EXHIBIT B

NYSBA

Staff Memorandum

HOUSE OF DELEGATES
Agenda Item #7(b)

REQUESTED ACTION: Approval of the report and recommendations of the Committee on Standards of Attorney Conduct, the New York City Bar Association, and the New York County Lawyers' Association with respect to temporary practice in New York.

Attached is a report submitted jointly by the NYSBA Committee on Standards of Attorney Conduct, the New York City Bar Association, and the New York County Lawyers' Association proposing the adoption of a new Part 523 of the Rules of the Court of Appeals. This new set of rules would permit lawyers admitted in another jurisdiction to provide temporary legal services in New York under limited circumstances: (a) if undertaken in association with a New York lawyer who actively participates in and assumes joint responsibility for, the matter; or (b) if in or reasonably related to a proceeding if the lawyer is authorized by law to appear in the proceeding or expects to be authorized; (c) if in or reasonably related to an arbitration, mediation, or other alternate dispute resolution proceeding if the services 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 pro hac vice admission is required; or (d) if outside the scope of (b) or (c) and reasonably related the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. Lawyers engaging in such temporary practice would be subject to the New York Rules of Professional Conduct and New York disciplinary authority.

As set forth in the report, this proposal is based on Rule 5.5 of the ABA Model Rules of Professional Conduct; 43 states and the District of Columbia have adopted rules identical or similar to Rule 5.5 to govern such temporary practice. The report notes that in 2003 and 2007, the NYSBA House of Delegates approved similar versions of this rule; however, those proposals were not adopted by the Appellate Division.

An additional proposal contained in the report recommends the adoption of a rule that would permit a lawyer relocating to New York to practice pending admission, whether on motion or by examination, for one year following the lawyer's relocation.

This report was posted on the Reports Group page for comment on April 11, 2012; in response to comments received, COSAC has amended its proposal to delete a provision in proposed Rule 523.2 regarding matters involving alternative dispute resolution.

The report will be presented at the June 23 meeting by Ronald Minkoff, a member of the Committee on Standards of Attorney Conduct.

June 15, 2012
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REPORT OF

THE NEW YORK STATE BAR ASSOCIATION

THE NEW YORK CITY BAR ASSOCIATION

THE NEW YORK COUNTY LAWYERS' ASSOCIATION

THE COURT OF APPEALS SHOULD ADOPT RULES PERMITTING TEMPORARY PRACTICE IN NEW YORK BY LAWYERS WHO ARE LICENSED AND IN GOOD STANDING IN ANOTHER U.S. JURISDICTION

_____, 2012

June 15, 2012
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Introduction

The New York State Bar Association ("NYSBA"), the New York City Bar Association ("City Bar") and the New York County Lawyers' Association ("NYCLA")[1] respectfully request that the Court of Appeals promulgate rules that would permit lawyers admitted and in good standing in another United States jurisdiction (and foreign legal consultants authorized to practice foreign law in another United States jurisdiction) (collectively, "out-of-state lawyers") to provide temporary legal services in New York in certain limited circumstances. The new rules (the "Proposed Rules") would also give New York disciplinary jurisdiction over these lawyers.

We recommend that the Proposed Rules be codified as a new Part 523 of the Rules of the Court of Appeals (22 NYCRR § 523.1 et seq.). Appendix A to this Report contains the Proposed Rules. For the Court's convenience, we offer alternative versions of the Proposed Rules. Version One does not require reciprocity. Version Two does require reciprocity. As discussed below, we urge adoption of Version One.

Summary of Recommendations

Overview. Law practice is increasingly national and global in scope. Recognizing this trend, the highest courts of 43 states and the District of Columbia have already adopted rules identical or similar to Rule 5.5 of the ABA Model Rules of Professional Conduct, as amended in 2002. These provisions codify the circumstances in which an out-of-state lawyer who has no office or other systematic presence in the state may provide temporary services in the state.

[1] City Bar's Professional Responsibility Committee has also adopted a brief report in support of new temporary-practice rules. That report is Appendix G to this report.

Appendix B to this Report contains ABA Model Rule 5.5. As set forth in more detail below, the NYSBA, City Bar and NYCLA urge the Court to join these jurisdictions by adopting Section 523.2 of the Proposed Rules, which is closely modeled on the ABA Model Rule.

In addition, we recommend a new provision for temporary practice for up to one year pending admission to the New York bar, whether on examination or by motion. This new provision, set forth in Section 523.3 of the Proposed Rules, is similar to those adopted in two other jurisdictions (the District of Columbia and Missouri), and is similar to a current proposal by the American Bar Association's Commission on Ethics 20/20. (Sections 523.1, 523.4, 523.5 and 523.6 set forth general provisions applicable to both forms of temporary practice that would be allowed by Sections 523.2 and 523.3.)

Temporary practice provisions generally. The Proposed Rules will clarify the circumstances in which out-of-state lawyers may lawfully provide temporary legal services in New York. In most of the circumstances covered by Section 523.2 of the Proposed Rules, temporary legal practice in New York is already commonly thought to be permitted under case law construing the existing statutes governing the unauthorized practice of law. Thus, Section 523.2 of the Proposed Rules would clarify rather than contradict current understandings, while providing coherence in the area and helping clients retain the ability to use their chosen counsel for all facets of a matter, not just work done outside New York. The Proposed Rules in Section 523.2 would also bring New York into line with 44 other jurisdictions on the extent to which out-of-state lawyers may lawfully render legal services in New York on a temporary basis, and would provide clarity to New York lawyers (*i.e.*, lawyers permanently admitted to practice in

New York) regarding the circumstances in which they can assist out-of-state lawyers without aiding the unauthorized practice of law. At the same time, the rules would enhance the power of New York courts and disciplinary agencies to regulate out-of-state lawyers who provide legal services in New York.

Practice pending admission. Section 523.3 would ease the disruption to practice faced by lawyers who are required to relocate because of, for example, family demands, military transfers, client needs and economic changes. Section 523.3 would particularly benefit lawyers who move because a spouse is transferred and would ensure that clients of lawyers who relocate to New York can retain the services of their counsel without interruption (*i.e.,* without waiting until the lawyer is permanently admitted in New York). Proposed Rule 523.3 would permit a lawyer to practice pending admission for up to one year as long as the lawyer (i) submits an application, within 60 days of beginning practice under the Rule, either to take the New York bar examination or to be admitted without examination, (ii) associates with an admitted lawyer, and (iii) complies with certain other safeguards.

