

VIRGINIA:

**IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND**

**IN THE MATTER OF
RULES OF PROFESSIONAL CONDUCT 1.17, 1.18, AND 5.5**

PETITION OF THE VIRGINIA STATE BAR

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TO THE HONORABLE CHIEF JUSTICE AND THE JUSTICES OF THE
SUPREME COURT OF VIRGINIA:

NOW COMES the Virginia State Bar, by its president and executive director, pursuant to Part 6, § IV, Paragraph 10-4 of the Rules of this Court, and requests review and approval of proposed amendments to Rules 1.17, 1.18, and 5.5, as set forth below. The proposed rule amendments were approved by unanimous votes of the Council of the Virginia State Bar on October 23, 2020 (Appendix, Page 1).

I. Overview of the Issues

The Virginia State Bar Standing Committee on Legal Ethics (“Committee”) has proposed amendments to Rule 1.17, Sale of Law Practice, Rule 1.18, Duties to Prospective Client, and Rule 5.5, Unauthorized Practice of Law; Multijurisdictional Practice of Law.

Rule 1.17

The proposed amendment to Rule 1.17 corrects a word choice issue

in Comment [12], replacing the word “concluded” with the word “included.”

Rule 1.18

The proposed amendment to Rule 1.18 removes a phrase from Comment [6] to the Rule, “and the lawyer believes that an effective screen could not be engaged to protect the client,” which is inconsistent with the section of the Rule the comment is interpreting. Paragraph (c) of the Rule, and the balance of Comment [6], provides that a lawyer is not disqualified by a contact with a prospective client so long as she has not received significantly harmful information from the prospective client, and there is no need for a screen to be used under the circumstances. The language that the Committee proposes to delete does not belong in that comment, because either the lawyer is not disqualified and there is no need to form a belief about the effectiveness of a screen, or the lawyer is disqualified under paragraph (c) and paragraph (d) of the Rule, and Comments [7] and [8], must be applied to the situation.

Rule 5.5

The proposed amendments to Rule 5.5 include updating Comments [4] and [21] to reflect the current numbering of the advertising rules and correcting Comment [6], which twice uses the phrase “Foreign lawyer,” when “Foreign Lawyer” is a defined term under the Rule and should be

capitalized in every instance. The proposed amendments also revise Comment [14] to remove the phrase “(d)(4)(ii)” from the introductory sentence; that comment refers to the requirement of paragraphs (d)(4)(iii) and (d)(4)(iv) that the services provided in Virginia arise out of or be reasonably related to the Foreign Lawyer’s practice elsewhere, but paragraph (d)(4)(ii) does not contain such a requirement in the body of the Rule and therefore should not be included in this comment.

The proposed amendments are included below in Section III with additions underlined and deletions stippled.

II. Publication and Comments

The Standing Committee on Legal Ethics approved the proposed amendments at its meeting on April 10, 2019 (Appendix, Page 4). The Virginia State Bar issued a publication release dated April 15, 2019, pursuant to Part 6, § IV, Paragraph 10-2(c) of the Rules of this Court (Appendix, Page 5). Notice of the proposed amendment was also published on the bar’s website on the “Actions on Rule Changes and Legal Ethics Opinions” page on April 15, 2019 (Appendix, Pages 7, 11, and 14), and in the bar’s newsletter on May 1, 2019 (Appendix, Page 19).

No comments were received.

III. Proposed Rule Changes

RULE 1.17 Sale Of Law Practice

A lawyer or a law firm may sell or purchase a law practice, partially or in its entirety, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area in which the practice has been conducted, except the lawyer may practice law while on staff of a public agency or legal services entity which provides legal services to the poor, or as in-house counsel to a business.

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms.

(c) Actual written notice is given by the seller to each of the seller's clients (as defined by the terms of the proposed sale) regarding:

- (1) the proposed sale and the identity of the purchaser;**
- (2) any proposed change in the terms of the future representation including the fee arrangement;**

(3) the client's right to consent or to refuse to consent to the transfer of the client's matter, and that said right must be exercised within ninety (90) days of receipt of the notice;

(4) the client's right to retain other counsel and/or take possession of the file; and

(5) the fact that the client's refusal to consent to the transfer of the client's matter will be presumed if the client does not take any action or does not otherwise consent within ninety (90) days of receipt of the notice.

