

State of New York Court of Appeals

*At a session of the Court, held at Court of Appeals
Hall in the City of Albany, on the 26th
day of March, 2020.*

Present, HON. JANET DiFIORE, Chief Judge presiding.

In the Matter

of

The Amendment of the Rules of the Court of Appeals
for the Registration of the In-House Counsel.

Pursuant to section 53 of the Judiciary Law, it is hereby

ORDERED that Part 522 of the Rules for the Registration of In-House Counsel is amended (22 NYCRR Part 522), effective April 15, 2020, or as soon thereafter as section 52 of the Judiciary Law is complied with, by deleting the bracketed material and adding the underlined material to sections 522.1, 522.2, 522.3, 522.5, 522.7, and 522.8, to read as follows:

§ 522.1 Registration of In-House Counsel

(a) In-House Counsel defined. An in-house counsel is an attorney who is employed full time or part time in this State by a non-governmental corporation, partnership, association, or other legal entity, including its subsidiaries and organizational affiliates, that is not itself engaged in the practice of law or the rendering of legal services outside such organization. An attorney is not required to reside in New York State or an adjacent state in order to register under this Part.

(b) In its discretion, and in accordance with Section 522.1(a), the Appellate Division may register as in-house counsel an applicant who:

(1) (i) has been admitted to practice in the highest law court in any other state or territory of the United States or in the District of Columbia; or (ii) is a member in good standing of a recognized legal profession in a foreign [non-United States] jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation by a duly constituted professional body or public authority where such an authority both exists and holds in good standing compliant members employed as in-house counsel; or (iii) where no such authority exists, or where such authority exists but suspends the membership of members employed as in-house counsel, is trained and licensed as a lawyer in a foreign jurisdiction and eligible to join the bar of such foreign jurisdiction, if such bar exists, or is otherwise eligible to engage in the private practice of law in such jurisdiction, upon ceasing to be employed as in-house counsel;

(2) (i) is currently admitted to the bar as an active member in good standing in at least one other jurisdiction, within [or outside] the United States, which would similarly permit an attorney admitted to practice in this State to register as in-house counsel; [and] (ii) was admitted to the bar in at least one other jurisdiction outside the United States and either is a current active member in good standing or has a bar membership that has been suspended because the applicant is employed as in-house counsel, but the applicant is eligible to again become an active member in good standing upon a

showing that the applicant is no longer working as in-house counsel; or (iii) is otherwise trained as a lawyer and permitted to provide legal services in a foreign jurisdiction and eligible to join the bar of such foreign jurisdiction, if such a bar exists, upon ceasing to be employed as in-house counsel; and

(3) possesses the good moral character and general fitness requisite for a member of the bar of this State.

§ 522.2 Proof required

An applicant under this Part shall file with the Clerk of the Appellate Division of the department in which the applicant resides, is employed or intends to be employed as in-house counsel:

(a) (1) a certificate of good standing from each jurisdiction in which the applicant is licensed to practice law; or

(2) if the foreign jurisdiction in which the applicant is licensed to practice law does not issue such certificates, an affidavit along with relevant supporting documentation confirming that the applicant is trained as a lawyer and eligible to join the bar of such foreign jurisdiction, if such a bar exists, or is otherwise eligible to engage in the private practice of law in such jurisdiction, upon ceasing to be employed as in house-counsel;

(b) (1) a letter from each such jurisdiction's grievance committee, or other body entertaining complaints against attorneys, certifying whether charges have been filed with or by such committee or body against the applicant, and, if so, the substance of the charges and the disposition thereof; or

(2) if the foreign jurisdiction in which the applicant is licensed to practice law does not provide such letters, an affidavit certifying whether charges have been filed with or by such committee or body against the applicant, and, if so, the substance of the charge and the disposition thereof;

(c) an affidavit certifying that the applicant:

(1) performs or will perform legal services in this State solely and exclusively as provided in section 522.4; and

(2) agrees to be subject to the disciplinary authority of this State and to comply with the New York Rules of Professional Conduct (22 NYCRR Part 1200) and the rules governing the conduct of attorneys in the judicial department where the attorney's registration will be issued; and

(d) an affidavit or affirmation signed by an officer, director, or general counsel of the applicant's employer, on behalf of said employer, attesting that the applicant is or will be employed as an attorney for the employer and that the nature of the employment conforms to the requirements of this Part.

(e) Documents in languages other than English shall be submitted with a certified English translation.

