

CHAPTER 6

**RECIPROCITY, IN-HOUSE COUNSEL ADMISSIONS  
AND  
MULTI-JURISDICTIONAL PRACTICE  
IN WASHINGTON (AND BEYOND)**

**by Mark J. Fucile**

**Stoel Rives LLP**  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204  
503.294.9501  
mjfucile@stoel.com

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**Mark J. Fucile** is a partner in the Litigation Group at Stoel Rives LLP. His legal ethics practice includes counseling lawyers, law firms and corporate and governmental legal departments on professional ethics and attorney-client privilege issues and defending lawyers before courts and regulatory agencies. Mark is a past chair of the Washington State Bar Association Rules of Professional Conduct Committee, is a former member of the Oregon State Bar Legal Ethics Committee and is a member of the Idaho State Bar's Section on Ethics & Professionalism. Mark was also a member of the WSBA's Special Committee for the Evaluation of the Rules of Professional Conduct. He writes the quarterly Ethics & the Law column for the Washington State Bar News and the monthly Ethics Focus column for the Multnomah (Portland) Bar's Multnomah Lawyer. Mark is a contributing author/editor for the current editions of the WSBA's Legal Ethics Deskbook and the OSB's Ethical Oregon Lawyer. He is admitted in Washington, Oregon, Idaho, Alaska and the District of Columbia. Mark received his B.S. from Lewis & Clark College and his J.D. from UCLA.

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## I. INTRODUCTION

Both the Washington Rules of Professional Conduct (“RPCs”) and the ABA Model Rules of Professional Conduct (“ABA Model Rules”) upon which the RPCs are based define the “authorized” and “unauthorized” practice of law by attorneys.<sup>1</sup> Under the current version of Washington RPC 5.5(a), “[a] lawyer shall not \* \* \* [p]ractice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction[.]” Similarly, RPC 5.5(b) prohibits a Washington lawyer from “[a]ssist[ing] a person who is not a member of the [Washington State] Bar in the performance of activity that constitutes the unauthorized practice of law[.]” Until recent changes that will be discussed in this paper, ABA Model Rules 5.5(a) and 5.5(b) were substantively identical to the Washington rules. Although these rules appear comparatively clear on their face, there has been substantial confusion and debate nationally in recent years over what is usually called “multi-jurisdictional practice” or simply “MJP.”

This paper focuses on four primary facets of MJP. *First*, it outlines the reciprocal admission compact that went into effect among Washington, Oregon and Idaho on January 1, 2002. *Second*, it discusses Washington’s reciprocal admission rule for lawyers from outside the Northwest. *Third*, it addresses a more limited set of reciprocal admission rules available for in-house corporate counsel in the Northwest. *Fourth*, it examines broader proposals for authorizing specific kinds of transitory practice by “out-of-state” lawyers.

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<sup>1</sup> As noted, this paper focuses on issues relating to the practice of law by attorneys. For issues relating to the practice of law (both authorized and unauthorized) by nonlawyers, see Washington General Rule 24, which defines the practice of law, and General Rule 25, which establishes a “Practice of Law Board.” See also *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 45 P.3d 1068 (2002) (discussing the practice of law by nonlawyers).

## II. THE NORTHWEST RECIPROCAL ADMISSION COMPACT

Washington, Oregon and Idaho entered into a novel agreement that went into effect on January 1, 2002 that allows broad reciprocal admissions among the three states.

The specific rules governing the “Tri-State Compact” are set out in Washington Admission to Practice Rule (“APR”) 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](http://www.wsba.org); Oregon—[www.osbar.org](http://www.osbar.org); and Idaho—[www.state.id.us/isb](http://www.state.id.us/isb).

The rules for all three jurisdictions are substantially similar. To be admitted reciprocally in one of the other jurisdictions under the Tri-State Compact, 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 uses a “mirror image” reciprocity rule, and, therefore, it 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 also requires that reciprocal admission applicants comply with the mandatory malpractice insurance regulations of the Oregon State Bar Professional Liability Fund (“PLF”). Oregon Admission Rule 15.05(5). Therefore, if the reciprocally admitted lawyer maintains his or her principal office in Oregon and is in private practice, then the lawyer must participate in the PLF. *Id.* 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.” *Id.* More information about the Oregon PLF is available from its web site at [www.osbplf.org](http://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.

### **III. BEYOND THE TRI-STATE COMPACT— RECIPROCAL ADMISSIONS IN WASHINGTON**

For lawyers seeking admission in Washington who do not otherwise meet the requirements of the Tri-State Compact, Washington offers another avenue for reciprocal

admission in the form of APR 18. APR 18 is a pure “mirror image” reciprocity rule—*i.e.*, it offers reciprocal admission to out-of-state lawyers on substantially the same basis that the lawyer’s “home” state would allow Washington lawyers to practice there. A current list of reciprocal jurisdictions is available in the “licensing” section of the Washington State Bar Association’s (“WSBA”) web site at [www.wsba.org](http://www.wsba.org).<sup>2</sup>

To qualify under APR 18’s broader reciprocal formula, an applicant must:

- be an active member in good standing of the bar in a jurisdiction that accords Washington lawyers reciprocal admission;
- show good character; and
- pass the Washington Professional Responsibility Exam (“WPRE”) *if* the lawyer’s “home” jurisdiction would require Washington lawyers being admitted there to pass the Multi-State Professional Responsibility Exam (“MPRE”).<sup>3</sup>

As with lawyers admitted under the Tri-State Compact, once an applicant is admitted reciprocally, the lawyer is a “full-fledged” member of the WSBA. Therefore, the lawyer must pay all applicable dues and satisfy all MCLE requirements.

