

AMERICAN BAR ASSOCIATION

COMMISSION ON ETHICS 20/20

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED: that the American Bar Association adopts the Model Rule on Practice Pending
2 Admission as follows:

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

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

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

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

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

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

20 **e. reasonably expects to fulfill all of this jurisdiction's requirements for that form of**
21 **admission;**

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

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

26 **h. pays any annual client protection fund assessment.**
27

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

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

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

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

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

43 **e. meets the requirements of paragraphs 1(a), (b), (c), (f), (g), and (h) of this Rule.**
44

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

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

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

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

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

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

64 **d. the lawyer is disbarred or suspended in any other jurisdiction in which the lawyer**
65 **is licensed to practice law; or**

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

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

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

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

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

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

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80

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

84

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

87

88 **Comment**

89 [1] This Rule recognizes that a lawyer admitted in another jurisdiction may need to
90 relocate to or commence practice in this jurisdiction, sometimes on short notice. The admissions
91 process can take considerable time, thus placing a lawyer at risk of engaging in the unauthorized
92 practice of law and leaving the lawyer’s clients without the benefit of their chosen counsel. This
93 Rule closes this gap by authorizing the lawyer to practice in this jurisdiction for a limited period
94 of time, up to 365 days, subject to restrictions, while the lawyer diligently seeks admission. The
95 practice authority provided pursuant to this Rule commences immediately upon the lawyer’s
96 establishment of an office or other systematic and continuous presence for the practice of law.

97 [2] Paragraph 1(f) requires a lawyer practicing in this jurisdiction pursuant to the
98 authority granted under this Rule to associate with a lawyer who is admitted to practice law in
99 this jurisdiction. The association between the incoming lawyer and the lawyer licensed in this
100 jurisdiction is akin to that between a local lawyer and a lawyer practicing in a jurisdiction on a
101 temporary basis pursuant to Model Rule of Professional Conduct 5.5(c)(1).

102 [3] While exercising practice authority pursuant to this Rule, a lawyer cannot hold out to
103 the public or otherwise represent that the lawyer is admitted to practice in this jurisdiction. See
104 Model Rule of Professional Conduct 5.5(b)(2). Because such a lawyer will typically be assumed
105 to be admitted to practice in this jurisdiction, that lawyer must disclose the limited practice
106 authority and jurisdiction of licensure in all communications with potential clients, such as on
107 business cards, websites, and letterhead. Further, the lawyer must disclose the limited practice
108 authority to all potential clients before agreeing to represent them. See Model Rules 7.1 and
109 7.5(b).

110 [4] The provisions of paragraph 5 (a) through (d) of this Rule are necessary to avoid
111 prejudicing the rights of existing clients or other parties. Thirty days should be sufficient for the
112 lawyer to wind up his or her practice in this jurisdiction in an orderly manner.

113

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

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

118

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

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

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

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

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

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

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

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

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

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

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

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

150
151 **Comment**

152 ...

153 [4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice
154 generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes an office or other
155 systematic and continuous presence in this jurisdiction for the practice of law. Presence may be
156 systematic and continuous even if the lawyer is not physically present here. Such a lawyer must
157 not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this
158 jurisdiction. See also Rules 7.1(a) and 7.5(b).

159 ...

160 [18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction
161 in which the lawyer is not licensed when authorized to do so by federal or other law, which
162 includes statute, court rule, executive regulation or judicial precedent. See, e.g., The ABA Model
163 Rule on Practice Pending Admission.

164 ...

165 [21] Paragraphs (c) and (d) do not authorize communications advertising legal services to
166 prospective clients in this jurisdiction by lawyers who are admitted to practice in other
167 jurisdictions. Whether and how lawyers may communicate the availability of their services to
168 ~~prospective clients~~ in this jurisdiction is governed by Rules 7.1 to 7.5.

