

AMERICAN BAR ASSOCIATION

ABA Commission on Ethics 20/20

321 N. Clark Street
Chicago, IL 60654-7598
Phone: (312) 988-5311
Fax: (312) 988-5280

Website: www.abanet.org/ethics2020

2009-2010

CO-CHAIR

Jamie S. Gorelick
WilmerHale
1875 Pennsylvania Ave., N.W.
Washington, DC 20006

CO-CHAIR

Michael Traynor
3131 Eton Ave.
Berkeley, CA 94705

MEMBERS

Professor Stephen Gillers
New York, NY

Jeffrey B. Golden
London, United Kingdom

George W. Jones, Jr.
Washington, DC

Hon. Elizabeth B. Lacy
Richmond, VA

Judith A. Miller
San Francisco, CA

Hon. Kathryn A. Oberly
Washington, DC

Roberta Cooper Ramo
Albuquerque, NM

Herman Joseph Russomanno
Miami, FL

Professor Theodore Schneyer
Tucson, AZ

Professor Carole Silver
Washington, DC

Frederic S. Ury
Fairfield, CT

Hon. Gerald W. VandeWalle
Bismarck, ND

Hon. Diane P. Wood
Chicago, IL

LIAISONS

ABA Board of Governors
Steven C. Krane
New York, NY

**ABA Center for Professional
Responsibility**
Donald B. Hilliker
Chicago, IL

**ABA Task Force on International Trade
in Legal Services**

Professor Robert E. Lutz, II
Los Angeles, CA

**ABA Standing Committee on Ethics and
Professional Responsibility**

Philip H. Schaeffer
New York, NY

COMMISSION REPORTER

Keith R. Fisher
Chicago, IL

**CENTER FOR PROFESSIONAL
RESPONSIBILITY**

Jeanne P. Gray, Director

Ellyn S. Rosen, Commission Counsel
(312) 988-5311

Mary M. Devlin, Deputy Director
(312) 988-5295

Marcia Kladder, Policy & Program Director
(312) 988-5326

Natalia Vera, Senior Paralegal
(312) 988-5328

Kimley Grant, Regulation Paralegal
(312) 988-5319

**To: ABA Entities, Courts, Bar Associations (state, local and international),
Law Schools, Individuals and Entities**

**From: Jamie S. Gorelick and Michael Traynor, Co-Chairs
ABA Commission on Ethics 20/20**

Date: June 1, 2010

**Re: Memoranda and Templates for Comment- Inbound Foreign Lawyer
Issues**

In its November 19, 2009 Preliminary Issues Outline the ABA Commission on Ethics 20/20 posed questions regarding the ability of foreign lawyers to practice in the U.S. Those questions included:

- 1) Should the ABA include foreign lawyers within the scope of the ABA Model Rule for *Pro Hac Vice* Admission?
- 2) Should the ABA adopt a policy regarding registration of foreign lawyers practicing in-house in the U.S.?
- 3) Should the temporary practice provisions applicable to U.S. lawyers in Rule 5.5 of the ABA Model Rules of Professional Conduct be expanded to include non-U.S. lawyers? In 2002, the ABA adopted a Model Rule for Temporary Practice by Foreign Lawyers. Most jurisdictions that have adopted Model Rule 5.5 have not yet adopted the corollary foreign temporary practice rule.

The Commission's Working Group on Inbound Foreign Lawyer Issues has reviewed and considered the thoughtful comments and testimony received to date. Based on that information and additional research, the Working Group proposes affirmative responses to these three questions. In support of its suggestions the Working Group prepared memoranda and templates illustrating why and how foreign lawyers could be included within the current ABA Model Rules. It did not conduct a plenary review of those ABA policies. The Commission concurs with the Working Group's decision to suggest only substantive additions consistent with inbound foreign lawyer issues under Commission consideration. Members of 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 actively participated on the Working Group. The Commission is grateful for their significant contributions.

At its April 29, 2010 meeting the Commission took no position regarding the three questions set forth above, agreeing only to disseminate the Working Group's memoranda and templates for public input and comment. They accompany this Memo. The Commission will reconsider these proposals at future meetings in light of the comments it receives and in the context of ongoing research.

Please email comments to Senior Research Paralegal Natalia Vera at veran@staff.abanet.org by July 1, 2010. As noted above, the Commission views as appropriate the Working Group's limited approach of proposing substantive additions that address the issues the Commission is considering, but not stylistic or other substantive amendments. As a result, please limit your comments and suggestions accordingly.

Explanatory Memo
ABA Commission on Ethics 20/20
Working Group-Inbound Foreign Lawyers
Addition of Foreign Lawyers to ABA Model Rule for Registration of In-House
Counsel and Model Rule on Pro Hac Vice Admission
June 1, 2010

Introduction:

Advances in technology and client demand have driven increases in globalization of the practice of law. U.S. lawyers increasingly seek to represent clients in other countries, just as non-U.S. lawyers seek to provide legal services in the U.S. As described further below, this is true regardless of law firm size and it is not limited to certain practice areas. The ABA Commission on Multijurisdictional Practice (MJP Commission) included two foreign lawyer recommendations in the package of reforms it proposed and the House of Delegates adopted.¹ These are the only ABA policies that address foreign lawyer practice rights in the U.S.

The Working Group has considered the comments received in response to the Ethics 20/20 Commission's November 19, 2009 Preliminary Issues Outline. There are at least two areas where the Working Group suggests that the ABA should consider providing further guidance to U.S. jurisdictions in this regard, but has not yet done so. First, while at least thirteen states permit pro hac vice admission by foreign lawyers,² the ABA does not have a policy on this issue. Second, six states permit foreign in-house counsel to work for their employer in the U.S. provided that they register with the state.³ The ABA does not yet have a policy on this issue. The Working Group believes that the ABA Commission on Ethics 20/20 should consider recommendations to fill this policy void by including foreign lawyers within the rubric of the ABA Model Rule for Registration of In-House Counsel and the ABA Model Rule on Pro Hac Vice Admission. Redlined and clean templates illustrating how the Working Group believes this could be accomplished are attached to this Explanatory Memo as Appendices A, B, C, and D.

The ABA Model Rule for Registration of In-House Counsel

In August 2008, the ABA House of Delegates adopted the Model Rule for Registration of In-House Counsel to provide a method by which U.S jurisdictions that adopted Rule 5.5

¹ See Model Rule for the Licensing of Legal Consultants adopted by the House of Delegates in August 2002, amended in August 2006 and now known as the Model Rule for the Licensing and Practice of Foreign Legal Consultants, <http://www.abanet.org/cpr/mjp/FLC.pdf> ; and the Model Rule for Temporary Practice by Foreign Lawyers, <http://www.abanet.org/cpr/mjp/201j.pdf> .

² See, e.g., American Bar Association Center for Professional Responsibility Comparison Chart of ABA Model Rule for Pro Hac Vice Admission With State Versions and Amendments Since 2002 (last updated April 27, 2010), at http://www.abanet.org/cpr/mjp/prohac_admin_comp.pdf .

³ The states that have foreign lawyer in-house counsel rules are Arizona, Connecticut, Delaware, Virginia, Washington, and Wisconsin. 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 October 26, 2009), http://www.abanet.org/cpr/mjp/in-house_comp.pdf .

(d) of the Model Rules of Professional Conduct could enhance public protection. Registration provides a means to ensure that such lawyers are in fact licensed by another state and in good standing, and a method to monitor in-house counsel that are practicing in the jurisdiction.⁴ The Model Rule also provides sanctions for those who fail to register. Lawyers subject to registration requirements also are subject to the professional conduct rules and disciplinary authority of the local jurisdiction.