Power to promulgate the Proposed Rules. The Court of Appeals has the power to promulgate the Proposed Rules. Judiciary Law § 53(2) provides that the Court "may make such provisions as it shall deem proper for admission to practice as attorneys and counselors, of persons who have been admitted to practice in other states or countries." The Proposed Rules concern temporary admission to practice for lawyers who have been admitted to practice in other states or countries, and thus fall squarely within the authority granted by § 53(2).

Reciprocity. Judiciary Law § 53(2) does not require the Court to impose a reciprocity requirement, and we urge the Court not to include one. Only one of the 44 jurisdictions that have adopted a version of ABA Model Rule 5.5 has included a reciprocity requirement, and that state – Connecticut – did so because of concerns that the absence of a temporary-practice rule in New York would disadvantage Connecticut lawyers. In these circumstances, a reciprocity requirement would not serve the function of encouraging other states to adopt rules to benefit New York lawyers, but instead would be a step backward in erecting unnecessary barriers to salutary cross-border practice that will benefit New York lawyers and clients.

Background

For several years, the NYSBA's Committee on Standards of Attorney Conduct ("COSAC") has studied rules for multijurisdictional practice. Spearheaded by the late Steven Krane, former NYSBA president and founding chair of COSAC, the NYSBA House of Delegates recommended in 2003 and again in 2007 that New York adopt a disciplinary rule that would permit and regulate multijurisdictional practice.[2]

The New York City Bar Association (the "City Bar" or the "Association of the Bar of the City of New York"), too, has studied these issues for years. In 2001, then City Bar President Evan A. Davis provided a statement to the ABA Commission on Multijurisdictional Practice ("MJP Commission") favoring a permanent solution to problems posed by multijurisdictional practice and urging the Commission "to keep your focus on the removal of barriers imposed on

[2] Versions of NYRPC 5.5(b), (c) and (d)(2) were approved by the NYSBA House of Delegates in 2003 and 2007. The City Bar supported these earlier proposals.

out-of-state lawyers, which are increasingly anachronistic, do a disservice to clients, and are more economic protectionism than public service."[3] The City Bar supported a disciplinary rule similar to ABA Model Rule 5.5.[4]

Significant differences from prior proposals. Section 523.2 of the present proposal is similar to the earlier proposals, but with three significant differences. First, the former proposals included a provision that would have allowed practice by in-house counsel. We have omitted that provision from the Proposed Rules because in 2011 the Court of Appeals adopted rules for registration of in-house counsel admitted in another United States jurisdiction.[5] Second, the former proposals included a provision that would have explicitly authorized out-of-state attorneys to provide legal services in alternative dispute resolution ("ADR") proceedings in New York that arise out of or are related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. We have omitted that provision from the Proposed Rules as unnecessary and potentially misleading, as discussed further below. Third, the former proposals urged adoption of the substance of ABA Model Rule 5.5 as part of New York's Code of Professional Responsibility or Rules of Professional Conduct. This Report, in contrast, urges adoption of the Proposed Rules by the Court of Appeals using its authority under Judiciary Law § 53(2) to adopt rules governing admission to practice in New York. The Court of Appeals promulgated both the

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3 See "Statement of Evan A. Davis, President, The Association of the Bar of the City of New York Before the ABA Commission on Multijurisdictional Practice, March 30, 2001," copy attached as Appendix C.

4 See Letter from then City Bar President E. Leo Milonas to A. Vincent Buzard, Secretary, New York State Bar Association, May 27, 2003, copy attached as Appendix D.

5 22 NYCRR Part 522.

foreign legal consultant and in-house counsel registration rules under the authority of § 53(2), and it has equal authority to promulgate the Proposed Rules.[6]

Another significant difference is that the Proposed Rules include, in Section 523.3, provisions that would permit temporary practice pending admission. Those provisions were not part of the prior proposals.

Discussion

We address below, first, the Proposed Rule dealing with temporary practice by lawyers not relocating to New York, then the Proposed Rule providing for temporary practice pending admission, and finally the question of reciprocity.

I. GENERAL TEMPORARY-PRACTICE RULES

A. The Proposed Rules would permit out-of-state lawyers to practice in New York in limited and temporary circumstances that benefit clients while posing little or no threat to the public.

Under the rules we propose, which draw heavily on ABA Model Rule 5.5, lawyers admitted, in good standing and authorized[7] to practice law in another U.S. jurisdiction would be explicitly authorized to practice in New York on a temporary basis in three categories that reflect

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[6] In addition, for completeness, the general temporary-practice rules we are proposing extend to foreign legal consultants licensed in another U.S. jurisdiction. Foreign legal consultants are not included in the proposed rules providing for practice pending admission.

[7] The words "and authorized" excludes lawyers who are on inactive status in their home jurisdiction. *See* ABA Model Rule 5.5, Comment [7]. The Proposed Rules also limit the services that could be provided to those that the lawyer could provide in his or her home jurisdiction, so that, for example, if a lawyer licensed as a foreign legal consultant could only practice foreign law, that restriction would apply to his or her temporary practice in New York as well.

customary cross-border practice. Beyond those three customary categories, out-of-state lawyers would not be permitted to open an office here[8] or to hold themselves out as New York lawyers.

Types of permitted temporary practice. Specifically, the Proposed Rules would permit such lawyers to provide legal services in this state – on a temporary basis – provided that those temporary legal services:

(a) are undertaken in association with a lawyer who is admitted to practice in this state and who actively participates in, and assumes joint responsibility for, the matter;

(b) 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;

(c) are not within paragraph (b) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

As the comments to the ABA Model Rule state, these circumstances "do not create an unreasonable risk to the interests of . . . clients, the public or the courts." ABA Model Rule 5.5, Comment [5]. Indeed, the greater danger to the public is tolerating the current situation in which numerous out-of-state lawyers are believed to visit New York on legal business – usually with no adverse consequences – without any guidance from New York's court rules or Rules of Professional Conduct. Proposed Part 523 fills that gap and provides the necessary guidance.

Safeguards for the public. The permitted circumstances are ringed with safeguards: association with a New York lawyer who actively participates in, and assumes joint

[8] The Proposed Rule, like the ABA Model Rule, would include an express savings clause permitting practice in the State where authorized by federal law or other New York law. Proposed Rule §523.4. *See, e.g., Sperry v. Florida*, 373 U.S. 379 (1963) (patent agents not subject to state unauthorized-practice rules); *Augustine v. Dep't of Veterans Affairs*, 429 F.3d 1334 (Fed. Cir. 2005) (California unauthorized-practice statute does not apply to out-of-state lawyer practicing before Federal Merit Systems Protection Board).

responsibility for, the matter; work related to a proceeding in which the lawyer is or reasonably expects to be admitted *pro hac vice*; or work in matters that arise out of or are reasonably related to the lawyer's practice in his or her home jurisdiction.

