Highlights of Proposed Changes to the Rules of Professional Conduct for Attorneys

I.   Highlights of Proposed Changes as adopted by ABA in August 2012

SCR 20:1.0 Terminology: Add language to Comment [9] to include segregation of electronic information as part of screening procedures

SCR 20:1.1 Competence: Add language to comment requiring knowledge of benefits and risks of technology used in practice. Add language to Comment [6] and [7] discussing factors lawyers should consider to ensure that outsourced legal and other services are performed competently.

SCR 20:1.4 Communication: Replace reference in Comment [4] to "telephone calls" with language regarding duty to acknowledge client communications.

SCR 20:1.6 Confidentiality: Addition of (d) to Rule requiring lawyers to make reasonable efforts to safeguard information relating to the representation of clients. Add language to Comment [16] and [17] discussing factors to consider in assessing what such reasonable efforts may be.

SCR 20:1.17 Sale of a Law Practice: Add language to Comment referencing 1.6(b)(7) limited permissive disclosure exception of information relating to the representation of clients for the purpose of detecting and resolving conflicts.

SCR 20:1.18 Duties to Prospective Clients: Amend (a) and (b) of Rule to clarify definition of prospective client and duty owed to a prospective client. Add language to Comment [2] to further clarify definition of prospective client.

SCR 20:4.4 Respect for Rights of 3rd Persons: Add language to (b) to include electronically stored information (e.g. metadata) as also requiring notification of sender when inadvertently sent. Add language to Comment [2] and [3] discussing change to (b).

SCR 20:5.3 Responsibilities Regarding Nonlawyer Assistance: Add language to Comment [3] and [4] to clarify lawyers' obligation of supervision with respect to outsourced legal and other services in connection with the representation of clients.

SCR 20:5.5 Unauthorized Practice of Law: Add language to (d) clarifying that lawyers who are not admitted in the jurisdiction but who practice for the federal government, or exclusively and permissibly practice federal law, are not prohibited from establishing a systematic and continuous presence in the jurisdiction.

SCR 20:7.2 Advertising: Add language to Comment [5] clarifying what constitutes a "recommendation" of a lawyer's services and to provide criteria for determining whether a lawyer may ethically use specific internet based lead generation services.

SCR 20:7.3 Solicitation of Clients: Add language to Comment [1] clarifying what constitutes a "solicitation."

II.   Proposed changes that were not part of, or differ from, ABA changes.

SCR 20:1.6 Confidentiality: Addition of limited permissive disclosure to detect and resolve conflicts in (c)(6). The corresponding ABA provision is limited to circumstances in which a lawyer is changing employment or a firm is changing composition.

SCR 20:1.8 Conflict of interest: Prohibited Transactions: Add Wisconsin Committee Comment alerting lawyers to language in ABA Comment that contradicts SCR 20:7.3(e), which prohibits lawyers from, at their own instance, drafting documents that require the future services of the lawyer.

SCR 20:4.4 respect for rights of 3rd Persons: Add (c), which imposes duty to cease review and abide by senders instructions when a lawyer receives an inadvertently sent document that is subject to lawyer-client privilege or work product protection.   There is no similar ABA provision.

SCR 20:5.7 Limited Liability Legal Practice: Amend (a)(1) to clarify that lawyers who are otherwise authorized to practice in Wisconsin may practice in firms organized under SCR 20:5.7.   Amend (d) to clarify that out of state firms that wish to register under the Rule must have a Wisconsin licensed lawyer who has an ownership share in the firm.

SCR 20:5.8 Responsibilities Regarding Law-Related Services: Add this Rule, which is identical to ABA Model Rule 5.7, in order to provide guidance to Wisconsin lawyers who provide law-related services to their clients.