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REPORT

The ABA Commission on Ethics 20/20 has examined how globalization and technology are transforming the legal marketplace and fueling cross-border practice. In studying these developments, the Commission has reviewed the existing regulatory framework governing multijurisdictional practice and lawyer mobility and produced several Resolutions and Reports. The Resolutions accompanying this Report contain proposals that are designed to address the ethics and regulatory issues associated with a lawyer's establishment of a practice in a new jurisdiction.

The Commission is proposing adoption of a new standalone ABA Model Rule on Practice Pending Admission, which would be cross-referenced in Rule 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law) of the Model Rules of Professional Conduct. The new Model Rule on Practice Pending Admission would enable lawyers to practice in a new jurisdiction while the lawyer actively pursues admission through one of the procedures that the jurisdiction authorizes, such as admission by motion or passage of that jurisdiction's bar examination.

This proposal recognizes the reality that, in today's legal services marketplace, a lawyer licensed in one U.S. jurisdiction may need to relocate to a new U.S. jurisdiction, sometimes on short notice, and that the admissions process in the new jurisdiction can take considerable time. Subject to numerous restrictions to protect clients and the public, the new Model Rule is designed to permit the relocating lawyer to practice in the new jurisdiction in the interim, thus affording clients their choice of counsel and giving lawyers the ability to practice without the risk of engaging in the unauthorized practice of law. The Commission is also proposing conforming amendments to Rule 5.5 of the ABA Model Rules of Professional Conduct (Unauthorized Practice of Law; Multijurisdictional Practice of Law) that are designed to alert lawyers to the practice authority afforded by the new Model Rule on Practice Pending Admission.

I. Model Rule on Practice Pending Admission

Technological and economic changes have produced an increase in cross-border practice, revealing an important gap in the practice authority granted by Model Rule 5.5(d). That gap affects an increasing number of lawyers who have found it necessary to quickly establish a practice in a jurisdiction where they are not otherwise admitted. For example, a lawyer may need to relocate in order to accommodate the needs of a client who has moved to a new jurisdiction. Or the lawyer may receive a job opportunity in a jurisdiction other than the jurisdiction of original licensure or be transferred to another jurisdiction, often requiring relocation within a very short timeframe. Lawyers also frequently have to relocate due to changes in personal circumstances, such as the relocation of a spouse or domestic partner due to

military deployment or other professional opportunities. In sum, lawyers increasingly need to relocate during their careers, often more than once and frequently without much notice.¹

The Commission found and heard that, despite the increasing need to relocate, the admissions process for these lawyers can take considerable time. For example, the admission by motion process requires an applicant to complete and submit a lengthy application that requires personal and professional information that can take weeks or months to compile. The process typically requires a lawyer to obtain proof of licensure from the lawyer's home jurisdiction, submit evidence of a passing score on the Multistate Professional Responsibility Examination, and accumulate substantial personal and professional information in order to satisfy the character and fitness requirements of the jurisdiction. If the lawyer does not qualify for admission by motion (e.g., the lawyer has not satisfied the durational practice requirements), the lawyer will need to sit for the jurisdiction's bar examination, which is administered only twice per year.

The Commission found that this time consuming process can adversely affect lawyers' ability to represent their existing clients effectively and can have adverse consequences on lawyers' careers in a marketplace that requires an increasing amount of cross-border practice. Thus, the Commission concluded that, assuming procedural safeguards are put in place, these relocating lawyers should be permitted to establish a continuous and systematic presence for the practice of law in the new jurisdiction for a limited time (not to exceed 365 days) while diligently pursuing formal admission. The proposed new standalone Model Rule on Practice Pending Admission, if adopted, would authorize this form of practice.

A Comment to the Model Rule makes clear that the 365 day time period begins to toll immediately upon the lawyer's establishment of an office or other systematic and continuous presence for the practice of law in the jurisdiction. This would prevent the lawyer from using the 45 day period within which to file an application for admission as additional time in which to practice there. At the same time, however, the Commission also recognized that it may be necessary to extend the 365 day limit if (for reasons outside of the lawyer's control) the bar admission process takes longer than one year. To address that issue, the Commission has included a paragraph that provides that, for good cause shown by the applicant, the Court may, in its discretion, extend the time limits set forth in the Model Rule.

