

Transnational Legal Practice

DONALD H. RIVKIN AND MICHAEL D. SANDLER

I. Introduction

This report assesses efforts to promote the ability of American lawyers, subject to appropriate ethical considerations, to practice abroad and the concomitant ability of foreign lawyers to practice in the United States. The past year witnessed much activity in this area.

II. ABA and Paris Bar

ABA President Lee Cooper signed a Cooperation Agreement between the ABA and the Paris Order of Avocats by which the two associations, recognizing their "shared experience, competence, and deontology," undertook to pursue "common inquiries into the totality of problems posed by the practice of law," and bound themselves "to cooperate on ethical and legal matters." Among other things, the U.S. and Paris organizations agreed on certain steps relating to admission to the bar and undertook to promote exchanges of apprentice lawyers between the United States and France. A Consultative Committee consisting of equal numbers of Parisian and U.S. lawyers is to "identify and to help resolve difficulties encountered by American lawyers in establishing themselves in Paris, and by French lawyers in establishing themselves in the United States," and will also follow legislative and regulatory developments relating to the right of establishment" and "make inquiry into problems common to the legal profession in France and the United States relating to the liberalization of cross-border exchanges and the practice of law."

A somewhat comparable agreement contemplating a continuing cooperative relationship was also entered into by the Order of Avocats and The Association of the Bar of the City of New York.

III. ABA and England and Wales Law Society

The ABA has been requested by the Law Society of England and Wales to explore ways in which British solicitors might be permitted to take bar examinations in U.S. states without

Donald H. Rivkin is a member of the firm Schnader, Harrison, Segal & Lewis in New York City and he is chair of the Transnational Legal Practice Committee. Michael D. Sandler, a vice-chair of the same Committee, is a member of the firm Foster, Pepper & Shefelman in Seattle, Washington.

the necessity of law school study in this country. A task force chaired by Rudolph C. Hasl, Chair of the Section of Legal Education and Admission to the Bar, has been created to investigate this proposal. The Transnational Legal Practice Committee is represented on the task force.

IV. IBA Guidelines for Foreign Legal Consultants

The International Bar Association has not made notable progress in its efforts to promulgate proposed Guidelines for Foreign Legal Consultants. Objections to the effort have ranged from concerns of bars of developing countries that the Guidelines would expose them to excessive competition, to contentions by the Council of the Bars and Law Societies of the European Communities that pan-European rules must be established before international norms are created. The subject will be revisited at the IBA 50th anniversary meeting in New York on June 11-13, 1997.

V. European Parliament and EU Directive

A notable development in 1996 was the adoption by the European Parliament of a directive under which lawyers admitted to practice in any member state of the European Union could not be obliged to take an aptitude test in order to practice in any other jurisdiction. Further, a lawyer would be able to practice under his or her home title (*e.g.*, *avocat*, *advokat*, *Rechtsanwalt*, *barrister*, *solicitor*, *procuratore legale*) in the host country for an unlimited period of time. In effect, the European Parliament had adopted a foreign legal consultant system of the nature advocated by the American Bar Association worldwide. The directive adopted by the European Parliament will not have the force of law until it is approved by the Council of Ministers, and it is not possible to predict when (or even if) that will occur. The directive, of course, would be applicable only within the European Union, but if it is adopted the American Bar would make known its expectation of GATS¹-compatible treatment in Europe.

VI. Japan

The American Chamber of Commerce in Japan is attempting to persuade the Japanese government to liberalize the restrictive rules that obtain in that country concerning foreign practitioners, in particular the inability of U.S. lawyers to form partnerships with, employ, or be employed by Japanese lawyers. The Transnational Practice Committee of the ABA Section of International Law and Practice cooperated with the Chamber in these efforts, but there is no basis in experience for optimism that the desired liberalization will be achieved.

VII. WTO

International bodies, notably the World Trade Organization and the Organization for Economic Cooperation and Development, are increasingly interesting themselves in national impediments to cross-border law practice, and there is little doubt that the subject will continue to be on their agendas.

1. General Agreement on Trade in Services.