

In-House Registration Proposal Approved by State Bar

BY ROY SIMON

On November 6, 2010, the New York State Bar Association House of Delegates overwhelmingly approved, by voice vote, a proposed new Part to the Rules of the Court of Appeals. The new rules would permit in-house lawyers who are in good standing in another U.S. state, or in a foreign country, to practice in New York on a limited basis without taking the New York bar exam. This article sets out the national and New York context of the proposed rules, summarizes the proposed rules, excerpts comments submitted by other bar groups, and provides highlights of the debate in the House of Delegates concerning the proposed rules.

Background: Why Are In-House Lawyers Different?

Why does the legal profession need a special set of rules and regulations to govern in-house lawyers? Are they different from other lawyers? They are different for two main reasons, both of which reflect fundamental economic realities.

First, in-house lawyers are ultra-specialists. They specialize not just in a single type of practice (like litigation or M&A) or a single area of law (like antitrust or securities regulation) or a single industry (like technology or health care), but in a single client, their employer. That expertise is not always readily transferable (at least not at the same compensation) if they want to change jobs. In economic terms, in-house lawyers develop substantial human capital that is more valuable to their employers than to others.

Second, in-house lawyers move around a lot, especially those who work in-house at large multistate or multinational corporations. Those national or global enterprises need lawyers on the ground in different places at different times. The companies move their lawyers around as needed when the company expands, changes focus, embarks on a new project, acquires a new subsidiary, or consolidates or restructures the legal department. The lawyers are transferred to places where they are needed just as any other corporate employees are. As the report submitted in support of the New York proposal said, in-house registration rules “reflect the reality of law practice in the 21st Century, particularly for cross-border and global entities and their lawyers, who move frequently between affiliates.” The in-house registration rules thus allow the efficient allocation of resources. (Many large law firms also have multiple offices, but they generally do not move their lawyers around from office to office.) And because in-house lawyers are super-specialized in a single company (or a single corporate family), it is not always practical for them to refuse a transfer to another state, especially if the employer says, expressly or otherwise, “Transfer or quit.”

Of course, in-house lawyers can take the bar exam when they move to a new state, just as any other lawyer can. But the bar exam is given only twice a year in New York (as elsewhere), and requires substantial preparation. The delay in getting a lawyer licensed in a new state, the reluctance of employers to provide time off to study for the bar, and the resistance of employees to spending their non-working hours poring over bar review course materials and listening to bar review lectures, would all add enormously to the transaction costs of moving an in-house lawyer from the company’s offices in

State X to the company's offices in New York. And those higher transaction costs might discourage some companies from moving their in-house lawyers to New York.

What about admission on motion, which does not require a lawyer to take the bar exam? Might work in New York, might not. Under 22 N.Y.C.R.R. § 520.10, New York allows admission on motion only to lawyers who (a) are in good standing in another U.S. jurisdiction or a common-law foreign jurisdiction, (b) have practiced law for at least five of the preceding seven years, and (c) come from a jurisdiction that offers reciprocity to New York lawyers who want to gain bar admission without taking the bar exam. (The Appellate Divisions have discretion to impose character and fitness requirements as well, and the Court of Appeals may vary or waive any of these rules.) These are high hurdles. The five-of-seven year requirement is an obstacle if an in-house lawyer has practiced for less than five years, or has moved around from state to state during that period (because bar admission authorities won't count practice in a state where the lawyer was not licensed toward the five year practice requirement).

The reciprocity condition is also often hard for in-house lawyers to meet because New York has reciprocity with only thirty-four U.S. jurisdictions, not including such important places as California, New Jersey, Connecticut, or Delaware. Moreover, under § 520.6, New York never allows admission on motion to lawyers educated in a foreign country – they have to meet stringent requirements even to be eligible to take the bar exam. (For a nifty site with links to each qualifying state, the rules governing foreign-educated lawyers, and other useful materials, see <http://www.nybarexam.org/AOM/AdmissiononMotion.htm>.)

Can't foreign lawyers qualify as foreign legal consultants without taking the New York bar exam? Yes, 22 N.Y.C.R.R. Part 521 permits foreign lawyers to practice in New York State as foreign legal consultants, and the application process is relatively streamlined. But the scope of practice is extremely narrow. For example, a foreign legal consultant is prohibited from preparing any instrument effecting the transfer or registration of title to real estate located in the United States, and is forbidden to render legal advice on New York law or federal law except based on advice from a lawyer licensed to practice in New York. Basically, all that a foreign legal consultant can do is to advise New York clients on foreign law. Multinational corporations need a lot more than that from their in-house lawyers.