Currently, Model Rule of Professional Conduct 5.5 (d) only excludes from the definition of unauthorized practice of law the provision of legal services by U.S. in-house counsel admitted in one jurisdiction and practicing in another, when the lawyer is providing legal services solely to the lawyer's employer. The Rule assumes that an in-house lawyer can establish an office or other "systematic presence" in a jurisdiction and forgo 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 Working Group's suggestions for amending the Model Rule for Registration of In-House Counsel to include foreign lawyers is joined with two other proposals: (1) that the Model Rule on Pro Hac Vice Admission be amended to include foreign lawyers, and (2) that Model Rule 5.5 be amended to incorporate the provisions of the ABA Model Rule for Temporary Practice by Foreign Lawyers (see the additional Explanatory Memo and template). The Working Group did not conduct a plenary review of these existing ABA policies. It suggested substantive, not stylistic, additions to bring foreign lawyers within the scope of those Rules. **Of particular note, suggested amendments to the Model Rule for Registration of In-House Counsel and the Model Rule for Pro Hac Vice Admission attached to this Memo use the ABA House of Delegates' adopted definition of foreign lawyer set forth in the ABA Model Rule for the Licensing of and Practice by Foreign Legal Consultants and the ABA Model Rule for Temporary Practice by Foreign Lawyers.**

The Working Group recommends requiring all lawyers registered under the Rule, domestic or foreign, to pay any annual client protection fund assessment. This is consistent with Comment [17] of Model Rule 5.5, which states that lawyers who establish an office or continuous presence in the state "may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education." The Working Group also agreed with comments from the ABA Standing Committee on Client Protection in response to the Commission's Preliminary Issues Outline recommending inclusion of this requirement in the Black Letter Rule.

The Working Group considered suggesting an Appendix providing recommendations for inclusion of information in the registration application. However, the Report filed with the House of Delegates supporting the original recommendation to adopt the Model Rule for Registration of In-House Counsel stated:

⁴ See Model Rule 5.5 Comment [17].

An application in a form prescribed by the jurisdiction, requesting information such as name, address, employer’s name and address, status of license in another state or states. No “character and fitness” questions would be asked because a background investigation is not part of the registration process. If there is some reason to doubt the authenticity or accuracy of the documentation, good standing or employment, the prospective registrant would have the burden of resolving all questions to the satisfaction of the registering authority.

As a result, the Working Group declined to recommend that proposed change to the existing Rule.

Consistent with the ABA Model Rule for Licensing and Practice of Foreign Legal Consultants, the Working Group proposes adding language to the In-House Registration Rule to require that a foreign lawyer provide accurate English translation(s) of any documents demonstrating his or her admission to practice and good standing as a lawyer in any foreign jurisdictions.

The Rule would continue to prohibit the registered lawyer from appearing in court or other tribunal under the auspices of this registration, even if on behalf of the employer, unless they are admitted *pro hac vice* or by some other exception to the local licensure law. The amended Rule would continue to provide that lawyers registered under the Rule, whether U.S. or foreign, bear the burden of reporting any change in licensure and employment status.

By suggesting the addition of foreign lawyers to this Rule, the Working Group proposes to enhance a straightforward registration process that neither creates an automatic licensing process nor places an undue burden on in-house counsel or on states’ lawyer regulatory systems. Some have expressed concerns that amending the In-House Registration Rule in this manner will constitute the “camel’s nose under the tent” of increased foreign lawyer presence in the U.S. The Working Group unanimously disagreed with that proposition. Those lawyers are already here, especially in the “in-house” context. The Working Group’s suggested changes to the In-House Registration Rule and corresponding amendments to Model Rule 5.5 would ensure that the regulatory authorities know who these lawyers are and which companies employ them. This will inure to the benefit of the bar as well as to the public. Doing so also will recognize the legal needs of multinational corporations to facilitate the provision of legal services by counsel of their choice.

Furthermore, the Model Rule for the Licensing and Practice of Foreign Legal Consultants already recognizes that permitting foreign lawyers to work in the U.S., with limitations, is beneficial. Like that Rule, the Model Rule for Registration of In-House Counsel limits the work of the foreign lawyer. The Foreign Legal Consultant Rule limits the body of law on which the foreign lawyer may advise; the In-House Registration Rule specifies the clients to whom the foreign lawyer may advise.

In-house lawyers admitted in a foreign jurisdiction, but working for their employer in the U.S., have been twice vetted. The bar admissions authorities in their country of licensure have done so, as have their employers. Each possesses a strong incentive to thoroughly investigate the lawyer's character, fitness, and background.⁵ Because these lawyers are working under a limited scope of practice and only for their client/employer, the risk to the public associated with these proposed amendments is *de minimus*.

ABA Model Rule on Pro Hac Vice Admission

In August 2002, the ABA House of Delegates adopted the Model Rule on Pro Hac Vice Admission as part of the package of policies proposed by the MJP Commission. This proposal, put forth by the MJP Commission, had been developed cooperatively by the ABA Section of Litigation and the ABA Tort Trial and Insurance Practice Section. The Rule requires that the lawyer admitted pro hac vice associate with local counsel and provides that local counsel remains responsible to the client and for the conduct of the proceeding.

As noted above, at least thirteen states have rules permitting pro hac vice admission for foreign lawyers. The need for such rules in other states will continue to grow. Consider, for example, that in 2007, there were \$20 trillion in foreign-owned assets in the U.S. and \$17.6 trillion in U.S.-owned assets abroad.⁶ The 2000 U.S. Census data shows that between 1990 and 2000, every jurisdiction had at least a 19% increase in its foreign-born population, and every jurisdiction except five had at least a 30% increase.⁷ Nineteen states saw an increase of more than 100%.⁸ States with the largest percentage increases are: Alabama, Arizona, Arkansas, Delaware, Georgia, Idaho, Iowa, Kansas, Kentucky, Mississippi, Nebraska, Nevada, North Carolina, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee and Utah.⁹

It follows that these foreign born residents will, at some time, have family law, inheritance or business relationships with their country of origin. Many of these interactions will require involvement of U.S. and foreign lawyers. Comments submitted in response to the Commission's Preliminary Issues Outline support the need for the amendments suggested by the Working Group. For example, family law has become more internationalized and it is not uncommon for those lawyers, typically solo or smaller firm practitioners, to regularly represent clients whose cases involve issues that cross country borders. More and more frequently, family law practitioners must coordinate with their foreign counterparts. The same can be said of property and estate law practitioners.

⁵ See, e.g., J. Charles Mokriski, In-House Lawyers' Bar Status: "Counsel, You're Not in Kansas Anymore," Boston Bar Journal, January/February 2008.

⁶ See <http://www.bea.gov/international/index.htm#trade>.

⁷ The Foreign-Born Population: 2000, Census 2000 Brief at 3 (Dec. 2003), <http://www.census.gov/prod/2003pubs/c2kbr-34.pdf>.

⁸ Id.

⁹ Id.

The Working Group also recognized that individual and organizational clients will want their foreign lawyers to be able to appear pro hac vice in commercial matters. These lawyers have intimate knowledge of their clients' businesses and the international laws that govern them. By allowing a foreign lawyer to participate in a U.S. commercial proceeding pro hac vice, along with local counsel, the client is assured the full panoply of legal expertise provided by counsel of its choice.

Adding foreign lawyers to the Model Pro Hac Vice Rule would not dilute any client protections. The judge who presides over the case provides one level of protection and the requirement that local counsel is involved and bears responsibility offers a second.

As with the proposed changes to the Model Rule for Registration of In-House Counsel, the definition of foreign lawyer/foreign jurisdiction that used in already adopted ABA policies.