(d) If a client involved in a pending matter cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court *in camera* information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(e) The fees charged clients shall not be increased by reason of the sale.

COMMENT

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to

this Rule, when a lawyer or an entire firm ceases to practice and another lawyer or firm takes over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Termination of Practice by Seller

[2] The fact that a number of the seller's clients decide not to be represented by the purchaser but take their matters elsewhere does not result in a violation. Neither does the seller's return to private practice after the sale as a result of an unanticipated change in circumstances result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon leaving the office.

[3] Comment [3] to *ABA Model Rule 1.17* substantially appears in paragraph (a) of this Rule.

[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction.

[5] This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of

practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5(e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice

[6] The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is

unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of any lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser and any proposed change in the terms of future representation, and must be told that the decision to consent or to make other arrangements must be made within 90 days. If nothing is heard from the client within that time, the client's refusal to consent to the sale is presumed.

[8] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to

the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interest will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered *in camera*.

[9] All the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing agreements between the seller and the client as to fees and the scope of work must be honored by the purchaser, unless the client consents after consultation.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation

to assure that the purchaser is qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure client consent after consultation for those conflicts which can be agreed to (see Rule 1.7); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[12] If approval of the substitution of the purchasing attorney for the selling attorney is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included ~~concluded~~ in the sale (see Rule 1.16).

Applicability of the Rule

[13] This Rule applies to the sale of a law practice by representatives of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a nonlawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer shall see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of

tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice.

RULE 1.18 Duties to Prospective Client

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d).

(d). If a lawyer is disqualified from representation under this

paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; the disqualified lawyer reasonably believes that the screen would be effective to sufficiently protect information that could be significantly harmful to the prospective client; and

(ii) written notice that includes a general description of the subject matter about which the lawyer was consulted and the screening procedures employed is promptly given to the prospective client.

COMMENT

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's discussions with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. The principle of loyalty diminishes in importance if the sole reason for an individual lawyer's disqualification is the lawyer's initial consultation with a prospective new client with whom no client-lawyer relationship is formed, either because the lawyer detected a conflict of interest as a result of an initial consultation, or for some other reason (e.g., the prospective client decided not to retain the firm). Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] Not all persons who communicate information to a lawyer are entitled to protection under this Rule. A person who communicates

information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of paragraph (a).

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The client may disclose such information as part of the process of determining whether the client wishes to form a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial interview to only such information as reasonably appears necessary for that purpose. Where the information

indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

[5] A lawyer may condition conversations with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

[6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter ~~and the lawyer believes that an effective screen could not be engaged to protect the client.~~

[7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d)(1),

imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client and the lawyer reasonably believes that an effective screen will protect the confidential information of the prospective client. Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[8] Notice, including a general description of the subject matter about which the lawyer was consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see Rule 1.15.

RULE 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice of Law

(a) A lawyer, law firm or professional corporation shall not employ in any capacity a lawyer whose license has been suspended or revoked for professional misconduct, during such period of suspension or revocation, if the disciplined lawyer was associated with such lawyer, law firm, or professional corporation at any time on or after the date of the acts which resulted in suspension or revocation.

(b) A lawyer, law firm or professional corporation employing a lawyer as a consultant, law clerk, or legal assistant when that lawyer's license is suspended or revoked for professional misconduct shall not represent any client represented by the disciplined lawyer or by any lawyer with whom the disciplined lawyer practiced on or after the date of the acts which resulted in suspension or revocation.

(c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(d) Foreign Lawyers:

(1) "Foreign Lawyer" is a person authorized to practice law by the duly constituted and authorized governmental body of any State or Territory of the United States or the District of Columbia, or a foreign nation, but is neither licensed by the Supreme Court of Virginia or authorized under its rules to practice law generally in the Commonwealth of Virginia, nor disbarred or suspended from practice in any jurisdiction.

