

## **Invitation to Comment on Proposed Rules Involving the Multijurisdictional Practice of Law**

The Louisiana State Bar Association House of Delegates approved three Resolutions which were recommended by its Multijurisdictional Practice Committee. The Resolutions would accomplish the following.

- (1) Rule 5.5 of the Rules of Professional Conduct (ROPC) would be amended to, among other things, allow some types of temporary legal services performed by non-admitted lawyers.
- (2) Rule 8.5 of the Rules of Professional Conduct would be amended to clarify the circumstances under which lawyers become subject to the lawyer disciplinary authority of Louisiana. Included in this proposed rule change are conflict of law provisions.
- (3) Referenced in the changes to ROPC 5.5, and separately recommended by the LSBA, would be the adoption of an in-house counsel rule, in which non-admitted lawyers who are practicing in Louisiana for corporate or associational clients would receive a limited license to allow them to perform legal work for their employers.

The Court has decided to place the proposed rule changes on its website in order to allow interested persons to comment. Significant recommended amendments to the presently existing version of ROPC 5.5 and 8.5 have been printed in **boldface** type. Finally, an application forms packet has been prepared for use in implementing the in-house counsel

rule. The cover page of the application forms packet includes a suggested in-house counsel application filing fee.

Persons interested in commenting on the proposed rules and the application forms packet may forward written comments to:

Tim Averill  
Deputy Judicial Administrator/General Counsel  
Office of the Judicial Administrator  
Supreme Court of Louisiana  
400 Royal Street, Suite 1190  
New Orleans, LA 70130-8101  
or via e-mail to: [tfa@lajao.org](mailto:tfa@lajao.org)

The comments should be forwarded no later than Friday, January 21, 2005. **Please be advised that any comments which are forwarded constitute matters of public record and are subject to public inspection.**

**PROPOSED CHANGES TO RULE 5.5 OF THE  
RULES OF PROFESSIONAL CONDUCT**

**RULE 5.5: UNAUTHORIZED PRACTICE OF LAW;  
MULTIJURISDICTIONAL PRACTICE OF LAW**

- (a) A lawyer shall not practice law **in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.**
  
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
  - (1) **except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or**
  - (2) **hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.**
  
- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
  - (1) **are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;**
  - (2) **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;**



- (i) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a disbarred attorney, during the period of disbarment, or any person the attorney knows or reasonably should know is an attorney who has permanently resigned from the practice of law in lieu of discipline; or
- (ii) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a suspended attorney, during the period of suspension, unless first preceded by the submission of a fully executed employment registration statement to the Office of Disciplinary Counsel, on a registration form provided by the Louisiana Attorney Disciplinary Board, and approved by the Louisiana Supreme Court.

(e)(2) The registration form provided for in Section (e)(1) shall include:

- i) the identity and bar roll number of the suspended attorney sought to be hired;
- ii) the identity and bar roll number of the attorney having direct supervisory responsibility over the suspended attorney throughout the duration of employment or association;

- iii) a list of all duties and activities to be assigned to the suspended attorney during the period of employment or association;
- iv) the terms of employment of the suspended attorney, including method of compensation;
- v) a statement by the employing attorney that includes a consent to random compliance audits, to be conducted by the Office of Disciplinary Counsel, at any time during the employment or association of the suspended attorney; and
- vi) a statement by the employing attorney certifying that the order giving rise to the suspension of the proposed employee has been provided for review and consideration in advance of employment by the suspended attorney.

(e)(3) For purposes of **Section (e)** of this Rule, the practice of law shall include the following activities:

- i) holding oneself out as an attorney or lawyer authorized to practice law;
- ii) rendering legal consultation or advice to a client;
- iii) appearing on behalf of a client in any hearing or proceeding, or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing officer, or governmental body operating in an adjudicative capacity,

including submission of pleadings, except as may otherwise be permitted by law;

- iv) appearing as a representative of the client at a deposition or other discovery matter;
- v) negotiating or transacting any matter for or on behalf of a client with third parties;
- vi) otherwise engaging in activities defined by law or Supreme Court decision as constituting the practice of law.

(e)(4) In addition, a suspended lawyer shall not receive, disburse or otherwise handle client funds.

(e)(5) Upon termination of the suspended attorney, the employing attorney having direct supervisory authority shall promptly serve upon the Office of Disciplinary Counsel written notice of the termination.

