

Report 201J

**AMERICAN BAR ASSOCIATION
COMMISSION ON MULTIJURISDICTIONAL PRACTICE
REPORT TO THE HOUSE OF DELEGATES**

RECOMMENDATION

1 RESOLVED, that the American Bar Association adopts the proposed *Model Rule for Temporary*
2 *Practice by Foreign Lawyers*, dated August 2002:

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4 **Model Rule for Temporary Practice by Foreign Lawyers**
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6 (a) A lawyer who is admitted only in a non-United States jurisdiction shall not, except as
7 authorized by this Rule or other law, establish an office or other systematic and continuous
8 presence in this jurisdiction for the practice of law, or hold out to the public or otherwise
9 represent that the lawyer is admitted to practice law in this jurisdiction. Such a lawyer does not
10 engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the
11 lawyer performs services in this jurisdiction that:

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

14 (2) are in or reasonably related to a pending or potential proceeding before a tribunal held
15 or to be held in a jurisdiction outside the United States if the lawyer, or a person the lawyer is
16 assisting, is authorized by law or by order of the tribunal to appear in such proceeding or
17 reasonably expects to be so authorized;

18 (3) are in or reasonably related to a pending or potential arbitration, mediation or other
19 alternative dispute resolution proceeding held or to be held in this or another jurisdiction, if the
20 services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which
21 the lawyer is admitted to practice;

22 (4) are not within paragraphs (2) or (3) and

23 (i) are performed for a client who resides or has an office in a jurisdiction in
24 which the lawyer is authorized to practice to the extent of that authorization; or

25 (ii) arise out of or are reasonably related to a matter that has a substantial
26 connection to a jurisdiction in which the lawyer is authorized to practice to the extent of
27 that authorization; or

28 (5) are governed primarily by international law or the law of a non-United States
29 jurisdiction.

30 (b) For purposes of this grant of authority, the lawyer must be a member in good standing
31 of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to
32 practice as lawyers or counselors at law or the equivalent and subject to effective regulation and
33 discipline by a duly constituted professional body or a public authority.

REPORT

The ABA *Model Rule for Licensing of Legal Consultants*, approved in 1993, permits foreign lawyers to perform limited work from established offices in American jurisdictions. The streamlined admissions process established by this rule is impractical for foreign lawyers who perform services in the United States only on a temporary basis. For example, a foreign lawyer who is negotiating a transaction on behalf of a client in the lawyer's own country may come to the United States briefly to meet other parties to the transaction and their lawyers or to review documents. Or a foreign lawyer conducting litigation in the lawyer's home country may come to the United States to meet witnesses. While it is not feasible for foreign lawyers in such circumstances to seek admission as foreign legal consultants, it should nevertheless be permissible for them to provide these temporary and limited services in the United States.

The proposed *Model Rule for Temporary Practice by Foreign Lawyers* identifies five circumstances in which a foreign lawyer may provide legal services in the United States. The proposal takes its definition of "lawyer" from the ABA *Model Rule for Licensing of Legal Consultants*. To come within the proposal, a lawyer must be a member in good standing of a recognized legal profession in the lawyer's home country, and the members of that profession must be subject to effective regulation and discipline by a duly constituted professional body or public authority.

Under the proposal, foreign lawyers would be able to provide legal services in the United States on a temporary basis if they do so in association with a lawyer admitted to practice in the jurisdiction and who actively participates in the matter. This language is identical to language in proposed Rule 5.5(c)(1) of the ABA *Model Rules of Professional Conduct* for lawyers admitted in a United States jurisdiction.

A foreign lawyer would also be able to provide legal services in the United States on a temporary basis if the work is reasonably related to a pending or potential proceeding in a jurisdiction outside the United States, so long as the lawyer is authorized to appear in that jurisdiction, or reasonably expects to be so authorized, or is assisting such a person. This provision tracks Rule 5.5(c)(2) with appropriate modifications to take account of the fact that the lawyer is not admitted in a United States jurisdiction.

Also, a foreign lawyer could provide legal services in the United States on a temporary basis if the services are reasonably related to a pending or potential alternative dispute resolution proceeding so long as the work has a nexus to the lawyer's practice in the lawyer's jurisdiction of admission. This language parallels proposed Rule 5.5(c)(3). It recognizes that lawyers may be asked to participate in arbitrations, mediations or other ADR proceedings (other than those that are court-affiliated) anywhere in the world.

A foreign lawyer could also, temporarily, provide legal services in the United States if the services are for a client who resides or has an office in a jurisdiction in which the lawyer is authorized to practice or if the services are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice. The scope of the work the lawyer could perform under this provision would be limited to the services the lawyer may

perform in the authorizing jurisdiction. For example, if a German lawyer came to the United States to negotiate on behalf of a client in Germany, the lawyer would be authorized to provide only those services that the lawyer is authorized to provide for that client in Germany. A foreign lawyer may also be authorized as a foreign legal consultant in one United States jurisdiction and cite that authority as the basis for temporary presence in a second United States jurisdiction. If so, the lawyer could provide in the second jurisdiction only those services that the lawyer is authorized to perform in the jurisdiction in which the lawyer is a foreign legal consultant provided the additional requirements of this paragraph were satisfied.

Finally, a foreign lawyer may provide legal services temporarily in the United States if those services are governed primarily by international law or the law of a non-United States jurisdiction.