For all of these reasons, approximately forty-five (45) states currently allow in-house lawyers from other U.S. jurisdictions to practice continuously without taking the bar exam or obtaining admission on motion. (The only states that don't, besides New York, are Hawaii, Mississippi, Montana, and West Virginia. Texas has no rule but has an express policy authorizing in-house lawyers to do a broad range of legal work without obtaining a Texas law license.) Of these forty-five states, seven extend registration rights not only to U.S. lawyers but also to lawyers from foreign countries as well. (The seven are Arizona, Connecticut, Delaware, Georgia, Virginia, Washington State, and Wisconsin.)

Meanwhile, Back in New York ...

In 2003, less than a year after the ABA House of Delegates had approved an amended version of ABA Model Rule 5.5 ("Unauthorized Practice of Law; Multijurisdictional Practice of Law"), the New York State Bar Association, partly at the urging of the late Steven Krane, sought to get out in front of the curve by recommending the amendments to the Courts. One of the provisions in the proposed amendments would have allowed lawyers in good standing in another United States jurisdiction to provide legal

services outside of court to the lawyer's employer and the employer's organizational affiliates without obtaining admission to the New York bar. In other words, in-house lawyers could have practiced here, but only for their employers and only outside of court (unless they applied for and obtained pro hac vice admission like any other out-of-state lawyer).

About two years later, the Courts let it be known informally that they had unspecified concerns about the proposed rule, and the State Bar withdrew it, pending comprehensive recommendations by the Committee on Standards of Attorney Conduct ("COSAC"), which worked with various other bar committees to develop a revised proposal. In 2008, based on COSAC's work, the State Bar sent the Courts a slightly stricter version of proposed Rule 5.5 that included the same in-house language as the 2003 proposal. The Courts rejected everything in proposed Rule 5.5 relating to out-of-state lawyers, including the in-house practice provision.

Since New York has no rule (yet) allowing in-house lawyers to practice here without taking the bar exam or obtaining admission on motion, and since those avenues are not practical for many lawyers, what is happening? Two things.

First, some companies with operations in New York hesitate to bring lawyers here from other states. Those companies either bring the out-of-state lawyers in temporarily from time to time, or work their New York-licensed lawyers harder, or hire New York-licensed lawyers instead of bringing in lawyers admitted elsewhere. It is very hard to get an empirical handle on this.

Second, many companies with operations in New York bring in out-of-state lawyers as if this were perfectly legal. In other words, these companies act as if there were already a rule in place authorizing out-of-state lawyers to practice in New York. It is also hard to get any empirical data on the number of these lawyers, but most of us know of some in-house lawyers who are not admitted in New York but practice here as if they were. We can't get a handle on how many because these lawyers are flying under the radar. They do not register with OCA, do not appear in court, cannot volunteer for pro bono work, and do not advertise their lack of admission here. (They remind me of a 1995 law review article by Professor Charles Wolfram entitled *Sneaking Around in the Legal Profession*.)

In short, we don't know either how many in-house lawyers are kept out of New York *because* we lack an authorizing rule, or how many in-house lawyers practice in New York *despite* our lack of such a rule. All we know is that, however many unauthorized in-house lawyers there may be in New York, they don't pay any dues to OCA (because no rule says they have to); they don't do pro bono work (because unauthorized practice laws say they cannot); and they are not subject to discipline by New York grievance committees (because no rule says they are). That is not a good situation for anyone.

The Proposed New York In-House Registration Rule

In 2008, the ABA House of Delegates overwhelmingly approved a Model Rule on Registration of In-House Counsel. At that time the New York Courts were still considering the State Bar's comprehensive proposals to replace the old Code of Professional Responsibility with the New York Rules of Professional Conduct, including the proposed paragraph in Rule 5.5 authorizing limited practice by in-house counsel, so no one focused much on the ABA model for in-house registration. But after the Courts rejected the in-house clause and the other innovative parts of proposed Rule 5.5, various bar groups began thinking

about the problem of in-house counsel, which at present is a lose-lose situation – we lose when companies decide not to locate lawyers in New York, and we lose when they locate lawyers in New York under the radar.

