

December 18, 2008

COURT NOTICE

Eastern and Southern Districts of New York

The Courts have adopted revisions to Local Rule 1.5(b)(5). Prior to its taking effect the public is invited to comment.

Proposed New Local Rule 1.5(b)(5):

In connection with activities in this court, any attorney is found to have engaged in conduct violative of the New York State Lawyer's Code of Professional Responsibility as adopted from time to time by the Appellate Divisions of the State of New York. In interpreting the Code, in the absence of binding authority from the United States Supreme Court of the United States Court of Appeals for the Second Circuit, this court, in the interests of comity and predictability, will give due regard to decisions of the New York Court of Appeals and other New York State courts, absent significant federal interests.

Background and Reason for Recommendation:

A "Report on Deference by Federal Courts Sitting in New York to State Court Interpretations of Attorney Ethics Rules," prepared by the Advisory Group to the New York Federal-State Judicial Council, recommends that federal courts sitting in New York modify their current approach and adopt a special comity-based deference to state court interpretations of New York attorney conduct rules, in particular the already decided or predictively likely interpretations of the New York Court of Appeals. Under this special deference standard, New York federal courts would follow state court decisions construing New York attorney ethics rules as a matter of comity absent an overriding federal policy interest. Such an overriding policy interest would include undue restriction on the constitutional privilege to participate in federal court litigation in New York without being admitted in New York.

There are three reasons for the recommended change: (1) most other federal districts accord deference to state court interpretations of state attorney ethics rules, (2) the lack of such deference can result in conflicting rules in federal and state courts, and (3) an even more conclusive Erie-style adherence to highest state court decisions is favored by various committees of the Judicial Conference of the United States, including the Committee on Rules of Practice and Procedure, commonly referred to as the "Standing Committee." The Advisory Group recommends that the federal courts sitting in New York should adopt a greater degree of deference to the interpretations of the New York State Lawyer's Code of Professional Conduct by the New York state courts, and in particular by the New York Court of Appeals.

Comments to the above are to be submitted, in writing, on or before the close of business, Friday, January 16, 2009 which is the effective date of the amendments to Local Rule 1.5(b)(5).

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