As a further protection for the public, when out-of-state lawyers are engaged in temporary practice in New York in these narrow categories, the Proposed Rules would expressly subject them to the New York Rules of Professional Conduct and to the disciplinary authority of the relevant Appellate Department to the same extent as lawyers admitted in New York.[9] The Appellate Divisions thus could sanction lawyers for misconduct, including by censure, reprimand, and/or withdrawal of the privilege of in-state practice. Any of those sanctions would likely have further consequences under reciprocal discipline provisions in the lawyer's home jurisdiction.[10]

Omission of alternative dispute resolution provision. The ABA Model Rule contains a provision that would expressly permit out-of-state attorneys to provide legal services on a temporary basis in connection with a pending or anticipated ADR proceeding, including arbitration and mediation, where 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. This provision has

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[9] Pursuant to N.Y. Rule of Prof. Conduct 8.5(b)(2)(ii), a lawyer admitted in New York and another state is subject to the rules of the jurisdiction in which the lawyer "principally practices" except where the particular conduct "clearly has its predominant effect in another jurisdiction where the lawyer is licensed to practice." The provision of Proposed Rule 523.5 mandating the application of the New York Rules of Professional Conduct would ensure that New York's rules would apply if the predominant effect of particular conduct is in New York.

[10] Nearly every U.S. jurisdiction – and each Appellate Division in New York – has a reciprocal discipline provision that imposes discipline in the home state on any lawyer who is disciplined by another U.S. jurisdiction. *See, e.g.*, 22 NYCRR §§ 603.3, 691.3, 806.19, 1022.22; ABA Model Rules for Lawyer Disciplinary Enforcement, Rule 22.

been omitted from the Proposed Rules for two reasons: First, because the Proposed Rules would separately authorize out-of-state attorneys to provide temporary legal services in connection with proceedings before "a tribunal" before which the lawyer (or a person the lawyer is assisting) is authorized to appear, or services that "arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice," any arbitration practice that would have been authorized by the Model Rule provision is covered elsewhere by the Proposed Rules. Second, including a provision that explicitly provides authority to attorneys admitted in "another United States jurisdiction" to represent parties in ADR proceedings in New York may create a negative implication that non-U.S. attorneys cannot represent parties in such ADR proceedings. This is inconsistent with a long tradition permitting appearance in arbitration in New York without regard to bar membership, a tradition supported by case law stretching back at least 30 years.[11] The Proposed Rules are not intended to affect this authority or this practice.

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[11] *See Williamson, P.A.* v. *John D. Quinn Constr. Corp.*, 537 F. Supp. 613,616 (S.D.N.Y. 1982) (Weinfeld, J.); *Seigel* v. *Bridas Sociedad Anomina Petrolera Indus, y Comercial*, No. 90 Civ. 6108 (RJW), 1991 U.S. Dist. LEXIS 11455, at *16 (S.D.N.Y. Aug. 19, 1991); *Prudential Equity Group, LLC* v. *Ajamie*, No. 07 Civ. 5606, 2008 U.S. Dist. LEXIS 14108, at *7-8 (S.D.N.Y. Feb. 27, 2008). The ABA's Commission on Multijurisdictional Practice (the "ABA MJP Commission") has articulated several policy reasons that support New York's longstanding practice:

> It is generally recognized that, in the ADR context, there is often a strong justification for choosing a lawyer who is not admitted to practice law in the jurisdiction in which the proceeding takes place but who has an ongoing relationship with the client, who is admitted to practice in the jurisdiction in which the client is located, or has developed a particular knowledge or expertise that would be advantageous in providing the representation. Admission to practice law in the jurisdiction in which the proceeding takes place may be relatively unimportant, in part, because that jurisdiction may have no relation to the law governing the proceeding or to the dispute. Unlike litigation, in ADR parties may select the site of the proceeding simply on the basis of convenience. At times, as in the case of international arbitrations, a site is chosen precisely because it has no connection to either party or to the dispute. Thus, in ADR proceedings, the in-state lawyer is not ordinarily better qualified than other

(Footnote continued on next page)

Benefits to New York's economy. Moreover, when out-of-state lawyers travel to New York on a temporary basis to litigate cases or negotiate deals, they benefit the economy of New York State. New York is the financial capital of the world and the busiest commercial hub in the nation, so temporary-practice rules would confer a net benefit on New York by making it easier for lawyers to come here to do business with New York companies. In the long run, helping New York businesses grow and prosper through trade will increase legal work for New York lawyers who counsel New York businesses or litigate on their behalf. Moreover, while out-of-state lawyers are temporarily in New York, they spend money on airport fees, taxicabs, hotels, restaurants, and stores, contributing to the health of New York's small businesses and paying state and local sales and hotel taxes.

Section-by-section comments on the Proposed Rules. As noted above, the Proposed Rules draw heavily on ABA Model Rule 5.5(b). That paragraph was proposed to the ABA in 2002 by the ABA MJP Commission, which offered comprehensive explanations of each subparagraph, including numerous examples of circumstances in which lawyers commonly need to practice temporarily in a jurisdiction other than the one in which they are admitted in order to serve their clients. We excerpt below the most relevant portions of the MJP Commission's

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> lawyers by virtue of greater familiarity with state law, state legal processes and state institutions. Further, as noted by the ABA Section of Litigation in its comments to the Commission, "Clients have important considerations in ADR, which include confidentiality, consistency, uniformity, costs, and convenience. After all, non-binding ADR procedures usually require client 'buy in' to succeed. Denying a client her preferred counsel could hamper early ADR efforts and impede prompt resolution of disputes."

Appendix E hereto at 24.

report (substituting citations to the Proposed Rules rather than ABA Model Rule 5.5). The full text of the MJP Commission's report is attached as Appendix E.