(2) A Foreign Lawyer shall not, except as authorized by these Rules or other law:

(i) establish an office or other systematic and continuous presence in Virginia for the practice of law, which may occur even if the Foreign Lawyer is not physically present in Virginia; or

(ii) hold out to the public or otherwise represent that the Foreign Lawyer is admitted to practice law in Virginia.

(3) A Foreign Lawyer shall inform the client and interested third parties in writing:

(i) that the lawyer is not admitted to practice law in Virginia;

(ii) the jurisdiction(s) in which the lawyer is licensed to practice; and

(iii) the lawyer's office address in the foreign jurisdiction.

(4) A Foreign Lawyer may, after informing the client as required in 3(i)-(iii) above, provide legal services on a temporary and occasional basis in Virginia that:

(i) are undertaken in association with a lawyer who is admitted to practice without limitation in Virginia or admitted under Part I of Rule 1A:5 of this Court and who actively participates in the matter;

(ii) are in or reasonably related to a pending or potential proceeding before a tribunal in Virginia or another jurisdiction, if the Foreign Lawyer, or a person the Foreign Lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(iii) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in Virginia or another jurisdiction, if

the services arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(iv) are not within paragraphs (4)(ii) or (4)(iii) and arise out of or are reasonably related to the representation of a client by the Foreign Lawyer in a jurisdiction in which the Foreign Lawyer is admitted to practice or, subject to the foregoing limitations, are governed primarily by international law.

(5) A foreign legal consultant practicing under Rule 1A:7 of this Court and a corporate counsel registrant practicing under Part II of Rule 1A:5 of this Court are not authorized to practice under this rule.

COMMENT

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph

(c) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[1a] For purposes of paragraphs (a) and (b), "Lawyer" denotes a person authorized by the Supreme Court of Virginia or its Rules to practice law in the Commonwealth of Virginia including persons admitted to practice in this state pro hac vice.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unauthorized persons. Paragraph (c) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] Likewise, the definition of the practice of law does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law — for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants, and persons employed in government agencies.

[4] Other than as authorized by law or this Rule, a Foreign Lawyer violates paragraph (d)(2)(i) if the Foreign Lawyer establishes an office or

other systematic and continuous presence in Virginia for the practice of law. Presence may be systematic and continuous even if the Foreign Lawyer is not physically present here. Such "non-physical" presence includes, but is not limited to, the regular interaction with residents of Virginia for delivery of legal services in Virginia through exchange of information over the Internet or other means. Such Foreign Lawyer must not hold out to the public or otherwise represent that the Foreign Lawyer is admitted to practice law in Virginia. *See also*, Rules 7.1(a) and ~~7.5(b)~~. Despite the foregoing general prohibition, a Foreign Lawyer may establish an office or other systematic and continuous presence in Virginia if the Foreign Lawyer's practice is limited to areas which by state or federal law do not require admission to the Virginia State Bar. Examples of lawyers admitted in another United States jurisdiction include those lawyers whose practices are limited to federal tax practice before the IRS and Tax Court, patent law before the Patent and Trademark Office, or immigration law. A Foreign Lawyer admitted to practice in a jurisdiction outside the United States may be authorized to practice under Rule 1A:7 as a foreign legal consultant and may likewise establish an office or other systematic and continued presence in Virginia.

[5] Paragraph (d)(4) identifies circumstances in which a Foreign Lawyer may provide legal services on a temporary basis in Virginia that do not create an unreasonable risk to the interests of their clients, the public, or the courts. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. Except as authorized by this rule or other law, a Foreign Lawyer may not establish an office or other systematic and continuous presence in Virginia without being admitted to practice generally here.

[6] There is no single test to determine whether a Foreign Lawyer's services are provided on a "temporary basis" in Virginia, and may therefore be permissible under paragraph (d)(4). Services may be "temporary" even though the Foreign Lawyer provides services in Virginia on a recurring basis, or for an extended period of time, as when the Foreign Lawyer is representing a client in a single lengthy negotiation or litigation.

