

COMMONWEALTH OF MASSACHUSETTS

At the Supreme Judicial Court holden at Boston within and for said Commonwealth on the tenth day of March, in the year two thousand and sixteen:

present,

<u>HON. RALPH D. GANTS</u>)	Chief Justice
)	
<u>HON. FRANCIS X. SPINA</u>)	
)	
<u>HON. ROBERT J. CORDY</u>)	Justices
)	
<u>HON. MARGOT BOTSFORD</u>)	
)	
<u>HON. FERNANDE R.V. DUFFLY</u>)	
)	
<u>HON. BARBARA A. LENK</u>)	
)	
<u>HON. GERALDINE S. HINES</u>)	

ORDERED: That Chapter Three of the Rules of the Supreme Judicial Court is hereby amended as follows:

Rule 3:07	By deleting the first sentence of Comment [7A] to Mass. R. Prof. C. 1.5 and replacing it with the following sentence: Unlike ABA Model Rule 1.5(e), Paragraph (e) does not require that the division of fees be in proportion to the services performed by each
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lawyer or require the lawyer to assume joint responsibility for the representation in order to be entitled to a share of the fee.

Rule 3:07 By deleting the words "paragraph (c)" in the final sentence of Mass. R. Prof. C. 1.6(d) and replacing them with the following words: paragraph (d)

Rule 3:07 By deleting the words "legal community" in the second sentence of Comment [3A] to Mass. R. Prof. C. 1.6 and replacing them with the following words: local community

Rule 3:07 By deleting the words "Rule 1.11(c)(1)" in the first sentence of Comment [4] to Mass. R. Prof. C. 1.10 and replacing them with the following words: Rule 1.11(d)(2)(i)

Rule 3:07 By deleting Mass. R. Prof. C. 5.4(a)(4) and replacing it with Mass. R. Prof. C. 5.4 (a)(4) attached hereto.

Rule 3:07 By deleting Mass. R. Prof. C. 5.5(d) and replacing it with Mass. R. Prof. C. 5.5(d) attached hereto.

Rule 3:07 By adding a new paragraph (e) to Mass. R. Prof. C. 5.5 as attached hereto.

Rule 3:07 By deleting Comments [5], [7], [15], and [18] to Mass. R. Prof. C. 5.5 and replacing them with Comments [5], [7], [15], and [18] attached hereto.

The amendments accomplished by this order shall take effect
on May 1, 2016.

ORDERED:

<u>RALPH D. GANTS</u>)	Chief Justice
)	
<u>FRANCIS X. SPINA</u>)	
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<u>ROBERT J. CORDY</u>)	Justices
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<u>MARGOT BOTSFORD</u>)	
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<u>FERNANDE R.V. DUFFLY</u>)	
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<u>BARBARA A. LENK</u>)	
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<u>GERALDINE S. HINES</u>)	

ATTACHMENTS

Mass. R. Prof. C. 5.4(a) (4): a lawyer or law firm may agree to share a statutory or tribunal-approved fee award, or a settlement in a matter eligible for such an award, with a qualified legal assistance organization that referred the matter to the lawyer or law firm, if the client consents, after being informed that a division of fees will be made, to the sharing of the fees and the total fee is reasonable.

Mass. R. Prof. C. 5.5(d): A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

- (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or
- (2) are services that the lawyer is authorized to provide by federal law or other law or rule of this jurisdiction.

Mass. R. Prof. C. 5.5(e): For purposes of paragraph (d), the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or a public authority.

Comments to Mass. R. Prof. C. 5.5:

Comment [5]: There are occasions in which a lawyer admitted to practice 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 under circumstances that do not create an unreasonable risk to the interests of the lawyer's clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d) (1)

and (d)(2), this Rule does not authorize a U.S. or foreign lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

Comment [7]: Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. Paragraph (d) also applies to lawyers admitted in a foreign jurisdiction. The word "admitted" in paragraphs (c), (d) and (e) means the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

Comment [15]: Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States or foreign jurisdiction, and is not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law. Pursuant to paragraph (c) of this Rule, a lawyer admitted to any U.S. jurisdiction may also provide legal services in this jurisdiction on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

Comment [18]: Paragraph (d)(2) recognizes that a U.S. or foreign lawyer may provide legal services in this jurisdiction even though not admitted when the lawyer is authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.