

## CONFERENCE OF CHIEF JUSTICES

### Resolution 7

#### IN SUPPORT OF THE VOLUNTARY GOOD PRACTICES GUIDANCE FOR LAWYERS TO DETECT AND COMBAT MONEY LAUNDERING AND TERRORIST FINANCING

WHEREAS, in response to the growing problem of money laundering and terrorist financing, the intergovernmental body known as the Financial Action Task Force on Money Laundering (FATF) has been advancing a “Gatekeeper Initiative” that seeks to impose stringent anti-money laundering and counter-terrorist financing obligations on “gatekeepers” to the domestic and international monetary systems, including many lawyers engaged in the practice of law; and

WHEREAS, as part of the Gatekeeper Initiative, the FATF issued comprehensive international anti-money laundering and counter-terrorist financing standards that encourage countries to develop a “risk-based approach” that is intended to focus greater resources (and require greater due diligence) where the money laundering and terrorist financing risks are the highest, and conversely, focus fewer resources (and require less due diligence) where such risks are lower; and

WHEREAS, after receiving extensive input from the legal profession, the FATF issued broad risk-based guidance to lawyers identifying the money laundering and terrorist financing issues specific to the legal profession, outlining the risk factors that lawyers need to consider in developing a risk-based system, and urging the legal profession to develop and implement such a system; and

WHEREAS, in response to the FATF guidance, the American Bar Association (ABA)—through its Task Force on Gatekeeper Regulation and the Profession—worked in cooperation with various ABA substantive law sections and numerous specialty bar associations to develop the Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing (Voluntary Guidance), which was subsequently approved by the ABA House of Delegates in August 2010; and

WHEREAS, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 463 (ABA Ethics Opinion) on May 23, 2013 dealing with a lawyer’s ethical obligations to fight money laundering and terrorist financing, including the interaction of the ABA Model Rules of Professional Conduct and the Voluntary Guidance; the ABA Ethics Opinion concludes that the Voluntary Guidance is consistent with the ethical principles outlined in the ABA Model Rules, including those concerning loyalty and confidentiality, and encourages lawyers to adopt client intake and monitoring procedures, such as risk-based control measures, that are designed to minimize the risk that lawyers would unwittingly engage in providing legal services that facilitate money laundering or terrorist financing; and

WHEREAS, the President of the ABA sent a letter dated April 8, 2011 to all state and local bar presidents asking them to encourage their members to follow the Voluntary Guidance—and a similar letter to the bar presidents on July 31, 2013 urging them to encourage their members to comply with the new ABA Ethics Opinion and the related Voluntary Guidance—as the most effective means of combating money laundering while avoiding the passage of federal legislation or adoption of rules that would impose unnecessary and burdensome new regulations on lawyers and the legal profession, conflict with existing state court and state bar ethical rules and standards, and otherwise compromise the lawyer-client relationship or adversely impact the independence of the bar and the critical role of the attorney in the justice system; and

WHEREAS, the ABA and the numerous specialty bar associations that developed the Voluntary Guidance also are taking other steps to further disseminate the Voluntary Guidance to the state courts, state and local bar associations, practicing lawyers, and the public and have requested the Conference’s assistance in accomplishing this important task; and

WHEREAS, the Conference of Chief Justices, in fulfilling its leadership role for state judicial systems, has traditionally taken positions to protect the independence of the bar and the critical role of the attorney in our system of justice, and advocated against proposed policies that threaten principles of federalism or that seek to preempt proper state court authority and oversight of the legal profession;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices hereby approves and endorses the Voluntary Guidance and urges all state and local bar associations to educate their members regarding the Voluntary Guidance and to encourage them to follow it; and

BE IT FURTHER RESOLVED that the Conference supports the risk-based approach contained in the Voluntary Guidance as an effective means of assisting lawyers to combat money laundering and terrorist financing while still complying with their existing state court and state bar ethical duties and legal obligations.

Adopted as proposed by the CCJ Professionalism and Competence of the Bar Committee at the CCJ 2014 Annual Meeting.