Association of Professional Responsibility Lawyers

November _, 2002

The Honorable Robert Zoelick
United States Trade Representative
600 Sevbenteenth Street, N.W.
Washington D.C. 20508

RE: Regulation of Foreign Lawyers Delivering Legal Services in the United States

Dear Mr. Ambassodor:

I write as President of the Association of Professional Responsibility Lawyers ("APRL"), whose board has authorized submission of these comments concerning the United States negotiating position on "inbound" foreign lawyers providing legal services in the United States. APRL has not yet developed positions on all aspects of issues on which comments have been requested. APRL hopes to provide comments on other issues in the future.

Existing rules focus on admission for lawyers desiring to establish an office or other systematic and continuous presence in the state where they propose to practice. As the American Bar Association has recently recognized, special provisions are necessary for provision of services on a temporary basis, and it is primarily provisions of that sort which we wish to address in these comments.

APRL's Interests

APRL is an independent national organization of lawyers whose practice concentrates upon professional licensing and discipline, professional responsibility and the law of lawyering. Its membership practices in every American jurisdiction and includes foreign lawyers. APRL conducts study and educational programs nationally and internationally, including in its educational efforts and membership

activities lawyers from Canada, the United Kingdom, China, Australia and their counterparts from EU countries. APRL members are particularly interested in matters relating to attorney licensing and discipline, risk management and multijurisdictional practice. APRL and its members have been active in all aspects of the development of the American Bar Association position on multijurisdictional practice and attorney discipline in connection with such practice. For these reasons, APRL is vitally concerned with the application of GATS to attorneys who wish, either temporarily or more permanently, to cross national borders as a part of their practice. These may be attorneys not licensed in the United States who may seek to practice in the United States or United States licensed lawyers who may seek to practice abroad.

Issues Presented by "Inbound" Foreign Lawyers

APRL has reviewed the comments filed by the National Organization of Bar Counsel ("NOBC"), with most of which APRL agrees. In light of the NOBC comments and the recent actions of the American Bar Association on Multijurisdictional Practice, APRL suggests that the issues raised by foreign lawyers providing legal services in the United States be considered as presenting the following questions:

1. What foreign lawyers should be permitted to provide such services on a temporary basis?

2. What sorts of legal services should foreign lawyers be permitted to provide on a temporary basis?

3. On what basis should foreign lawyers be permitted to permanently establish themselves in the United States?

4. What disciplinary jurisdiction should the state(s) in which a foreign lawyer practices ("host state(s)") be able to exercise over the foreign lawyer?

5. What effect should be given to in the lawyer's "home jurisdiction(s)" (those in which the lawyer is regularly licensed to practice) to discipline in a host state located in the United States?

What Foreign Lawyers Should Be Able To Practice Temporarily?

NOBC suggests that only lawyers qualifying under the ABA Model Rules for the Licensing of Legal Consultants should be permitted to provide services on a temporary basis. APRL believes that those rules, requiring five years of admission and actual practice of the lawyer's home state law, may not be appropriate in all instances, as when a foreign client wishes to have the advice of a home state lawyer while negotiating an international transaction in a United States host state.

APRL suggests instead the standard recently adopted by the ABA in paragraph (b) of its Model Rule on Temporary Practice by Foreign Lawyers:

> the lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.

APRL notes that NOBC supported the Report of the ABA Commission on Multijurisdictional Practice ("MJP Commission"), which proposed this rule. That Report was completed after NOBC submitted its comments on "Regulation of Foreign Lawyers Delivering Legal Services in the United States." So the standard just quoted was not then available for adoption by NOBC, and NOBC's support of the overall Report suggests that it might find this standard acceptable.

What Services Should Foreign Lawyers Be Permitted To Provide on a Temporary Basis?

APRL addressed this subject in connection with the deliberations of the MJP Commission. Together with the NOBC; the American Corporate Counsel Association; the ABA Section of Law Practice Management; the ABA Section of Business Law; the ABA Section of Environment, Energy & Resources; the ABA Section of International Law & Practice; the bars or bar associations of Arizona, the City of New York, the District of Columbia, Colorado, Denver, Michigan, and Virginia; and the Federal Communications Bar Association, APRL supported "A Common Sense Proposal for Multijurisdictional Practice" (copy attached) that included practice in the United States by foreign lawyers. Under the Common Sense Proposal, a lawyer meeting the qualifications set forth above would be permitted, in a host state where that lawyer was not otherwise admitted, to engage in the practice of law when:

> (1) the lawyer is authorized by law or order to appear before a tribunal or administrative agency or is preparing for a potential proceeding or hearing in which the lawyer reasonably expects to be so authorized; or
>
> (2) other than engaging in conduct governed by paragraph [](1):
>
> ….
>
> (ii) the lawyer performs services for a client in this jurisdiction on a temporary basis, does not establish a systematic and continuous presence in this jurisdiction for the practice of law, and does not hold out to the public that the lawyer is licensed to practice law in this jurisdiction.

