



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

MEMORANDUM

To: Members of the Public
From: John W. McConnell
Re: Amendment to Proposed Temporary Practice Rule
for Public Comment
Date: September 21, 2015

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It has been brought to our attention that an amendment to section 523.2(a) of the proposed Rule regarding temporary practice is required to clarify the rule's intent. The draft rule initially proposed for public comment stated, in pertinent part:

§ 523.2 Scope of temporary practice - general.

A lawyer admitted and authorized to practice law in another jurisdiction within or outside the United States, 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 could provide in such jurisdiction (and that may generally be provided by a lawyer admitted to practice within this state) and:

(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; or ...

The amended proposed rule inserts an “or” at the end of section 523.2(a), as follows

(emphasis added):

§ 523.2 Scope of temporary practice - general.

A lawyer admitted and authorized to practice law in another jurisdiction within or outside the United States, 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 could provide in such jurisdiction (and that may generally be provided by a lawyer admitted to practice within this state) and:

(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; or

(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; or ...

This amendment is intended to clarify that subsections (a) through (d) of section 523.2 set forth separate and disjunctive conditions under which temporary practice may occur. That is, under the rule, attorneys from other jurisdictions may provide (1) services in association with an actively participating New York lawyer who assume joint responsibility, or (2) services that “are in or reasonably related to a pending or potential proceeding ...”; or (3) services that “are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding...”, or (4) services that are not within subsections (b) and (c) and arise out of, or are reasonably related to, the attorney’s practice in a jurisdiction where she or he is admitted.

[PROPOSED – *AMENDED VERSION Sept. 21, 2015*]
PART 523. RULES OF THE COURT OF APPEALS
REGARDING TEMPORARY PRACTICE

§ 523.1 General regulation as to lawyers admitted in another jurisdiction

§ 523.2 Scope of practice – general

§ 523.3 Disciplinary authority

§ 523.1 General regulation as to lawyers admitted in another 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.

A lawyer admitted and authorized to practice law in another jurisdiction within or outside the United States, 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 could provide in such jurisdiction (and that may generally be provided by a lawyer admitted to practice within this state) and:

(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; or

(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; or

(c) are in or reasonably related to a pending or potential arbitration, mediation or other alternative dispute resolution 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 the forum requires pro hac vice admission; or

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

§ 523.3 Disciplinary authority.

A lawyer 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 were admitted or authorized to practice in the state.