AMERICAN BAR ASSOCIATION

COMMISSION ON ETHICS 20/20
STANDING COMMITTEE ON CLIENT PROTECTION
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY
STANDING COMMITTEE ON PROFESSIONALISM
STANDING COMMITTEE ON SPECIALIZATION
NEW YORK STATE BAR ASSOCIATION
GENERAL PRACTICE, SOLO AND SMALL FIRM DIVISION
COMMISSION ON WOMEN IN THE PROFESSION
SECTION OF INTERNATIONAL LAW
YOUNG LAWYERS DIVISION
NEW YORK COUNTY LAWYERS’ ASSOCIATION
SECTION OF BUSINESS LAW
LAW PRACTICE MANAGEMENT SECTION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association adopts the Model Rule on Practice Pending Admission as follows:

ABA Model Rule on Practice Pending Admission

1. A lawyer currently holding an active license to practice law in another U.S. jurisdiction and who has been engaged in the active practice of law for three of the last five years, may provide legal services in this jurisdiction through an office or other systematic and continuous presence for no more than [365] days, provided that the lawyer:

   a. is not disbarred or suspended from practice in any jurisdiction and is not currently subject to discipline or a pending disciplinary matter in any jurisdiction;
   b. has not previously been denied admission to practice in this jurisdiction or failed this jurisdiction’s bar examination;
   c. notifies Disciplinary Counsel and the Admissions Authority in writing prior to initiating practice in this jurisdiction that the lawyer will be doing so pursuant to the authority in this Rule;
   d. submits within [45] days of first establishing an office or other systematic and continuous presence for the practice of law in this jurisdiction a complete application for admission by motion or by examination;
e. reasonably expects to fulfill all of this jurisdiction’s requirements for that form of admission;
f. associates with a lawyer who is admitted to practice in this jurisdiction;
g. complies with Rules 7.1 and 7.5 of the Model Rules of Professional Conduct [or jurisdictional equivalent] in all communications with the public and clients regarding the nature and scope of the lawyer’s practice authority in this jurisdiction; and
h. pays any annual client protection fund assessment.

2. A lawyer currently licensed as a foreign legal consultant in another U.S. jurisdiction may provide legal services in this jurisdiction through an office or other systematic and continuous presence for no more than [365] days, provided that the lawyer:

a. provides services that are limited to those that may be provided in this jurisdiction by foreign legal consultants;
b. is a member in good standing of a recognized legal profession in the foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;
c. submits within [45] days of first establishing an office or other systematic and continuous presence for the practice of law in this jurisdiction a complete application for admission to practice as a foreign legal consultant;
d. reasonably expects to fulfill all of this jurisdiction’s requirements for admission as a foreign legal consultant; and
e. meets the requirements of paragraphs 1(a), (b), (c), (f), (g), and (h) of this Rule.

3. Prior to admission by motion, through examination, or as a foreign legal consultant, the lawyer may not appear before a tribunal in this jurisdiction that requires pro hac vice admission unless the lawyer is granted such admission.

4. The lawyer must immediately notify Disciplinary Counsel and the Admissions Authority in this jurisdiction if the lawyer becomes subject to a disciplinary matter or disciplinary sanctions in any other jurisdiction at any time during the [365] days of practice authorized by this Rule. The Admissions Authority shall take into account such information in determining whether to grant the lawyer’s application for admission to this jurisdiction.

5. The authority in this Rule shall terminate immediately if:

a. the lawyer withdraws the application for admission by motion, by examination, or as a foreign legal consultant, or if such application is denied, prior to the expiration of [365] days;
b. the lawyer fails to file the application for admission within [45] days of first establishing an office or other systematic and continuous presence for the practice of law in this jurisdiction;
c. the lawyer fails to remain in compliance with Paragraph 1 of this Rule;
d. the lawyer is disbarred or suspended in any other jurisdiction in which the lawyer is licensed to practice law; or
e. the lawyer has not complied with the notification requirements of Paragraph 4 of this Rule.

6. Upon the termination of authority pursuant to Paragraph 5, the lawyer, within [30] days, shall:
   
   a. cease to occupy an office or other systematic and continuous presence for the practice of law in this jurisdiction unless authorized to do so pursuant to another Rule;
   
   b. notify all clients being represented in pending matters, and opposing counsel or co-counsel of the termination of the lawyer’s authority to practice pursuant to this Rule;
   
   c. not undertake any new representation that would require the lawyer to be admitted to practice law in this jurisdiction; and
   
   d. take all other necessary steps to protect the interests of the lawyer’s clients.

7. Upon the denial of the lawyer’s application for admission by motion, by examination, or as a foreign legal consultant, the Admissions Authority shall immediately notify Disciplinary Counsel that the authority granted by this Rule has terminated.

8. The Court, in its discretion, may extend the time limits set forth in this Rule for good cause shown.

Comment

[1] This Rule recognizes that a lawyer admitted in another jurisdiction may need to relocate to or commence practice in this jurisdiction, sometimes on short notice. The admissions process can take considerable time, thus placing a lawyer at risk of engaging in the unauthorized practice of law and leaving the lawyer’s clients without the benefit of their chosen counsel. This Rule closes this gap by authorizing the lawyer to practice in this jurisdiction for a limited period of time, up to 365 days, subject to restrictions, while the lawyer diligently seeks admission. The practice authority provided pursuant to this Rule commences immediately upon the lawyer’s establishment of an office or other systematic and continuous presence for the practice of law.

[2] Paragraph 1(f) requires a lawyer practicing in this jurisdiction pursuant to the authority granted under this Rule to associate with a lawyer who is admitted to practice law in this jurisdiction. The association between the incoming lawyer and the lawyer licensed in this jurisdiction is akin to that between a local lawyer and a lawyer practicing in a jurisdiction on a temporary basis pursuant to Model Rule of Professional Conduct 5.5(c)(1).

[3] While exercising practice authority pursuant to this Rule, a lawyer cannot hold out to the public or otherwise represent that the lawyer is admitted to practice in this jurisdiction. See Model Rule of Professional Conduct 5.5(b)(2). Because such a lawyer will typically be assumed to be admitted to practice in this jurisdiction, that lawyer must disclose the limited practice authority and jurisdiction of licensure in all communications with potential clients, such as on business cards, websites, and letterhead. Further, the lawyer must disclose the limited practice authority to all potential clients before agreeing to represent them. See Model Rules 7.1 and 7.5(b).
[4] The provisions of paragraph 5 (a) through (d) of this Rule are necessary to avoid prejudicing the rights of existing clients or other parties. Thirty days should be sufficient for the lawyer to wind up his or her practice in this jurisdiction in an orderly manner.

FURTHER RESOLVED, That the American Bar Association amends the black letter and Comment to Rule 5.5 of the ABA Model Rules of Professional Conduct dated August 2012, as follows (insertions underlined, deletions struck through):

**Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law**

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

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

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

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

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

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

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

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

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

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that provide legal services in this jurisdiction that:

(1) are provided to the lawyer’s employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

Comment

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

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

...  

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

...  

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