## **PROPOSED CHANGES TO RULE 8.5 OF THE RULES OF PROFESSIONAL CONDUCT**

### **RULE 8.5: DISCIPLINARY AUTHORITY; CHOICE OF LAW**

- (a) **Disciplinary Authority.** A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, **regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the**

**disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.**

**(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:**

**(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and**

**(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.**

## **DRAFT IN-HOUSE COUNSEL RULE**

### **LOUISIANA SUPREME COURT RULE XVII**

**\* \* \***

#### **Section 14. Limited Admission for In-House Counsel**

**(A) A lawyer admitted and authorized to practice law in another state or territory of the United States may receive a limited license to practice law in this state when the lawyer is employed in Louisiana as a lawyer exclusively for: a**



corporation, its subsidiaries or affiliates; an association; and/or a business which consists of activities other than the practice of law or the provision of legal services, if the lawyer:

- (1) Has filed an application for a limited license pursuant to this Rule with the Committee on Bar Admissions of the Supreme Court of Louisiana containing the following:
  - (a) A written application in the form prescribed by the Committee;
  - (b) A sworn statement that no complaints with any disciplinary authority are pending in any jurisdiction and that no charges of professional misconduct are pending against the applicant in any jurisdiction;
    - (i) Alternatively, if any such complaints or charges are pending, full details of the complaints or charges, and the current status of same;
  - (c) Information which indicates that the applicant meets the requirements of Section 3, subparts (A), (B), (C), and (D) of this Rule;
  - (d) An affidavit from an officer, director or general counsel of the applicant's employer in this state attesting the fact that the applicant is employed as a lawyer exclusively for the employer, that the applicant is an individual of good moral character, and

that the nature of the employment conforms to the requirements of this Rule;

(e) The National Conference of Bar Examiners Character Report.

If the applicant has completed an NCBE character report within three years of the application for limited licensure, the prior report may be submitted in lieu of a new report;

(i) In the event a prior NCBE report is submitted, the applicant shall also append to the prior report the NCBE Supplemental Character Report.

(f) The non-refundable prescribed application fee set by the Supreme Court of Louisiana;

(2) Otherwise meets the character and fitness requirements of this Rule and the Committee on Bar Admissions of the Supreme Court of Louisiana; and

(3) Receives the recommendation and approval of the Committee on Bar Admissions of the Supreme Court of Louisiana.

(B) The application, affidavits, and other materials, including the report of character and fitness, shall be reviewed by the Committee on Bar Admissions of the Supreme Court of Louisiana. The Louisiana Supreme Court, in its discretion, may issue the limited license to practice law in the State of

Louisiana based on the recommendations and approval of the Committee on Bar Admissions.

- (C) Licensure pursuant to the Rule is not a matter of right and shall be granted only in those cases where the public interest, considering the character, background and employment of the applicant, is furthered by issuing a license. In the event the Committee does not recommend the limited licensure of an applicant, the applicant may then appeal in accordance with Section 9 of this rule.
- (D) The license issued pursuant to this Rule only authorizes the lawyer to practice exclusively for the employer filing the affidavit required by subpart (A)(1)(d) of this rule and to engage in pro bono work with an organization approved for this purpose by the Louisiana Bar. In all other respects, the lawyer receiving a license pursuant to this Rule shall be deemed a lawyer licensed to practice law in this state.
- (E) A limited license issued pursuant to this Rule shall be valid for four years from the date of issuance. The license is automatically terminated if the lawyer is admitted to the practice of law pursuant to any other provisions of Rule XVII. The license is automatically suspended if the lawyer's employment by the employer filing the affidavit required by subpart (A)(1)(d) of this rule is terminated. If a lawyer's employment is terminated but the lawyer is immediately thereafter employed by an employer filing the affidavit required by subpart (A)(1)(d) of this rule, the limited license shall be reinstated for the

remainder of the period of four years from the date the license originally was issued.

