



MEMORANDUM

September 4, 2015

To: All Interested Persons

From: John W. McConnell

Re: Proposed New Section 523 of the Rules of the Court of Appeals Authorizing the Temporary Practice of Law in New York by Out-of-State and Foreign Attorneys.

Public comment is requested on the proposed adoption of a new rule of the Court of Appeals (22 NYCRR § 523) authorizing the temporary practice of law in New York by out-of-state and foreign (non-U.S.) attorneys (Exh. A). For more than a decade, the New York State Bar Association (NYSBA) has recommended the adoption of rules permitting temporary practice by out-of-state lawyers (Exh. B). The Conference of Chief Justices (CCJ) issued a resolution this year strongly encouraging state judiciaries to adopt explicit policies permitting temporary practice by foreign lawyers (Exh. C). The rationale behind these proposals is especially pertinent to New York State. In light of the increasing globalization of business and law practice, New York's role as a center of world commerce would be enhanced by permitting lawyers from other jurisdictions to appear in this state to work on transactional or short-term litigation-related matters (so-called "fly-in, fly-out" events).

The proposed new section 523 of the Rules of the Court of Appeals is modeled principally on (1) a draft rule recommended by the NYSBA in 2012 (Exh. B), and (2) American Bar Association (ABA) Model Rule 5.5, permitting the temporary practice of law by attorneys licensed in other U.S. jurisdictions under certain prescribed circumstances (Exh. D). More than forty jurisdictions have adopted variations of Model Rule 5.5 since its adoption in 2002 (Exh. E). Also in 2002, the ABA adopted a Model Rule addressing temporary practice by foreign (non-U.S.) lawyers (Exh. F), which has been implemented, in different formats, in ten jurisdictions (Colorado, Delaware, Washington D.C., Florida, Georgia, New Hampshire, New Mexico, Oregon, Pennsylvania, and Virginia) (Exh. G).

Under proposed new section 523, a lawyer admitted and authorized to practice law in

another jurisdiction within or outside the U.S., who is not disbarred or suspended in any jurisdiction, would be permitted to provide legal services in New York on a temporary basis where such services:

- a. are undertaken in association with a lawyer admitted to practice in this state 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 state if the lawyer or a person the lawyer is assisting is authorized to appear in such proceeding or reasonably expects to be so authorized; or
- c. are in or reasonably related to an ADR proceeding held or to be held in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which pro hac vice admission is required; or
- d. are not within paragraphs (b) and (c) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

Furthermore, except as otherwise provided by law, the lawyer may not establish an office or other systematic and continuous presence in this state or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this state. Finally, the lawyer is expressly subject to New York's Rules of Professional Conduct and the disciplinary authority of this state.

While comments addressing any and all aspects of the proposal are welcome, the Administrative Board of the Courts has expressed particular interest in the following issues:

1. Whether the rule should contain a definition of "temporary practice," and if so, what definitions are appropriate to achieve the rule's purposes.
2. Whether the rule should include a registration requirement notifying court administrators of the dates and scope of temporary practice (e.g., an affirmation to the Department of the Appellate Division in which such service occurs).
3. Whether and what procedures should be implemented to assure fulfillment of disciplinary responsibilities by temporary practitioners.
4. Whether and how the rule should apply to candidates applying for admission to the New York bar.
5. Whether the rule should apply to registered in-house counsel and licensed legal consultants.

Issues relating to the temporary practice of law have been the subject of extensive analysis and commentary within the legal profession. In addition to reviewing the exhibits accompanying this memorandum, prospective commentators are encouraged to consult additional relevant resources freely available on the world wide web.

Persons wishing to comment on this proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than November 3, 2015.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.