The proposed new Model Rule on Practice Pending Admission also includes a separate section that allows a foreign lawyer already licensed in one U.S. jurisdiction as a foreign legal consultant to continue practicing as a foreign legal consultant in another U.S. jurisdiction while an application to become a foreign legal consultant is pending in that new U.S. jurisdiction. It is important to note that this provision does not create any practice authority for foreign lawyers beyond what the Model Rules have already long allowed (e.g., rules relating to licensing and practice by foreign legal consultants and rules governing whether foreign lawyers can sit for a particular jurisdiction's bar examination). The section merely provides (subject to important limitations) that a foreign lawyer who is already admitted in a U.S. jurisdiction as a foreign legal

¹ In February 2012, the ABA House of Delegates recognized the frequent relocation needs of lawyers who are the spouses of deployed military personnel by adopting new policies designed to ease barriers to their ability to practice in new jurisdictions. ABA Resolution 108 (Feb. 2012), http://www.abanow.org/wordpress/wp-content/files_flutter/13285629012012mm108.pdf.

consultant may continue to practice as such while their application for that form of admission is pending in another U.S. jurisdiction.

The Commission's proposal in this regard is not without precedent. The District of Columbia allows out-of-state lawyers to practice law from a principal office located in the District of Columbia for a period not to exceed 360 days during the pendency of a person's first application for admission to the District of Columbia Bar.² The Commentary to that Rule states that it is designed to provide a one-time grace period for out-of-state lawyers who are moving their principal office to the District of Columbia. Missouri also has a similar procedure,³ and New York recently adopted a similar provision for in-house lawyers.⁴ The Commission inquired about and did not learn of any problems caused by these provisions.

The Commission nevertheless concluded that, to ensure that lawyers do not abuse the proposed exception or use this privilege in ways that would put the public at risk, numerous restrictions and limitations are appropriate. First, in order to qualify to practice pursuant to this new Model Rule, the lawyer must have been engaged in the active practice of law for three of the last five years. This time in practice requirement is consistent with the practice requirement in the newly amended Model Rule for Admission by Motion and would prevent a newly admitted lawyer (e.g., one who has passed the bar examination in a state with a very high bar passage rate) from using the new Model Rule to establish a practice in another jurisdiction (e.g., a jurisdiction with a very low bar passage rate), while studying for and waiting for the results of the bar examination in that other jurisdiction.

Second, the lawyer must not be disbarred or suspended from practice in any jurisdiction and must not currently be subject to discipline or be the subject of a pending disciplinary matter in any jurisdiction.

Third, the lawyer must not have been previously denied admission to practice in the jurisdiction (e.g., due to a failure to satisfy the jurisdiction's character and fitness requirements) or previously failed the jurisdiction's bar examination. This requirement is designed to ensure that a lawyer does not use the authority to practice under the Model Rule on Practice Pending Admission to circumvent a prior denial of the right to practice in the jurisdiction. For example, if a lawyer fails the bar examination in one jurisdiction and passes it in another, the lawyer cannot establish a practice in the former jurisdiction while waiting to re-take that jurisdiction's bar examination.

The Commission considered whether a failure of the jurisdiction's bar exam should be disqualifying for only a limited period of time (e.g., five years), but concluded that a cap would allow a lawyer who failed the jurisdiction's bar examination (and whose competence was, therefore, previously called into question in that jurisdiction) to engage in the practice of law in that jurisdiction without having completed a thorough vetting process, like admission by motion.

² D.C. CT. OF APPEALS R. 49(c)(8) (Limited Duration Supervision By D.C. Bar Member)
<http://www.dcappeals.gov/dccourts/docs/rule49.pdf>.

