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1 The views expressed herein have not been approved by the House of Delegates or the Board
2 of Governors of the American Bar Association and, accordingly, should not be construed as
3 representing the policy of the American Bar Association.

4
5 **Resolution**

6
7 **RESOLVED:** That the American Bar Association amends Rule 5.5 of the ABA
8 Model Rules of Professional Conduct as follows (insertions underlined, deletions
9 ~~struck through~~):

10
11 **RULE 5.5: UNAUTHORIZED PRACTICE OF LAW;**
12 **MULTIJURISDICTIONAL PRACTICE OF LAW**

13
14 (a) A lawyer shall not practice law in a jurisdiction in violation of the
15 regulation of the legal profession in that jurisdiction, or assist another in doing so.

16 (b) A lawyer who is not admitted to practice in this jurisdiction shall not:

17 (1) except as authorized by these Rules or other law, establish an
18 office or other systematic and continuous presence in this jurisdiction for the
19 practice of law; or

20 (2) hold out to the public or otherwise represent that the lawyer is
21 admitted to practice law in this jurisdiction.

22 (c) A lawyer admitted in another United States jurisdiction, and not
23 disbarred or suspended from practice in any jurisdiction, may provide legal services
24 on a temporary basis in this jurisdiction that:

25 (1) are undertaken in association with a lawyer who is admitted to
26 practice in this jurisdiction and who actively participates in the matter;

27 (2) are in or reasonably related to a pending or potential
28 proceeding before a tribunal in this or another jurisdiction, if the lawyer, or
29 a person the lawyer is assisting, is authorized by law or order to appear in
30 such proceeding or reasonably expects to be so authorized;

31 (3) are in or reasonably related to a pending or potential
32 arbitration, mediation, or other alternative dispute resolution proceeding in
33 this or another jurisdiction, if the services arise out of or are reasonably
34 related to the lawyer's practice in a jurisdiction in which the lawyer is
35 admitted to practice and are not services for which the forum requires pro
36 hac vice admission; or

37 (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or
38 are reasonably related to the lawyer's practice in a jurisdiction in which the
39 lawyer is admitted to practice.

40 (d) A lawyer admitted in another United States jurisdiction or in a foreign
41 jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the
42 equivalent thereof, may provide legal services through an office or other systematic
43 and continuous presence in this jurisdiction that:

44 (1) are provided to the lawyer's employer or its organizational
45 affiliates; ~~and~~ are not services for which the forum requires pro hac vice
46 admission; and, when performed by a foreign lawyer and concern the law of

47 **this or another jurisdiction, other than international law, are undertaken in**
48 **consultation with a U.S. lawyer authorized to provide such advice; or**
49 **(2) are services that the lawyer is authorized by federal or other**
50 **law or rule to provide in this jurisdiction.**
51 **(e) For purposes of paragraph (d), the foreign lawyer must be a member in**
52 **good standing of a recognized legal profession in a foreign jurisdiction, the members**
53 **of which are admitted to practice as lawyers or counselors at law or the equivalent,**
54 **and are subject to effective regulation and discipline by a duly constituted**
55 **professional body or a public authority.**

56
57 **Comment**

58
59 [1] A lawyer may practice law only in a jurisdiction in which the lawyer is
60 authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a
61 regular basis or may be authorized by court rule or order or by law to practice for a
62 limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of
63 law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting
64 another person. For example, a lawyer may not assist a person in practicing law in
65 violation of the rules governing professional conduct in that person's jurisdiction.

66 [2] The definition of the practice of law is established by law and varies from
67 one jurisdiction to another. Whatever the definition, limiting the practice of law to
68 members of the bar protects the public against rendition of legal services by unqualified
69 persons. This Rule does not prohibit a lawyer from employing the services of
70 paraprofessionals and delegating functions to them, so long as the lawyer supervises the
71 delegated work and retains responsibility for their work. See Rule 5.3.

72 [3] A lawyer may provide professional advice and instruction to nonlawyers
73 whose employment requires knowledge of the law; for example, claims adjusters,
74 employees of financial or commercial institutions, social workers, accountants and
75 persons employed in government agencies. Lawyers also may assist independent
76 nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to
77 provide particular law-related services. In addition, a lawyer may counsel nonlawyers
78 who wish to proceed pro se.