To enhance substantive clarity and consistency within the Rule, the Working Group proposed adding the term "administrative" before "agency" throughout. The Rule as originally adopted uses the terms "agency" and "administrative agency" interchangeably. The Working Group checked with the Section of Administrative Law to determine whether it had any concerns about limiting the agencies referenced in the Rule to administrative agencies. Section members advised that they were not aware that the "arguable limitations of 'administrative agency' have been causing appreciable problems in the area of pro hac vice admissions." They did note, however, that the current language of the Rule could, "at least potentially, lead to uncertainty with respect to appearances by out-of-state lawyers before entities such as central ALJ panels or other administrative review tribunals." The Commission may want to determine, via request for public comment, whether others think that the risks of such uncertainty are significant and would operate to the detriment of the goals of the Model Rule.

The majority of the Working Group's other suggested additions to the Rule are intended to ensure internal consistency and bring its terminology in line with other ABA policies. For example, the Working Group proposes use of the term "Disciplinary Counsel" instead of "lawyer regulatory authority," "Rules of Professional Conduct" instead of "ethical rules," and "Rules of Disciplinary Enforcement" instead of "rules of discipline." Changes in Paragraph I.F. 1(a) are intended to increase clarity and eliminate redundancy.

The Working Group suggests reorganizing the order of items in Appendix A of the Rule (required information for verified application for pro hac vice admission) to improve logical flow and provide better substantive guidance. Other suggested changes, such as including e-mail addresses and telephone numbers, will increase the ease with which those investigating, granting or denying the application can communicate with the applicant and others who may have relevant information. The same is true of the Working Group's suggestion to amend the Rule to require the applicant to provide certified copies of requested court, agency or disciplinary orders, and where appropriate accurate English translations thereof.

ABA Commission on Ethics 20/20
Working Group-Inbound Foreign Lawyers
ABA Model Rule on Pro Hac Vice Admission
Redlined Template: Addition of Foreign Lawyers
Disseminated for Comment June 1, 2010

I. Admission In Pending Litigation Before A Court Or Administrative Agency

A. Definitions

1. An “out-of-state” lawyer is a person not admitted to practice law in this state but who is admitted in another state or territory of the United States, ~~or of the District of Columbia~~ or a foreign jurisdiction, and not disbarred or suspended, or the equivalent thereof, from practice in any jurisdiction.

2. a “foreign jurisdiction” is one with a recognized legal profession, 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.

3. An out-of-state lawyer is “eligible” for admission pro hac vice if that lawyer:

a. lawfully practices solely on behalf of the lawyer’s employer and its commonly owned organizational affiliates, regardless of where such lawyer may reside or work; or

b. neither resides nor is regularly employed at an office in this state; or

c. resides in this state but (i) lawfully practices from offices in one or more other states or foreign jurisdictions and (ii) practices no more than temporarily in this state, whether pursuant to admission pro hac vice or in other lawful ways.

4. A “client” is a person or entity for whom the out-of-state lawyer has rendered services or by whom the lawyer has been retained prior to the lawyer’s performance of services in this state.

5. An “alternative dispute resolution” (“ADR”) proceeding includes all types of arbitration or mediation, and all other forms of alternative dispute resolution, whether arranged by the parties or otherwise.

6. “This state” refers to [state or other U.S. jurisdiction promulgating this ~~Rule~~]. This Rule does not govern proceedings before a federal court or federal agency located in this state unless that body adopts or incorporates this Rule.

B. Authority of Court or Administrative Agency To Permit Appearance By Out-of-State Lawyer

1. Court Proceeding. A court of this state may, in its discretion, admit an eligible out-of-state lawyer retained to appear in a particular proceeding pending before such court to appear pro hac vice as counsel in that proceeding.

2. Administrative Agency Proceeding. If practice before an administrative agency of this state is limited to lawyers, the agency may, using the same standards and procedures as a court, admit an eligible out-of-state lawyer who has been retained to appear in a particular agency proceeding to appear as counsel in that proceeding pro hac vice.

C. In-State Lawyer’s Duties. When an out-of-state lawyer appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with

1 the in-state lawyer, or in an advisory or consultative role, the in-state lawyer who is
2 co-counsel or counsel of record for that client in the proceeding remains responsible
3 to the client and responsible for the conduct of the proceeding before the court or
4 administrative agency. It is the duty of the in-state lawyer to advise the client of the
5 in-state lawyer's independent judgment on contemplated actions in the proceeding if
6 that judgment differs from that of the out-of-state lawyer.

7 **D. Application Procedure**

8 1. **Verified Application.** An eligible out-of-state lawyer seeking to appear
9 in a proceeding pending in this state as counsel pro hac vice shall file a verified
10 application with the court or administrative agency where the proceeding litigation
11 is filed. The application shall be served on all parties who have appeared in the case
12 and the [Disciplinary Counsel lawyer regulatory authority]. The application shall
13 include proof of service. The court or administrative agency has the discretion to
14 grant or deny the application summarily if there is no opposition.

15 2. **Objection to Application.** The [Disciplinary Counsel] lawyer
16 regulatory authority] or a party to the proceeding may file an objection to the
17 application or seek the court's or administrative agency's imposition of conditions
18 to its being granted. The [Disciplinary Counsel lawyer regulatory authority] or
19 objecting party must file with its objection a verified affidavit containing or
20 describing information establishing a factual basis for the objection. The
21 [Disciplinary Counsel lawyer regulatory authority] or objecting party may seek
22 denial of the application or modification of it. If the application has already been
23 granted, the [Disciplinary Counsel lawyer regulatory authority] or objecting party
24 may move that the pro hac vice admission be withdrawn.

25 3. **Standard for Admission and Revocation of Admission.** The courts
26 and administrative agencies of this state have discretion as to whether to grant
27 applications for admission pro hac vice. An application ordinarily should be granted
28 unless the court or administrative agency finds reason to believe that such
29 admission:

30 a. may be detrimental to the prompt, fair and efficient
31 administration of justice,

32 b. may be detrimental to legitimate interests of parties to the
33 proceedings other than the client(s) the applicant proposes to represent,

34 c. one or more of the clients the applicant proposes to represent
35 may be at risk of receiving inadequate representation and cannot adequately
36 appreciate that risk, or

37 d. the applicant has engaged in such frequent appearances as to
38 constitute regular practice in this state.

39 4. **Revocation of Admission.** Admission to appear as counsel pro hac vice
40 in a proceeding may be revoked for any of the reasons listed in Section I.D.3
41 above.

42 **E. Verified Application**

43 1. **Required Information.** An application shall state the information
44 listed on Appendix A to this ~~¶~~Rule. The applicant may also include any other
45 matters supporting admission pro hac vice.

46 2. **Application Fee.** An applicant for permission to appear as counsel
47 pro hac vice under this Rule shall pay a non-refundable fee as set by

1 the [court, administrative agency or other proper authority] ~~Lawyer~~
2 ~~regulatory authority]~~ at the time of filing the application.

3 3. Exemption for Pro Bono Representation. An applicant shall not be
4 required to pay the fee established by I.E.2 above if the applicant will
5 not charge an attorney fee to the client(s) and is:

6 a. employed or associated with a pro bono project or nonprofit
7 legal services organization in a civil case involving the client(s)
8 of such programs: or

9 b. involved in a criminal case or a habeas proceeding for an
10 indigent defendant.

11 F. Authority of the [Disciplinary Counsel Lawyer Regulatory Authority], the
12 and Court, and Administrative Agency: Application of Ethical Rules of
13 Professional Conduct, Rules of Disciplinary Enforcement Discipline,
14 Contempt, and Sanctions

15 1. Authority Over Out-of-State Lawyer and Applicant.