"Temporary" refers to the duration of the Foreign Lawyer's presence and provision of services, while "occasional" refers to the frequency with which the Foreign Lawyer comes into Virginia to provide legal services.

[7] Paragraph (d)(1) requires that the Foreign Lawyer be authorized to practice in the jurisdiction in which the Foreign Lawyer is admitted and excludes a Foreign Lawyer who, while technically admitted, is not

authorized to practice because, for example, the Foreign Lawyer is on inactive status.

[8] Paragraph (d)(4)(i) recognizes that the interests of clients and the public are protected if a Foreign Lawyer associates with a lawyer licensed to practice Virginia. For this paragraph to apply, however, the lawyer admitted to practice in Virginia must actively participate in and share responsibility for the representation of the client.

[9] Foreign Lawyers not admitted to practice generally in this jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. Under paragraph (d)(4)(ii), a Foreign Lawyer does not violate this Rule when the Foreign Lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of Virginia requires a Foreign Lawyer to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the Foreign Lawyer to obtain that authority.

[10] Paragraph (d)(4)(ii) also provides that a Foreign Lawyer rendering services in Virginia on a temporary basis does not violate this Rule when the Foreign Lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the Foreign Lawyer is

authorized to practice law or in which the Foreign Lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a Foreign Lawyer may engage in conduct temporarily in Virginia in connection with pending litigation in another jurisdiction in which the Foreign Lawyer is or reasonably expects to be authorized to appear, including taking depositions in Virginia.

[11] *ABA Model Rule* Comment not adopted.

[12] Paragraph (d)(4)(iii) permits a Foreign Lawyer to perform services on a temporary basis in Virginia if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice. The Foreign Lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (d)(4)(iv) permits a Foreign Lawyer to provide certain legal services on a temporary basis in Virginia that arise out of or are reasonably related to that lawyer's practice in a jurisdiction in which the

Foreign Lawyer is admitted but are not within paragraphs (d)(4)(ii) or (d)(4)(iii). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs ~~(d)(4)(ii)~~, (d)(4)(iii), and (d)(4)(iv) require that the services arise out of or be reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice. A variety of factors evidence such a relationship. The Foreign Lawyer's client may have been previously represented by the Foreign Lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the Foreign Lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the Foreign Lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their Foreign Lawyer in assessing the relative merits of each. In addition, the services may draw on the Foreign Lawyer's recognized expertise developed through the regular

practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

[14a] Paragraph (d)(4)(iv) recognizes that a Foreign Lawyer may provide legal services when the services provided are governed by international law or the law of a foreign jurisdiction in which the Foreign Lawyer is admitted to practice.

[15 - 18] *ABA Model Rule* Comments not adopted.

[19] A Foreign Lawyer who practices law in Virginia pursuant to this Rule is subject to the disciplinary authority of Virginia. See Rule 8.5(a).

[20] *ABA Model Rule* Comment not adopted.

[21] Paragraph (d)(4) does not authorize communications advertising legal services to prospective clients in Virginia by Foreign Lawyers who are admitted to practice in other jurisdictions. Whether and how Foreign Lawyers may communicate the availability of their services to prospective clients in Virginia is governed by Rules 7.1 and 7.3~~to 7.5~~.

IV. Conclusion


The Supreme Court is authorized to regulate the practice of law in the Commonwealth of Virginia and to prescribe a code of ethics governing the professional conduct of attorneys. Va. Code §§ 54.1-3909, 3910.


Pursuant to this statutory authority, the Court has promulgated rules

and regulations relating to the organization and government of the Virginia State Bar. Va. S. Ct. R., Pt. 6, § IV, Paragraph 10 of these rules sets forth the process by which legal ethics advisory opinions and rules of professional conduct are promulgated and implemented. The proposed rule change was developed and approved in compliance with all requirements of Paragraph 10.

THEREFORE, the bar requests that the Court approve the proposed amendments to Rules 1.17, 1.18, and 5.5 for the reasons stated above.

Respectfully submitted,
VIRGINIA STATE BAR

By 
Brian L. Buniva, President

By 
Karen A. Gould, Executive Director

Dated this 29th day of October, 2020.