

Statement of the Association of Professional Responsibility Lawyers on ABA Ethics 20/20 Commission Proposed Templates re Inbound Foreign Lawyer Issues

The Association of Professional Responsibility Lawyers (“APRL”) applauds the ABA and the Commission for undertaking a study of issues posed by the increasing globalization of the practice of law. While APRL believes that the Commission should study possible broader United States practice rights for foreign lawyers, APRL supports adoption of the proposed templates as a means to expand the current ABA model rules to fully reflect the logic underlying the multijurisdictional practice reforms adopted by the House of Delegates in 2002.

APRL’s Interests

APRL is an independent national organization of lawyers whose practices concentrate upon professional licensing and discipline, professional responsibility and the law of lawyering. Its membership practices in every American jurisdiction and includes foreign lawyers. APRL conducts study and educational programs nationally and internationally. APRL members are particularly interested in matters relating to attorney licensing and discipline, risk management and multijurisdictional practice.

Reasons for APRL’s Position

The growing ease of interstate and international travel and communication and the resulting globalization of economic activity have made it ever more necessary for lawyers to expand the geographic scope of their practices. Both law firms and their clients increasingly conduct business on a nationwide and even worldwide scale. And, as the Commission on Multijurisdictional Practice recognized in 2002, “the geographic scope of a lawyer’s practice must be adequate to enable the lawyer to serve the legal needs of clients in a national and global economy.”

As the Explanatory Memo of the Working Group on In-Bound Foreign Lawyers notes, the logic of the existing Model Rule on Temporary Practice by Foreign Lawyers is that foreign lawyers, as defined by that rule, should be permitted the same scope of temporary practice as U.S. lawyers from other states. The existing Model Rule for Pro Hac Vice Admission, by omitting mention of foreign lawyers, does not reflect that logic. APRL agrees that, for the reasons stated in the Explanatory Memo, the Model Rule for Pro Hac Vice Admission should be amended to accord with the logic of the Model Rule on Temporary Practice by Foreign Lawyers.

Currently, Model Rule of Professional Conduct 5.5(d) allows lawyers to serve as in-house counsel in states other than those where they are admitted and the Model Rule for Registration of In-House Counsel provides a mechanism for such lawyers to be registered by the states in which they maintain their offices. Like the Model Rule for Pro Hac Vice Admission, these rules make no provision for foreign lawyers to serve as in-house counsel. As the Explanatory Memo notes, the existing rules

assume[] that an in-house lawyer can establish an office or other “systematic presence” in the jurisdiction and forego local licensure without unreasonable risk to the client or public because: (1) the employer is able to assess the lawyer’s qualifications and the quality of the lawyer’s work; and (2) the lawyer’s only client is the employer.

APRL agrees with the Working Group that these assumptions apply equally to foreign lawyers and the existing rules should be amended to reflect that.

The Working Group also proposes to essentially incorporate the Model Rule on Temporary Practice by Foreign Lawyers into Model Rule 5.5. APRL supports this, as many jurisdictions appear to have overlooked the Model Rule on Temporary Practice by Foreign Lawyers.

While APRL supports all of the current proposals of the Working Group, APRL views those proposals as simply implementing and completing the reforms adopted in 2002. APRL urges the Commission and the Working Group to study further expansion of multijurisdictional practice, both within the United States and internationally.