79 [4] Other than as authorized by law or this Rule, a lawyer who is not admitted
80 to practice generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes
81 an office or other systematic and continuous presence in this jurisdiction for the practice
82 of law. Presence may be systematic and continuous even if the lawyer is not physically
83 present here. Such a lawyer must not hold out to the public or otherwise represent that
84 the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and
85 7.5(b).

86 [5] There are occasions in which a lawyer admitted to practice in another
87 United States jurisdiction, and not disbarred or suspended from practice in any
88 jurisdiction, may provide legal services on a temporary basis in this jurisdiction under
89 circumstances that do not create an unreasonable risk to the interests of their clients, the
90 public or the courts. Paragraph (c) identifies four such circumstances. The fact that
91 conduct is not so identified does not imply that the conduct is or is not authorized. With
92 the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a U.S. or

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93 foreign lawyer to establish an office or other systematic and continuous presence in this
94 jurisdiction without being admitted to practice generally here.

95 [6] There is no single test to determine whether a lawyer's services are
96 provided on a "temporary basis" in this jurisdiction, and may therefore be permissible
97 under paragraph (c). Services may be "temporary" even though the lawyer provides
98 services in this jurisdiction on a recurring basis, or for an extended period of time, as
99 when the lawyer is representing a client in a single lengthy negotiation or litigation.

100 [7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law
101 in any United States jurisdiction, which includes the District of Columbia and any state,
102 territory or commonwealth of the United States. Paragraph (d) also applies to lawyers
103 admitted in a foreign jurisdiction. The word "admitted" in paragraphs (c), (d) and (e)
104 contemplates that the lawyer is authorized to practice in the jurisdiction in which the
105 lawyer is admitted and excludes a lawyer who while technically admitted is not
106 authorized to practice, because, for example, the lawyer is on inactive status.

107 [8] Paragraph (c)(1) recognizes that the interests of clients and the public are
108 protected if a lawyer admitted only in another jurisdiction associates with a lawyer
109 licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer
110 admitted to practice in this jurisdiction must actively participate in and share
111 responsibility for the representation of the client.

112 [9] Lawyers not admitted to practice generally in a jurisdiction may be
113 authorized by law or order of a tribunal or an administrative agency to appear before the
114 tribunal or agency. This authority may be granted pursuant to formal rules governing
115 admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under
116 paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a
117 tribunal or agency pursuant to such authority. To the extent that a court rule or other law
118 of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to
119 obtain admission pro hac vice before appearing before a tribunal or administrative
120 agency, this Rule requires the lawyer to obtain that authority.

121 [10] Paragraph (c)(2) also provides that a lawyer rendering services in this
122 jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in
123 conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is
124 authorized to practice law or in which the lawyer reasonably expects to be admitted pro
125 hac vice. Examples of such conduct include meetings with the client, interviews of
126 potential witnesses, and the review of documents. Similarly, a lawyer admitted only in
127 another jurisdiction may engage in conduct temporarily in this jurisdiction in connection
128 with pending litigation in another jurisdiction in which the lawyer is or reasonably
129 expects to be authorized to appear, including taking depositions in this jurisdiction.

130 [11] When a lawyer has been or reasonably expects to be admitted to appear
131 before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers
132 who are associated with that lawyer in the matter, but who do not expect to appear before
133 the court or administrative agency. For example, subordinate lawyers may conduct
134 research, review documents, and attend meetings with witnesses in support of the lawyer
135 responsible for the litigation.

136 [12] Paragraph (c)(3) permits a lawyer admitted to practice law in another
137 jurisdiction to perform services on a temporary basis in this jurisdiction if those services
138 are in or reasonably related to a pending or potential arbitration, mediation, or other

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139 alternative dispute resolution proceeding in this or another jurisdiction, if the services
140 arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the
141 lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice
142 in the case of a court-annexed arbitration or mediation or otherwise if court rules or law
143 so require.

144 [13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to
145 provide certain legal services on a temporary basis in this jurisdiction that arise out of or
146 are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is
147 admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal
148 services and services that nonlawyers may perform but that are considered the practice of
149 law when performed by lawyers.