In the spring and summer of this year, three of the groups working on the in-house counsel problem began working together – the State Bar (via COSAC and the Corporate Counsel Section), the New York City Bar, and the New York County Lawyers Association. Making modest changes to the thoughtful ABA Model Rule on Registration of In-House Counsel, the three groups crafted a joint proposal for a new Part 522 of the Rules of the Court of Appeals and circulated it to the bar for comment. The key elements of the proposal, with my parenthetical translations, were as follows:

- Lawyers are eligible for in-house registration without passing the New York bar exam only if they (i) are in good standing in another U.S. or foreign jurisdiction that has a similar rule (*i.e.*, that extends reciprocity to New York lawyers), and (ii) are employed by a “single organization” (*i.e.*, they don’t serve multiple clients the way outside counsel do);
- In-house lawyers must register with the New York State Office of Attorney Registration within 180 days of starting their employment in New York (or, if they are already here, within 180 days after the in-house registration rule takes effect);
- Applicants for in-house registration may render legal services to their employers in New York during the 180-day period before registration materials are due, and once all application materials have been timely submitted, they may continue practicing without being admitted until the registration becomes effective.
- Once admitted through the registration process, in-house lawyers are authorized to provide legal services – but “only on matters directly related to their work for the entity” – to three categories of clients: (i) the single entity client (the lawyer’s employer); (ii) “entities that control, are controlled by, or are under common control with the employer” (*i.e.*, the employer’s parent, subsidiaries, and sister organizations); and (iii) “employees, officers and directors of such entities”.
- Registered in-house lawyers are (i) prohibited from appearing in court or other tribunal “[e]xcept as otherwise permitted by the rules and law of New York” (*e.g.*, *pro hac vice* admission rules), and (ii) prohibited from providing legal services to anyone other than the employer and its parent, subsidiaries, and affiliates (or holding themselves out as being authorized to do so).
- Registered in-house lawyers (i) are subject to the New York Rules of Professional Conduct and all other laws and rules that govern other active lawyers admitted in New York (including the same OCA registration fees and the same mandatory CLE requirements); (ii) are authorized to provide *pro bono* legal services through bar associations, legal services programs, or other organizations authorized to provide *pro bono* services; and (iii) must notify OAR within thirty days after terminating employment or being sanctioned by any tribunal, disciplined in any jurisdiction, or charged with any disciplinary violation.
- Lawyers who fail to register as required are (i) subject to professional discipline in New York and are (ii) ineligible for admission on motion for two years.

Comments on the Proposals

The proposed rules were well received. Four separate bar entities submitted written comments favoring the proposals (though one entity submitted a dissenting report as well).

The State Bar's Commercial and Federal Litigation Section made three points:

In our view, this rule ... encourages businesses to locate their in-house staff in New York by removing any concerns those businesses may have about ... the State's prohibition on the unauthorized practice of law. This rule further takes into account New York's status as a premier location for multi-national and national businesses, and evinces an intent on behalf of New York to continue its status as a destination that is amenable to the fluid and flexible legal resource needs of those businesses. Moreover, in light of evidence indicating that a number of in-house counsel are already practicing law in New York without authorization or oversight, we believe that this rule encourages those attorneys to stop practicing under the radar and will provide New York with the ability to now exercise some oversight concerning their conduct.

The Nassau County Bar Association wrote that its Board of Directors supported the proposal. "With a membership of close to 6000 joining stellar bar associations in the state, we hope the Court will be persuaded that New York should adopt such rules."

The State Bar's Committee on Membership, which is charged with increasing the membership of the New York State Bar Association, made several practical points:

The Committee on Membership ... considers the adoption of Proposed Part 522 to further the interests of both non-resident and in-state members of the NYSBA as well as other attorneys admitted to practice only in other jurisdictions (whether within or outside the territory of the United States). The proposed rules are consistent with the public interest in having access to competent counsel who are subject to the same degree of oversight as attorneys presently authorized to practice law in New York. Requiring in-house counsel located in New York to register and be admitted under Proposed Part 522 also may encourage them to join the NYSBA and its Corporate Counsel Section or other Sections, which would increase the Association's membership and enhance its role as the voice of the legal profession in New York.

