in all 50 states and in other countries on U.S. federal law such as tax, securities, banking, and antitrust. Should it make a difference whether the lawyer or law firm maintains an office in the other states or countries?

### **C. Social Networking; "Unbundling," and "Opensourcing" of Legal Services**

- Do the Model Rules and existing disciplinary enforcement mechanisms adequately address the use of social networking sites by lawyers and law firms?
- Unbundled legal services providers are proliferating and clients are increasingly using these services. Do existing ethical and disciplinary enforcement rules adequately protect clients in this context?

- What are the ethical implications of “opensourcing” (on-line services that provide free forms or other legal information or legal advice)?
- What are the ethical implications of lawyers sharing work product on-line (sometimes referred to as “peer to peer”)?<sup>6</sup>

#### **D. Lawyer Accountability and Accessibility of Public Information**

Given an increasingly technology-driven and multijurisdictional law practice reality, how can the ABA encourage increased transparency about lawyers and legal services? For example:

- Should the ABA National Lawyer Regulatory Data Bank include public regulatory actions related to non-U.S. lawyers?
- Should all state lawyer disciplinary agencies and/or state bar associations make information about public lawyer regulatory actions available on the Internet? Would doing so lead to litigation brought by lawyers whose practices are adversely affected?
- Does existing law adequately protect the public when the public uses web sites that provide assessments or ratings of individual lawyers’ and law firms’ capabilities?
- Should the ABA recommend that other countries create client protection funds?

### **III. Particular Ethical Issues Raised by Changing Technology**

#### **A. Access to Justice**

Do advances in technology increase or enhance the opportunities for lawyers and law firms to improve access to justice? Can technology ameliorate the availability of affordable legal services to underserved segments of the public? If so, what type of regulation of those services is appropriate?

#### **B. Competence**

Does the rapid pace of technological evolution raise issues relating to lawyer competence?

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<sup>6</sup> See note 5, *supra*.

### **C. Data Security and Confidentiality Issues**

- The Commission will investigate whether there is or should be a professional obligation to understand and to use new technologies and new applications reasonably. For example, how does a lawyer's obligation to avoid inadvertent disclosure of confidential or privileged information apply to the phenomenon of "cloud computing," where the lawyer or law firm no longer maintains physical possession of, or exercises control over, the server that holds such information?
- How does technology accentuate or ameliorate the risks and consequences of inadvertent disclosure of confidential and/or privileged information (*e.g.*, metadata and other document integrity issues)? Do the Model Rules adequately address these issues and those that can be anticipated from next-generation technology?
- What are the implications of advances in technology for data retention policies and procedures?
- Do the Model Rules and existing ethics opinions adequately protect clients from inappropriate use by lawyers of available technologies, (*e.g.*, the use of cellular telephones in public locations, blogging, Tweeting or the indiscriminate use of the "reply all" function in e-mail)?

### **D. Jurisdictional Issues**

What difficulties do technological advances create for lawyers, law firms, and regulators in terms of establishing a jurisdictional nexus for the application of ethical and disciplinary rules? Does technology present opportunities for lawyers and law firms to reduce or increase the risk that they will come under the jurisdiction of regulatory officials in countries in which they do not wish to practice?