150 [14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be
151 reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is
152 admitted. A variety of factors evidence such a relationship. The lawyer's client may
153 have been previously represented by the lawyer, or may be resident in or have substantial
154 contacts with the jurisdiction in which the lawyer is admitted. The matter, although
155 involving other jurisdictions, may have a significant connection with that jurisdiction. In
156 other cases, significant aspects of the lawyer's work might be conducted in that
157 jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction.
158 The necessary relationship might arise when the client's activities or the legal issues
159 involve multiple jurisdictions, such as when the officers of a multinational corporation
160 survey potential business sites and seek the services of their lawyer in assessing the
161 relative merits of each. In addition, the services may draw on the lawyer's recognized
162 expertise developed through the regular practice of law on behalf of clients in matters
163 involving a particular body of federal, nationally-uniform, foreign, or international law.
164 Lawyers desiring to provide pro bono legal services on a temporary basis in a jurisdiction
165 that has been affected by a major disaster, but in which they are not otherwise authorized
166 to practice law, as well as lawyers from the affected jurisdiction who seek to practice law
167 temporarily in another jurisdiction, but in which they are not otherwise authorized to
168 practice law, should consult the [*Model Court Rule on Provision of Legal Services*
169 *Following Determination of Major Disaster*].

170 [15] Paragraph (d) identifies two circumstances in which a lawyer who is
171 admitted to practice in another United States or a foreign jurisdiction, and is not disbarred
172 or suspended from practice in any jurisdiction, or the equivalent thereof, may establish an
173 office or other systematic and continuous presence in this jurisdiction for the practice of
174 law. as well as Pursuant to paragraph (c) of this Rule, a lawyer admitted in any U.S.
175 jurisdiction may also provide legal services in this jurisdiction on a temporary basis. See
176 also, the ABA Model Rule on Temporary Practice by Foreign Lawyers. Except as
177 provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in
178 another United States or foreign jurisdiction and who establishes an office or other
179 systematic or continuous presence in this jurisdiction must become admitted to practice
180 law generally in this jurisdiction.

181 [16] Paragraph (d)(1) applies to a U.S. or foreign lawyer who is employed by a
182 client to provide legal services to the client or its organizational affiliates, i.e., entities
183 that control, are controlled by, or are under common control with the employer. This
184 paragraph does not authorize the provision of personal legal services to the employer's

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185 officers or employees. The paragraph applies to in-house corporate lawyers, government
186 lawyers and others who are employed to render legal services to the employer. The
187 lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is
188 licensed generally serves the interests of the employer and does not create an
189 unreasonable risk to the client and others because the employer is well situated to assess
190 the lawyer's qualifications and the quality of the lawyer's work. To further decrease any
191 risk to the client, when advising on the domestic law of a United States jurisdiction the
192 foreign lawyer authorized to practice under paragraph (d)(1) of this Rule needs to consult
193 with a U.S. lawyer authorized to provide that advice. However, there are instances where,
194 for example, a treaty may obligate the application of international law to a matter. In
195 such cases, the foreign lawyer need not consult with U.S. counsel.

196 [17] If an employed lawyer establishes an office or other systematic presence
197 in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer
198 may be subject to registration or other requirements, including assessments for client
199 protection funds and mandatory continuing legal education. See, ABA Model Rule for
200 Registration of In-House Counsel.

201 [18] Paragraph (d)(2) recognizes that a U.S. or foreign lawyer may provide
202 legal services in a jurisdiction in which the lawyer is not licensed when authorized to do
203 so by federal or other law, which includes statute, court rule, executive regulation or
204 judicial precedent. See, e.g., The ABA Model Rule on Practice Pending Admission.

205 [19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c)
206 or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule
207 8.5(a).

208 [20] In some circumstances, a lawyer who practices law in this jurisdiction
209 pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not
210 licensed to practice law in this jurisdiction. For example, that may be required when the
211 representation occurs primarily in this jurisdiction and requires knowledge of the law of
212 this jurisdiction. See Rule 1.4(b).

213 [21] Paragraphs (c) and (d) do not authorize communications advertising legal
214 services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions.
215 Whether and how lawyers may communicate the availability of their services in this
216 jurisdiction is governed by Rules 7.1 to 7.5.