> **[Section 523.2(a)]** would allow work on a temporary basis in a state by an out-of-state lawyer who is associated in the matter with a lawyer who is admitted to practice in the jurisdiction and who actively participates in the representation. This provision would promote the client's interest in counsel of choice in many circumstances where the client has good reason to engage both a local and an out-of-state lawyer. One recurring example is where local counsel recommends engaging the assistance of a lawyer with special or particularized expertise. Another is where the client has a prior or ongoing relationship with the out-of-state lawyer in whom the client has particular confidence and whose advice is sought in evaluating the services of the local counsel. Lawyers who assist litigation counsel but who do not themselves appear in judicial proceedings would also be covered by this provision.
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> For this provision to apply, the lawyer admitted to practice in the jurisdiction could not serve merely as a conduit for the out-of-state lawyer, but would have to share actual responsibility for the representation. When that condition is met, the state's regulatory interest in protecting the interests of both clients and the public is adequately served. The lawyer who is licensed in the jurisdiction will have an opportunity to oversee the out-of-state lawyer's work and to assure that the work is performed competently and ethically. The local lawyer, having been found to have the requisite fitness and character to practice law in the state, is presumptively qualified to carry out this responsibility.
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> This provision would permit a lawyer to provide legal services on a temporary basis in an office of the lawyer's firm outside the lawyer's home state, as long as the lawyer is in a genuine co-counsel relationship with a lawyer of the firm who is licensed in the jurisdiction.
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> **[Section 523.2(b)]** would allow lawyers to provide services ancillary to pending or prospective litigation. Specifically, it would permit a lawyer's temporary presence in a state where the lawyer is not presently admitted to practice, if (a) the lawyer's services are in anticipation of litigation reasonably expected to be filed in a state where the lawyer is admitted or expects to be admitted *pro hac vice*, or (b) the lawyer's services are ancillary to pending litigation in which the lawyer lawfully appears (or reasonably expects to appear), either because the lawyer is licensed in the jurisdiction where the litigation takes place or because the lawyer has been or reasonably expects to be admitted *pro hac vice* to participate in the litigation. This provision would not supplant *pro hac vice* requirements, however. In order to appear before a tribunal in a state where the lawyer is not licensed, the out-of-state lawyer would be required to comply with existing *pro hac vice* provisions.

When a lawyer represents a party in a pending lawsuit in a jurisdiction in which the lawyer is licensed to practice law or in a pending litigation in which the lawyer appears *pro hac vice*, this provision would cover work related to the lawsuit that is performed in other states. Often, a lawyer representing a party in pending litigation must travel outside the jurisdiction where the litigation takes place in order to interview or depose witnesses, review documents, conduct negotiations, and perform other necessary work. It is generally recognized that work of this nature, insofar as it does not involve appearances in court by the out-of-state lawyer, is and should be permissible. It would be exceedingly costly and inefficient for a party to retain separate counsel in every state in which work must be performed ancillary to a pending litigation, and requiring parties to do so would not strongly serve any regulatory interest, since lawyers in litigation are generally supervised adequately by the courts before which they appear.

Additionally, this provision would cover work of a similar nature in connection with prospective litigation when there is a reasonable expectation that the lawsuit will be filed in a jurisdiction in which the lawyer is admitted to practice law or reasonably expects to be admitted *pro hac vice*. Prior to the filing of a lawsuit in a particular jurisdiction, lawyers may need to perform a variety of tasks, such as interviewing witnesses and reviewing documents, which may occur in multiple states. As in the case of pending litigation, in the context of prospective litigation it would be exceedingly costly and inefficient to require a party to retain separate counsel in every state in which such preliminary work must be done.

This provision would also cover supporting work by assisting lawyers who do not appear before the tribunal and are not themselves admitted *pro hac vice*. When a group of lawyers from an out-of-state law firm works collectively on a substantial litigation, it is understood that those lawyers who are making formal appearances in court or in depositions must seek *pro hac vice* admission, but it is customary for assisting lawyers not to do so if they serve exclusively in certain supporting roles, such as conducting legal research and drafting documents. Proposed Rule 523.2(b) would establish that as long as the supervisory lawyers involved in the litigation are or reasonably expect to be authorized to appear in the proceeding, this type of supporting legal work by assisting lawyers is permissible, even if some of it is performed outside the states in which the assisting lawyers are licensed.

[Section 523.2(c)] would permit, on a temporary basis, transactional representation, counseling and other non-litigation work that arises out of or is reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. This provision would address legal services provided by the lawyer outside the lawyer's state of admission that are related to the lawyer's practice in the home state. The provision is drawn from § 3(3) of the Restatement (Third) of the Law Governing Lawyers.

This provision is intended, first, to cover services that are ancillary to a particular matter in the home state. For example, in order to conduct negotiations on behalf of a home state client or in connection with a home state matter, the lawyer may need to meet with the client and/or other parties to the transaction outside the lawyer's home state. A client should be able to have a single lawyer conduct all aspects of a transaction, even though doing so requires traveling to different states. It is reasonable that the lawyer be one who practices law in the client's state or in a state with a connection to the legal matter that is the subject of the representation. In such circumstances, it should be sufficient to rely on the lawyer's home state as the jurisdiction with the primary responsibility to ensure that the lawyer has the requisite character and fitness to practice law; the home state has a substantial interest in ensuring that all aspects of the lawyer's provision of legal services, wherever they occur, are conducted competently and professionally.

Second, this provision would respect preexisting and ongoing client-lawyer relationships by permitting a client to retain a lawyer to work on multiple related matters, including some having no connection to the jurisdiction in which the lawyer is licensed. Clients who have multiple or recurring legal matters in multiple jurisdictions have an interest in retaining a single lawyer or law firm to provide legal representation in all the related matters. In general, clients are better served by having a sustained relationship with a lawyer or law firm in whom the client has confidence. Through past experience, the client can gain some assurance that the lawyer performs work competently and can work more efficiently by drawing on past experience regarding the client, its business, and its objectives. In order to retain the client's business, lawyers representing clients in multiple matters have a strong incentive to work competently, and to engage other counsel to provide legal services work that they are not qualified to render.

Third, this provision would authorize legal services to be provided on a temporary basis outside the lawyer's home state by a lawyer who, through the course of regular practice in the lawyer's home state, has developed a recognized expertise in a body of law that is applicable to the client's particular matter. This could include expertise regarding nationally applicable bodies of law, such as federal, international or foreign law. A client has an interest in retaining a specialist in federal tax, securities or antitrust law, or the law of a foreign jurisdiction, regardless of where the lawyer has been admitted

to practice law. This could also include expertise regarding the law of the lawyer's home state if that law governs the matter, since a client has an interest in retaining a lawyer who is admitted in the jurisdiction whose law governs the particular matter and who has experience regarding that law. The provision would, thus, bring the law into line with prevalent law practices. For example, many lawyers who specialize in federal law currently practice nationally, without regard to jurisdictional restrictions, which are unenforced. The same is true of lawyers specializing in other law that applies across state lines.

To be covered by this provision, the lawyer's contact with any particular host state would have to be temporary. As the California Supreme Court Advisory Task Force noted in its preliminary report on [multijurisdictional practice],

> clients often request an out-of-state transactional or other nonlitigating lawyer to come temporarily to [a host state] to provide legal services on a discrete matter. In many circumstances, such conduct poses no significant threat to the public or the legal system, particularly where the attorney is representing a client located in another state [or] has a longstanding relationship with the client . . ..