16 a. During pendency of an application for admission pro hac vice
17 and upon the granting of such application, an out-of-state lawyer submits to
18 the authority of the courts or administrative agency and the jurisdiction of
19 [Disciplinary Counsel lawyer regulatory authority] of this state for all
20 conduct arising out of or relating in any way to the application or proceeding
21 in which the out-of-state lawyer seeks to appear, regardless of where the
22 conduct occurs. ~~The applicant or out-of-state lawyer who has obtained pro~~
23 ~~hac vice admission in a proceeding submits to this authority for all that~~
24 ~~lawyer's conduct (i) within the state while the proceeding is pending or (ii)~~
25 ~~arising out of or relating to the application or the proceeding.~~ An applicant
26 or out-of-state lawyer who has pro hac vice authority for a proceeding may
27 be disciplined in the same manner as an in-state lawyer.

28 b. The court's, administrative agency's and the [Disciplinary
29 Counsel's lawyer regulatory authority's] authority includes, without
30 limitation, the court's, the agency's, and the [Disciplinary Counsel's lawyer
31 regulatory authority's] rules of professional conduct, rules of disciplinary
32 enforcement, contempt and sanctions orders, local court rules, and court
33 policies and procedures.

34 2. Familiarity With Rules. An applicant shall become familiar with all
35 applicable the rules of professional conduct, rules of disciplinary enforcement of
36 ~~the [lawyer regulatory authority]~~, local court or agency rules, and policies and
37 procedures of the court or administrative agency before which the applicant seeks to
38 practice.

39 II. Out-of-State Proceedings, Potential In-State and Out-of-State Proceedings, and All
40 ADR

41 A. In-State Ancillary Proceeding Related to Pending Out-of-State Proceeding.
42 In connection with proceedings pending outside this state, an out-of-state lawyer
43 admitted to appear in that proceeding may render in this state legal services
44 regarding or in aid of such proceeding.

45 B. Consultation by Out-of-State Lawyer

46 1. Consultation with In-State Lawyer. An out-of-state lawyer may
47 consult in this state with an in-state lawyer concerning the in-state's lawyer's
48 client's pending or potential proceeding in this state.

- 1 3. the jurisdictions in, and administrative agencies and courts before which
2 applicant has been admitted to practice and the respective period(s) of
3 admission;
- 4 4. the name and address of each court or agency and a full identification of each
5 proceeding in which the applicant has filed an application to appear pro hac
6 vice in this state within the preceding two years and the date of each
7 application;
- 8 5. a statement as to whether the applicant (a) has ever been denied admission
9 pro hac vice in any jurisdiction, U.S. or foreign, including this state, (b) has
10 ever had admission pro hac vice revoked in any jurisdiction, U.S. or foreign,
11 including this state, or (c) has otherwise ever formally been disciplined or
12 sanctioned by any court or administrative agency in any jurisdiction, U.S. or
13 foreign, including this state. If so, specify the nature of the allegations; the
14 name of the authority bringing such proceedings; the caption of the
15 proceedings, the date filed, and what findings were made and what action
16 was taken in connection with those proceedings. (a A certified copy of the
17 written finding or order shall be attached to the application. If the written
18 finding or order is not in English, the applicant shall submit an English
19 translation and satisfactory proof of the accuracy of the translation);
- 20 56. whether any formal, written disciplinary proceeding has ever been brought
21 against the applicant by a disciplinary counsel or analogous foreign
22 regulatory authority in any other jurisdiction within the last five (5) years
23 and, as to each such proceeding: the nature of the allegations; the name of
24 the person or authority bringing such proceedings; the date the proceedings
25 were initiated and finally concluded; the style caption of the proceedings;
26 and the findings made and actions taken in connection with those
27 proceedings. (a A certified copy of the written order shall be attached to the
28 application. If the written order is not in English, the applicant shall submit
29 an English translation and satisfactory proof of the accuracy of the
30 translation.);
- 31 67. whether the applicant has been held formally in contempt or otherwise
32 sanctioned by any court in a written order in the last five (5) years for
33 disobedience to its rules or orders, and, if so: the nature of the allegations;
34 the name of the court before which such proceedings were conducted; the
35 date of the contempt order or sanction, the caption of the proceedings, and
36 the substance of the court's rulings. (a A copy of the written order or
37 transcript of the oral rulings shall be attached to the application. If the
38 written finding or order is not in English, the applicant shall submit an
39 English translation and satisfactory proof of the accuracy of the translation);
- 40 7. ~~the name and address of each court or agency and a full identification of each~~
41 ~~proceeding in which the applicant has filed an application to appear pro hac~~
42 ~~vice in this state within the preceding two years; the date of each application;~~
43 ~~and the outcome of the application;~~
- 44 8. an averment as to the applicant's familiarity with the rules of professional
45 conduct, rules of disciplinary enforcement of the [lawyer regulatory
46 authority], local or agency rules, and court policies and procedures of the
47 court or administrative agency before which the applicant seeks to practice;
48 and

- 1 **9. the name, address, telephone number, e-mail address, and bar number of an**
2 **active member in good standing of the bar of this state who will sponsor the**
3 **applicant’s pro hac vice request. The bar member shall appear of record**
4 **together with the out-of-state lawyer.**
- 5 **10. Optional: the applicant’s prior or continuing representation in other matters**
6 **of one or more of the clients the applicant proposes to represent and any**
7 **relationship between such other matter(s) and the proceeding for which**
8 **applicant seeks admission.**
- 9 **11. Optional: any special experience, expertise, or other factor deemed to make**
10 **it particularly desirable that the applicant be permitted to represent the**
11 **client(s) the applicant proposes to represent in the particular cause.**

ABA Commission on Ethics 20/20
Working Group-Inbound Foreign Lawyers
ABA Model Rule on Pro Hac Vice Admission
Clean Template: Addition of Foreign Lawyers
Disseminated for Comment June 1, 2010

I. Admission In Pending Litigation Before A Court Or Administrative Agency

A. Definitions

1. An “out-of-state” lawyer is a person not admitted to practice law in this state but who is admitted in another state or territory of the United States, the District of Columbia or a foreign jurisdiction, and not disbarred or suspended, or the equivalent thereof, from practice in any jurisdiction.

2. a “foreign jurisdiction” is one with a recognized legal profession, 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.

3. An out-of-state lawyer is “eligible” for admission pro hac vice if that lawyer:

a. lawfully practices solely on behalf of the lawyer’s employer and its commonly owned organizational affiliates, regardless of where such lawyer may reside or work; or

b. neither resides nor is regularly employed at an office in this state; or

c. resides in this state but (i) lawfully practices from offices in one or more other states or foreign jurisdictions and (ii) practices no more than temporarily in this state, whether pursuant to admission pro hac vice or in other lawful ways.

4. A “client” is a person or entity for whom the out-of-state lawyer has rendered services or by whom the lawyer has been retained prior to the lawyer’s performance of services in this state.

5. An “alternative dispute resolution” (“ADR”) proceeding includes all types of arbitration or mediation, and all other forms of alternative dispute resolution, whether arranged by the parties or otherwise.

6. “This state” refers to [state or other U.S. jurisdiction promulgating this Rule]. This Rule does not govern proceedings before a federal court or federal agency located in this state unless that body adopts or incorporates this Rule.

B. Authority of Court or Administrative Agency To Permit Appearance By Out-of-State Lawyer

1. **Court Proceeding.** A court of this state may, in its discretion, admit an eligible out-of-state lawyer retained to appear in a particular proceeding pending before such court to appear pro hac vice as counsel in that proceeding.