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Report

Introduction

In this Resolution the ABA Commission on Ethics 20/20 proposes to amend Rule 5.5(d) of the ABA Model Rules of Professional Conduct (Unauthorized Practice of Law; Multijurisdictional Practice of Law) to include within its scope, with important limitations, foreign in-house counsel. It is complemented by a separate Resolution to amend the 2008 ABA Model Rule for Registration of In-House Counsel to subject foreign in-house counsel to registration and appropriate scope of practice requirements. If adopted by the House of Delegates, the changes proposed in these Resolutions will provide to state supreme courts a balanced and publicly protective regulatory approach for meeting the needs of global organizational clients to have the counsel of their choice work in their U.S. office.

In August 2002, the ABA House of Delegates adopted recommendations proposed by the Commission on Multijurisdictional Practice (MJP Commission) to amend Rule 5.5 of the ABA Model Rules of Professional Conduct. These amendments provided enhanced opportunities for U.S. lawyers to engage in cross-border practice by permitting temporary practice of law by U.S. lawyers in jurisdictions where they are not licensed. Model Rule 5.5(d) further authorized lawyers admitted in another U.S. jurisdiction, and not disbarred or suspended from practice in any jurisdiction, to establish a continuous and systematic presence to provide legal services to the lawyer's employer or its organizational affiliates (in-house counsel) or services that the lawyer is authorized to provide by federal law or other law of the jurisdiction in which the lawyer is not admitted.

In November 19, 2009, the ABA Commission on Ethics 20/20 issued its Preliminary Issues Outline, identifying a number of issues for consideration and study and soliciting input about them. One of those issues was whether Model Rule 5.5(d) should be amended to include foreign lawyers within its practice authorization for in-house counsel. Because Model Rule 5.5(d) and the Model Rule for Registration of In-House Counsel Registration are closely related, in response to the comments received to the Preliminary Issues Outline the Commission's Working Group on Inbound Foreign Lawyers examined whether the ABA Model Rule for Registration of In-House Counsel should also include foreign lawyers within its scope.

The Commission's Inbound Foreign Lawyers Working Group included active participants from the ABA Standing Committee on Ethics and Professional Responsibility, the ABA Standing Committee on Professional Discipline, the Section of International Law, the Real Property, Trust and Estate Law Section, the Task Force on International Trade in Legal Services, and the Section of Legal Education and Admissions to the Bar. These representatives contributed significantly to the

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Commission's deliberations and the Resolution that accompanies this Report. The Commission is grateful for their contributions to its work.

The Working Group conducted research and carefully evaluated whether to recommend permitting limited practice authorization for foreign in-house counsel via Rule 5.5(d). The Working Group concluded that the Commission should recommend this change.

In June 2010, without taking a position on the Working Group's recommendation, the Commission circulated broadly for comment templates and memoranda illustrating and explaining the basis for those suggested changes. At subsequent meetings the Commission considered additional written responses and oral testimony on the subject and concluded that the realities of client needs in the global legal marketplace necessitate that the ABA address more directly inbound foreign lawyers and associated regulatory concerns. As noted at the beginning of this Report, the Commission determined that one way to do so was to include foreign lawyers within the scope of Model Rule 5.5(d) in a way that meets client needs by providing them with the ability to have the counsel of their choice, while ensuring necessary protections. In furtherance of maintaining appropriate public and client protections, the Commission is proposing in a separate, but related, Resolution and Report the amendment of the 2008 ABA Model Rule for Registration of In-House Counsel to include foreign lawyers. These amendments will ensure that foreign in-house counsel that practice pursuant to Model Rule 5.5's authority are identifiable and subject to regulation and monitoring.

