

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

1  
2 **RESOLVED, That the American Bar Association adopts the Model Rule on Practice**  
3 **Pending Admission as follows:**

4  
5 **ABA Model Rule on Practice Pending Admission**

6  
7 **1. A lawyer currently holding an active license to practice law in another U.S. jurisdiction**  
8 **and who has been engaged in the active practice of law for three of the last five years,**  
9 **may provide legal services in this jurisdiction through an office or other systematic and**  
10 **continuous presence for no more than [365] days, provided that the lawyer:**

11  
12 **a. is not disbarred or suspended from practice in any jurisdiction and is not**  
13 **currently subject to discipline or a pending disciplinary matter in any jurisdiction;**

14 **b. has not previously been denied admission to practice in this jurisdiction or failed**  
15 **this jurisdiction's bar examination;**

16 **c. notifies Disciplinary Counsel and the Admissions Authority in writing prior to**  
17 **initiating practice in this jurisdiction that the lawyer will be doing so pursuant to the**  
18 **authority in this Rule;**

19 **d. submits within [45] days of first establishing an office or other systematic and**  
20 **continuous presence for the practice of law in this jurisdiction a complete application**  
21 **for admission by motion or by examination;**

22 e. reasonably expects to fulfill all of this jurisdiction's requirements for that form of  
23 admission;

24 f. associates with a lawyer who is admitted to practice in this jurisdiction;

25 g. complies with Rules 7.1 and 7.5 of the Model Rules of Professional Conduct [or  
26 jurisdictional equivalent] in all communications with the public and clients regarding  
27 the nature and scope of the lawyer's practice authority in this jurisdiction; and

28 h. pays any annual client protection fund assessment.

29  
30 2. A lawyer currently licensed as a foreign legal consultant in another U.S. jurisdiction  
31 may provide legal services in this jurisdiction through an office or other systematic and  
32 continuous presence for no more than [365] days, provided that the lawyer:

33  
34 a. provides services that are limited to those that may be provided in this  
35 jurisdiction by foreign legal consultants;

36 b. is a member in good standing of a recognized legal profession in the foreign  
37 jurisdiction, the members of which are admitted to practice as lawyers or counselors at  
38 law or the equivalent, and are subject to effective regulation and discipline by a duly  
39 constituted professional body or a public authority;

40 c. submits within [45] days of first establishing an office or other systematic and  
41 continuous presence for the practice of law in this jurisdiction a complete application  
42 for admission to practice as a foreign legal consultant;

43 d. reasonably expects to fulfill all of this jurisdiction's requirements for admission as  
44 a foreign legal consultant; and

45 e. meets the requirements of paragraphs 1(a), (b), (c), (f), (g), and (h) of this Rule.

46  
47 3. Prior to admission by motion, through examination, or as a foreign legal consultant, the  
48 lawyer may not appear before a tribunal in this jurisdiction that requires *pro hac vice*  
49 admission unless the lawyer is granted such admission.

50  
51 4. The lawyer must immediately notify Disciplinary Counsel and the Admissions Authority  
52 in this jurisdiction if the lawyer becomes subject to a disciplinary matter or disciplinary  
53 sanctions in any other jurisdiction at any time during the [365] days of practice authorized  
54 by this Rule. The Admissions Authority shall take into account such information in  
55 determining whether to grant the lawyer's application for admission to this jurisdiction.

56  
57 5. The authority in this Rule shall terminate immediately if:

58  
59 a. the lawyer withdraws the application for admission by motion, by examination, or  
60 as a foreign legal consultant, or if such application is denied, prior to the expiration  
61 of [365] days;

62 b. the lawyer fails to file the application for admission within [45] days of first  
63 establishing an office or other systematic and continuous presence for the practice of  
64 law in this jurisdiction;

65 c. the lawyer fails to remain in compliance with Paragraph 1 of this Rule;

66 d. the lawyer is disbarred or suspended in any other jurisdiction in which the lawyer  
67 is licensed to practice law; or

68 e. the lawyer has not complied with the notification requirements of Paragraph 4 of  
69 this Rule.