2. **Administrative Agency Proceeding.** If practice before an administrative agency of this state is limited to lawyers, the agency may, using the same standards and procedures as a court, admit an eligible out-of-state lawyer who has been retained to appear in a particular agency proceeding to appear as counsel in that proceeding pro hac vice.

C. In-State Lawyer’s Duties. When an out-of-state lawyer appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with

1 the in-state lawyer, or in an advisory or consultative role, the in-state lawyer who is
2 co-counsel or counsel of record for that client in the proceeding remains responsible
3 to the client and responsible for the conduct of the proceeding before the court or
4 administrative agency. It is the duty of the in-state lawyer to advise the client of the
5 in-state lawyer's independent judgment on contemplated actions in the proceeding if
6 that judgment differs from that of the out-of-state lawyer.

7 **D. Application Procedure**

8 1. **Verified Application.** An eligible out-of-state lawyer seeking to appear
9 in a proceeding pending in this state as counsel pro hac vice shall file a verified
10 application with the court or administrative agency where the litigation is filed. The
11 application shall be served on all parties who have appeared in the case and the
12 [Disciplinary Counsel]. The application shall include proof of service. The court or
13 administrative agency has the discretion to grant or deny the application summarily
14 if there is no opposition.

15 2. **Objection to Application.** The [Disciplinary Counsel] or a party to the
16 proceeding may file an objection to the application or seek the court's or
17 administrative agency's imposition of conditions to its being granted. The
18 [Disciplinary Counsel] or objecting party must file with its objection a verified
19 affidavit containing or describing information establishing a factual basis for the
20 objection. The [Disciplinary Counsel] or objecting party may seek denial of the
21 application or modification of it. If the application has already been granted, the
22 [Disciplinary Counsel] or objecting party may move that the pro hac vice admission
23 be withdrawn.

24 3. **Standard for Admission and Revocation of Admission.** The courts
25 and administrative agencies of this state have discretion as to whether to grant
26 applications for admission pro hac vice. An application ordinarily should be granted
27 unless the court or administrative agency finds reason to believe that such
28 admission:

29 a. may be detrimental to the prompt, fair and efficient
30 administration of justice,

31 b. may be detrimental to legitimate interests of parties to the
32 proceedings other than the client(s) the applicant proposes to represent,

33 c. one or more of the clients the applicant proposes to represent
34 may be at risk of receiving inadequate representation and cannot adequately
35 appreciate that risk, or

36 d. the applicant has engaged in such frequent appearances as to
37 constitute regular practice in this state.

38 4. **Revocation of Admission.** Admission to appear as counsel pro hac vice
39 in a proceeding may be revoked for any of the reasons listed in Section I.D.3
40 above.

41 **E. Verified Application**

42 1. **Required Information.** An application shall state the information
43 listed on Appendix A to this Rule. The applicant may also include any other matters
44 supporting admission pro hac vice.

45 2. **Application Fee.** An applicant for permission to appear as counsel
46 pro hac vice under this Rule shall pay a non-refundable fee as set by
47 the [court, administrative agency or other proper authority] at the
48 time of filing the application.

- 1 **3. Exemption for Pro Bono Representation.** An applicant shall not be
2 required to pay the fee established by I.E.2 above if the applicant will
3 not charge an attorney fee to the client(s) and is:
4 **a.** employed or associated with a pro bono project or nonprofit
5 legal services organization in a civil case involving the client(s)
6 of such programs: or
7 **b.** involved in a criminal case or a habeas proceeding for an
8 indigent defendant.

9 **F. Authority of the [Disciplinary Counsel], the Court, and Administrative**
10 **Agency: Application of Rules of Professional Conduct, Rules of Disciplinary**
11 **Enforcement, Contempt, and Sanctions**

12 **1. Authority Over Out-of-State Lawyer and Applicant.**

13 **a.** During pendency of an application for admission pro hac vice
14 and upon the granting of such application, an out-of-state lawyer submits to
15 the authority of the courts or administrative agency and the jurisdiction of
16 [Disciplinary Counsel] of this state for all conduct arising out of or relating in
17 any way to the application or proceeding in which the out-of-state lawyer
18 seeks to appear, regardless of where the conduct occurs. An applicant or
19 out-of-state lawyer who has pro hac vice authority for a proceeding may be
20 disciplined in the same manner as an in-state lawyer.

21 **b.** The court's, administrative agency's and the [Disciplinary
22 Counsel's] authority includes, without limitation, the court's, the agency's,
23 and the [Disciplinary Counsel's] rules of professional conduct, rules of
24 disciplinary enforcement, contempt and sanctions orders, local court rules,
25 and court policies and procedures.

26 **2. Familiarity With Rules.** An applicant shall become familiar with all
27 applicable rules of professional conduct, rules of disciplinary enforcement, local
28 court or agency rules, and policies and procedures of the court or administrative
29 agency before which the applicant seeks to practice.

30 **II. Out-of-State Proceedings, Potential In-State and Out-of-State Proceedings, and All**
31 **ADR**

32 **A. In-State Ancillary Proceeding Related to Pending Out-of-State Proceeding.**
33 In connection with proceedings pending outside this state, an out-of-state lawyer
34 admitted to appear in that proceeding may render in this state legal services
35 regarding or in aid of such proceeding.

36 **B. Consultation by Out-of-State Lawyer**

37 **1. Consultation with In-State Lawyer.** An out-of-state lawyer may
38 consult in this state with an in-state lawyer concerning the in-state's lawyer's
39 client's pending or potential proceeding in this state.

40 **2. Consultation with Potential Client.** At the request of a person in this
41 state contemplating a proceeding or involved in a pending proceeding, irrespective
42 of where the proceeding is located, an out-of-state lawyer may consult in this state
43 with that person about that person's possible retention of the out-of-state lawyer in
44 connection with the proceeding.

45 **C. Preparation for In-State Proceeding.** On behalf of a client in this state or
46 elsewhere, the out-of-state lawyer may render legal services in this state in
47 preparation for a potential proceeding to be filed in this state, provided that the out-

1 of-state lawyer reasonably believes he is eligible for admission pro hac vice in this
2 state.

3 **D. Preparation for Out-of-State Proceeding.** In connection with a potential
4 proceeding to be filed outside this state, an out-of-state lawyer may render legal
5 services in this state for a client or potential client located in this state, provided that
6 the out-of-state lawyer is admitted or reasonably believes the lawyer is eligible for
7 admission generally or pro hac vice in the jurisdiction where the proceeding is
8 anticipated to be filed.

9 **E. Services Rendered Outside This State for In-State Client.** An out-of-state
10 lawyer may render legal services while the lawyer is physically outside this state
11 when requested by a client located within this state in connection with a potential or
12 pending proceeding filed in or outside this state.

13 **F. Alternative Dispute Resolution (“ADR”) Procedures.** An out-of-state lawyer
14 may render legal services in this state to prepare for and participate in an ADR
15 procedure regardless of where the ADR procedure is expected to take or actually
16 takes place.

17 **G. No Solicitation.** An out-of-state lawyer rendering services in this state in
18 compliance with this Rule or here for other reasons is not authorized by anything in
19 this Rule to hold out to the public or otherwise represent that the lawyer is admitted
20 to practice in this jurisdiction. Nothing in this Rule authorizes out-of-state lawyers
21 to solicit, advertise, or otherwise hold themselves out in publications as available to
22 assist in litigation in this state.

23 **H. Temporary Practice.** An out-of-state lawyer will only be eligible for
24 admission pro hac vice or to practice in another lawful way only on a temporary
25 basis.

26 **I. Authorized Services.** The foregoing services may be undertaken by the out-of-
27 state lawyer in connection with a potential proceeding in which the lawyer
28 reasonably expects to be admitted pro hac vice, even if ultimately no proceeding is
29 filed or if pro hac vice admission is denied.