The State Bar's Labor and Employment Section also supported the proposal, stating:

We agree with the Bar Associations' assessment that by limiting the scope of practice for covered attorneys to their organizational employer and affiliates, who are themselves sophisticated users of legal services; there is little risk of harm to the public from "unqualified" individuals. The Committee also agrees that in this day and age when many businesses, and labor organizations, have a multijurisdictional presence, the ability of those organizations to secure the services of attorneys of their choosing, without unnecessary barriers, is important to continuing New York's role as a business and not for profit center.

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The only potential downside of the recommended Rule is that it makes it easier for non-New York lawyers to secure employment in New York, at the possible cost of opportunities for New

York lawyers. We do not find this to be a substantial reason to oppose this recommendation.

However, a dissenting member of the Labor and Employment Section, whose views were endorsed by a few others, raised these negative points:

I object ... to that part of the proposed rule [§ 522.9], which allows the years of limited admission to the NY Bar as in house counsel to be counted towards the 5 years of practice needed to seek plenary admission. The goal of allowing corporate and union in house counsel not admitted in NY the ability to provide limited legal services exclusively to their NY located employers can be achieved ... without providing in house counsel a route to plenary admission before demonstrating their competency to hold themselves out to the public as qualified to practice in all areas of law in NY. Finally, if the purpose of the proposed rule is to allow multi-state and multi-national entities more flexibility in moving their lawyers to their NY offices, why does the proposed rule also apply to in house counsel employed by entities that have offices only in NY?

With the proposed rules, the supporting report, and the comments from other bar entities in place, the stage was set for the debate in the State Bar's House of Delegates on November 6th.

The Debate in the House of Delegates

In the House of Delegates, COSAC Chair Joe Neuhaus of Sullivan & Cromwell began by acknowledging his debt to the late Steve Krane, who chaired COSAC and its predecessor committee (the "Krane Committee") for fourteen years before Neuhaus took over in 2010. Neuhaus then introduced COSAC member Barbara Gillers, who has extensive legal ethics experience as disciplinary counsel, counsel to a major law firm, and adjunct professor teaching professional responsibility. Ms. Gillers noted that by admitting in-house counsel to the bar in New York, we will bring in-house lawyers under the jurisdiction of the disciplinary authorities and grievance mechanisms. The registered in-house lawyers will be required to take CLE just as everyone else and required to pay dues just as the rest of us. And they will be on the radar screen of all enforcement mechanisms and our profession. The floor was then opened for discussion.

The first speaker, a delegate from the Dutchess County Bar Association, criticized the "reciprocity" feature of the rule, § 522.1(b), which allows in-house registration only for lawyers whose licensing states would extend similar privileges to New York lawyers. It seemed counter to the goal of bringing businesses to New York. A business deciding whether to locate in New York would have to figure out whether each attorney it wants to bring to New York is from a state that extends similar privileges. Neuhaus responded that the reciprocity feature is mandated by the statute authorizing the Court of Appeals to adopt rules allowing admission to out-of-state lawyers without taking the bar exam. Specifically, Judiciary Law § 90(b) requires that at least one other jurisdiction in which the applying lawyer is admitted "would similarly admit an attorney or counselor-at-law admitted to practice in New York state to its bar without examination." In any event, Neuhaus added, this was not a big issue because only five states do not offer reciprocity to in-house lawyers. "We are at the back end of a trend that is truly sweeping the country," he said.

The Dutchess County delegate then asked what sanctions would be imposed on an in-house attorney who did not register. Barbara Gillers responded that unregistered in-house lawyers caught practicing in

New York would be subject to the same penalties as anyone else who practices law here without a license. For example, the New York Attorney General and local bar associations have authority to prosecute the unauthorized practice of law, and disciplinary authorities can refer unregistered in-house lawyers to their home state bar for discipline. (The home state bar would presumably charge the lawyer with violating the home state's version of Rule 5.5(a) by practicing law in a jurisdiction – New York – “in violation of the regulation of the legal profession in that jurisdiction.”)