When a lawyer seeks to practice law regularly in a state, to open an office for the solicitation of clients, or otherwise to establish a practice in the state, however, the state has a more substantial interest in regulating the lawyer's law practice by requiring the lawyer to gain admission to the bar. Although the line between the "temporary" practice of law and the "regular" or "established" practice of law is not a bright one, the line can become clearer over time as Part 523 is interpreted by courts, disciplinary authorities, committees of the bar, and other relevant authorities.

Additionally, for this provision to apply, the lawyer's work in the host state must arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted, so that as a matter of efficiency or for other reasons, the client's interest in retaining the lawyer should be respected. For example, if a corporate client is seeking legal advice about its environmental liability or about its employment relations in each of the twenty states in which it has plants, it is likely to be unnecessarily costly and inefficient for the client to retain twenty different lawyers. Likewise, if a corporate client is seeking to open a retail store in each of twenty states, the client may be best served by retaining a single lawyer to assist it in coordinating its efforts. On the other hand, work for an out-of-state client with whom the lawyer has no prior professional relationship and for whom the lawyer is performing no other work ordinarily will not have the requisite relationship to the lawyer's practice where the matter involves a body of law in which the lawyer does not have special expertise. In the context of determining whether work

performed outside the lawyer's home state is reasonably related to the lawyer's practice in the home state, as is true in the many other legal contexts in which a "reasonableness" standard is employed, some judgment must be exercised.

B. The Proposed Rules would reduce uncertainty regarding the unauthorized practice of law.

Rule 5.5(b) of the New York Rules of Professional Conduct prohibits New York lawyers from aiding a nonlawyer in the unauthorized practice of law, whether in New York or elsewhere. Because clients often have needs in multiple jurisdictions, however, out-of-state lawyers (just like New York lawyers) must often travel across jurisdictional lines in the course of performing legal services. This is so whether these out-of-state lawyers are engaged in litigation or in transactional work, and whether they practice alone, in small firms, or in large firms. It is true whether they are in a private firm, in the legal department of an organization, or in a government law office. But when out-of-state lawyers perform legal services in New York without being admitted here, they may violate statutes that prohibit the unauthorized practice of law. As a corollary, New York lawyers who assist or engage in negotiations or transactions with those out-of-state lawyers may violate Rule 5.5(b) by aiding the unauthorized practice of law.

Thus, out-of-state lawyers may have some anxiety about physically coming into New York to meet with an opposing lawyer who is licensed in New York, or to perform due diligence when an out-of-state client plans to buy a New York business, or to investigate the facts of a New York accident in which an out-of-state driver or passenger was injured. In today's high-tech world some have even suggested that practicing law "in" New York could include

practicing by fax, phone, email, video-conference, or other electronic or virtual means.[12] And New York lawyers may have anxiety about assisting out-of-state lawyers who physically or electronically come to New York to practice temporarily.

Uncertain boundaries of unauthorized practice. Moreover, the precise line between unauthorized practice, on the one hand, and appropriate legal work in New York ancillary to a legal practice elsewhere, on the other hand, has never been very clear. *Compare Spivak v. Sachs*, 16 N.Y.2d 163, 211 N.E.2d 329 (1965) (denying fees to a California attorney who had stayed in a hotel in New York fourteen days while advising a personal acquaintance regarding her New York divorce proceedings), *with El Gemayel v. Seaman*, 72 N.Y.2d 701, 707, 533 N.E.2d 245, 249 (N.Y. 1998) ("phone calls to New York by . . . an attorney licensed in a foreign jurisdiction to advise his client of the progress of legal proceedings in that foreign jurisdiction, did not, without more, constitute the 'practice' of law"). There have been numerous attempts to define the unauthorized practice of law and to develop tests to distinguish the authorized practice of law from the unauthorized practice of law, without success.[13]

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[12] *E.g.*, *Birbrower, Montalbano, Condon & Frank v. Superior Court*, 17 Cal. 4th 119, 70 Cal. Rptr. 2d 304, 949 P.2d 1 (1998) ("one may practice law in the state in violation of [California's unauthorized practice rule] although not physically present here by advising a California client on California law in connection with a California legal dispute by telephone, fax, computer, or other modern technological means").

[13] The Restatement (Third) of the Law Governing Lawyers observes that "definitions and tests employed by courts to delineate unauthorized practice by non-lawyers have been vague or conclusory." § 4 cmt. *c* (2000). In 2002, NYSBA's House of Delegates rejected a proposed definition by the Special Committee on the Unlawful Practice of Law ("SCUPL"), and no alternative proposal has since been put forward. *See* SCUPL Interim Report, at 3–4 (2006). The ABA's Task Force on the Model Definition of the Practice of Law failed to gain support for its draft model definition of the practice of law and ultimately recommended to the House of Delegates only that each state adopt its own definition based on the premise that "the practice of law is the application of legal principles and judgment to the circumstances or objectives of another person or entity." *See* ABA Task Force Recommendations as Adopted (Aug. 11, 2003).

Although most lawyers act in good faith and do not intend to engage in the unauthorized practice of law, lawyers engaged in multijurisdictional practice sometimes step over the line unintentionally because of the demands of their clients, the necessities of their practice and uncertainties about whether the statutes and rules on unauthorized practice apply to them. Lawyers who are caught on the wrong side of the line risk forfeiting legal fees and/or subjecting themselves to sanctions, disciplinary action, and even criminal prosecution. New York lawyers assisting out-of-state lawyers are also at risk because they may be aiding out-of-state lawyers in the unauthorized practice of law. Although the laws prohibiting the unauthorized practice of law are seldom enforced against out-of-state lawyers or those assisting them, this lack of enforcement fosters disregard or disrespect for these laws.

The laws and rules should regulate rather than ban out-of-state lawyers who perform legal services in jurisdictions in which they are not admitted, and should subject them to professional discipline in those jurisdictions to protect the public. ABA Model Rules 5.5 and 8.5(a) have already accomplished these dual objectives in almost all other U.S. jurisdictions,[14] and Proposed Part 523 will accomplish these goals in New York.

[14] All or virtually all of the 44 jurisdictions that have adopted a version of ABA Model Rule 5.5 have also adopted a version of ABA Model Rule 8.5(a), which provides, "A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide legal services in this jurisdiction." New York does not have a comparable provision in its Rules, so a special provision is needed in the temporary-practice rules to accomplish the objective of subjecting out-of-state lawyers to the New York Rules of Professional Conduct.