³ MO. SUP. CT. R. 8.06 (Temporary Practice by Lawyers Applying for Admission to the Missouri Bar)
<http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/0/e0bcf992eb92f9ae86256db7007379ef?OpenDocument>.

⁴ N.Y. COMP. CODES R. & REGS. tit. 22, § 522.7 (2011).

Fourth, the lawyer must notify Disciplinary Counsel and the licensing authority in writing that the lawyer is taking advantage of the practice authority in the Model Rule on Practice Pending Admission. This requirement is intended to ensure that the disciplinary and licensing authorities are aware of the lawyer's presence and intention to establish an ongoing practice in the jurisdiction under the Rule.

Fifth, the lawyer must submit an application for admission by motion, examination, or as a foreign legal consultant within [45] days of first providing legal services.⁵ The purpose of this requirement is to ensure that a lawyer is serious about applying for admission in the new jurisdiction and applies promptly upon arriving there. The time frame is placed in brackets so that a jurisdiction can tailor it according to the particular needs of that jurisdiction.

Sixth, the lawyer must have a reasonable expectation that the lawyer will fulfill all of the jurisdiction's requirements for admission. This requirement is analogous to Rule 5.5(c)(2), which permits a lawyer to practice temporarily in a jurisdiction in connection with a litigation matter if the lawyer "reasonably expects to be . . . authorized" to appear before a tribunal in that jurisdiction.

Seventh, the lawyer must associate with a lawyer who is licensed to practice in the jurisdiction. This requirement is designed to ensure that the incoming lawyer has the ability to consult with a lawyer who is licensed in the jurisdiction regarding any issues that may require knowledge of distinctly local laws or procedures. This requirement is similar to the requirement in Rule 5.5(c)(1), which permits an out-of-state lawyer to practice *temporarily* in the jurisdiction if the lawyer associates with a lawyer who is admitted in the jurisdiction. The Commission was reluctant to impose a stricter requirement, such as a requirement to be directly supervised by a lawyer who is admitted in the jurisdiction, because of the particular obstacles such a requirement would impose on solo practitioners. In particular, in-state lawyers may be reluctant to directly supervise a lawyer from another jurisdiction who is not in the same office, because of the administrative difficulties associated with supervising a lawyer in a different law office. For these reasons, the Commission concluded that the "association" requirement, which has worked well in the context of temporary practice under Rule 5.5(c)(1), is an adequate safeguard in the context of the Model Rule on Practice Pending Admission as well.⁶

Eighth, Paragraph 4 provides that the lawyer taking advantage of the practice authority conferred by the Model Rule must immediately notify Disciplinary Counsel and the Admissions Authority if, at any time during the [365] days of practice, the lawyer becomes subject to a disciplinary matter or disciplinary sanctions are imposed upon the lawyer in any other

⁵ Registration as in-house counsel is not listed because Rule 5.5(d)(1) already provides authority for lawyers to practice as in-house counsel in a jurisdiction without being fully admitted to practice there. Although some jurisdictions require these lawyers to seek registration as in-house counsel, Rule 5.5(d)(1) is sufficient to protect the lawyer from allegations of unauthorized practice while the lawyer completes the registration process.

⁶The Commission believes that state and local bar associations could provide a great service to the profession and the public by establishing a roster of experienced lawyers who are willing to associate with incoming lawyers under these circumstances. Such an association not only would serve the public and the bar, but it also has the potential to be a source of new work for the in-state lawyer who may be called on to assist the incoming lawyer's clients. In many ways, this process would be analogous to the creation of rosters of lawyers who are willing to serve as mentors for new lawyers or who agree to serve as practice monitors for lawyers conditionally admitted to the practice of law. See ABA Model Rule on Conditional Admission to Practice Law (2008), available at http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/colap/ABAModelRule_ConditionalAdmission_Feb2008.authcheckdam.pdf.

jurisdiction. Under those circumstances, the Admissions Authority must take that information into account in determining whether to grant the lawyer's application for admission or (as explained below) whether to terminate the lawyer's right to continue practicing pursuant to the new Model Rule.

