

ABA Commission Would Liberalize Practice Rules

BY LAZAR EMANUEL

As out-of-state law firms invade New York and New York firms move to establish beachheads in other states, legal scholars are struggling to redefine the barriers against unauthorized practice.

The ABA's Ethics 2000 Commission has entered the fray by recommending changes in Model Rule 5.5. In its current version, the Rule restates the traditional prohibition against practice "in a jurisdiction where [practice] violates the regulation of the legal profession in that jurisdiction." New York's DR 3-101(B) uses virtually the same language.

The Commission's proposed amendments would create "four 'safe harbors' for lawyers rendering legal services in jurisdictions where they are not admitted to practice." The text of proposed MR 5.5 (a) and (b) would read as follows: (a) A lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

(b) A lawyer admitted to practice in another jurisdiction, but not in this jurisdiction, does not engage in the unauthorized practice of law in this jurisdiction when:

- (1) the lawyer is authorized to appear before a tribunal in this jurisdiction by law or order of the tribunal or is preparing for a proceeding in which the lawyer reasonably expects to be so authorized; or
- (2) other than making appearances before a tribunal with authority to admit the lawyer to practice pro hac vice:
 - (i) a lawyer who is an employee of a client acts on the client's behalf or, in connection with the client's matters, on behalf of the client's other employees or its commonly owned organizational affiliates;
 - (ii) the lawyer acts with respect to a matter that arises out of or is otherwise reasonably related to the lawyer's practice on behalf of a client in a jurisdiction in which the lawyer is admitted to practice; or
 - (iii) the lawyer is associated in a particular matter with a lawyer admitted to practice in this jurisdiction.