Why Permitting Limited Practice Authorization for Foreign In-House Counsel in Model Rule 5.5 Makes Sense

ABA Model Rule 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law) has remained essentially unchanged since 2002.¹ Forty-four U.S. jurisdictions now have some form of Model Rule 5.5; fourteen jurisdictions have adopted a rule identical to the ABA Model Rule; and thirty jurisdictions have adopted a rule substantially similar to it.²

The primary focus of the MJP Commission's recommendations was cross-border law practice within the United States. The MJP Commission was cognizant, however, of parallel increases in transnational legal practice driven by technology and globalization. The need for foreign lawyers to have limited practice authorization in the U.S. has not lessened since adoption of MJP Commission's recommendations in 2002. Rather, the realities of 21st century legal practice have resulted in an increase in foreign lawyers seeking to provide legal services to their clients in the U.S. (as well as a concurrent

¹ In 2007, a sentence to Comment [14] was added to reflect the existence of the Model Court Rule on Provision of Legal Services Following Determination of Major Disaster.

² See American Bar Association, *State Implementation of ABA Model Rule 5.5 (Multijurisdictional Practice of Law) Chart* (last updated September 27, 2011), http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/quick_guide_5.5.authcheckdam.pdf.

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increase in the efforts by U.S. lawyers and law firms to do the same abroad³). For example, in 2002, the U.S. imported \$820 million in legal services.⁴ In 2009, that number had risen to \$1.7 billion.⁵ The June 14, 2010 Background Note by the Secretariat of the World Trade Organization Council for Trade in Services⁶ states as follows:

The 1998 Secretariat background Note on legal services observed that the legal services sector had experienced continuous growth as a consequence of the rise in international trade and of the emergence of new fields of practice, in particular in the area of business law. This trend has further continued over the last decade, and brought about sizable growth to the legal services sector. The widening and deepening of international trade and investment links, combined with strong economic growth in many developing countries have increased worldwide demand for legal services, and encouraged the establishment of foreign affiliates in China, Russia, and other fast growing emerging markets... The global market for trade in services is estimated to have generated total revenues of US\$581 billion in 2008, representing an annual growth rate of 5 per cent for the period from 2004-2008.⁷ This figure is calculated on the basis of globally received revenue by law firms.

The number of foreign companies with U.S. offices or operations in the United States has increased since 2002, as has the number of U.S. companies with foreign offices or operations. With regard to the former, U.S. states actively recruit foreign companies to open offices in their jurisdictions. For example, as noted in a February 2012 White Paper issued by the ABA Task Force on International Trade in Legal Services, “[o]ver 3600 foreign businesses from more than 60 countries have established operations in Georgia, including the U.S. headquarters of such notable names as Porsche Cars North America, Siemens, ING Americas, Philips Consumer Electronics, Ciba Vision, Intercontinental Hotels Group, Novelis, Munich Re and Mizuno. These companies directly employ approximately 194,000 Georgians and, by virtue of the ripple effect, indirectly generate jobs for many thousands more. Indeed, according to the Metro Atlanta Chamber of Commerce, foreign companies accounted for 20% of the metro area’s new business activity in the last decade...The state actively recruits foreign international business, with the Georgia Department of Economic Development maintaining international offices in Brazil, Canada, Chile, China, Germany, Japan, Korea, Mexico, Israel, and the United Kingdom. At least 66 countries are represented in Atlanta by a consulate, trade office or

³ In 2009, the U.S. exported \$7.26 billion in legal services, up from \$6.4 billion in 2007 and \$5.26 billion in 2006. See, *Table G. Other Private Services Receipts*, U.S. Bureau of Economic Analysis, available at http://www.bea.gov/international/xls/table_G.xls; *Table 7. Business, Professional and Technical Services*, U.S. Bureau of Economic Analysis (2010), available at <http://www.bea.gov/international/xls/tab7a.xls>.

⁴ See *Table H. Other Private Services Payments*, U.S. Bureau of Economic Analysis, available at http://www.bea.gov/international/xls/table_H.xls.

⁵ *Id.*

⁶ See Council for Trade in Services, *Background Note by the Secretariat: Legal Services*, S/C/W/318 (June 14, 2010), available at http://docsonline.wto.org/GEN_highLightParent.asp?qu=&doc=D%3A%2FDDFD%2FDOCUMENTS%2FT%2FS%2FC%2FW318%2FDOC%2EHTM&curdoc=21&popTitle=S%2FC%2FW%2F318.

⁷ Datamonitor; *Global Legal Services*, December 2009.