The next speaker, an At-Large Delegate from the 9th District who serves as Staff Counsel for the 9th District Grievance Committee, generally supported the idea of in-house registration because it would bring in-house lawyers into compliance. But he worried that it was still unclear what the “practice of law” is in New York. (I think his point was that it might be difficult to prosecute an unregistered in-house lawyer, who might be doing work that a nonlawyer businessman could lawfully do, unless we could define the unauthorized practice of law with greater precision. This point hit home with me. I was on the ill-fated NYSBA Special Committee on the Unauthorized Practice of Law – charmingly called “SCUPL” – that developed a carefully crafted definition of the practice of law, but the House of Delegates, faced with opposition from those who thought the definition was too restrictive, sent it back to SCUPL to die.)

The same speaker asked what attention had been given to increasing the resources of the disciplinary authorities. The in-house registration rule would bring hundreds or thousands of additional attorneys under the jurisdiction of grievance committees, which are volunteer committees (staffed by professionals) already overloaded with work. Given the vague definition of law practice and the many new attorneys to be regulated, what will be done? Grievance counsel staff and volunteers could not handle this new work without additional resources, and they would need “a clear bright-line rule” in order to enforce the rules.

Neuhaus responded that the general question of financial resources was beyond the jurisdiction of COSAC and the other sponsoring entities, and that it will be up to the courts and the disciplinary system generally to address these workload concerns. But Neuhaus also noted that with the admission of in-house lawyers would come a new source of fees. “There will be money that comes with it,” he said.

The next speaker seemed quite hostile to the proposal. (At one point, House of Delegates Chair and President-Elect Vince Doyle admonished him that “this is not a cross-examination.”) The speaker noted that the rule would have to be approved by the Court of Appeals. Had the Court of Appeals already discussed this rule in the past? No, Neuhaus responded, but the rules would fit nicely with other rules in the 520 series of Court of Appeals rules, such as the rules authorizing admission on motion for out-of-state attorneys and the rules authorizing admission for foreign legal consultants. The speaker persisted. The Courts had previously refused to approve in-house language in proposed Rule 5.5. Do we know why the Appellate Divisions didn't approve it? And what does this report do to address the Courts' objections? Neuhaus noted that the Courts had rejected many of the changes proposed by COSAC and rolled them back to the language of the old Code of Professional Responsibility. The in-house provision in Rule 5.5 would have been a change to the pre-existing Code and therefore would have been an exception to the general approach by the courts.

Next, reflecting a misunderstanding shared by some others who commented on the proposed rules, the speaker asked why the rules would allow these lawyers to go to court. Neuhaus responded: “They are

not allowed to go to court.” Under § 522.2(b)(1), registered in-house lawyers may not appear before a court “[e]xcept as otherwise permitted by the rules and law of New York.” If they go to court and a court admits them *pro hac vice* or in some other way, then they have authority – but the in-house rule by itself does not authorize them to go to court.

Next, the same speaker raised an economic point. Earlier in the meeting, NYSBA President Steve Younger had noted that we were now exporting billions of dollars worth of legal services to foreign countries. Why would it be in the public interest to allow people who did not pass our licensing requirements to practice in New York? Barbara Gillers responded that it was “very important” for New York to pass this proposal. Most American jurisdictions have a rule like this, and New York lawyers were hurt by the fact that we did not yet have this rule. She noted that Connecticut previously had an in-house registration rule like the proposed rule *without* a reciprocity requirement (meaning that New York in-house lawyers were welcome even though Connecticut in-house lawyers were not welcome in New York), but when Connecticut learned that New York was considering a rule *with* a reciprocity requirement, it adopted a reciprocity requirement as well (meaning that New York in-house lawyers would not be welcome in Connecticut unless and until New York adopted an in-house registration rule). Another example: In California, about 800 lawyers have taken advantage of an in-house rule similar to the proposed rule – and 25% of those lawyers migrated from New York (indicating that New York was losing talented, tax-paying, dues-paying in-house lawyers to another state that was more hospitable to in-house lawyers).

The proposed rule would also benefit New York, Gillers added, because we are the hub of national and international business activity. Many companies move their General Counsel and their in-house lawyers all over, from state to state and from country to country, based on their needs at the moment. Not having an in-house registration rule was a “significant factor” inhibiting businesses from moving their lawyers to New York. (She admitted that she did not have statistics to prove this, but she said she and Joe Neuhaus had spent a lot of time talking to general counsel and believed the lack of an in-house registration rule in New York was a problem.) Foreign lawyers who know their businesses, know the people, know the law, want to come here for a period of time to serve their clients in house. “These are sophisticated clients who understand their own needs and their needs for lawyers,” Gillers said, “so this rule serves New York, and it serves New York lawyers.” The delegate was still skeptical. “So New York lawyers will benefit by making it easier for out-of-state lawyers to practice here?” Neuhaus replied: “And New York lawyers will be able to leave the state and go to other states that have reciprocity requirements to practice there.”

