
Jamie Gorelick Helps Lead ABA to Approve New Ethics Guidelines

2013-02-20

The American Bar Association's (ABA) House of Delegates met on February 11 at its Mid-Year Meeting to vote on the final four resolutions proposed by the ABA's Commission on Ethics 20/20, co-chaired by WilmerHale Partner [Jamie Gorelick](#). In total, nine changes were made as the result of three-and-a-half years of work to modernize the ABA Model Rules of Professional Responsibility (and related policies) to take account of profound changes in the practice of law as a result of increased globalization and technological advancements.

The Commission on Ethics 20/20 was created in 2009 and Gorelick was recruited to co-lead the Commission, along with Michael Traynor, president emeritus and chair of the Counsel of the American Law Institute, to study issues and propose policy recommendations that would allow lawyers to better serve their clients, the courts and the public. The Commission—comprised of noted academics, judges and a wide range of practitioners and bar leaders—shepherded to adoption significant changes, among them:

- Updating the Rules so that lawyers **protect confidences** not just in paper communications and documents but **in the multiple forms of electronic communication** and documents.
- **Requiring lawyers both to understand the risks** and benefits of using various forms of electronic communication and storage and **to take precautions to protect client confidences** that are embedded in electronic communications.
- **Revising the Rules on advertising** to provide guidance on new forms of lawyer advertising, like the use of social media, pay-per-click ads and web-based lawyer referral programs.
- Providing **guidance on outsourcing**, including as to what the lawyer's responsibility is when work is divided among more than one law firm or with a service provider like a document review firm.
- Revising the Rules to **permit lawyers moving from one jurisdiction to another to practice** in the new jurisdiction pending admission.
- **Shortening the time period** that one has to have practiced in order to be eligible for **admission by motion**, to three of the last five years.
- **Advising a firm on what information it may ask of a lawyer moving laterally** from another firm in order to assess possible conflicts of interest.

- **Permitting foreign lawyers to serve as in-house counsel** in the US, with certain restrictions.
- **Permitting foreign lawyers to be admitted pro hac vice**, with certain restrictions.
- **Permitting lawyers and clients to agree as to** the jurisdiction in which the lawyer's work will have its **"predominant effect"** for the purposes of choice of rule analysis of the **conflict of interest rules that apply to the representation**.

Commenting on her Commission's work, Gorelick said, "Our goal was to apply the core values of the profession to 21st century challenges. With technology permitting lawyers to project themselves from one jurisdiction to another virtually, lawyers moving across state and national borders, changes in how lawyers market legal services, and the substantial variation in the ethical rules in jurisdictions in the United States and around the world, these changes were necessary."

The Resolutions will now be presented to the Supreme Courts of the various states and territories for their consideration and adoption. The full text of the changes can be found on the [ABA Commission on Ethics 20/20 webpage](#).