(F) A limited license issued pursuant to this Rule may be renewed for a successive four year period by filing the written application required by the Committee. The application shall be filed at least ninety days prior to the expiration of the current license. For good cause shown, the Court may permit the late filing of an application. The application shall include at least the following:

- (1) The licensee's sworn statement that no complaints with any disciplinary authority are pending and that no charges of professional misconduct are pending against the licensee in any jurisdiction. Alternatively, if any such complaints or charges are pending or any disciplinary action has been taken against the licensee in any jurisdiction, full details of the complaint and charges, the current status of the complaint or charges, and the disposition thereof, if not currently pending, shall be set forth;
- (2) An affidavit from an officer, director or general counsel of the licensee's employer in this state attesting the fact that the licensee remains employed as a lawyer exclusively for the employer and that the nature of the employment continues to conform to the requirements of this Rule;
- (3) An affidavit from the licensee setting forth any changes in information from that provided in his or her immediately preceding application pursuant to this Rule or attesting that there are no such changes;

- (4) The NCBE Supplemental Character Report;
  - (5) The application for renewal shall be accompanied by the non-refundable fee approved by the Court.
- (G) A lawyer admitted pursuant to this Rule is required to pay the annual Disciplinary Assessment required of attorneys admitted to practice three years or more pursuant to La. S. Ct. Rule XIX, Section 8; and Louisiana State Bar Association annual dues pursuant to Article V of the Articles of Incorporation of the Louisiana State Bar Association during the period of the limited license.
- (H) A lawyer admitted pursuant to this rule shall be subject to the Louisiana Rules of Professional Conduct and to the disciplinary authority of the courts and the Louisiana Attorney Disciplinary Board.
- (I) A lawyer admitted pursuant to this rule shall comply with the annual registration requirements contained in Louisiana Supreme Court Rule XIX, §8.
- (J) A lawyer admitted pursuant to this Rule is required to meet the continuing legal education requirements specified in La. S. Ct. Rule XXX.
- (K) No lawyer who is acting as in-house counsel shall be denied admission pursuant to this Rule solely because of the lawyer's failure to otherwise seek admission under this Rule if an application pursuant to this Rule is filed prior to \_\_\_\_\_, 2005. The failure to apply prior to \_\_\_\_\_, 2005, may be grounds for the denial of an application.

This rule shall become effective on July 1, 2005, and shall remain in full force and effect thereafter until amended through future orders of the Court.

**Louisiana  
In-House Counsel  
APPLICATION FORMS PACKET**

**CONTENTS:**

Application for limited licensure as in-house counsel

Lawyer Discipline Attestation

Certificate to be completed by lawyer regulatory agency in jurisdiction(s) where admitted

Affidavit to be completed on behalf of the in-house employer

NCBE Character and Fitness Application

**FORWARDING INFORMATION:** Please transmit your completed application and enclosures to:

The Committee on Bar Admissions  
2800 Veterans Memorial Boulevard  
Suite 310  
Metairie, LA 70002

**APPLICATION CHECKLIST**

1. A filing fee in the amount of \$550.00 must be enclosed. The fee should be paid in two separate checks. One check should be made payable to the Committee on Bar Admissions in the amount of \$300.00. A second check in the amount of \$250.00 should be made payable to The National Conference of Bar Examiners.
2. Certificate(s) of disciplinary history must be enclosed.
3. An affidavit of the in-house employer must be enclosed.

**APPLICATION FOR LIMITED LICENSURE AS IN-HOUSE COUNSEL**

Please type or print

**1. Name:** Please complete the information in item 1 as you wish it to appear in the official records of the Supreme Court of Louisiana.

Mr. Ms. \_\_\_\_\_  
(last name, first name, middle name)

**2. Date of Birth:** \_\_\_\_\_

**3. Addresses:** Louisiana Supreme Court Rule XIX, §8 requires that attorneys provide business and residence addresses. These addresses must be physical addresses and not post office boxes. You must designate your business or residence as your primary registration statement address. The primary registration statement address shall be a matter of public record. You may also designate an optional mailing address.

| Primary Registration Statement Address<br>(Public Record) | Secondary Address | Mailing Address (Optional) |
|---|-------------------|----------------------------|
|   |                   |                            |
|   |                   |                            |
|   |                   |                            |
|   |                   |                            |

Is your primary registration statement address a business or residence address?  
\_\_\_\_\_

Business telephone number \_\_\_\_\_

Business fax number \_\_\_\_\_

Business e-mail address \_\_\_\_\_

**4. Nature of Application:**

Check one:

\_\_\_\_\_ initial application      \_\_\_\_\_ reapplication



If this is a reapplication, please state reason(s) therefore. (e.g. - left jurisdiction, change of limited practice status)

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**5. Admissions to Practice Law:** Please list all jurisdictions in which you are licensed to practice law. Include your bar or attorney number, or other personal identifier, from that licensing entity. If you are admitted under a name that is different from the name indicated in item 1, please provide the name under which you are admitted. Use additional paper if necessary.

a. Jurisdiction \_\_\_\_\_ Bar or attorney number \_\_\_\_\_

\_\_\_\_\_  
(last name, first name, middle name)

b. Jurisdiction \_\_\_\_\_ Bar or attorney number \_\_\_\_\_

\_\_\_\_\_  
(last name, first name, middle name)

c. Jurisdiction \_\_\_\_\_ Bar or attorney number \_\_\_\_\_

\_\_\_\_\_  
(last name, first name, middle name)

**6. Denials of Admission to Practice Law:** Have you ever been denied admission to practice before the bar of any jurisdiction based upon your character or fitness? Check one.

