

States Follow ABA Lead In Promoting MJP

BY LAZAR EMANUEL

A number of recent developments among the states have accelerated the Bar's general acceptance of wider multi-jurisdictional practice (MJP). The states are following the lead of the ABA, which, in August 2002, adopted several new rules promoting MJP. [See, Roy Simon, NYPRR October 2002, p. 1.] The new ABA rules (MR 5.5) recognize the right of a lawyer admitted in one state to render temporary legal services to clients in another state under the following circumstances:

(1) the lawyer associates local counsel who "actively participates in the matter"; (2) the legal services are "reasonably related to a pending or potential proceeding before a tribunal" if either the out-of-state lawyer or a person the lawyer is assisting is authorized to appear in the proceeding "or reasonably expects to be so authorized"; (3) the legal services are "reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding" if the services are "reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice" and are not services requiring pro hac vice admission"; or (4) are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

MR 5.5(b) imposes two restraints on out-of-state lawyers: (1) they may not open an office for the practice of law in the foreign jurisdiction; and (2) they may not publicly hold out that they are admitted to practice in the foreign jurisdiction.

The ABA also adopted a new Model Rule on pro hac vice admission before a foreign court and a new Rule for Admission on Motion. The latter enables a lawyer with at least five years of active practice to be admitted in a foreign state on motion.

Colorado Takes Lead

Following the ABA's lead, several states have recently liberalized their MJP rules. In Colorado, the state's Supreme Court has moved ahead of the ABA and has ruled that all "out-of-state" lawyers may now "practice law" in Colorado if they meet several simple conditions. The conditions are:

- a) the lawyer is licensed to practice law in another US jurisdiction;
- b) the lawyer is on active status in another jurisdiction;
- c) the lawyer is a member in good standing of the bar in all jurisdictions in which the lawyer is admitted;
- d) the lawyer has not established a domicile in Colorado; (e) the lawyer has not opened an office for the regular practice of law in Colorado from which he holds himself out to the public as practicing Colorado law or "solicits or accepts" Colorado clients.

Any "out-of-state" lawyer who wishes to appear before a Colorado court of record or administrative tribunal must comply with the state's pro hac vice rules.

A pro hac vice motion must include the name of a Colorado lawyer who will act as "associate counsel" to the out-of-state lawyer. Associate counsel must join in all court papers and in all appearances unless excused by the court.

A special new rule enables out-of-state lawyers to obtain a "Single Client Counsel Certification," entitling them to offer continuing legal services to a single corporate client in the same way as if fully licensed in Colorado (except that pro hac vice admission is still required in litigation before a court or agency). The rule is intended to facilitate practice by corporate in-house counsel. The out-of-state lawyer applying for the certificate must (1) be domiciled in Colorado, (2) pay both a "certification fee" and an annual registration fee, (3) comply with Colorado CLE requirements, and (4) limit his practice to his single designated client. Colorado joins twelve other states in offering a special limited-license certificate to out-of-state lawyers who are employed as corporate counsel.

New Jersey Committees Endorse ABA Rules

When the ABA adopted its new Rules in August, a number of New Jersey delegates voted to oppose the changes. Two committees appointed by the New Jersey Supreme Court have now recommended that the state follow the ABA lead. One significant recommendation would permit lawyers admitted in New Jersey but without an office in New Jersey to practice without restriction in New Jersey. This recommendation, if adopted, would enable lawyers based in Philadelphia or New York City and admitted in New Jersey to cross into New Jersey freely in connection with any matter permitted to a New Jersey lawyer with an office in New Jersey. Coupled with another recommendation of the committee - that out-of-state-lawyers be permitted to gain admission on motion on the same terms as in the ABA model - the ability of Pennsylvania and New York lawyers to overcome New Jersey's traditional insularity would be enhanced significantly.