70  
71 6. Upon the termination of authority pursuant to Paragraph 5, the lawyer, within [30]  
72 days, shall:

73  
74 a. cease to occupy an office or other systematic and continuous presence for the  
75 practice of law in this jurisdiction unless authorized to do so pursuant to another Rule;

76 b. notify all clients being represented in pending matters, and opposing counsel or  
77 co-counsel of the termination of the lawyer's authority to practice pursuant to this  
78 Rule;

79 c. not undertake any new representation that would require the lawyer to be  
80 admitted to practice law in this jurisdiction; and

81 d. take all other necessary steps to protect the interests of the lawyer's clients.

82  
83 7. Upon the denial of the lawyer's application for admission by motion, by examination, or  
84 as a foreign legal consultant, the Admissions Authority shall immediately notify  
85 Disciplinary Counsel that the authority granted by this Rule has terminated.

86  
87 8. The Court, in its discretion, may extend the time limits set forth in this Rule for good  
88 cause shown.

89  
90 **Comment**

91 [1] This Rule recognizes that a lawyer admitted in another jurisdiction may need to  
92 relocate to or commence practice in this jurisdiction, sometimes on short notice. The admissions  
93 process can take considerable time, thus placing a lawyer at risk of engaging in the unauthorized  
94 practice of law and leaving the lawyer's clients without the benefit of their chosen counsel. This  
95 Rule closes this gap by authorizing the lawyer to practice in this jurisdiction for a limited period  
96 of time, up to 365 days, subject to restrictions, while the lawyer diligently seeks admission. The  
97 practice authority provided pursuant to this Rule commences immediately upon the lawyer's  
98 establishment of an office or other systematic and continuous presence for the practice of law.

99 [2] Paragraph 1(f) requires a lawyer practicing in this jurisdiction pursuant to the  
100 authority granted under this Rule to associate with a lawyer who is admitted to practice law in  
101 this jurisdiction. The association between the incoming lawyer and the lawyer licensed in this  
102 jurisdiction is akin to that between a local lawyer and a lawyer practicing in a jurisdiction on a  
103 temporary basis pursuant to Model Rule of Professional Conduct 5.5(c)(1).

104 [3] While exercising practice authority pursuant to this Rule, a lawyer cannot hold out to  
105 the public or otherwise represent that the lawyer is admitted to practice in this jurisdiction. See  
106 Model Rule of Professional Conduct 5.5(b)(2). Because such a lawyer will typically be assumed  
107 to be admitted to practice in this jurisdiction, that lawyer must disclose the limited practice  
108 authority and jurisdiction of licensure in all communications with potential clients, such as on  
109 business cards, websites, and letterhead. Further, the lawyer must disclose the limited practice  
110 authority to all potential clients before agreeing to represent them. See Model Rules 7.1 and  
111 7.5(b).

112 [4] The provisions of paragraph 5 (a) through (d) of this Rule are necessary to avoid  
 113 prejudicing the rights of existing clients or other parties. Thirty days should be sufficient for the  
 114 lawyer to wind up his or her practice in this jurisdiction in an orderly manner.  
 115

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

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

120  
 121 **(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal  
 122 profession in that jurisdiction, or assist another in doing so.**

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

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

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

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

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

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

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

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

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

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

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

152  
 153 **Comment**

154 ...

155 [1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to  
156 practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be  
157 authorized by court rule or order or by law to practice for a limited purpose or on a restricted  
158 basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the  
159 lawyer's direct action or by the lawyer assisting another person. For example, a lawyer may not  
160 assist a person in practicing law in violation of the rules governing professional conduct in that  
161 person's jurisdiction.

162  
163 [4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice  
164 generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes an office or other  
165 systematic and continuous presence in this jurisdiction for the practice of law. Presence may be  
166 systematic and continuous even if the lawyer is not physically present here. Such a lawyer must  
167 not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this  
168 jurisdiction. See also Rules 7.1(a) and 7.5(b).

169 ...  
170 [18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction  
171 in which the lawyer is not licensed when authorized to do so by federal or other law, which  
172 includes statute, court rule, executive regulation or judicial precedent. See, e.g., The ABA Model  
173 Rule on Practice Pending Admission.

174 ...  
175 [21] Paragraphs (c) and (d) do not authorize communications advertising legal services to  
176 ~~prospective clients~~ in this jurisdiction by lawyers who are admitted to practice in other  
177 jurisdictions. Whether and how lawyers may communicate the availability of their services to  
178 ~~prospective clients~~ in this jurisdiction is governed by Rules 7.1 to 7.5.