



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

EILEEN D. MILLETT
COUN SEL

MEMORANDUM

To: All Interested Persons

From: Eileen D. Millett

Re: Request for Public Comment on Proposal to Modify the Rules of the Court of Appeals, Part 523, to Add a Provision That Permits a Lawyer Licensed in a Jurisdiction Outside New York to Practice Remotely From a New York Location

Date: April 6, 2022

The Administrative Board of the Courts is seeking public comment on a proposal, proffered by both the New York State Bar Association (NYSBA) and the New York City Bar (“City Bar”), to amend Part 523 of the Rules of the Court of Appeals to confirm that lawyers who practice law outside New York State do not engage in the unauthorized practice of law by working remotely from their homes in New York State.

The City Bar proposed the amendment to Part 523 in a report, and NYSBA’s Committee on Statewide Attorney Conduct (COSAC) suggested further revisions, which were incorporated (Ex. A – City Bar Report). The updated report was approved by the NYSBA’s House of Delegates on January 22, 2022 (Ex. B- NYSBA letter).

The City Bar states that the rationale for the proposal is that since the COVID-19 pandemic, it has become common for lawyers to work remotely. This proposed amendment would recognize and formalize the accepted belief that a person’s physical presence in New York while practicing law in another jurisdiction does not, in and of itself, demonstrate that such an individual is practicing law in New York (Ex. A). Instead, the nature of the work and the lawyer’s public presence should be determinative of whether a person is engaged in the unauthorized practice of law.

The City Bar states that Arizona, Colorado, Minnesota, New Hampshire, North Carolina, and Ohio have temporary practice rules which permit remote practice. The bars in Florida, Maine, Utah, Virginia, and New Jersey “have issued advisory opinions interpreting their respective temporary practice rules to permit remote practice.” (Ex. A, p. 2)

The proposed rule amendments can be found in the Appendix of the City Bar report (Ex.

A, p. 3-5).

Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: Eileen D. Millett, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York, 10004. Comments must be received no later than June 6, 2022.

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.

EXHIBIT A



A report from the New York City Bar Association on **Proposed** **Amendment to the New York** **Court of Appeals Part 523 Rules** **for the Temporary Practice of** **Law in New York**

January 2022



**FOR CONSIDERATION BY THE NEW YORK STATE BAR ASSOCIATION
HOUSE OF DELEGATES, JANUARY 2022**

**REPORT BY THE PROFESSIONAL RESPONSIBILITY COMMITTEE,
PROFESSIONAL ETHICS COMMITTEE, PROFESSIONAL DISCIPLINE COMMITTEE,
LEGAL REFERRAL SERVICE COMMITTEE,
SMALL LAW FIRM COMMITTEE AND THE
COUNCIL ON THE PROFESSION**

**PROPOSED AMENDMENT TO NEW YORK COURT OF APPEALS PART 523
RULES FOR THE TEMPORARY PRACTICE OF LAW IN NEW YORK**

I. SUMMARY

We propose amendments to the New York Court of Appeals Part 523 (“Rules for the Temporary Practice of Law in New York”) in order to confirm that lawyers who practice law outside New York State do not engage in the practice of law in this State solely by virtue of physically working remotely from their homes in this State.¹

II. RATIONALE FOR THE PROPOSAL

Prior to the recent COVID-19 pandemic, lawyers and other professionals worked from their homes on an occasional basis. Since the pandemic and because of improvements to video communications and the proliferation of software facilitating working remotely, it appears that work patterns have changed. It is expected that lawyers may continue to work remotely from their homes, but now on a more long-term basis. This report proposes the adoption of a new court rule designed to formalize what we believe has always been the case: namely, that the fact that a person is physically situated in this State while practicing law in another jurisdiction does not mean that they are practicing law in this State. In other words, it is the nature of the person’s work and their public presence, not their physical location, which is determinative of whether a person is engaged in the unauthorized practice of law.