C. The Proposed Rules would align New York with the overwhelming majority of U.S. jurisdictions.

As noted, 44 other jurisdictions (43 states plus the District of Columbia) have already adopted temporary-practice rules permitting practice by out-of-state lawyers in certain circumstances.[15] We are aware of no adverse consequences following the adoption of these rules in those jurisdictions. Only New York and six other states have not adopted either Model Rule 5.5(b), (c) and (d)(2) or a similar rule.[16]

The multijurisdictional practice rules adopted in the vast majority of U.S. jurisdictions reflect the reality of law practice in the 21st Century, particularly for cross-border and global entities and their lawyers, who move frequently across jurisdictional borders. New York's outlier status undermines the State's position as a business and legal capital of the world.

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[15] The U.S. jurisdictions that have adopted temporary practice rules (and the date those rules went into effect or the dates of adoption) are as follows: Alabama (Sept. 19, 2006), Alaska (Oct. 28, 2008), Arizona (June 8, 2004), Arkansas (March 3, 2005), California (April 8, 2004), Colorado (Jan. 1, 2003), Connecticut (June 29, 2007), Delaware (Oct. 16, 2007), District of Columbia (Aug. 1, 2006), Florida (May 12, 2005), Georgia (June 8, 2004), Idaho (March 15, 2004), Illinois (July 1, 2009), Indiana (Sept. 30, 2004), Iowa (April 20, 2005), Kentucky (July 15, 2009), Louisiana (March 9, 2005), Maine (Aug. 1, 2009), Maryland (Feb. 8, 2005), Massachusetts (Jan. 1, 2007), Michigan (Oct. 26, 2010), Minnesota (June 17, 2005), Missouri (March 9, 2005), Nebraska (June 8, 2005), Nevada (eff. May 1, 2006), New Hampshire (July 25, 2007), New Jersey (July 28, 2004), New Mexico (Aug. 13, 2003), North Carolina (March 1, 2003), North Dakota (Nov. 17, 2004), Ohio (Sept. 1, 2006), Oklahoma (April 17, 2007), Oregon (Oct. 27, 2004), Pennsylvania (April 30, 2004), Rhode Island (Feb. 16, 2007), South Carolina (Oct. 1, 2005), South Dakota (Sept. 29, 2003), Tennessee (Oct. 23, 2009), Utah (eff. Nov. 1, 2005), Vermont (June 17, 2009), Virginia (Dec. 30, 2008), Washington (July 10, 2006), Wisconsin (July 30, 2008), Wyoming (July 1, 2006). *See* http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/recommendations.authcheckdam.pdf.

[16] The other six states that have not adopted a temporary-practice rule are Hawaii, Kansas, Mississippi, Montana, Texas, and West Virginia. Hawaii and Texas, however, have created commissions to review proposals similar to ABA Model Rule 5.5. In Mississippi, the State Bar in June 2011 petitioned the Mississippi Supreme Court to adopt Model Rule 5.5. We have no information as to whether Kansas, Montana or West Virginia is considering adopting a temporary-practice rule.

D. The Court of Appeals has power to adopt the Proposed Rules.

The Court of Appeals has inherent, implicit and plenary power over the regulation of attorneys in New York. Judiciary Law § 53(2) in particular specifies that the Court of Appeals "may make such provisions as it shall deem proper for admission to practice as attorneys and counselors, of ***persons who have been admitted to practice in other states*** or countries." (Emphasis added.)[17] Exercising this power, the Court of Appeals in 1974 adopted limited licensing rules for foreign lawyers, codified at 22 NYCRR Part 521 ("Rules of the Court of Appeals for the Licensing of Foreign Legal Consultants"). More recently, the Court of Appeals adopted rules permitting lawyers admitted and in good standing in another U.S. jurisdiction to practice in-house for their employer-clients without taking the bar examination, codified at 22 NYCRR Part 522 ("Rules of the Court of Appeals for the Registration of In-House Counsel"). The power to adopt the temporary-practice rules we now propose (as new Part 523 of 22 NYCRR) is well-within the Court's power under Section 53(2).

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[17] Section 53 provides in part:

> **§ 53. Rule-making power of court of appeals as to admission of attorneys and counsellors**
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> 1. The court of appeals may from time to time adopt, amend, or rescind rules not inconsistent with the constitution or statutes of the state, regulating the admission of attorneys and counsellors at law, to practice in all the courts of record of the state.
>
> 2. The court may make such provisions as it shall deem proper for admission to practice as attorneys and counsellors, of persons who have been admitted to practice in other states or countries. . . .

A complete copy of § 53 is attached as Appendix F to this Report.

II. THE PROPOSED RULE ON TEMPORARY PRACTICE PENDING ADMISSION

Globalization, changes in technology, economic changes, and client demands have produced an increase in cross-border practice and a related need for lawyers to relocate from time to time. An increasing number of lawyers have found it necessary to establish a practice in a jurisdiction where they have not previously been 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, or may be transferred to, a jurisdiction other than the jurisdiction of original licensure, often requiring relocation within a very short time. Lawyers sometimes 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 sufficient notice to obtain bar admission before the move.

Lengthy process for permanent admission. The admission process for these lawyers can take considerable time. For example, the process for admission without examination in New York requires an applicant to complete and submit an application that requires personal and professional information that can take weeks or months to compile. See 22 NYCRR § 520.10(b). Similarly, if the lawyer does not qualify for admission without examination (*e.g.*, the lawyer has not satisfied the durational practice requirements or is admitted in any of the 16 non-reciprocal

jurisdictions in the U.S.), the lawyer will need to sit for the bar examination, which is administered only twice per year.[18]

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, assuming that effective procedural safeguards are put in place, these lawyers should be permitted to establish a continuous and systematic presence in New York for a limited time while diligently pursuing formal admission. The proposed Rule on temporary practice pending admission, Section 523.3, if adopted, would authorize this form of practice for a limited time.

Two other jurisdictions have adopted rules providing for temporary practice pending admission. The District of Columbia permits 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.[19] The Commentary to the D.C. 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

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[18] The process of seeking admission via the bar exam takes at least seven months and can take much longer. The applicant must file a completed application nearly three months before the exam is administered, and there is no provision for late filing. (In 2012, a person wishing to take the July bar exam is required to apply no later than April 30, 2012. A person who misses this deadline must wait until the February bar exam. Thus, a person who receives a job offer or transfer on May 1, 2012 must wait until February of 2013 to take the bar exam and will not learn the results until mid-May of 2013, more than a year after relocating to New York.) The applicant will typically not receive the results of the exam for three to four months. (Historically, results from the July examination are released by mid-November, and results of the February examination are released by mid-May.) A person who passes the bar exam must then submit an application to the appropriate Character and Fitness Committee, submit to a personal interview, and attend a swearing-in ceremony.

