

Commission Urges Changes In Multijurisdictional Practice Rules

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The ABA Commission on Multijurisdictional Practice has issued an interim report which recommends retention of the present system for state judicial licensing and regulation of lawyers but also recommends greater freedom and flexibility in practice across state lines and in other states. The Commission urges adoption of Proposed Model Rule 5.5: *Unauthorized Practice of Law*, which reflects the Commission's proposals. The Commission has asked for public comment on its recommendations by March 1, 2002.

A copy of the report is available at www.abanet.org/cpr/mjp-home.html.

The report includes the following recommendations:

1. The ABA should affirm its support for the principle of state judicial licensing and regulation of lawyers. "The Commission believes that...given the present state of knowledge, the ABA should not recommend the wholesale elimination of jurisdictional limits on law practice."
2. The Model Rules should be amended to provide that, as a general rule, it is not the unauthorized practice of law for a lawyer admitted in one jurisdiction to render legal services on a temporary basis in a jurisdiction in which the lawyer is not admitted, if his services do not create an unreasonable risk to the interests of the client, the public or the courts.
3. The Model Rules should identify "safe harbors" embodying the principles of 2. above and authorizing services on a temporary basis, at the same time as they make clear that a lawyer may not establish an office, maintain a continuous presence, or hold herself out as authorized to practice law in a jurisdiction in which she is not licensed.
4. The "safe harbors" referred to in 3. above would include:
 - a) work as co-counsel with a lawyer admitted to practice in the jurisdiction;
 - b) the performance of professional services that any non-lawyer is legally permitted to perform (*e.g.*, some states permit nonlawyers to assist in administrative proceedings and to give specified kinds of advice);
 - c) work ancillary to pending or prospective litigation (this "safe harbor" would not replace a state's *pro hac vice* requirements, but a lawyer who was admitted, or who had reasonable expectation of being admitted, *pro hac vice* would be allowed to go into other states regardless of admission to prepare for prospective litigation, to interview witness, and to conduct negotiations);
 - d) representation of clients in an arbitration, mediation or other ADR setting;

- a) non-litigation work ancillary to a lawyer 's representation of a client in his "home state" or to his work on a matter in the home state;
 - b) services involving primarily federal law, international law, the law of a foreign jurisdiction, or the law of the lawyer 's home state.
5. The Model Rules should permit a lawyer who is an employee of a client or its affiliate to render services to that client in a jurisdiction in which he is not admitted, except in appearances before tribunals subject to *pro hac vice* provisions.
 6. The ABA should endorse a model "admission on motion" rule to facilitate the licensing of a lawyer by a host state if the lawyer has been engaged in active practice in another jurisdiction for a significant period.
 7. The ABA should endorse a model *pro hac vice* statute.
 8. The ABA should take steps to promote interstate disciplinary enforcement mechanisms.
 9. The ABA should support efforts to eliminate state bar admission requirements for practice in the federal district courts by encouraging amendment of the Federal Rules of Civil and Criminal Procedure. "...given the global nature of contemporary law practice, restricting the privilege to practice before a U.S. District Court to lawyers who are admitted to the state bar in which the district is located [is] unduly burdensome."