§ 522.3 Compliance

An attorney registered as in-house counsel under this Part shall:

(a) (1) remain an active member in good standing in at least one state or territory of the United States or in the District of Columbia or a foreign jurisdiction as described in section 522.1(b)(1); or

(2) if the attorney has never obtained such membership by virtue of having spent the attorney's entire career as in-house counsel in a jurisdiction in which in-house counsel are not required or permitted to have such membership, or the attorney's membership in a foreign jurisdiction has been suspended because of the attorney's employment as in-house counsel, the attorney will remain eligible to join the bar of such foreign jurisdiction, if such a bar exists, or otherwise remain eligible to engage in the private practice of law in such jurisdiction upon ceasing to be employed as in-house counsel;

(b) promptly notify the appropriate Appellate Division department of a disposition made in a disciplinary proceeding in another jurisdiction;

(c) register with the Office of Court Administration and comply with the appropriate biennial registration requirements; and

(d) except as specifically limited herein, abide by all of the laws and rules that govern attorneys admitted to the practice of law in this State.

§ 522.5 Termination of registration

(a) Registration as in-house counsel under this Part shall terminate when:

(1) the attorney ceases to be an active member in another jurisdiction[, as required in] or otherwise qualified under section 522.1(b)((2)); or

(2) the attorney ceases to be an employee of the employer listed on the attorney's application, provided, however, that if such attorney, within 30 days of ceasing to be such an employee, becomes employed by another employer for which such attorney shall perform legal services as in-house counsel, such attorney may request continued registration under this Part by filing within said 30-day period with the appropriate Appellate Division department an affidavit to such effect, stating the dates on which the prior employment ceased and the new employment commenced, identifying the new employer and reaffirming that the attorney will provide legal services in this State solely and exclusively as permitted in section 522.4. The attorney shall also file an affidavit or affirmation of the new employer as described in section 522.2(d) and shall file an amended statement within said 30-day period with the Office of Court Administration.

(b) In the event that the employment of an attorney registered under this Part ceases with no subsequent employment by a successor employer, the attorney, within 30 days thereof, shall file with the Appellate Division department where registered a statement to such effect, stating the date that employment ceased. Noncompliance with this provision shall result in the automatic termination of the attorney's registration under this Part;

(c) Noncompliance with the provisions of section 468-a of the Judiciary Law and the rules promulgated thereunder, insofar as pertinent, shall, 30 days following the date set forth therein for compliance, result in the termination of the attorney's rights under this Part.

§ 522.7 Saving Clause and Noncompliance

(a) An attorney employed as in-house counsel, as that term is defined in section 522.1(a), shall file an application in accordance with section 522.2 within [30] 90 days of the later of commencement of such employment or April 15, 2020;

(b) An application filed within the period required by section 522.7(a) shall be deemed to be timely whether or not the Appellate Division acts on the application within that period;

(c) Failure to comply with the provisions of this Part shall be deemed professional misconduct, provided, however, that the Appellate Division may upon application of the attorney grant an extension upon good cause shown.

§ 522.8 Pro bono legal services

Notwithstanding the restrictions set forth in section 522.4 of this Part, an attorney registered as in-house counsel under this Part may provide pro bono legal services in this State in accordance with New York Rules of Professional Conduct (22 NYCRR 1200.0) rule 6.1(b) and other comparable definitions of pro bono legal services in New York under the following terms and conditions. An attorney providing pro bono legal services under this section:

(a) shall either

(1) be admitted to practice and in good standing in another state or territory of the United States or in the District of Columbia and possess the good moral character and

general fitness requisite for a member of the bar of this State, as evidenced by the attorney's registration pursuant to section 522.1(b) of this Part; or

(2) be a foreign attorney registered pursuant to section 522.1(b) of this Part, in which event the attorney shall only provide such pro bono legal services under the direct supervision of a duly registered New York lawyer;

(b) pursuant to section 522.2(c)(2) of this Part, agrees to be subject to the disciplinary authority of this State and to comply with the laws and rules that govern attorneys admitted to the practice of law in this State, including the New York Rules of Professional Conduct (22 NYCRR Part 1200.0) and the rules governing the conduct of attorneys in the judicial department where the attorney's registration is issued;

(c) may appear, either in person or by signing pleadings, in a matter pending before a tribunal, as that term is defined in New York Rules of Professional Conduct (22 NYCRR 1200.0) rule 1.0(w), at the discretion of the tribunal, without being admitted pro hac vice in the matter. Prior to any appearance before a tribunal, a registered in-house counsel must provide notice to the tribunal that the attorney is not admitted to practice in New York but is registered as in-house counsel pursuant to this Part. Such notice shall be in a form approved by the Appellate Division; and

(d) shall not hold oneself out as an attorney admitted to practice in this State, in compliance with section 522.4(d) of this Part.