\_\_\_\_\_ Yes Please indicate jurisdiction(s): \_\_\_\_\_

\_\_\_\_\_ No

**7. Employer:** Please indicate the name, address, and telephone number of your in-house employer.

Name of employer \_\_\_\_\_

Address \_\_\_\_\_

Telephone number \_\_\_\_\_

Name of person to contact to verify your employment status

\_\_\_\_\_

Check one:

\_\_\_\_\_ I am currently employed by the in-house employer

\_\_\_\_\_ I expect to begin employment with the in-house employer on

\_\_\_\_\_

**Certification:**

\_\_\_\_\_ State

\_\_\_\_\_ Parish or County

I, \_\_\_\_\_ (print name), the undersigned applicant for limited licensure as in-house counsel within the State of Louisiana, do hereby certify that I have read and am familiar with the Louisiana Rules of Professional Conduct and will abide by the provisions thereof.

I acknowledge that I am subject to the jurisdiction of the Supreme Court of Louisiana for disciplinary purposes.

Date: \_\_\_\_\_

\_\_\_\_\_ Signature

**LAWYER DISCIPLINE ATTESTATION**

I hereby certify that no complaints are pending with any disciplinary authority in any jurisdiction, and that no charges of professional misconduct are pending against me in any jurisdiction. Appended to this statement are confirming certificates from the disciplinary authority in each jurisdiction in which I am admitted.

I further authorize notification to or from the entity governing the practice of law within each jurisdiction in which I am licensed to practice law of any disciplinary action taken against me.

I hereby certify that I am or will be exclusively employed by the employer specified in this application. I have advised my client that I am not a licensed Louisiana attorney.

I have read the foregoing application, and further attest that the information submitted in it is complete and true to the best of my knowledge and belief.

\_\_\_\_\_  
(signature of applicant)

The foregoing instrument was sworn to be subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
(signature of notary)

\_\_\_\_\_  
(name of notary)

**CERTIFICATE OF DISCIPLINARY HISTORY**

\_\_\_\_\_  
State

\_\_\_\_\_  
County

Re: \_\_\_\_\_  
(Attorney name)

I HEREBY CERTIFY that I am duly appointed custodian of records of the entity that licenses or regulates attorneys in the above-referenced jurisdiction.

I FURTHER CERTIFY that the records of my office indicate that the above-referenced attorney is in good standing and that no complaints or charges of professional misconduct are pending.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(title)

**AFFIDAVIT OF EMPLOYER**

\_\_\_\_\_  
State

\_\_\_\_\_  
Parish

I, \_\_\_\_\_, am employed as  
(Name of official)

\_\_\_\_\_ for  
(Title of official)

\_\_\_\_\_  
(Name and address of employer)

\_\_\_\_\_  
\_\_\_\_\_

and am authorized to attest to the following in connection with an application for limited licensure as in-house counsel.

I HEREBY ATTEST that the above-referenced employer is a corporation, association, or other legal entity (taken together with its respective parents, subsidiaries, and affiliates) authorized to transact business in this state that is not itself engaged in the practice of law or the rendering of legal service outside such organization, whether for a fee or otherwise, and does not charge or collect a fee for any legal representation or advice.

I FURTHER ATTEST that the above-referenced employer is aware that

\_\_\_\_\_ (name of applicant) is not licensed to practice law in Louisiana; that this individual seeking certification under the Louisiana Supreme Court's In-House Counsel Rule is/will be exclusively employed by this employer; the nature of the applicant's employment conforms to the requirements of the in-house

counsel rule; and that this employer is not relying upon the Supreme Court of Louisiana or its agencies in any manner in employing this individual.

Finally, I hereby attest that applicant \_\_\_\_\_ is a person of good moral character.

\_\_\_\_\_  
(signature)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary

(Seal)