30
31 **APPENDIX A**
32

33 **The out-of-state lawyer’s verified application for admission pro hac vice shall**
34 **include:**

- 35 **1. the applicant’s residence and business address, telephone number(s), and e-**
36 **mail address(es);**
- 37 **2. the name, address, phone number, and e-mail address of each client sought**
38 **to be represented;**
- 39 **3. the jurisdictions in, and administrative agencies and courts before which**
40 **applicant has been admitted to practice and the respective period(s) of**
41 **admission;**
- 42 **4. the name and address of each court or agency and a full identification of each**
43 **proceeding in which the applicant has filed an application to appear pro hac**
44 **vice in this state within the preceding two years and the date of each**
45 **application;**
- 46 **5. a statement as to whether the applicant (a) has ever been denied admission**
47 **pro hac vice in this state or any other jurisdiction, (b) has ever had admission**
48 **pro hac vice revoked in this state or any other jurisdiction, or (c) has**

1 otherwise ever formally been disciplined or sanctioned by any court or
2 administrative agency in this state or any other jurisdiction. If so, specify the
3 nature of the allegations; the name of the authority bringing such
4 proceedings; the caption of the proceedings, the date filed, and what findings
5 were made and what action was taken in connection with those proceedings.
6 A certified copy of the written finding or order shall be attached to the
7 application. If the written finding or order is not in English, the applicant
8 shall submit an English translation and satisfactory proof of the accuracy of
9 the translation;

10 **6.** whether any formal, written disciplinary proceeding has ever been brought
11 against the applicant by a disciplinary counsel or analogous foreign
12 regulatory authority in any jurisdiction within the last five (5) years and, as
13 to each such proceeding: the nature of the allegations; the date the
14 proceedings were initiated and finally concluded; the caption of the
15 proceedings; and the findings made and actions taken in connection with
16 those proceedings. A certified copy of the written order shall be attached to
17 the application. If the written order is not in English, the applicant shall
18 submit an English translation and satisfactory proof of the accuracy of the
19 translation.

20 **7.** whether the applicant has been held directly or indirectly in contempt or
21 otherwise sanctioned by any court in a written order in the last five (5) years,
22 and, if so: the nature of the allegations; the name of the court before which
23 such proceedings were conducted; the date of the contempt order or
24 sanction, the caption of the proceedings, and the substance of the court's
25 rulings. A copy of the written order or transcript of the oral rulings shall be
26 attached to the application. If the written finding or order is not in English,
27 the applicant shall submit an English translation and satisfactory proof of
28 the accuracy of the translation;

29 **8.** an averment as to the applicant's familiarity with the rules of professional
30 conduct, rules of disciplinary enforcement, local rules and court procedures
31 of the court before which the applicant seeks to practice; and

32 **9.** the name, address, telephone number, e-mail address, and bar number of an
33 active member in good standing of the bar of this state who will sponsor the
34 applicant's pro hac vice request. The bar member shall appear of record
35 together with the out-of-state lawyer.

36 **10.** Optional: the applicant's prior or continuing representation in other matters
37 of one or more of the clients the applicant proposes to represent and any
38 relationship between such other matter(s) and the proceeding for which
39 applicant seeks admission.

40 **11.** Optional: any special experience, expertise, or other factor deemed to make
41 it particularly desirable that the applicant be permitted to represent the
42 client(s) the applicant proposes to represent in the particular cause.

1
2
3
4
5
6

ABA Commission on Ethics 20/20
Working Group-Inbound Foreign Lawyers
ABA Model Rule for Registration of In-House Counsel
Redlined Template: Addition of Foreign Lawyers
Disseminated for Comment June 1, 2010

7 GENERAL PROVISIONS:

8 A. A lawyer admitted to the practice of law in another United States jurisdiction, or
9 in a foreign jurisdiction, who has a continuous presence in this jurisdiction and is
10 employed as a lawyer by an organization as permitted pursuant to Rule 5.5(d)(1)
11 of the Model Rules of Professional Conduct, the business of which is lawful and
12 consists of activities other than the practice of law or the provision of legal
13 services, shall register as in-house counsel within [180 days] of the
14 commencement of employment as a lawyer or if currently so employed then
15 within [180 days] of the effective date of this rule, by submitting to the
16 [registration authority] the following:

- 17 1) A completed application in the form prescribed by the [registration
18 authority];
19 2) A fee in the amount determined by the [registration authority];
20 3) Documents proving admission to practice law and current good standing
21 in all jurisdictions, U.S. and foreign, in which the lawyer is admitted to
22 practice law;— If the jurisdiction is foreign and the documents are not in
23 English, the lawyer shall submit an English translation and satisfactory
24 proof of the accuracy of the translation; and
25 4) An affidavit from an officer, director, or general counsel of the employing
26 entity attesting to the lawyer's employment by the entity and the capacity
27 in which the lawyer is so employed, and stating that the employment
28 conforms to the requirements of this ~~Rule~~.

29 For purposes of this Rule, a "foreign jurisdiction" is one with a recognized legal
30 profession, the members of which are admitted to practice as lawyers or
31 counselors at law or the equivalent and subject to effective regulation and
32 discipline by a duly constituted professional body or a public authority.

33
34 SCOPE OF AUTHORITY OF REGISTERED LAWYER:

35 B. A lawyer registered under this section shall have the rights and privileges
36 otherwise applicable to members of the bar of this jurisdiction with the following
37 restrictions:

- 38 1. The registered lawyer is authorized to provide legal services to the entity
39 client or its organizational affiliates, including entities that control, are
40 controlled by, or are under common control with the employer, and for
41 employees, officers and directors of such entities, but only on matters
42 directly related to their work for the entity and only to the extent

1 consistent with Rule 1.7 of the Model Rules of Professional Conduct [or
2 jurisdictional equivalent provision in the jurisdiction]; and

- 3 2. The registered lawyer shall not:
- 4 a. Except as otherwise permitted by the rules of this jurisdiction,
5 appear before a court or any other tribunal as defined in Rule
6 1.0(m) of the Model Rules of Professional Conduct [or
7 jurisdictional equivalent], or
 - 8 b. Offer or provide legal services or advice to any person other than
9 as described in paragraph B.1., or hold himself or herself out as
10 being authorized to practice law in this jurisdiction other than as
11 described in paragraph B.1.

12
13 PRO BONO PRACTICE:

- 14 C. Notwithstanding the provisions of paragraph B above, a lawyer registered under
15 this section is authorized to provide pro bono legal services through an established
16 not-for-profit bar association, pro bono program or legal services program or
17 through such organization(s) specifically authorized in this jurisdiction.

18
19 OBLIGATIONS:

- 20 D. A lawyer registered under this section shall:
- 21 1. Pay an annual fee in the amount of \$_____;
 - 22 2. Pay any annual client protection fund assessment;
 - 23 3. Fulfill the continuing legal education requirements that are required of
24 active members of the bar in this jurisdiction;
 - 25 4. Report within [___] days to the jurisdiction the following:
 - 26 a. Termination of the lawyer's employment as described in
27 paragraph B.4.;
 - 28 b. Whether or not public, any change in the lawyer's license status
29 in another jurisdiction, whether U.S. or foreign, including by the
30 lawyer's resignation;
 - 31 c. Whether or not public, any disciplinary charge, finding, or
32 sanction concerning the lawyer by any disciplinary authority,
33 court, or other tribunal in any jurisdiction, U.S. or foreign.