APRL continues to believe that this is an appropriate scope of practice for foreign lawyers in the United States on a temporary basis.

In the alternative, though not preferred, APRL would endorse the scope of temporary practice permitted by paragraph (a) of the ABA Model Rule on Temporary Practice by Foreign Lawyers (copy attached).

Permanent Establishment

In general, APRL agrees with NOBC that foreign lawyers desiring to establish an office or other systematic and continuous presence in the United States for the practice of law should be required to obtain admission (either generally or as a foreign legal consultant) in the state(s) in which that office or systematic and continuous presence is maintained.

However, as both the Common Sense Proposal and ABA Model Rule of Professional Conduct 5.5(d)(1) recognize, organizations employing in-house counsel have greater ability than most clients to assess the competence and character of the counsel they employ, so APRL urges that foreign lawyers (as described above) be permitted (in parallel to Model Rule 5.5(d)(1)'s authorization for lawyers admitted in a United States jurisdiction) to render legal services in the United States "to the lawyer's employer or its organizational affiliates," so long as those "are not services for which the forum requires pro hac vice admission."

Disciplinary Jurisdiction

APRL agrees with NOBC that the host state(s) in which a foreign lawyer practices should have the same disciplinary jurisdiction over that lawyer as they have over United States lawyers practicing there. This was an element of the Common Sense Proposal and is endorsed by the MJP Report.

Reciprocal Discipline

APRL largely agrees with NOBC that foreign lawyers practicing in the United States should face reciprocal discipline from their home jurisdictions if they are disciplined by a United States host jurisdiction in which they have practiced, and that such reciprocal discipline should be imposed substantially on the basis provided in Rule 22 of the ABA Model Rules of Disciplinary Enforcement (copy attached). However, paragraphs (A) through (C) of that rule are procedural in nature and may not be appropriate in the context of a foreign regulatory system, which we assume will provide the foreign lawyer appropriate procedural protections consistent with local law and fundamental fairness. APRL believes that United States interests in discipline of such lawyers will be adequately protected so long as reciprocal discipline is imposed substantially in accordance with paragraphs (D) and (E) of that rule.

Most Favored Nation

APRL is aware that the United States has committed itself to comply with certain most favored nation ("MFN") requirements of GATS. APRL is aware that there may be issues as to how those requirements interact with the proposed standard for "inbound" foreign lawyers (some nations may not have qualifying legal professions) and the requirement of reciprocal discipline (especially if that depends on the sort of individual commitment by the foreign nation suggested by NOBC). On the other hand, APRL points out that nothing in APRL's proposal depends on how any foreign nation treats United States lawyers seeking to practice in that nation. APRL is still studying the GATS MFN requirements and the various approaches that may be possible under those requirements. When that study has advanced further, APRL may have further comments on the MFN issues.

APRL is grateful for the opportunity to comment. Should you have any questions about these comments, I can be contacted as follows:

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We look forward to working with your office regarding these negotiations.

Very truly yours,

Anthony E. Davis
President

A COMMON SENSE PROPOSAL FOR MULTIJURISDICTIONAL PRACTICE

(Check for updates and modifications at www.acca.com/advocacy/mjp/commonsenseproposal.html)

The undersigned embrace common ground on a critical issue facing the profession – the need for authorizing multijurisdictional practice (MJP). Many of us have already expressed separate "reform" positions to the ABA Commission on MJP or to state bar groups considering the issue. Although we represent lawyers from many different practice settings and with diverse perspectives – we share a common belief that what we agree upon in this debate is far greater than what divides us by way of differences.

By noting our support below, none of us abandons any of our previously stated MJP positions, each of which may differ to some degree. But we are all concerned that the ABA MJP Commission's interim report's reliance on a problematic and perplexing panoply of safe harbors to Model Rule 5.5 is a misdirected means of advocating the MJP reform that the profession must enact. Our profession must enact a more straightforward rule authorizing MJP, under which lawyers and clients can flourish, and by which the public will be protected from unprofessional behavior. Any such rule should be simple to understand, easy to define, hard to amend, and capable of enforcement from state to state. We believe that our proposed rule, offered as an amendment to Rule 5.5, is an appropriate model for consideration.