[19] District of Columbia Court of Appeals Rule 49(c)(8) (Limited Duration Supervision By D.C. Bar Member) http://www.dcappeals.gov/dccourts/docs/rule49.pdf

has a similar procedure.[20] The ABA Commission on Ethics 20/20, which has held hearings and sought national input on its proposals, reported that it did not learn of any problems caused by these provisions, and on May 7, submitted a report to the ABA House of Delegates proposing a Model Rule on Practice Pending Admission.[21] Nevertheless, to ensure that lawyers do not abuse the proposed exception or use this privilege in ways that would put the public at risk, a number of restrictions and limitations are appropriate.

Section 523.3's introductory language would require that the lawyer not be disbarred or suspended from practice and not currently subject to discipline or the subject of a pending disciplinary matter in any jurisdiction.

Section 523.3(a) would require the lawyer to submit an application, within 60 days of first providing legal services under the proposed Rule, either to take the New York bar examination or to be admitted on motion without examination. The purpose of requiring an application within 60 days is to ensure that the lawyer is serious about applying for admission in New York and submits an application promptly after commencing temporary work here. We suggest that the application for authorization to practice temporarily pending admission include a certification by the incoming lawyer as to the date when legal services were first provided in New York under this Rule.

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[20] Missouri Supreme Court Rule 8.06 (Temporary Practice by Lawyers Applying for Admission to the Missouri Bar) http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/0/e0bcf992eb92f9ae86256db7007379ef?OpenDocument

[21] ABA Commission on Ethics 20/20, Report and Resolution Proposing ABA Model Rule on Practice Pending Admission (May 7, 2012) http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20120508_ethics_20_20_final_resolution_and_report_practice_pending_admission_5_5_posting.authcheckdam.pdf

This section would also require the lawyer to have a reasonable expectation that the lawyer will fulfill all requirements for admission in New York. This requirement is analogous to proposed § 523.2(b), which would permit a lawyer to practice temporarily in connection with a litigation matter if the lawyer "reasonably expects to be . . . authorized" to appear before a tribunal.

In addition, the Proposed Rule would require the lawyer to associate with a lawyer who is licensed to practice in New York. This requirement is designed to ensure that the incoming lawyer has the ability to consult with a lawyer who is admitted in New York regarding any issues that may require knowledge of distinctly local laws or procedures. This requirement is similar to the requirement in proposed § 523.2(a) which permits an out-of-state lawyer to practice temporarily in the jurisdiction if the lawyer associates with a lawyer who is admitted to practice in this state and who actively participates in, and assumes joint responsibility for, the matter.

Finally, § 523.3(a) would require that the lawyer not have been previously denied admission to practice in New York (*e.g.*, due to a failure to satisfy character and fitness requirements) and that the lawyer not have previously failed the New York bar examination. This requirement is designed to ensure that a lawyer does not use the authority to practice under the Rule to circumvent a prior denial of the right to practice in New York. For example, if a lawyer fails the bar examination in New York and passes it in another jurisdiction, the lawyer cannot establish a practice in New York while waiting to re-take the New York bar examination.

Section 523.3(b) 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 New York that requires *pro hac vice* admission.

Section 523.3(c) provides that the practice authority terminates immediately if the lawyer's application for admission is denied before the expiration of the 365-day period (*e.g.*, the application for admission without examination is denied or the lawyer fails the bar examination), or if the lawyer fails to file an application to take the bar examination (or for admission without examination) within 60 days. The lawyer must stop practicing in New York unless authorized to do so pursuant to another Rule and must not undertake any new representation that would require the lawyer to be admitted to practice law in New York.

Section 523.3(d) provides the Appellate Divisions with authority to extend the two time periods set forth in the Rule – the 60-day period to file an application and the 365-day period to obtain admission – for good cause shown. This would permit the courts to accommodate unusual situations in which, for example, an applicant was unable to obtain a necessary reference from a former employer or an applicant did not obtain admission within a year, despite diligent prosecution of the application. As illustrated in footnote 16 above, an application for admission can take longer than a year as a consequence of the twice-per-year cycles of the bar examination process.

III. THE NEW RULES SHOULD NOT INCLUDE A RECIPROCITY PROVISION.

We recommend that this Court adopt the Proposed Rules without a reciprocity requirement.[22] This recommendation is based in part on the fact that, of the 44 U.S. jurisdictions that have already adopted similar temporary-practice rules, *only one* has adopted a reciprocity requirement. We understand that that jurisdiction -- Connecticut -- included the requirement solely because its neighbor New York had not yet adopted a temporary-practice rule. Neither of the jurisdictions that have adopted provisions for temporary practice pending admission has included a reciprocity requirement. In these circumstances, imposing a reciprocity requirement would tend to encourage other states to do the same, thereby impeding the goals of freer lawyer mobility and enhancing clients' ability to retain lawyers of their choosing that are the twin policies underlying this recommendation. A reciprocity requirement is loosely analogous to a tariff – while in the short term it protects local business, in the long term it reduces trade.

Moreover, in the case of the general temporary-practice provision (§ 523.2), a reciprocity provision would not serve the intended purpose of inducing other jurisdictions to provide similar benefits to New York lawyers. Nearly 90% of the other jurisdictions, which have licensed well over 90% of the lawyers in the United States, have already adopted temporary-practice rules without a reciprocity requirement. With respect to Connecticut, which has a reciprocity requirement, we suggest that it is in the broader interests of freer mobility that these Rules seek further to "disarm" rather than to impose a tit-for-tat reciprocity.

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[22] For the Court's convenience, Attachment A contains alternate versions of proposed Sections 523.2 and 523.3. Version One contains no reciprocity requirement. Version Two contains a reciprocity requirement. We urge the Court to adopt Version One.

Significantly, Judiciary Law § 53 does not obligate the Court to require reciprocity, but rather recognizes the wisdom, power and discretion of this Court in such matters. This is reflected in the fact that rules previously adopted by the Court are not uniform with respect to reciprocity. For example, the rules of the Court of Appeals on licensing foreign legal consultants (Part 521 of 22 NYCRR) do not contain a mandatory reciprocity requirement. Instead, those rules give the Appellate Divisions discretion to consider whether the home jurisdiction of the applicant would accord the same practice opportunities to a New York lawyer.[23] On the other hand, the recently adopted in-house counsel rules do contain a reciprocity requirement.[24]

In terms of statutory law, the only reciprocity requirement regarding attorney admissions of which we are aware appears in Judiciary Law § 90(b), which addresses the power of the Appellate Divisions.[25] It binds the *Appellate Divisions* to comply with the terms of § 90(b) and the rules of the Court of Appeals, but it does not constrain the Court of Appeals.

