

NYSBA HOUSE OF DELEGATES URGES AMENDMENTS  
TO RECOMMENDATIONS OF THE ABA COMMISSION ON  
MULTIJURISDICTIONAL PRACTICE; APPROVES NYSBA  
SPECIAL COMMITTEE REPORT GENERALLY  
SUPPORTING THE ABA COMMISSION'S PROPOSALS

On June 22, 2002, the NYSBA House of Delegates approved and endorsed the Report of its Special Committee on Multi-Jurisdictional Practice, as amended by the House of Delegates. Thus, the New York State Bar Association supports the following amendments to the recommendations in the Final Report of the ABA Commission on Multijurisdictional Practice, and supports the recommendations in the Final Report, as thus amended:

A. With respect to Recommendation 2 (Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law):

**1. The opening sentence of proposed Rule 5.5(c) should be amended by substituting "not in violation of Paragraph (b) of this Rule" for "on a temporary basis".**

Proposed Rule 5.5(b) would prohibit lawyers from establishing in a jurisdiction in which the lawyer is not admitted "an office or other systematic and continuous presence in this jurisdiction for the practice of law" and from holding out to the public or otherwise representing that the lawyer is admitted to practice law in the jurisdiction where the lawyer is not admitted. Proposed Rule 5.5(c) would authorize lawyers to provide certain legal services as described in four subparagraphs "on a temporary basis". Since the commentary which would accompany the proposed amended rule and the Commission's discussion makes it clear that the "the line between the 'temporary' practice of law and the 'regular' or 'established' practice of law is not a bright one", lawyers would be at risk of disciplinary action in jurisdictions in which they are not admitted if activities that do not involve establishing "an office or other systematic and continuous presence" may be deemed more than "temporary". The amendment would eliminate this uncharted and apparently unintended middle category.

**2. The last sentence of proposed Commentary 14 to proposed Rule 5.5 should be amended to substitute "a particular area of practice or body of law, including federal, nationally-uniform, foreign or international law" for "a particular body of federal, nationally-uniform, foreign, or international law".**

Paragraphs (3) and (4) of proposed Rule 5.5(c) authorize legal services in the jurisdiction in which the lawyer is not admitted that "arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice". Commentary 14 lists a variety of factors that may evidence such a relationship and concludes that, "[i]n addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law". This leaves in uncertain limbo a large number of specialized practices which provide services on a multi-jurisdictional basis where the lawyer's expertise is not based on the bodies of law

enumerated in the commentary. The amendment would make it clear that any specialized area of practice or any body of law may be the basis of the expertise out of which the lawyer's services arise or to which they are related.

B. With respect to Recommendation 7 (Model Rule on Admission by Motion):

1. **Eliminate from the eight requirements in Paragraph 1 of the Proposed Model Rule which an applicant must meet to be admitted on motion Paragraph (d) ("submit evidence of a passing score on the Multistate Professional Responsibility Examination as it is established in this jurisdiction"), or provide some alternate qualification for lawyers who were first admitted in a jurisdiction which at that time did not require such an examination.**
2. **Eliminate the "however" proviso in the fourth line of Paragraph 2 of the proposed Model Rule.**

The proposed requirements for admission on motion include being primarily engaged in the "active practice of law" for five of the last seven years. Paragraph 2 of the proposed Model Rule defines "active practice of law" to include in paragraph (e) "service as a judicial law clerk" and in paragraph (f) "service as corporate counsel," but adds the proviso that in no event shall these activities that were performed in advance of bar admission in the jurisdiction to which application for admission on motion is being made be accepted towards the durational requirement. By eliminating the proviso, service as a judicial law clerk or as corporate counsel within the jurisdiction to which application for admission on motion is being made will count towards the durational requirement.

C. With respect to Recommendation 6 (Model Rule on Pro Hac Vice Admission):

1. **Delete "and In-state Lawyer Duties Generally" from the heading of Paragraph I B since Paragraph B does not relate to the duties of in-state lawyers.**
2. **Revise Paragraph I C to read as follows:**

**"Association With In-State Lawyer. An out-of-state lawyer seeking to appear for a client in a proceeding pending in this state shall associate with an in-state lawyer. The in-state lawyer shall sponsor the application of the out-of-state lawyer and shall, at a minimum, appear of record in the action together with the out-of-state lawyer. Upon admission pro hac vice of the out-of-state lawyer, the in-state lawyer's continuing duties and responsibilities, if any, shall depend upon the requirements of the court and the understandings between the in-state lawyer and the client or out-of-state lawyer.**

The Model Rule as proposed would require the in-state lawyer to remain responsible to the client and for the conduct of the proceeding and would require the in-state lawyer to advise the client of his or her independent judgment on contemplated actions in the proceeding if that judgment differs from that of the out-of-state lawyer, provisions which would in effect require clients to pay for duplicative services.

3. **Eliminate from the application procedure described in Paragraph I D the obligation to serve the pro hac vice application on the state's "lawyer regulatory authority" in addition to all parties who have appeared in the proceeding and eliminate the subsequent provisions authorizing the lawyer regulatory authority to file an objection.**

The requirement of serving the lawyer regulatory authority adds unnecessary complexity and uncertainty as well as potential delay to a process that should be as simple as possible. The proposed rule would authorize the regulatory authority to file an objection and would provide for the revocation of the pro hac vice admission even at a later stage in the proceeding after the lawyer admitted pro hac vice has participated in the representation.

4. **Substitute as the last sentence in Paragraph 9 of Appendix A "The bar member shall appear of record together with the out-of-state lawyer" for "The bar member will be the lawyer of record for the client(s) the applicant seeks to represent."**
5. **Delete the seventh paragraph in the discussion of the Model Rule which seeks to describe the responsibilities of the in-state lawyer, or substitute a paragraph which indicates that upon the admission pro hac vice of the out-of-state lawyer the in-state lawyer's duties and responsibilities will depend upon the requirements of the court and the agreements between the in-state lawyer and the client or out-of-state lawyer.**