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bi-national chamber of commerce.”⁸ Also, the 2011 Foreign Investment in Texas Report, issued by the Office of the Governor’s Office of Economic Development and Tourism, notes that “Texas is a top-ranked global destination for foreign direct investment (FDI). The state’s strong economy, competitive business climate, and central location within North America have attracted more than 2,000 foreign multinationals to establish locations here.”⁹ The result has been a continued rise in interstate and international legal practice for in-house counsel, including those who are foreign lawyers. These lawyers’ employers often require them to relocate to a foreign jurisdiction where the company has an office.

In the face of these changes, the Commission proposes to amend Model Rule 5.5(d) and to add a new black letter paragraph 5.5(e), to provide limited practice authorization to lawyers who are admitted in a foreign jurisdiction, but who are providing legal services solely to their employers as in-house counsel. Doing so will ensure that foreign lawyers who work solely for their employers as in-house counsel are not considered to be engaged in the unauthorized practice of law under Rule 5.5. As noted above, to complement this proposed change to Model Rule 5.5, the Commission is also recommending that the House adopt proposed amendments to the ABA Model Rule for Registration of In-House Counsel to include foreign in-house counsel. The Model In-House Registration Rule defines the limited scope of practice for in-house counsel acting pursuant to Model Rule 5.5’s grant of authority; under the Commission’s proposal these limitations would similarly apply to foreign lawyers.

The Commission’s Proposal to Amend the Black Letter of Model Rule 5.5 and Its Comments to Permit Limited Practice Authorization by Foreign In-House Counsel

For purposes of the proposed amendments to Model Rule 5.5, foreign lawyers are defined in proposed new black letter paragraph (e) as those who are a member in good standing of a recognized legal profession in the lawyer’s home country. Moreover, the members of that profession must be subject to effective regulation and discipline by a duly constituted professional body or public authority. This definition of foreign jurisdiction or foreign lawyer has long been ABA policy, and has been adopted by U.S. state supreme courts. The Commission’s research revealed no problems that have arisen from its use.

The Commission’s proposal to permit foreign in-house counsel to work for their employers from an office in the U.S. contains an important client protection. The proposal provides that, if an issue concerns the law of a U.S. jurisdiction, other than international law, the foreign in-house counsel’s services must be undertaken in consultation with a U.S. lawyer authorized to provide such advice. The qualifying

⁸ ABA Task Force on International Trade in Legal Services, *International Trade in Legal Services and Professional Regulation: A Framework for State Bars Based on the Georgia Experience* (Feb. 4, 2012), available at <http://arbitrateatlanta.org/wp-content/uploads/2011/08/FINAL-ITILS-toolkit-2-4-12.pdf>.

⁹ See Texas Office of the Governor, *Foreign Investment in Texas: The Industries and Countries Leading Current Growth*, www.governor.state.tx.us/files/ecodev/Foreign_Investment.pdf (last viewed August 15, 2012).

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language, “other than international law,” is intended to make clear that, for example, when U.S. law obligates the application of international law to a matter, the foreign lawyer need not consult with a U.S. lawyer. Additional client protections in the companion proposal to add foreign in-house counsel to the ABA Model Rule for Registration of In-House Counsel include that fact that the foreign lawyer is subject to local discipline and must satisfy the U.S. jurisdiction’s continuing legal education requirements.

Adding foreign lawyers to Model Rule 5.5’s practice authority for in-house counsel benefits the clients of those lawyers without subjecting them or the public to any increased risks. Rule 5.5(d) currently assumes that a U.S. licensed in-house lawyer can establish an office or other “systematic presence” in a jurisdiction where that lawyer is not admitted and forgo traditional local licensure without unreasonable risk to the client or public because: (1) the employer is able to assess the lawyer’s qualifications and the quality of the lawyer’s work; and (2) the lawyer’s only client is the employer. The Commission on Ethics 20/20 concluded that these rationales also apply to foreign in-house counsel. Moreover, in-house lawyers admitted in a foreign jurisdiction (as currently defined by ABA policy), but working for their employer in the U.S., have been vetted by the admissions authorities in their country of licensure. That authority and the employer possess sufficiently strong incentives to thoroughly investigate the lawyer’s character, fitness, and background.¹⁰