To take the view that, say, Connecticut or New Jersey lawyers working from their residence in New York on Connecticut or New Jersey matters are engaged in the unauthorized practice of law in New York would be to discourage such lawyers from residing in this State, with all of the revenue and other benefits such residence brings to this State. It would also ignore the growing reality of “work from home” situations in law practice and a variety of other industries. Further, the New York rules against unauthorized practice are primarily designed to protect the New York public, and the public is not put at risk when lawyers happen to be working remotely from their New York residence while practicing law in other jurisdictions.

¹ This proposal, as originally drafted in early 2021, was reviewed by the Committee on Statewide Attorney Conduct, after which COSAC’s suggested modifications were incorporated. The final proposed language of the amendment is set forth in an appendix immediately following this report and has COSAC’s support and endorsement.

Similarly, many New York lawyers reside in adjoining states, such as Connecticut and New Jersey. Although we do not believe that New York considers those lawyers to be engaged in the unauthorized practice of law every time they cross the New York border to return home, our hope is that clarifying New York's position will encourage such other states to reciprocate and thus provide similar comfort that New York lawyers need not fear that working from their homes in such states will result in liability for unauthorized practice of law claims.

Arizona, Minnesota, New Hampshire, North Carolina and Ohio have temporary practice rules which specifically permit remote practice, as does Colorado so long as the lawyer is not domiciled there. Arizona Rule 5.5, Minnesota Rule 5.5, New Hampshire Rule 5.5, North Carolina Rule 5.5, Colorado R. Civ. P. 205.1, Ohio Rule 5.5. And the bars in Florida, Maine, Utah, Virginia and New Jersey have issued advisory opinions interpreting their respective temporary practice rules to permit remote practice. Florida 2019-4 (2020), Maine 189 (2005), Utah 19-03 (2019), Virginia 1856 (2016), New Jersey 59/742 (2021).

Our proposed amendments are also in accord with the recent American Bar Association ethics opinion, which observes that unauthorized law prohibitions are designed to "protect the public from unlicensed and unqualified practitioners of law. That purpose is not served by prohibiting a lawyer from practicing the law of a jurisdiction in which the lawyer is licensed, for clients with matters in that jurisdiction, if the lawyer is for all intents and purposes invisible *as a lawyer* to a local jurisdiction where the lawyer is physically located, but not licensed." ABA 495 (2020).

We respectfully urge adoption of these amendments.

Council on the Profession
Dean Matthew Diller and Melissa Colon-Bosolet, Chairs

Professional Discipline Committee
Brenda Correa, Chair

Professional Ethics Committee
Tyler Maulsby, Chair

Professional Responsibility Committee
Aegis Frumento, Chair; Wally Larson, Immediate Past Chair

Legal Referral Service Committee
David G. Keyko, Immediate Past Chair and primary contact person
david.keyko@pillsburylaw.com

Small Law Firm Committee
Anne Wolfson, Chair

Reissued November 2021

APPENDIX

Part 523 with proposed new language in bold and double underlined (the only proposed changes are in § 523.1 and to add a new § 523.5)

Part 523 - Rules for the Temporary Practice of Law in New York

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§ 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 other rules or law **such as §523.5 below**, 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

(a) A lawyer who is not admitted to practice in this State may provide legal services on a temporary basis in this State provided the following requirements are met.

(1) The lawyer is admitted or authorized to practice law in a state or territory of the United States or in the District of Columbia, or is a member of a recognized legal profession in a non-United States jurisdiction, the members of which are admitted or authorized to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority; and

(2) The lawyer is in good standing in every jurisdiction where admitted or authorized to practice; and

(3) the temporary legal services provided by the lawyer could be provided in a jurisdiction where the lawyer is admitted or authorized to practice and may generally be provided by a lawyer admitted to practice in this State, and such temporary legal services:

- (i) are undertaken in association with a lawyer admitted to practice in this State who actively participates in, and assumes joint responsibility for, the matter; or
- (ii) 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
- (iii) 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 are not services for which the forum requires pro hac vice admission; or
- (iv) are not within paragraph (3) (ii) or (3) (iii) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted or authorized to practice.

