

CHAPTER 5

**CROSSING STATE LINES:  
NEW RULES ON MULTIJURISDICTIONAL PRACTICE  
AND CHOICE OF LAW**

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*This chapter is adapted from Mark's July 2006 Ethics & the Law column in the WSBA Bar News called "Have License, Will Travel: A Roadmap to Licensing Around the Northwest." That column was published shortly before the Washington Supreme Court approved the new Rules of Professional Conduct. This chapter updates the earlier column to reflect the final adopted changes to the Washington RPCs and associated Admission to Practice Rules.*

## I. INTRODUCTION

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 chapter, 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 vice* motion.<sup>1</sup>

## II. 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.<sup>2</sup>

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<sup>1</sup> The Northwest *pro hac vice* admission 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 vice* also need to comply with the requirements of the particular court or agency before which they are seeking admission.

<sup>2</sup> 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). Since the Tri-State Compact, Oregon now has reciprocity with Utah and Idaho now has reciprocity with Utah and Wyoming.

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](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, 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](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. HOUSE COUNSEL ADMISSION**

Washington, Oregon and Idaho have taken different paths to house counsel admission but reach the same place: relatively easy admission for in-house corporate counsel.

Until the new RPCs were adopted, Washington had a specific house counsel admission rule, former APR 8(f), which allowed in-house corporate counsel to be admitted in Washington as long as they were members in good standing of the bar of any other state or the District of Columbia. The Supreme Court’s order approving the new RPCs also approved changes to APR 8(f). It is now limited to foreign in-house counsel and allows them to obtain a limited license for work directly for their Washington corporate employers and its affiliates. In-house counsel

admitted in other American jurisdictions, by contrast, are now authorized to practice law in Washington by RPC 5.5(d)(1): “A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that: (1) are provided to the lawyer’s employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission[.]”

Oregon and Idaho have taken the somewhat different approach of recognizing in-house corporate practice by out-of-state lawyers as being the authorized practice of law under their versions of RPC 5.5, but still require those lawyers to register and to pay annual licensing fees. Neither Oregon nor Idaho, however, require out-of-state lawyers to take their full bar exams as a condition of house counsel admission. The Oregon and Idaho house counsel admission rules are, respectively, Oregon AR 16.05 and Idaho BCR 220. 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.

#### **IV. TEMPORARY MULTIJURISDICTIONAL PRACTICE**

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 adopted versions of RPC 5.5 that closely parallel the ABA Model Rule in, respectively, 2005 and 2004. Washington joined them with new RPC 5.5 on September 1. All three also adopted substantially similar versions of RPC 8.5, which subjects out-of-state lawyers to disciplinary jurisdiction for in-state conduct and adopts corresponding choice of law rules.

The new Northwest MJP 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 prefilings 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.
- As discussed in more detail above, in-house counsel are allowed to provide services to their corporate employers.
- 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.

## V. CONCLUSION

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.