Some feel that including foreign lawyers within the scope of Model Rule 5.5(d) presages undesired and increased foreign lawyer presence in the U.S. The Commission disagrees with this position. The available data regarding the global legal services market, including that described above, indicates that these lawyers are already here and serving as in-house counsel. Their multinational corporation clients, regardless of size, and whose presence was sought by U.S. jurisdictions have a need for legal services provided by counsel of their choice. Since 1993, when it first adopted the Model Rule for Licensing and Practice of Foreign Legal Consultants, the ABA has recognized that there are benefits to allowing foreign lawyers limited practice authorization in the U.S. The Commission believes that it is best to acknowledge these realities and to regulate these lawyers while they are here in the U.S.

Arizona, Connecticut, Delaware, Georgia, Virginia, Washington, and Wisconsin currently permit foreign in-house counsel limited authorization to work for their employer in the U.S. so long as they register.¹¹ Georgia also permits foreign in-house counsel this limited practice authority, but does not require registration. The Commission is aware of no adverse consequences following adoption of these rules.

¹⁰ See, e.g., J. Charles Mokriski, *In-House Lawyers’ Bar Status: Counsel, You’re Not in Kansas Anymore*, Boston Bar Journal, Jan.-Feb. 2008.

¹¹ See, e.g., American Bar Association Center for Professional Responsibility, *Comparison of ABA Model Rule for Registration of In-House Counsel With State Versions* (last updated January 9, 2012), http://www.americanbar.org/groups/professional_responsibility/commission_on_multijurisdictional_practice.html.

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Support for the Commission's tempered approach to these issues is evidenced by the July 28, 2010 Resolution of the Conference of Chief Justices endorsing these changes in principle and urging their adoption by the ABA House of Delegates.¹² The resolution was proposed by the Conference's Task Force on the Regulation of Foreign Lawyers and the International Practice of Law.

The Commission's approach is also consistent with a joint proposal submitted in November 2010 to the New York Court of Appeals by the New York State Bar Association, the New York City Bar Association, and the New York County Lawyers' Association. That proposal sought the adoption of rules that would provide for the limited licensure and registration of U.S. and foreign in-house counsel.¹³ The unified position of these three New York bar associations reflects an increased recognition that foreign lawyers should be permitted to serve as in-house counsel for their employers, even though the New York Court of Appeals ultimately adopted an in-house rule that does not include foreign lawyers.¹⁴

Pro Hac Vice Authority

The proposed amendments to Model Rule 5.5 also anticipate adoption of the recommendations in a separate Resolution to amend the ABA Model Rule on Pro Hac Vice Admission to allow foreign lawyers to gain limited authority to practice pro hac vice before a U.S. court or administrative agency. As the separate Resolution and Report to amend the Model Rule on Pro Hac Vice Admission makes clear, the Commission concluded that the realities of legal practice and client needs support including such limited practice authority for foreign lawyers within the scope of ABA policy.

Conclusion

These proposed amendments to Rule 5.5 of the ABA Model Rules of Professional Conduct and its Comments meet the needs of 21st Century clients and counsel while providing adequate safeguard for the courts, the profession, and the public. The Commission on Ethics 20/20 respectfully requests that the House of Delegates approve the amendments to the Model Rule 5.5.

¹² See Conference of Chief Justices, *Resolution 13: Endorsing in Principle the Recommended Changes to the ABA Model Rules Regarding Practice by Foreign Lawyers*, <http://ccj.ncsc.dni.us/InternationalResolutions/resol13ABA.html> (last viewed March 14, 2011).

¹³ See N.Y. State Bar Ass'n, N.Y. City Bar Ass'n & N.Y. Cnty. Lawyers' Ass'n, *Proposed Rules for Licensing of In-House Counsel* (Nov. 2010), available at http://www.nysba.org/AM/Template.cfm?Section=Substantive_Reports&ContentID=59866&template=/CM/ContentDisplay.cfm.

¹⁴ The Court, in its order adopting the rule did not explain its decision to exclude foreign lawyers. See State of New York Court of Appeals, *Notice to the Bar Registration of In-House Counsel*, available at <http://www.nycourts.gov/ctapps/news/nottobar/InHouseCounsel041111.pdf>.