34
35 LOCAL DISCIPLINE:

- 36 E. A registered lawyer under this section shall be subject to the [jurisdiction's Rules
37 of Professional Conduct], [Rules of Lawyer Disciplinary Enforcement], and all
38 other laws and rules governing lawyers admitted to the active practice of law in
39 this jurisdiction. The [jurisdiction's disciplinary counsel] has and shall retain
40 jurisdiction over the registered lawyer with respect to the conduct of the lawyer in
41 this or another jurisdiction to the same extent as it has over lawyers generally
42 admitted in this jurisdiction.

43
44 AUTOMATIC TERMINATION:

- 45 F. A registered lawyer's rights and privileges under this Rule section automatically
46 terminate when:

- 1 1. The lawyer's employment terminates;
- 2 2. The lawyer is suspended or disbarred from practice in any jurisdiction or
- 3 any court or agency before which the lawyer is admitted, U.S. or foreign;
- 4 or
- 5 3. The lawyer fails to maintain active status in at least one jurisdiction, U.S.
- 6 or foreign.

7
8 REINSTATEMENT:

9 G. A registered lawyer whose registration is terminated under paragraph F.1. above,
10 may be reinstated within [~~xx~~__] months of termination upon submission to the
11 [registration authority] of the following:

- 12 1. An application for reinstatement in a form prescribed by the [registration
- 13 authority];
- 14 2. A reinstatement fee in the amount of \$_____;
- 15 3. An affidavit from the current employing entity as prescribed in paragraph
- 16 A.4.

17
18 SANCTIONS:

19 H. A lawyer under this rule who fails to register shall be:

- 20 1. Subject to professional discipline in this jurisdiction;
- 21 2. Ineligible for admission on motion in this jurisdiction;
- 22 3. Referred by the [registration authority] to ~~the~~ this [jurisdiction's bar
- 23 admissions authority]; and
- 24 4. Referred by the [registration authority] to the disciplinary authority of the
- 25 jurisdictions of licensure, U.S. and/or foreign.

1 **ABA Commission on Ethics 20/20**
2 **Working Group-Inbound Foreign Lawyers**
3 **ABA Model Rule for Registration of In-House Counsel**
4 **Clean Template: Addition of Foreign Lawyers**
5 **Disseminated for Comment June 1, 2010**
6

7 **GENERAL PROVISIONS:**

8 A. A lawyer admitted to the practice of law in another United States jurisdiction, or
9 in a foreign jurisdiction, who has a continuous presence in this jurisdiction and is
10 employed as a lawyer by an organization as permitted pursuant to Rule 5.5(d)(1)
11 of the Model Rules of Professional Conduct, the business of which is lawful and
12 consists of activities other than the practice of law or the provision of legal
13 services, shall register as in-house counsel within [180 days] of the
14 commencement of employment as a lawyer or if currently so employed then
15 within [180 days] of the effective date of this rule, by submitting to the
16 [registration authority] the following:

- 17 1) A completed application in the form prescribed by the [registration
18 authority];
- 19 2) A fee in the amount determined by the [registration authority];
- 20 3) Documents proving admission to practice law and current good standing
21 in all jurisdictions, U.S. and foreign, in which the lawyer is admitted to
22 practice law. If the jurisdiction is foreign and the documents are not in
23 English, the lawyer shall submit an English translation and satisfactory
24 proof of the accuracy of the translation; and
- 25 4) An affidavit from an officer, director, or general counsel of the employing
26 entity attesting to the lawyer's employment by the entity and the capacity
27 in which the lawyer is so employed, and stating that the employment
28 conforms to the requirements of this Rule.

29 For purposes of this Rule, a "foreign jurisdiction" is one with a recognized legal
30 profession, the members of which are admitted to practice as lawyers or
31 counselors at law or the equivalent and subject to effective regulation and
32 discipline by a duly constituted professional body or a public authority.
33

34 **SCOPE OF AUTHORITY OF REGISTERED LAWYER:**

35 B. A lawyer registered under this section shall have the rights and privileges
36 otherwise applicable to members of the bar of this jurisdiction with the following
37 restrictions:

- 38 1. The registered lawyer is authorized to provide legal services to the entity
39 client or its organizational affiliates, including entities that control, are
40 controlled by, or are under common control with the employer, and for
41 employees, officers and directors of such entities, but only on matters
42 directly related to their work for the entity and only to the extent
43 consistent with Rule 1.7 of the Model Rules of Professional Conduct [or
44 jurisdictional equivalent]; and
- 45 2. The registered lawyer shall not:

- a. Except as otherwise permitted by the rules of this jurisdiction, appear before a court or any other tribunal as defined in Rule 1.0(m) of the Model Rules of Professional Conduct [or jurisdictional equivalent], or
- b. Offer or provide legal services or advice to any person other than as described in paragraph B.1., or hold himself or herself out as being authorized to practice law in this jurisdiction other than as described in paragraph B.1.

PRO BONO PRACTICE:

- C. Notwithstanding the provisions of paragraph B above, a lawyer registered under this section is authorized to provide pro bono legal services through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically authorized in this jurisdiction.

OBLIGATIONS:

- D. A lawyer registered under this section shall:
 1. Pay an annual fee in the amount of \$_____;
 2. Pay any annual client protection fund assessment;
 3. Fulfill the continuing legal education requirements that are required of active members of the bar in this jurisdiction;
 4. Report within [___] days to the jurisdiction the following:
 - a. Termination of the lawyer's employment as described in paragraph B.4.;
 - b. Whether or not public, any change in the lawyer's license status in another jurisdiction, whether U.S. or foreign, including by the lawyer's resignation;
 - c. Whether or not public, any disciplinary charge, finding, or sanction concerning the lawyer by any disciplinary authority, court, or other tribunal in any jurisdiction, U.S. or foreign.

LOCAL DISCIPLINE:

- E. A registered lawyer under this section shall be subject to the [jurisdiction's Rules of Professional Conduct], [Rules of Lawyer Disciplinary Enforcement], and all other laws and rules governing lawyers admitted to the active practice of law in this jurisdiction. The [jurisdiction's disciplinary counsel] has and shall retain jurisdiction over the registered lawyer with respect to the conduct of the lawyer in this or another jurisdiction to the same extent as it has over lawyers generally admitted in this jurisdiction.

AUTOMATIC TERMINATION:

- F. A registered lawyer's rights and privileges under this Rule automatically terminate when:
 1. The lawyer's employment terminates;

- 1 2. The lawyer is suspended or disbarred from practice in any jurisdiction or
2 any court or agency before which the lawyer is admitted, U.S. or foreign;
3 or
4 3. The lawyer fails to maintain active status in at least one jurisdiction, U.S.
5 or foreign.

6
7 REINSTATEMENT:

8 G. A registered lawyer whose registration is terminated under paragraph F.1. above,
9 may be reinstated within [] months of termination upon submission to the
10 [registration authority] of the following:

- 11 1. An application for reinstatement in a form prescribed by the [registration
12 authority];
- 13 2. A reinstatement fee in the amount of \$_____;
- 14 3. An affidavit from the current employing entity as prescribed in paragraph
15 A.4.

16
17 SANCTIONS:

18 H. A lawyer under this rule who fails to register shall be:

- 19 1. Subject to professional discipline in this jurisdiction;
- 20 2. Ineligible for admission on motion in this jurisdiction;
- 21 3. Referred by the [registration authority] to this [jurisdiction's bar
22 admissions authority]; and
- 23 4. Referred by the [registration authority] to the disciplinary authority of the
24 jurisdictions of licensure, U.S. and/or foreign.