Vince Doyle then recognized the next speaker, a Mt. Kisco lawyer who was currently of counsel to a law firm in Mamaroneck but had spent most of his long career as an in-house lawyer. In reply to the concern expressed earlier about providing greater resources to grievance counsel, the speaker pointed out that he had never heard of any in-house counsel being subject to a disciplinary action by the state. “It’s just not something that happens,” he said. “We don’t deal with people on the outside on attorney’s fees and various other matters that are the subject of disciplinary hearings.”

The same speaker noted that a corporation these days could be located anywhere. Many years ago he was working in-house for IBM Corporation. His office was in Armonk, New York, but one day IBM decided to move his office to Stamford, Connecticut. “Exactly the same clients, exactly the same work, but we crossed that Westchester/Fairfield County line fifteen miles away,” he said, “and I was very

concerned about practicing without a license in Connecticut.” He had already passed the New York, New Jersey, and Vermont bar exams, and he was not eager to prepare for and take the Connecticut bar exam. Fortunately (and apparently in the nick of time), Connecticut passed the statute permitting in-house counsel to practice.

That Connecticut statute was very important to in-house lawyers because many major corporations had crossed that very same state line between Westchester and Fairfield to obtain tax advantages and various other benefits. The Connecticut legislature recognized that these out-of-state in-house lawyers were “welcome additions who created absolutely no conflict for local counsel, and in fact will generate more business for local counsel.” He cited two reasons for the increased local business. First, in-house lawyers generally cannot appear in court to serve clients, so they have to hire local litigators to do that. Second, in-house lawyers will recognize problems way ahead of an outside lawyer (because in-house lawyers are much closer to the client, I guess) and “know when they have to get local counsel involved.” He praised the proposed New York in-house registration rule as “most welcome and very, very productive for the bar association.”

The next speaker was from the NYSBA International Section. He noted that New York already allows non-U.S. lawyers to come to New York and practice the law of their home country in New York. For example, a French lawyer who has a French specialty can come to New York and practice French law here legitimately and under the regulation of our courts. What is worth thinking about, he said, is that the proposal does not limit Connecticut lawyers or French lawyers to practicing only the law of the jurisdiction in which they have been admitted. This gap brings out the relationship between being *admitted* to practice and being *competent* to practice a given law. “Those of us who have gone through the whole process of taking the bar exam and getting admitted in New York have presumably gone through some test of our competence to practice New York law,” he said. He understood the argument that a corporation can take care of itself and is different from the typical individual client. Also, because of the restrictions built into the rule (such as no court appearances and no service to the general public), the risk of the outside lawyer coming into New York and not having the competence to practice New York law seemed very small compared to the benefits. But he perceived “a challenge here about what our bar association can do to assist with any concern about that competence issue.” For example, § 522.4(a) assumes that in-house lawyers know the New York Rules of Professional Conduct, so he wondered if the State Bar’s CLE department should offer a special program on the Rules of Professional Conduct or on fundamentals of New York corporate law and related issues to help fill in concerns on the competence side.

The next speaker, a delegate from the Corporate Counsel Section, noted that his section participated in the preparation of the report on the proposed rule and he wanted to stand in support of it. “I view this resolution as a win-win,” he said. “It will permit corporations to hire the attorney of their choice. It will remove a potential cloud from in-house counsel in other jurisdictions. It will provide funds through registration fees. And looking down the road I think it will help the Association by increasing membership.”

The next speaker, a delegate from the New York County Lawyers Association and the Director of the NYCLA’s Ethics Institute, supported the rule enthusiastically. “Make no mistake,” he said. “This is a pro-New York proposition. Right now in-house lawyers in New York are in a very precarious situation. They are advising corporations here yet they have no official sanction here. This proposal makes a very

tenable situation for these attorneys. It brings fees to New York, and it gives New York a way to regulate these attorneys.”

The final speaker, a delegate from the 9th District, said that more than thirty years ago he had been a colleague of the earlier speaker in the IBM legal department and “that long ago this was a concern – and it’s still a concern. It’s a win-win.”