(b) A person licensed as a legal consultant pursuant to 22 NYCRR Part 521, or registered as in-house counsel pursuant to 22 NYCRR Part 522, may not practice pursuant to this Part.

§ 523.3 Disciplinary authority

A lawyer who practices law temporarily in this State pursuant to this Part shall be subject to the New York Rules of Professional Conduct and to the disciplinary authority of this State in connection with such temporary practice to the same extent as if the lawyer were admitted or authorized to practice in the State. A grievance committee may report complaints and evidence of a disciplinary violation against a lawyer practicing temporarily pursuant to this Part to the appropriate disciplinary authority of any jurisdiction in which the attorney is admitted or authorized to practice law.

§ 523.4 Annual report

On or before the first of September of each year, the Office of Court Administration shall file an annual report with the Chief Judge reviewing the implementation of this rule and making such recommendations as it deems appropriate.

§ 523.5 Working from home

A lawyer who is not admitted to practice in this State but who is authorized to practice law in one or more other jurisdictions identified in § 523.2(a)(1), may practice law from a temporary or permanent residence or other temporary or permanent location in this State to the same extent that such lawyer is permitted to practice law in the jurisdiction(s) where the lawyer is duly admitted or authorized, provided:

- (a) the lawyer does not practice the law of this State except to the extent permitted by this Part, by other laws of this State, and by the laws of jurisdictions in which the lawyer is authorized to practice;
- (b) the lawyer does not use advertising, oral representations, business letterhead, websites, signage, business cards, email signature blocks or other communications to hold himself or herself out, publicly or privately, as authorized to practice law in this State or as having an office for the practice of law in this State;
- (c) the lawyer does not solicit or accept residents or citizens of New York as clients on matters that the lawyer knows primarily require advice on the state or local law of New York, except as permitted by 22 NYCRR § 522.4 (in the in-house registration rule) or by other New York or federal law;
- (d) the lawyer does not regularly conduct in-person meetings with clients or third persons in New York except as would otherwise be permitted under § 523.2 of this Part; and
- (e) when the lawyer knows or reasonably should know that a person with whom the lawyer is dealing mistakenly believes that the lawyer is authorized to practice in this State, the lawyer shall make reasonable efforts to correct the misunderstanding.

EXHIBIT B



NEW YORK STATE BAR ASSOCIATION

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February 3, 2022

Hon. Janet DiFiore
Chief Judge of the Court of Appeals and of the State of New York
New York State Court of Appeals
20 Eagle Street
Albany, NY 12207

Dear Chief Judge DiFiore:

I respectfully present the enclosed report on “Proposed Amendment to the New York Court of Appeals Part 523 Rules for the Temporary Practice of Law in New York” for your review and consideration. This report, as submitted by the New York City Bar Association, was approved by the Association’s House of Delegates on January 22, 2022.

The report recommends amendments to Part 523 of the Rules of the Court of Appeals relating to temporary practice in New York by lawyers admitted in other jurisdictions. The amendments would clarify that a lawyer does not engage in the practice of law in New York solely by reason of physically working remotely in New York. The report finds that the nature of the work being performed, not the lawyer’s physical location, determines whether the lawyer is engaging in unauthorized practice of law.

The report is also available online at <https://nysba.org/app/uploads/2021/11/H7.-NYC-Bar-Part-523-of-the-Rules-of-the-Court-of-Appeals-staff-memo-and-cover-APPROVED-HOD-1.22.2022.pdf>.

I remain available to meet with you, Chief Administrative Judge Marks, or a designee to discuss this matter. Please do not hesitate to contact me if I can provide additional information or be of assistance.

Respectfully,

A handwritten signature in black ink, appearing to read "T. Andrew Brown".

T. Andrew Brown
President

cc: Hon. Lawrence K. Marks
Eileen D. Millett, Esq.