

Resolution 1
In Support of Preserving Traditional State Court Regulation of Lawyers and
Opposing Expanded Federal Agency Regulation of Lawyers and the Practice of Law

WHEREAS, the Conference of Chief Justices, in fulfilling its leadership role for state judicial systems, has traditionally taken positions to defend against proposed policies that threaten principles of federalism or that seek to preempt proper state court authority; and

WHEREAS, the Conference has long committed itself to protect and strengthen independent state judicial authority and proceedings as a central part of the federal system of American Government; and

WHEREAS, for centuries, lawyers have been regulated by the highest court of the state in which a lawyer is licensed, and the state courts, in turn, have developed extensive and effective regulations governing all aspects of the practice of law, including strict ethical codes and disciplinary rules; and

WHEREAS, the Federal Trade Commission (FTC), the U.S. Department of Housing and Urban Development (HUD), other federal agencies, and the U.S. Congress have considered or proposed rules or legislation that would impose new burdensome federal regulations on lawyers providing debt settlement or loan modification services to consumer clients, or that would impose suspicious activity reporting and other anti-money laundering compliance requirements on lawyers providing legal services to clients engaged in certain commercial or financial activities, which could conflict with existing state court rules and standards; and

WHEREAS, the U.S. Congress, in recognition of the many adverse effects that excessive federal agency regulation of lawyers engaged in the practice of law could have on traditional state court regulation of lawyers and the legal profession, included language in Section 1027(e) of the "Dodd-Frank Wall Street Reform and Consumer Protection Act" (P.L. 111-203) that excludes practicing lawyers and their employees from the expanded regulatory powers of the new Consumer Financial Protection Bureau created by the legislation; and

WHEREAS, the FTC, in similar recognition of the negative effects that excessive regulation of practicing lawyers could have on traditional state court regulation of lawyers and the legal profession and on the ability of consumers to obtain high quality legal representation, included language in the "Mortgage Assistance Relief Services" (MARS) Rule issued in November 2010 excluding most practicing lawyers from the rule's covering; and

WHEREAS, the proposed rules and congressional legislation referenced above, would have interfered with core aspects of the confidential attorney-client relationship including the attorney-client privilege, undermined traditional state court regulation of lawyers and the legal profession, and discouraged many lawyers from providing essential legal services to prospective clients;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices affirms that the primary regulation and oversight of lawyers and the legal profession should continue to be vested in the state courts, not federal agencies or Congress, and that the courts are in the best position to fulfill that important function; and

BE IT FURTHER RESOLVED that the Conference supports Congress' decision to include a broad exclusion for lawyers engaged in the practice of law and their employees in P.L. 111-203 and the FTC's decision to exclude most lawyers engaged in the practice of law from the coverage of its final MARS Rule, and the Conference urges HUD and other federal agencies

to include similar practice of law exclusions in their final rules; and

BE IT FURTHER RESOLVED that the Conference opposes federal legislation or rules intended to establish or expand the federal regulatory jurisdiction of lawyers engaged in the practice of law and their employees.

Adopted as proposed by the Professionalism and Competence of the Bar Committee at the CCJ Midyear Meeting, January 26, 2011.