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[23] Part 521.1(b) provides: "In considering whether to license an applicant to practice as a legal consultant, *the Appellate Division may in its discretion take into account whether a member of the bar of this State would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission.* . . . . " (Emphasis added.)
)

[24] 22 NYCRR § 522.1(b)(2).

[25] Section 90(b) reads: "Upon the application, pursuant to the rules of the court of appeals, of any person who has been admitted to practice law in another state or territory or the District of Columbia of the United States or in a foreign country, to be admitted to practice as an attorney and counselor-at-law in the courts of this state without taking the regular bar examination, *the appellate division* of the supreme court, if it shall be satisfied that such person is currently admitted to the bar in such other jurisdiction or jurisdictions . . . , possesses the character and general fitness requisite for an attorney and counselor at law and has satisfied the requirements of section 3-503 of the general obligations law, shall admit him to practice . . . ." Section 90(b) also requires that at least one other jurisdiction in which the applying lawyer is admitted "would similarly admit an attorney or counselor-at-law admitted to practice in New York state to its bar without examination." (Emphasis added.)

While we of course recognize the power of the Court of Appeals to require reciprocity in any admission rule for out-of-state attorneys, we urge the Court to adopt temporary-practice rules without such a requirement. This would bring New York in line with the overwhelming number of other U.S. jurisdictions that have already adopted temporary-practice rules without a reciprocity provision.

Conclusion

For all the foregoing reasons, the NYSBA, City Bar and NYCLA urge the Court of Appeals to adopt a proposed new Part 523, which sets forth rules for temporary practice of lawyers admitted and in good standing in other United States jurisdictions, without any reciprocity requirement.

Dated: _____, 2012

Respectfully submitted,

June 15, 2012
LIMITED DISTRIBUTION
NOT FOR PUBLICATION

APPENDIX A

[PROPOSED] PART 523. RULES OF THE COURT OF APPEALS REGARDING TEMPORARY PRACTICE

Table of Contents

§ 523.1 General regulation as to lawyers admitted in another United States jurisdiction.

A lawyer who is not admitted to practice in this state shall not:

(a) except as authorized by these rules or other law, establish an office or other systematic and continuous presence in this state for the practice of law; or

(b) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this state.

§ 523.2 Scope of temporary practice - general – VERSION ONE (no reciprocity requirement).

A lawyer admitted and authorized to practice law in another United States jurisdiction, or a foreign legal consultant authorized to practice law in another United States jurisdiction, who is not disbarred or suspended from practice in any jurisdiction, may provide on a temporary basis in this state legal services that the lawyer or foreign legal consultant could provide in such jurisdiction and that:

(a) are undertaken in association with a lawyer who is admitted to practice in this state and who actively participates in, and assumes joint responsibility for, the matter;

(b) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer or foreign legal consultant, or a person the lawyer or foreign legal consultant is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized; or

(c) are not within paragraph (b) of this Rule and arise out of or are reasonably related to the lawyer's or foreign legal consultant's practice in a jurisdiction in which the lawyer is admitted to practice or the foreign legal consultant is authorized to practice.

§ 523.2 Scope of temporary practice - general – VERSION TWO (reciprocity language in italics).

A lawyer admitted and authorized to practice law in another United States jurisdiction, or a foreign legal consultant authorized to practice law in another United States jurisdiction, who is not disbarred or suspended from practice in any jurisdiction, may (if that jurisdiction accords similar privileges to New York lawyers or foreign legal consultants within its jurisdiction) provide on a temporary basis in this state legal services that the lawyer could provide in such jurisdiction and that:

[The remaining sections would be the same in Version Two as in Version One. The only difference is the reciprocity requirement in Version Two.]

§ 523.3 Temporary practice pending admission – VERSION ONE (no reciprocity requirement).

A lawyer admitted and authorized to practice law in another United States jurisdiction, who is not disbarred or suspended from practice and is not currently subject to discipline or a pending disciplinary matter in any jurisdiction, may, pending admission to practice in this state, provide legal services in this state, including by establishing an office or other systematic and continuous presence in this state for the practice of law, as follows:

(a) The legal services may be provided for no more than 365 days, but only if the lawyer complies with all of the following requirements:

(i) the lawyer submits an application, within 60 days of first providing legal services in this state under this rule, either to take the bar examination or to be admitted on motion without examination,

(ii) the lawyer reasonably expects to fulfill all requirements for that form of admission,

(iii) the lawyer associates with a lawyer who is admitted to practice in this state, and

(iv) the lawyer has not previously been denied admission to practice in this state or failed this state's bar examination.

(b) Prior to admission without examination or upon examination, the lawyer may not appear before a tribunal in this state that requires pro hac vice admission unless the lawyer is granted such admission.

(c) The authority in this section shall terminate immediately if the lawyer's application for admission is denied prior to 365 days or if the lawyer fails to file the required application within 60 days of first providing legal services under this rule.

(d) The Appellate Divisions may extend the time periods set forth in this Rule for good cause shown.

§ 523.3 Temporary practice pending admission – VERSION TWO (reciprocity language in italics).

A lawyer admitted and authorized to practice law in another United States jurisdiction *that accords similar privileges to New York lawyers in its jurisdiction,* who is not disbarred or suspended from practice and is not currently subject to discipline or a pending disciplinary matter in any jurisdiction, may, pending admission to practice in this state, provide legal services in this state, including by establishing an office or other systematic and continuous presence in this state for the practice of law, as follows:

[The remaining sections would be the same in Version Two as in Version One. The only difference is the reciprocity requirement in Version Two.]

§ 523.4 Other authorized practice.

A lawyer admitted and authorized to practice law in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this state that:

(a) are provided by in-house counsel in accordance with Part 522 of these Rules; or

(b) are services that the lawyer is authorized to provide in this state by federal law or other law of this state.

§ 523.5 Disciplinary authority.

A lawyer or foreign legal consultant who practices law in this state pursuant to this Rule is subject to the New York Rules of Professional Conduct and to the disciplinary authority of this state in connection with practice under this Rule to the same extent as if the lawyer or foreign legal consultant were admitted or authorized to practice in the state.

§ 523.6 United States jurisdiction.

"United States jurisdiction" means and shall include the District of Columbia and any state, territory or commonwealth of the United States.