#### **IV. NORTHWEST HOUSE COUNSEL ADMISSION RULES**

Washington, Oregon and Idaho have also adopted a more limited set of reciprocal admission rules applicable to in-house corporate counsel.<sup>4</sup> Although not integrated with each other like the Tri-State Compact, the house counsel admission rules in the Northwest states are very similar.

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<sup>2</sup> Of note in the Northwest, 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](http://www.alaskabar.org).

<sup>3</sup> Washington relies on its own WPRE rather than the MPRE.

<sup>4</sup> Washington also has a special admission rule for military lawyers, APR 8(g).

Washington APR 8(f), the text of which and related admission instructions are available at the WSBA's web site, 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 WPRE; and
- show good character.

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

As a house counsel, the attorney's practice must be limited exclusively to the employing business entity. APR 8(f)(2). The house counsel admission rule does not authorize either offering legal services to the public or appearances before courts or other administrative tribunals.<sup>5</sup> *Id.* To retain a house counsel license, an attorney must maintain active bar membership in at least one other state and must remain employed by a business entity. APR 8(f)(6)-(7). 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. APR 8(f)(1)-(2). The house counsel rule, however, *excludes* employment with governmental agencies. *Id.*

As noted, Oregon and Idaho have similar house counsel admission rules. *See* Oregon Admission Rule 16.05; Idaho Bar Commission Rule 220. Additional information on those rules

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<sup>5</sup> A house counsel admitted under this rule is allowed to appear before a court or other administrative tribunal *if* the house counsel is associated "with an active member of the Washington State Bar Association who shall be the lawyer of record therein[.]" APR 8(f)(2).

and related application materials are available on the Oregon and Idaho bar web sites at, respectively, [www.osbar.org](http://www.osbar.org) and [www.state.id.us/isb](http://www.state.id.us/isb).

## V. OTHER MJP PROPOSALS

Although the availability of reciprocal admission is of great assistance to 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. *See generally* Restatement (Third) of the Law Governing Lawyers § 3(3) (2000). Unlike transitory litigators who have had the ability to become admitted *pro hac vice*, transactional lawyers did not have a similar mechanism accorded under the current versions of either the admission rules or RPC 5.5. *Cf.* Washington APR 8(b) (*pro hac vice* admission in court proceedings).

The problems in this “gray area” were illustrated in a pair of recent California court 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 attorney 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*. The merits of



*Birbrower* and *Condon* can—and have—been debated at length nationally. Regardless of their relative merits, however, they 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 WSBA have moved toward creating specific categories of “authorized” MJP.

The ABA adopted amendments to its Model Rules in August 2002 to authorize five categories of 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. The text of the rule changes, an accompanying report by the ABA special commission that developed the amendments and a wide range of background materials (including a resolution of support from the National Conference of Chief Justices) are available at the ABA Center for Professional Responsibility’s web site at [www.abanet.org/cpr](http://www.abanet.org/cpr). As noted, the ABA’s House of Delegates approved the rule amendments at its annual meeting in August 2002. Oregon and Idaho have adopted versions of ABA Model Rules 5.5 and 8.5 and ones pattern on those rules are pending before the Washington Supreme Court.<sup>6</sup>

If approved by the Supreme Court in its current form, new RPC 5.5 would recognize six forms of transitory work as the authorized practice of law:

- “Out-of-state” lawyers would be 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 would be extended to work, such as pre-filing witness interviews, that occurs before formal *pro hac vice* admission

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<sup>6</sup> The Washington proposals are part of the larger “Ethics 2003” package of RPC amendments before the Supreme Court.

is available and to alternative dispute resolution proceedings that do not have the equivalent of formal *pro hac vice* admission.

- “Out-of-state” lawyers would be 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 would be 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, would fall within the scope of “authorized practice” even if the lawyer involved is not admitted in the jurisdiction involved.<sup>7</sup>

If approved by the Supreme Court, RPC 8.5 would also change to explicitly expand the disciplinary authority of state regulators over lawyers practicing “authorized” MJP within their borders. *See also* Washington Rules for Enforcement of Lawyer Conduct 1.2 (disciplinary jurisdiction).

As noted earlier, the ABA Model Rules are just that—a set of models. But, even as such, they have largely been adopted by over 40 states and the District of Columbia—including all of the states in the Northwest. The ABA MJP amendments, therefore, are likely to form an influential template as individual states revise and update their rules of professional conduct. Moreover, even in states like California that have not yet adopted the ABA Model Rules, the broader forces of economic and technological change that have increased the “mobility” of legal

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<sup>7</sup> The ABA considered, but ultimately rejected, a much-broader “federal law” exception that would have authorized MJP if the matter involved “primarily” federal law. *See* ABA Commission on Multijurisdictional Practice Interim Report (Nov. 2001) (available at the ABA Center for Professional Responsibility’s web site at [www.abanet.org/cpr](http://www.abanet.org/cpr).)

services nationally will likely foster at least discussion about the possibility of accommodating broader MJR as well.