Ninth, Paragraph 5 provides that the practice authority terminates immediately under a number of circumstances. For example, it terminates if the lawyer withdraws the application for admission or the application is denied before the expiration of the 365 day period (e.g., the application for admission by motion is denied or the lawyer fails the jurisdiction's bar examination), or if the lawyer fails to file an application for admission within 45 days. Similarly, the practice authority terminates immediately if the lawyer fails to remain in compliance with the requirements of Paragraph 1 of the Model Rule or if the lawyer, after commencing practice, is subsequently suspended or disbarred in any other jurisdiction where the lawyer is admitted to practice or fails to comply with the notification requirements of Paragraph 4 of the Model Rule.

Tenth, upon denial of the application for admission, Paragraph 7 provides that the Admissions Authority must notify Disciplinary Counsel that the authority granted pursuant to the Rule has terminated. Concurrently, pursuant to Paragraph 6, the lawyer must stop practicing in the jurisdiction unless authorized to do so pursuant to another Rule; notify all clients being represented in pending matters in the jurisdiction, as well as opposing counsel or co-counsel, that the lawyer's practice authority has terminated; and not undertake any new representation that would require the lawyer to be admitted to practice law in the jurisdiction. These requirements are analogous to the client protection measures in Rule 27 ("Notice to Clients, Adverse Parties, and Other Counsel") of the ABA Model Rules for Lawyer Disciplinary Enforcement applicable to lawyers disbarred, placed on inactive status due to disability or suspended for more than six months.

Eleventh, a Comment to the proposed Model Rule would remind lawyers about their obligations under Rule 5.5(b)(2). In particular, the clear import of Rule 5.5(b)(2) is that a lawyer who practices in a jurisdiction pursuant to the authority contained in the Model Rule on Practice Pending Admission cannot "hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction." The proposed new Comments would remind lawyers of this restriction and emphasize that, to avoid misleading potential clients, lawyers also have to disclose their limited practice authority and jurisdiction of licensure in all communications with potential clients, such as on business cards, websites, and letterhead, and explicitly disclose the lawyer's limited authority to all potential clients before agreeing to represent them.

Finally, Paragraph 3 makes clear that the practice authority does not extend to appearances before a tribunal. The lawyer would have to obtain pro hac vice admission in order to appear before a tribunal in that jurisdiction.

II. Conforming Amendment to Model Rule 5.5(d)

The Commission first recommends that Rule 5.5(d) be amended to clarify the purpose of the paragraph. Rule 5.5(d) was intended (and has been interpreted) to permit a lawyer, under limited circumstances, to establish an office or other systematic and continuous presence for the practice of law in a jurisdiction where the lawyer is not otherwise admitted to practice. Except

for those limited circumstances, an out-of-state lawyer must become admitted to practice law generally in the jurisdiction in order to establish an office or engage in any other systematic or continuous practice of law there. The Commission concluded that the prefatory language in Rule 5.5(d) is not sufficiently clear in this regard and that the prefatory language should state explicitly that paragraph (d) is intended to explain when a lawyer may “provide legal services through an office or other systematic and continuous presence” in the jurisdiction.

To help alert lawyers to the new practice authority in the Model Rule on Practice Pending Admission, the Commission also proposes to amend the black letter of Model Rule 5.5(d)(2) to emphasize that lawyers can practice in another jurisdiction on a systematic and continuous basis as long as another “rule” so provides. Comment [18] to Rule 5.5 would then make an explicit cross-reference to the proposed Model Rule on Practice Pending Admission.

III. Conclusion

Globalization, changes in technology, and client demands have fueled an increase in cross-border practice as well as a related need for lawyers to relocate to new jurisdictions. The Resolutions accompanying this Report are intended to permit lawyers to respond to these developments, while providing adequate safeguards for clients and the public. Accordingly, the Commission respectfully requests that the House of Delegates adopt the proposed amendments set forth in the accompanying Resolutions.