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Have License, Will Travel: A Roadmap to Licensing Around the Northwest

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The past few years have seen dramatic changes around the Northwest in our ability to practice seamlessly across state lines. From formal reciprocal admission to enhanced temporary authorization to practice, Washington, Oregon and Idaho have taken major steps to offering Northwest lawyers the opportunity to work in all three venues with comparative ease. In this column, we'll look at three forms of cross-border licensing: (1) reciprocal admission; (2) in-house counsel admission; and (3) temporary "multijurisdictional practice," or "MJP." The oldest form of cross-border practice, *pro hac vice* admission for trial lawyers, remains alive and well, too, with the only significant change on that front being that the three Northwest bars now require temporary licenses and accompanying fees in addition to the traditional *pro hac* motion.ⁱ

Reciprocal Admission

Washington, Oregon and Idaho entered into a novel agreement that went into effect on January 1, 2002 that allows reciprocal admissions among the three states. Although Washington had already adopted a broad "mirror image" reciprocity rule by then, neither Oregon nor Idaho had up to that point offered reciprocal admission to any other state. The "Tri-State Compact" was also

unique for its time in its coordination of reciprocal admission among three geographically contiguous states.ⁱⁱ

The specific rules governing the Tri-State Compact are Washington Admission to Practice Rule 18, Oregon Admission Rule 15.05 and Idaho Bar Commission Rule 204A. The text of these rules and accompanying information on admission applications are available at the respective bar web sites: Washington—www.wsba.org; Oregon—www.osbar.org; and Idaho—www.state.id.us/isb.

The rules for all three jurisdictions are substantially similar. To be admitted reciprocally in one of the other jurisdictions, a reciprocal applicant must:

- be a graduate of an ABA-accredited law school;
- have passed the bar exam in at least *one* of the three participating states;
- be an active member of the bar in one of the three participating states;
- have practiced in one of the three participating states continuously for the three years immediately preceding the application; and
- show good character.

In addition, lawyers seeking reciprocal admission must complete 15 CLE hours in local practice and procedure. Information about specific CLE courses that satisfy this requirement is available from the individual bars in Washington,

Oregon and Idaho. The timing of the CLE requirement varies somewhat in each state:

- Oregon requires the 15 hours to be completed before admission.
- Idaho requires the 15 hours to be completed no later than six months following admission.
- Washington's "mirror image" reciprocity rule requires reciprocal applicants to satisfy the same CLE requirements that Washington lawyers would need to meet to be admitted in, as the case may be, Oregon or Idaho.

Finally, Oregon AR 15.05(5) also requires that reciprocal admission applicants comply with the mandatory malpractice insurance regulations of the Oregon State Bar Professional Liability Fund. Under the PLF, if a reciprocally admitted lawyer maintains his or her principal office in Oregon and is in private practice, then the lawyer must participate in the PLF. If the reciprocally admitted lawyer maintains his or her principal office outside of Oregon and is in private practice, then the lawyer "shall obtain and maintain other malpractice coverage covering the applicant's law practice in Oregon which coverage shall be substantially equivalent to the Oregon State Bar Professional Liability Fund coverage plan." More information about the PLF is available from its web site at www.osbplf.org.

Once an applicant is admitted reciprocally, the lawyer is a “full-fledged” member of the bar. Therefore, the lawyer must pay all applicable dues and satisfy all MCLE requirements. The MCLE requirement is tempered, however, by a separate compact under which Washington, Oregon and Idaho generally accept compliance with one state’s MCLE requirements as satisfying the requirements in the others.

House Counsel Admission

Washington, Oregon and Idaho have also adopted a more limited set of reciprocal admission rules applicable to corporate counsel. Although not integrated with each other like the Tri-State Compact, the house counsel admission rules in the Northwest states are very similar.

Washington APR 8(f) governs admission as a “house counsel” in Washington. To qualify for admission under this rule, an applicant must:

- be an active bar member in good standing in *any* other state or the District of Columbia;
- be employed exclusively by a “business entity”;
- pass the Washington Professional Responsibility Exam; and
- show good character.

Other than the WPRE, house counsel applicants are *not* required to take any other facet of the Washington bar examination.

A house counsel's practice must be limited exclusively to the employing business entity. The house counsel admission rule does not authorize either offering legal services to the public or appearances before courts or other administrative tribunals (unless admitted *pro hac vice*). To retain a house counsel license, a lawyer must maintain active bar membership in at least one other state and must remain employed by a business entity. For purposes of the house counsel admission rule, the term "business entity" includes a corporation, partnership, association or "other business entity," together with parent organizations, subsidiaries and affiliates. The house counsel rule, however, *excludes* employment with governmental agencies.

