

**NEW YORK STATE BAR ASSOCIATION  
OUTLINE OF COMMENTS AND AMENDMENTS  
SUBMITTED WITH RESPECT TO THE REPORT OF THE  
SPECIAL COMMITTEE ON MULTI-JURISDICTIONAL PRACTICE  
JUNE, 2003**

**1. Comments**

- A. NYSBA Committee on Legal Education and Admission to the Bar:** Unanimously supports the proposal.
- B. Association of the Bar of the City of New York:** Supports the proposal and recommends adoption of the rules. Recognizes that additional consideration will need to be given to disciplinary authorities adopting rules implementing these amendments.
- C. NYSBA House of Delegates Member Sarah Diane McShea:** Supports the proposal and outlines a response to concerns expressed about the regulation and discipline of lawyers from other jurisdictions.
- D. NYSBA Committee on Professional Discipline:** Supports the proposal in concept, but expresses concerns about the availability of reciprocal discipline and possible conflict with existing provisions of the Judiciary Law regarding unauthorized practice of law. The committee further expresses the view that an out-of-state attorney who regularly practices in New York State should be required to pay some type of registration fee.

**2. Proposed Amendments**

- A. Committee on Professional Ethics:** Amend proposed DR 3-101 (D)(4) as follows:

- (4) are not within in or reasonably related to a proceeding described in DR 3-101(D)(2) or (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.

*Explanation: Read literally, the phrase "are not within DR 3-101(D)(2) or (3)" could be read to permit a lawyer who is required to be admitted pro hac vice in order to appear in a proceeding, but who is not so admitted and does not expect to be, nonetheless to perform legal services in this State related to that proceeding.*

*The committee proposes this amendment to clarify the intent of the rule and avoid ambiguity.*

**B. Committee on Standards of Attorney Conduct:** Amend proposed EC 3-12 as follows:

EC 3-12 Other than as authorized by DR 3-101 or by law, a lawyer who is not admitted to practice generally in this state violates DR 3-101(C) if the lawyer establishes an office or other systematic and continuous presence in this state 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 state. A lawyer who provides services in this state on a recurring basis, or for an extended period of time, as when representing a client in a single lengthy negotiation or litigation, does not necessarily have a systematic and continuing presence in this state for purposes of DR 3-101(C).

*Explanation: The MJP Committee, consistent with the position adopted by the House of Delegates at its June 2002 meeting, rejected the ABA's inclusion of an additional and potentially confusing standard, reflected in Model Rule 5.5(c), permitting lawyers to provide legal services on a "temporary basis" in a state in which they are not admitted. We support this approach. We believe, however, that the concept contained in paragraph 6 of the comments to Model Rule 5.5, that services may be "temporary" even though a lawyer provides services within a state on a recurring basis, or for an extended period of time, should be added to the Ethical Considerations of the New York Code.*