

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 23rd day of December 2020.*

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective immediately.

On October 29, 2020, came the Virginia State Bar, by Brian L. Buniva, its President, and Karen A. Gould, its Executive Director and Chief Operating Officer, and presented to the Court a petition, approved by the Council of the Virginia State Bar, praying that Rules 1.17, 1.18, and 5.5, Part Six, Section II of the Rules of Court, be amended. The petition is approved and Rules 1.17, 1.18, and 5.5 are amended to read as follows:

Amend Rule 1.17, Comment [12] as follows:

**Rule 1.17. Sale Of Law Practice.**

\* \* \*

COMMENT

\* \* \*

[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 in the sale (see Rule 1.16).

\* \* \*

Amend Rule 1.18, Comment [6] as follows:

**Rule 1.18. Duties To Prospective Client.**

\* \* \*

COMMENT

\* \* \*

[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.

\* \* \*

Amend Rule 5.5, Comments [4], [6], [14], and [21] as follows:

**Rule 5.5. Unauthorized Practice Of Law; Multijurisdictional Practice of Law.**

\* \* \*

COMMENT

\* \* \*

[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*, Rule 7.1. 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.

\* \* \*

[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.

\* \* \*

[14] Paragraphs (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.

\* \* \*

[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.

A Copy,

Teste:

Clerk