

Bar Debates Liberalizing Multijurisdictional Practice

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The ABA's Commission on Multijurisdictional Practice has conducted the third and last of its public hearings to review the impact of the restrictions placed by individual states on the practice of law by out-of-state lawyers. In New York, as in the other states, a lawyer is enjoined from the "practice of law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction." DR 3-101(B). Thus, a New York lawyer violates the New York rules if he attempts to practice in another state if he is not admitted in that state, whether regularly or provisionally (e.g., pro hac vice). And an out-of-state lawyer who attempts to practice in New York if he has not been "regularly admitted" here is engaged in the unauthorized practice of law, a misdemeanor. Judiciary Law, §484, §485.

The Commission heard from witnesses who attacked the existing restrictions against crossing state lines as "parochial" and "protectionist." These witnesses argued that the realities of the market place dictated that lawyers be permitted to follow the needs of their clients, wherever they might lead.

Further, these witnesses argued, the restrictions against multijurisdictional practice had nothing whatever to do with the "core values" of the profession — i.e., protecting client confidences; avoiding conflicts of interest; providing competent representation. A lawyer who understood and practiced within the core values of one state would be equally zealous to observe them in another state. Also, a prudent lawyer would know when he did not know the substantive law of another state well enough to provide competent representation to his client.

At the Commission's meeting in New York, Evan A. Davis, president of ABCNY, advocated careful consideration of two possible methods for encouraging multijurisdictional practice: the Green Card Plan and the Driver's License Plan. Under the Green Card Plan, a lawyer admitted in State A who wants to practice in State B would: prove admission in State A for at least 3 years; present a certificate of good standing in State A; file statements of character and fitness by two clients; and pay an admission fee. The admission would be good for renewable periods of one year on evidence that the lawyer remained in good standing in State A. The lawyer would be prohibited from handling certain matters in State B without local affiliation (e.g., family law and real estate).

Under the Driver's License Plan, a lawyer admitted in State A who has engaged in active practice for three years would be able to practice in all other forty-nine states, in the same way as a driver licensed in one state is able to drive across state lines without limit.