The Oregon and Idaho house counsel admission rules, respectively Oregon AR 16.05 and Idaho BCR 220, closely parallel the Washington rule in all key respects. Because Oregon does not require in-house counsel to carry malpractice insurance, in-house counsel, whether admitted generally under the reciprocal admission rule or specially under the house counsel rule, do not have to obtain insurance.

Temporary MJP

Although reciprocal admission is a great tool for lawyers who practice regularly in more than one of the three Northwest states, it does not address some identifiable areas of transitory practice in which the lawyers involved are not called into "out-of-state" matters with sufficient frequency or regularity for it to

make practical or economic sense for them to become members of the bar in those other states. Until recently, there was no mechanism to authorize the comparatively common case of an out-of-state transactional lawyer who is “in state” on behalf of a “home state” client to negotiate a business transaction involving the “home state” client.

The problems in this “gray area” were illustrated in a pair of California decisions that engendered much discussion of MJP issues nationally. In the first, *Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court*, 17 Cal. 4th 119, 949 P.2d 1, 70 Cal. Rptr. 2d 304 (1998), the California Supreme Court, in effect, denied over \$1 million in fees to a New York law firm because its lawyers providing services to a California client were not licensed there. In the second, *Estate of Condon*, 65 Cal. App. 4th 1138, 76 Cal. Rptr. 2d 922 (1998), the California Court of Appeal distinguished *Birbrower* and upheld the fees charged by a Colorado lawyer who handled a probate matter in California for a *Colorado client*. Regardless of their relative merits, *Birbrower* and *Condon* illustrate the practical uncertainty that the lack of specific rules engenders and the difficulty courts may have in fashioning consistent authority in the absence of specific rules.

To address this uncertainty, both the ABA and the Northwest states moved to create specific categories of “authorized” MJP. The ABA adopted amendments to its Model Rules in August 2002 to authorize MJP. The ABA

amended Model Rule 5.5, which governs the authorized and unauthorized practice of law, and Model Rule 8.5, which addresses the disciplinary jurisdiction of individual states. Oregon and Idaho have adopted versions of RPC 5.5 that closely parallel the ABA Model Rule and a proposed Washington version is pending before the Supreme Court as I write this.

The new Northwest MJR rules recognize six forms of transitory work as the authorized practice of law:

- Out-of-state lawyers are allowed to handle “in-state” matters in association with a local lawyer who participates actively in the representation.
- The practical scope of *pro hac vice* admissions is extended to work, such as prefiling witness interviews, that occurs before formal *pro hac vice* admission is available and to alternative dispute resolution proceedings that do not have the equivalent of formal *pro hac vice* admission.
- Out-of-state lawyers are allowed to handle an arbitration, mediation or similar alternative dispute resolution proceeding if the legal services arise out of or are related to the lawyers “home” state.
- Out-of-state lawyers are allowed to handle “in-state” matters that arise out of or are reasonably related to the lawyer’s practice in the lawyer’s “home” state.

- In-house counsel are allowed to provide services to their corporate employers in transitory circumstances that do not otherwise warrant admission under available house counsel rules.
- Legal work specifically permitted by federal law, such as that of federal prosecutors, now falls within the scope of “authorized practice” even if the lawyer involved is not admitted in the jurisdiction involved.

Summing Up

The changes to the lawyer licensing rules around the Northwest have transformed what was one a bumpy road into a comparatively smooth ride to a unified practice in all three states.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP focuses on legal ethics, product liability defense and condemnation litigation. In his legal ethics practice, Mark handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation for lawyers, law firms and legal departments throughout the Northwest. He is a past member of the Oregon State Bar’s Legal Ethics Committee, is a past chair of the Washington State Bar Rules of Professional Conduct Committee, is a member of the Idaho State Bar Professionalism & Ethics Section and is a co-editor of the OSB’s Ethical Oregon Lawyer and the WSBA’s Legal Ethics Deskbook. Mark also writes the monthly Ethics Focus column for the Multnomah (Portland) Bar's Multnomah Lawyer, the

quarterly Ethics & the Law column for the WSBA Bar News and is a regular contributor on risk management to the OSB Bar Bulletin, the Idaho State Bar Advocate and the Alaska Bar Rag. Mark's telephone and email are 503.224.4895 and Mark@frllp.com.

ⁱ The Northwest *pro hac vice* licensing rules are Washington Admission to Practice Rule 8(b), Oregon Uniform Trial Court Rule 3.170 and Idaho Bar Commission rule 222. Lawyers being admitted *pro hac* also need to comply with the requirements of the particular court or agency before which they are seeking admission.

ⁱⁱ Washington and Alaska have reciprocity for experienced lawyers who have taken the bar exam in their respective "home" jurisdictions. More information on reciprocal admission in Alaska is available on the Alaska Bar's web site at www.alaskabar.org. Since the Tri-State Compact, Oregon now has reciprocity with Utah and Idaho now has reciprocity with Utah and Wyoming.