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**The New Rules:
What's Inside the Box? Part 4-Multijurisdictional Practice**

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In this final installment of our look at the new rules, we'll examine the new multijurisdictional practice rule. The old rule on licensing was DR 3-101. It prohibited the unauthorized practice of law by both nonlawyers and lawyers who were not licensed here or otherwise specially admitted. The new rule is RPC 5.5. It retains the prohibitions against unauthorized practice found in DR 3-101. RPC 5.5 then authorizes several specific categories of temporary practice here by out-of-state lawyers.

Before we turn to the specifics, let's start with a little history for context. Lawyers have been traveling across jurisdictional boundaries for a long time. Litigators, for example, have long been able to get temporarily admitted in another state to handle an individual case under pro hac vice rules. More recently, many states—including Oregon—have adopted varying reciprocal admission rules to accommodate lawyers who routinely practice in more than one jurisdiction. But, lawyers who only occasionally handled matters in other states and who didn't have the pro hac vice mechanism available to authorize their presence were in somewhat of a limbo. Most often it was business lawyers who were in another state handling a transaction for a "home state" client. Even litigators, though, ran into this problem when a case was being arbitrated rather

than handled in court because many states don't have pro hac vice rules beyond formal judicial proceedings.

Although virtually all states have regulations or statutes preventing the unauthorized practice of law, the risk to lawyers wasn't typically from regulatory authorities. Rather, it came from their own clients who, disappointed with the result in a matter, might argue that they had no duty to pay their lawyers because the lawyers were engaged in the unauthorized practice of law by providing the services involved in a jurisdiction in which the lawyers weren't licensed. Sound far-fetched? Many lawyers thought so until the California Supreme Court voided a fee agreement on exactly that theory in *Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court*, 17 Cal 4th 119, 949 P2d 1, 70 Cal Rptr 2d 304 (1998), and effectively 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 wake of *Birbrower*, the ABA appointed a special commission to examine multijurisdictional practice issues and eventually adopted a temporary practice rule that became the model for Oregon RPC 5.5 and similar regulations nationwide.

Oregon's version creates six categories of authorized multijurisdictional practice.

First, out-of-state lawyers are allowed to handle a matter here in association with an Oregon-licensed lawyer. For example, a Washington lawyer from a firm's Seattle office can assist on a matter its Portland office is handling.

Second, out-of-state lawyers are permitted to work on matters here if they have been admitted pro hac vice or expect to be so once the case is filed. This covers not only traditional pro hac vice admission, but also work such as investigations before a case is filed.

Third, out-of-state lawyers are authorized to handle arbitrations and mediations here that are related to their "home state" and for which formal pro hac vice rules do not exist. For example, a Seattle lawyer could arbitrate or mediate a case in Portland for a Washington client.

Fourth, out-of-state lawyers are permitted to handle matters here that are related to their "home state" practice. To continue our Seattle lawyer example, the lawyer could negotiate a business transaction in Portland for a Washington client.

Fifth, out-of-state corporate counsel are allowed to provide temporary services here to their corporate employers. This provision supplements Oregon's in-house counsel admission rule by allowing temporary practice here by in-house lawyers. For example, a Seattle-based in-house lawyer could handle a matter for the company's Portland office.

Sixth, out-of-state lawyers who are authorized to practice here by federal law may do so. For example, a military lawyer from Fort Lewis could handle a court-martial here.

When it adopted the RPCs, the Supreme Court limited the new multijurisdictional practice rules to a three-year trial period. Unless extended by further order of the Court, they will sunset at the end of 2007. Given the nature of practice today and the frequency with which lawyers cross interstate borders in both directions, these very practical rules will hopefully have proven their merit to the Court long before then.

ABOUT THE AUTHOR

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