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New York Adopts Rules Permitting Practice of Law by Foreign-Admitted In-House Counsel and Attorneys Temporarily in New York

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Effective December 30, 2015, in-house lawyers working in New York who are only admitted to practice outside the United States are no longer limited to serving as foreign law advisors, but registration is required within 90 days. In addition, New York has adopted a version of the Model Rule 5.5(a) provision on the multi-jurisdictional practice of law first proposed by the New York State Bar in 2003.

Chief Judge Jonathan Lippman, citing the globalization of the practice of law and noting the importance of New York to the world economy, announced long-awaited amendments to New York's rules governing the unauthorized practice of law. First, New York joins nineteen states in permitting lawyers who are working as inside corporate counsel, but are only admitted to practice outside the United States, to register and practice in New York as corporate counsel. In-house counsel who are admitted in a U.S. jurisdiction other than New York have been able to do so since April 20, 2011. (See 22 NYCRR Part 522.) California, Florida and Pennsylvania are notably absent from this group of jurisdictions that permit foreign lawyers to act as in-house lawyers and give advice on laws in addition to the laws of the countries where they are admitted to practice. Second, New York will permit lawyers not admitted in New York to practice there on a temporary basis. (See 22 NYCRR Part 523.) In Judge Lippman's words, "lawyers from other states and nations [are now permitted] to appear in this state to work on 'fly-in, fly-out' transactional and short-term transactional or short-term litigation-related matters."

Registration of Foreign-Admitted Inside Counsel

Effective on April 20, 2011, New York became the 45th state to allow an attorney who is employed in the state full-time as inside corporate counsel, but admitted to practice in another state, to give legal advice to his or her client, its affiliates, employees, officers and directors on issues related to the attorney's work for

his or her employer. To be permitted to provide such advice even though the attorney was not admitted in New York—and thus not otherwise permitted to practice law in New York—the attorney is required to register. Effective December 30, 2015, New York permits lawyers admitted to practice only outside the United States to register as inside corporate counsel so that the lawyer may provide the same legal services to his or her corporate clients as U.S. lawyers who register. Before the rule became effective, foreign lawyers working in corporate legal departments were either required to register as foreign law consultants, which limited the legal advice they could give to that of the foreign jurisdiction where they were admitted, or to limit their activities to that of law clerks and supervising outside counsel. The rule does not allow registered in-house counsel to appear in litigation in New York; *pro hac vice* admission is still required. In addition, the provision permitting registered in-house counsel to perform pro bono work applies only to attorneys admitted to practice in a U.S. jurisdiction.

The rule does not solve all problems for foreign members of corporate legal departments. For example, the rule does not permit inside counsel who are not admitted to practice in their home jurisdictions to register. This is a problem for foreign lawyers who are trained in jurisdictions that do not permit inside counsel to be admitted to practice as lawyers and for members of corporate legal departments who are not lawyers. Most significantly, the rule has a reciprocity provision, making it available only to lawyers from countries that permit New York lawyers to register and work as in-house counsel in those countries.

Registration is required of all foreign lawyers working in New York for corporate legal departments on December 30, 2015, within ninety days of that date. Foreign lawyers who join New York corporate legal departments after December 30 have thirty days to register. To register, a lawyer must provide a certificate of good standing from the jurisdiction or jurisdictions where the lawyer is admitted; a letter from the grievance committee of each such jurisdiction certifying that no charges have been filed against the attorney (or the substance and disposition of any charges filed); an affidavit from the lawyer certifying that the lawyer will only be providing legal services to the corporation and its affiliates, employees, officers and directors and the lawyer will comply with the New York Rules of Professional Conduct; and an affidavit from the attorney's employer attesting to the scope of the attorney's employment. Any non-English documents must be accompanied by a certified English translation.

Temporary Practice

New York is hardly in the forefront of adopting clear rules on multi-jurisdictional practice. Over 40 states have already adopted some version of ABA Model Rule of Professional Conduct 5.5, which clarifies when an attorney may practice law temporarily in a jurisdiction where the lawyer is not admitted. Indeed, the New York State Bar proposed that New York adopt a version of Model Rule 5.5 a dozen years ago. The change is nonetheless welcome. The rule covers lawyers admitted elsewhere in the United States as well as lawyers in good standing and admitted or authorized to practice in non-U.S. jurisdictions if the lawyers in that jurisdiction are subject to effective regulation and discipline by a professional or government body. This means that inside counsel that are not admitted to practice in their home countries are not covered by this rule, nor are attorneys that have registered to practice as inside counsel or foreign law consultants in New York. Lawyers who take advantage of this exception temporarily to practice in New York are subject to New York's Rules of Professional Conduct.

The amendment makes clear that engaging in the following activities in New York is not the unauthorized practice of law, so long as the lawyer is permitted to engage in the activities where he or she is admitted and New York also permits its lawyers to do so:

First, a non-New York lawyer may provide legal services in New York temporarily in association with a New York lawyer who actively participates in and assumes joint responsibility for the matter.

Second, a non-New York lawyer may engage in activities on a temporary basis in New York relating to a pending or potential lawsuit or other form of dispute proceeding where the lawyer or the person the lawyer is assisting is permitted or expects to be permitted to appear in the proceeding. For example, a non-New York lawyer may take a deposition in New York in connection with a lawsuit in which the lawyer has appeared in another state. A non-New York lawyer also may meet with potential witnesses in New York to prepare a complaint for an action in which the lawyer expects to appear.

Third, a non-New York lawyer may participate in alternative dispute resolution proceedings in New York or may provide legal services temporarily in New York in connection with alternative dispute resolution proceedings pending or to be held outside New York so long as it is not necessary for the lawyer to be admitted *pro hac vice* in order to participate in the New York or non-New York proceedings. To appear in alternative dispute resolution proceedings in New York does not usually require a *pro hac vice* admission unless the proceedings are in connection with a New York lawsuit.

Fourth, if the second or third exceptions do not apply, but the services are related to the non-New York lawyer's practice of law where he or she is admitted, this too is permitted on a temporary basis. This exception, for example, would cover attending a negotiating session in New York in connection with a transaction that is primarily being handled in a jurisdiction where the lawyer is admitted.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the author below.

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