Explanatory Memo
ABA Commission on Ethics 20/20
Working Group-Inbound Foreign Lawyers
Incorporation of Model Rule for Temporary Practice by Foreign Lawyers into Model Rule
of Professional Conduct 5.5
June 1, 2010

In August 2002, the ABA House of Delegates adopted recommendations proposed by the ABA Commission on Multijurisdictional Practice to amend Rule 5.5 of the ABA Model Rules of Professional Conduct to permit temporary practice by U.S. lawyers admitted in one jurisdiction but not in another. The House also adopted the ABA Model Rule for Temporary Practice by Foreign Lawyers (Recommendation 9).¹ While 43 jurisdictions have adopted Rule 5.5 in the same or substantially similar form, the same is not true of its foreign lawyer corollary.² Possibilities to achieve increased implementation of Recommendation 9 include leaving it where it is with changes described below, but making a renewed effort to have it adopted as a court rule; merging it, with changes described, into Model Rule 5.5 and rewriting its comment; or refashioning it as new Model Rule 5.5A with a comment and changes as described. The Working Group favors merging Recommendation 9, with changes, into Rule 5.5 and amending the comment.

Examples of a revised Model Rule 5.5 and a new Model Rule 5.5A are annexed. A new comment is not included at this time pending circulation of the proposals for comment and further direction from the Commission. The two versions are substantively identical except that proposed Model Rule 5.5A does not contain paragraphs (a) and (b) of Model Rule 5.5 because these paragraphs need appear only once in the Model Rules.

Suggested Model Rule 5.5 and 5.5A each make minimal changes to Recommendation 9. Specifically, they anticipate a change that would allow foreign lawyers to gain admission pro hac vice before a U.S. court or administrative agency (see accompanying Explanatory Memo and proposed changes to the ABA Model Rule on Pro Hac Vice Admission). Recommendation 9, as currently written, does not do that. The templates also anticipate a change that explicitly allows foreign lawyers to register under an in-house counsel rule on the same basis as domestic lawyers. Recommendation 9 does not do that. **They each adopt the definition of foreign lawyer that appears in the Model Rule for the Licensing and Practice of Foreign Legal Consultants (FLC Rule) and Recommendation 9.**

The suggested scope of the foreign lawyer's temporary practice authority in one area is narrower than the scope of that authority for the domestic lawyer. This is where the foreign lawyer's presence in the host jurisdiction is in connection with a matter that is not a litigation or ADR. The comment at the end of the annexed templates explains why the MJP commission chose to

¹ See Model Rule for Temporary Practice by Foreign Lawyers adopted by the House of Delegates in August 2002, <http://www.abanet.org/cpr/mjp/201j.pdf>.

² See, Quick Guide Chart of State Adoption of Rule 5.5, http://www.abanet.org/cpr/mjp/quick-guide_5.5.pdf (last amended 10/26/09) and Quick Guide Chart on State Adoption of MJP Recommendations 8 and 9, http://www.abanet.org/cpr/mjp/8_and_9_status_chart.pdf (last amended 9/26/09).

narrow this authority. The Working Group discussed whether the authority should be broadened to equal the temporary authority of domestic lawyers on non-dispute matters (for convenience, transactional matters). This would be easy to do if the Commission wished to recommend that change. It is, however, a substantial change.

As noted above, only a limited number of jurisdictions that have adopted rules permitting temporary practice by foreign lawyers. Of those, Delaware's and Pennsylvania's versions of Rule 5.5 provide identical authority, including transactional temporary practice authority, for foreign and domestic lawyers. The others (FL, GA, NC, NH, VA) either follow recommendation 9 on this point or afford all out-of-state lawyers, foreign and domestic, narrower authority than does Rule 5.5.

ABA Commission on Ethics 20/20
Working Group on Inbound Foreign Lawyers
Redlined Template: Incorporation of Model Rule for Temporary Practice by Foreign
Lawyers into Model Rule of Professional Conduct 5.5 or Freestanding Rule 5.5A
Disseminated for Comment June 1, 2010

1. *The first draft combines Recommendation 9 with Rule 5.5 with changes identified in the Explanatory Memo. As presented here, proposed new Rule 5.5 treats foreign and U.S. lawyers identically except for purposes of transactional work. The different treatment for transactional work is explained below.*

2. *The second draft starts with the MJP Commission's Recommendation 9 for foreign temporary practice and makes the changes identified in the Explanatory Memo. It is presented as a freestanding Rule 5.5A. It is substantively identical to proposed new Rule 5.5 except for the omission of paragraph (a) and (b) of Rule 5.5 because their inclusion would be redundant.*

3. *Drafting the formal comment will await the Commission's recommended action.*

Rule 5.5 amended to include foreign FIFO:

(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 only in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction

(1) as provided in paragraphs (c)(1)-(c)(3);

(2) that are not within paragraphs (c)(2) or (c)(3) and

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

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

(3) are governed primarily by international law or the law of a foreign jurisdiction.

(e) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may 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 to provide by federal law or other law of this jurisdiction.

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

ABA MODEL RULE FOR TEMPORARY PRACTICE BY FOREIGN LAWYERS (freestanding rule 5.5A)

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

Deleted: held or to be held in a jurisdiction outside the United States

Deleted: held or to be held

which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission;

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

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

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

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

(b) A lawyer admitted in non-United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may 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 to provide by federal law or other law of this jurisdiction.

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

Explanation regarding proposed new paragraphs (d)(2) and (3) in new Rule 5.5 and paragraphs (a)(4) and (a)(5) in new Rule 5.5A:

In current Rule 5.5(c)(4) the host state work need only “arise out of or [be] reasonably related to the lawyer’s practice” in his or her home state. This “practice” nexus is comparatively broad. As comment [14] explains, an expert in trade law in Chicago, for example, could travel to Kansas at the request of a potential Kansas client. Neither the matter nor the client need have any connection to Illinois.

The MJP Commission thought this was too broad an authority to grant non-U.S. lawyers. It could allow a German lawyer, e.g., who concentrates on trade law in Germany, to travel to Kansas to advise on US trade law on the ground that the work is “reasonably related” to his or her German trade law practice. (The German lawyer may in fact advise on U.S. trade law in Germany.) So, as in Recommendation 9 itself, the nexus in new Rule 5.5(d) and in Rule 5.5A(a)(4) is more demanding – the client on whose behalf the lawyer travels to a host state (e.g., Kansas) must be resident in, or have an office in, the lawyer’s home state (e.g., Germany); or the “matter” that warrants the travel must have a substantial connection to the lawyer’s home

state. Practice area alone cannot be the nexus. In other words, in merging Recommendation 9 into Rule 5.5 this authority in transactional (and advice) matters is not expanded.

In addition, proposed Rules 5.5A(a)(4) and Rule 5.5(d)(2) use the phrase “authorized to practice” rather than “admitted to practice.” This is because the cross-border lawyer may be a foreign legal consultant (FLC) in a U.S. jurisdiction and may be relying on that status as the predicate for the (d)(2) or (a)(4) authority. But FLC status does not constitute *admission* to practice in the FLC state. On the other hand, anyone admitted to practice is also authorized to practice, so the broader language (authorized instead of admission) works for both statuses.

Next, the phrase “to the extent of that authority” appears twice in (d)(2) and(a)(4) to make it clear that an FLC cannot perform services in the host state that the lawyer’s FLC status does not permit in the home state. (The scope of permissible FLC services is circumscribed.)

Last, Rule 5.5(d)(3) and Rule 5.5A(a)(5) is present here, as in Recommendation 9, because when the work is in connection with foreign or international law, the non-U.S. lawyer should enjoy broader authority to enter a host state, equivalent to the practice nexus in current Rule 5.5(c)(4). So the requirement that the matter have a connection to the home state or that the client be located in the home state is dropped. The German trade lawyer can therefore go to Kansas to advise on EU trade law at the request of a potential client in Kansas even though there is no other connection to Germany.