The inquirer is a New York licensed attorney who recently accepted a job at a law firm in Philadelphia. The inquirer was admitted to practice law in New York in August of 2006 and started her first job as a union attorney in the District of Columbia in February of 2007. That job consisted of handling administrative claims on behalf of federal employees before federal administrative agencies. The inquirer was permitted to appear before those agencies on behalf of federal employees using her New York State license. In August of 2009 until July 2011 the inquirer worked in the Office of General Counsel at one of the federal agencies as an attorney. According to the inquirer, as with her previous job, she was required only to have any valid state license for that job. The inquirer intends to apply for admission to the Pennsylvania Bar by waiver in February 2012, which will be five years after she started practicing law with no break in service. The inquirer advises that her supervisors at the firm where she is presently employed have advised that provided she is working on New York cases and not holding herself out as a Pennsylvania attorney for any other cases to which she is assigned, and if properly supervised in those latter types of cases that she should be able to meet the requirements for waiver.

This inquiry is governed by both Pennsylvania Rule of Professional Conduct (the "Rules") 5.5d2 and 4 as well as Pennsylvania Bar Admission Rule (BAR) 204 (4).

Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law provides in part that,

"(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

...(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may ...provide legal services in this jurisdiction that:

...(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Pennsylvania Bar Admission Rule ("BAR") Admission of Domestic Attorneys 204 provides in part that,"
(4) Presentation of proof satisfactory to the Board that the applicant has for a period of five years of the last seven years immediately preceding the date of filing of the application for admission to the bar of this Commonwealth devoted a major portion of time and energy to the practice of law in one or more states.

... For purposes of this rule, the phrase “practice of law” is defined as engaging in any of the following legal activities provided such activities were performed in a state in which the applicant was admitted to practice law or in a state that affirmatively permitted such activity by a lawyer not admitted to practice law in the jurisdiction: [emphasis added]

(i) Representation of one or more clients in the private practice of law.
(ii) Providing legal services as an attorney with a local, state or federal agency.
(iii) Teaching law full time at an accredited law school, college or university in the United States, provided a substantial portion of such time was spent teaching at an accredited law school.
(iv) Service as a judge in a federal, state or local court of record.
(v) Service full time as a judicial law clerk to any judge of any court of the United States or of any state or territory of the United States.
(vi) Service as corporate counsel.
(vii) Service performing legal functions while serving on active duty in the United States military service as a judge advocate as defined in the Uniform Code of Military Justice, 10 U.S.C. § 801, as amended.

The term “practice of law” shall not include providing legal services in any of the above referenced areas, when such services as undertaken constituted the unauthorized practice of law in the state in which the legal services were performed or in the state in which the clients receiving the unauthorized services were located."

The Committee previously addressed a very similar question in prior opinion 2006-5. That opinion states in part that,

"The Committee takes note that the provisions of subpart (4) do not require that the applicant have been engaged in the practice of law in a jurisdiction to which he is admitted. Rather the requirement is that a majority of the inquirer’s time has been spent practicing law in any given state either to which he is admitted or to which he is not admitted but where such practice is affirmatively permitted by that state. Thus, the operative question of this inquiry is whether the inquirer’s proposed practice, which is to represent clients in federal litigation in courts to which he is admitted, is permissible in Pennsylvania. Any other work done here will be under the supervision of a Pennsylvania licensed attorney.

The Committee addressed such an issue recently in opinions 2004-6 and 2005-14. Both those inquiries concerned inquirers who were engaging solely in immigration practice primarily in Pennsylvania even though neither was admitted here. Both those opinions, as well as this opinion, center on the provisions of Pennsylvania Rule of Professional Conduct 5.5 (d)...
The Committee holds that provided a major portion of the inquirer's time is devoted to representations engaged in by the inquirer in those federal courts to which he is admitted that the provisions of Rule 5.5d2 would permit him to do so from a law firm located in Pennsylvania. As regards any other court appearances, the inquirer would be required to be admitted pro hac vice to the appropriate court. In addition, work done on any other matters would require that the inquirer be supervised by a Pennsylvania admitted attorney who would be ultimately responsible for such work...because of the inquirer's limited admissions, these should be noted on the inquirer's business cards, stationery and any other place where his name appears in either general firm or individual publicity or client related communications.

The Committee notes that since it is the inquirer's intention to become admitted to Pennsylvania, that this opinion presumes that he is not located within the Commonwealth on a temporary basis. Because of this presumption, the provisions of Rule 5.5(c)(1) regarding temporary practice in Pennsylvania by attorneys admitted in other states does not apply to this inquiry..."

The Committee's analysis in this present inquiry is identical to that as in 2006-5. The provisions of BAR 204 which provide for admission by waiver are clear that the practice of law need not necessarily be in the state of admission, but must be allowed by the state in which they are occurring. It appears to the Committee that provided the inquirer's work in the District of Columbia was permitted with a New York State license and meets one or more of the criteria enumerated in BAR 204(8) as constituting the practice of law,¹ that this would appear to allow her consideration for admission under Pa BAR 204 provided she meets the five year time requirements.

As in 2006-5 it is very important to make sure that the inquirer is not engaging in the unauthorized practice of law. For the time spent on New York federal cases, providing she is admitted to the federal court in New York where such cases are pending, under Rule 5.5d2 she is clearly engaging in the legitimate practice of law. Any work done on a Pennsylvania matter for which the inquirer was admitted pro hac vice would also be legitimate. For other work done on Pennsylvania cases, because she is being supervised by a Pennsylvania admitted attorney who is responsible for her work, then she is not engaging in the unauthorized practice of law. However, such supervised Pennsylvania work would not appear to count towards meeting the requirements of BAR 204(8).

The same advice given in 2006-5 regarding noticing of the inquirer's limited admission on letterhead, website, cards etc. applies here as well.

¹ The Committee notes that it is not empowered to issue any type of binding ruling as to whether the inquirer has met the requirements of BAR 204 (8) in terms of her prior work qualifying under that Rule, as that is within the exclusive jurisdiction of the Pennsylvania Board of Law Examiners. The opinion mentions it only as a threshold issue when considering the inquirer's present work.
In closing the Committee stresses that it is not the body to make the final decision as to whether the inquirer will be allowed to waive in under Pa BAR 204. However, the Committee does find, subject to its normal caveat noted below, that as regards the work she is now doing the inquirer is not engaging in the unauthorized practice of law and that provided the majority of her time is spent on work that falls within the guidelines of Rule 5.5d2 it can see no reason why this would not count towards her five year practice requirement under PA BAR 204.

**CAVEAT:** The foregoing opinion is advisory only and is based upon the facts set forth above. The opinion is not binding upon the Disciplinary Board of the Supreme Court of Pennsylvania or any other Court. It carries only such weight as an appropriate reviewing authority may choose to give it.