That ended the debate and Vince Doyle called the question. The proposition passed overwhelmingly by voice vote. Readers who wish to view the entire debate as a webcast should visit <http://www.totalwebcasting.com/view/?id=nysbar>. (By the way, the webcast is a great innovation and allows all of us to follow much more closely the particular issues that concern us. The video was well indexed and both the sound and pictures were clear. The State Bar deserves our thanks for this technological advance.)

Postscript and Conclusion

The next step for proposed Part 522 is consideration by the Administrative Board of the Courts, which consists of the Chief Judge, the Chief Administrative Judge, and the Presiding Justices of the four Appellate Divisions. New York has been blessed over the decades with great Chief Judges of the Court of Appeals – Benjamin Cardozo, Stanley Fuld, Charles Breitel, Lawrence Cooke, and Judith Kaye are among them. The new Chief Judge, Jonathan Lippman, continues that proud tradition, and he appears to look favorably on the rule. In a New York Law Journal article that appeared shortly after the vote, he was quoted as saying, ““We are very aware of this issue and we will be responsive to it. We are interested in this. It is an issue that has been out there and it will very much be considered by us.” That is far from a promise to adopt the proposed rules (which in any event will require the votes of others), but it is a positive start to the process. And that process will occur soon – Chief Judge Lippman said he expected to put the matter on the agenda for the Courts’ December 2010 administrative meeting. “This is something we should be looking into in this day and age,” he said. He added that legitimizing the practice of law in New York by competent in-house attorneys would further his goal of preserving New York as a worldwide leader in commercial law. See Joel Stashenko, *State Bar Supports Easing Rules on Practice by In-House Counsel* (NYLJ Nov. 9, 2010).

The three sponsoring bar groups – New York State, New York City, and New York County – worked hard to develop a fair, intelligent, and carefully balanced proposal that will benefit New York economically while protecting employers, the public, and the bar by asserting and maintaining adequate control over in-house lawyers who practice here. About 90% of U.S. jurisdictions have already seen the wisdom in this approach. I hope New York’s Courts will, too. That would be a wonderful memorial to the memory and work of Steve Crane.

[Editor’s note: The text of the proposed Rule discussed by Roy Simon follows on the succeeding page.]

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Appendix A: [Proposed] Part 522.

Rules of the Court of Appeals For the Licensing of In-House Counsel

BY ROY SIMON

§ 522.1 General regulation as to licensing

(a) A lawyer admitted to the practice of law in another jurisdiction who has a continuous presence in New York and is employed as a lawyer by a single organization, the business of which is lawful and consists of activities other than the practice of law or the provision of legal services, shall register as in-house counsel within 180 days of the commencement of employment as a lawyer in the state or if currently so employed then within 180 days of the effective date of this rule, by submitting to the New York State Office of Attorney Registration the following:

(1) A completed application in the form prescribed by the Office of Attorney Registration setting forth information showing that the lawyer has met the requirements of this Part and possesses the good moral character and general fitness requisite for a member of the New York bar. The character and fitness requirement may be met by an affidavit from an officer, director, or general counsel of the employing entity attesting to the applicant's good moral character and general fitness to practice law in New York;

(2) A registration fee in the same amount and according to the same schedule as required by other members of the New York bar;

(3) Documents proving admission to practice law and current good standing in all jurisdictions in which the lawyer is admitted to practice law; and

(4) An affidavit from an officer, director, or general counsel of the employing entity attesting to the lawyer's employment by the entity and the capacity in which the lawyer is so employed, and stating that the employment conforms to the requirements of this rule.

(b) Registration and law practice under this Part is only permitted if one other jurisdiction where the lawyer is admitted would similarly permit an attorney or counselor-at-law admitted to practice in New York State without examination to engage in practice as described in § 522.1(a). This requirement of reciprocity is satisfied when the other jurisdiction would permit a New York lawyer to practice as an in-house lawyer under any registration procedure or general law or rule or policy permitting lawyers admitted elsewhere to practice as an in-house lawyer in the jurisdiction.

(c) A lawyer seeking to register under this Part may practice in-house during the 180-day period identified in (a) above and, if all materials identified in (a)(1)-(4) are timely submitted, until the lawyer's registration becomes effective. Any lawyer whose registration is denied must cease practicing law in New York.