The essence of our approach is to generally authorize temporary MJP practice, making appropriate

exceptions and providing appropriate protections for the public and the profession, rather than forcing lawyers through a confusing sieve of unauthorized practice rules and numerous safe harbors. The coalition does agree with the ABA Commission's general support for reform, and specifically calls for the implementation of many of the other important recommendations of the ABA MJP Commission report, including those portions pertaining to changes needed to related enforcement provisions in Model Rule 8.5, Rule 22 of the Model Rules for Lawyer Disciplinary Enforcement, proposals concerning a model pro hac vice standard that would harmonize current state rules for the temporary admission of non-host-state litigators in local host state court actions, and so on.

Last amended

3/19/02

Coalition Co-Founders:
The American Corporate Counsel Association (ACCA)
The Association of Professional Responsibility Lawyers (APRL)
The Law Practice Management Section, American Bar Association (ABA)
The National Organization of Bar Counsel (NOBC)

Organizations supporting the Common Sense Proposal's preference for temporary practice MJP authorization in Rule 5.5 (instead of a safe harbor rule formulation):
The Arizona Bar Association
The Association of the Bar of the City of New York (ABCNY)
The Bar Association of the District of Columbia (BADC)

The Business Law Section, American Bar Association (ABA)
The Colorado Bar Association (CBA)/The Denver Bar Association (DBA)
The Environment, Energy & Resources Section (ABA)
The Federal Communications Bar Association (FCBA)
The General Counsel Committee of the Business Law Section (ABA)
The International Law & Practice Section (ABA)
The Michigan Bar (as expressed by their current MJP authorization rule)
The Virginia Bar (as expressed by their current MJP authorization rule)

3/19/02 The Common Sense Proposal's

RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) Unauthorized Practice of Law. A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction;

(2) assist another person in the unauthorized practice of law.

(b) Multijurisdictional Practice of Law. A lawyer not admitted to practice in this jurisdiction, but admitted to practice in another jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may engage in the practice of law in this jurisdiction when:

(1) the lawyer is authorized by law or order to appear before a tribunal or administrative agency or is preparing for a potential proceeding or hearing in which the lawyer reasonably expects to be so authorized; or

(2) other than engaging in conduct governed by paragraph (b)(1):

(i) the lawyer is an employee of a client and acts on the client's behalf or on behalf of the client's organizational affiliates; or

(ii) the lawyer performs services for a client in this jurisdiction on a temporary basis, does not establish a systematic and continuous presence in this jurisdiction for the practice of law, and does not hold out to the public that the lawyer is licensed to practice law in this jurisdiction.

[Please note: Although the text of the Proposal is presented in the form of Model Rule of Professional Conduct 5.5, we recognize that changing the ethics rules cannot (in many states, at least) completely accomplish the "de-criminalization" of conduct that has traditionally been treated as the unauthorized practice of law ("UPL"), thereby subjecting "guilty" lawyers to potential loss of fees, professional discipline, or even criminal prosecution. Accordingly, in several - perhaps many - states, in order to accomplish completely the change that we advocate, broadly permitting MJP in the circumstances we have defined, it may be necessary for courts to adopt other rule changes, redefining UPL itself to exclude MJP as defined, or even legislation to the same effect. We believe that sub-section (b) of the Proposal may be adopted in the same terms wherever that is necessary, subject only to necessary editorial changes to reflect whether it is to be a court rule or a legislative provision.]

COMMENT

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice by the law of the jurisdiction or an order of a tribunal. Paragraph (a) of this Rule governs the unauthorized practice of law by a lawyer, either directly or by assisting another person. Paragraph (b) expressly authorizes lawyers to engage in multijurisdictional practice of law.

Unauthorized Practice of Law

[2] The practice of law in violation of the authorization requirements of this or another jurisdiction constitutes a violation of Paragraph (a)(1) of this Rule.

[3] The definition of the unauthorized practice of law is established by law, including court rule, and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Paragraph (a)(2) of this Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[4] Lawyers may also provide professional advice and instruction to nonlawyers whose employment requires knowledge of law, for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers may assist independent nonlawyers authorized by the law of a jurisdiction to provide particular legal services, for example, paraprofessionals authorized to provide some kinds of legal services. In addition, lawyers may counsel nonlawyers who wish to proceed pro se.

Multijurisdictional Practice of Law

[5] Paragraph (b) of this Rule, on the other hand, expressly authorizes lawyers admitted to practice in another jurisdiction, but not in this jurisdiction, and not currently disbarred or suspended from practice in any jurisdiction, to practice law temporarily in this jurisdiction. The categories of conduct described in this Rule are not exclusive. For example, nothing in this Rule restricts the ability of lawyers authorized by federal statute or other federal law to represent the interests of the United States or other persons in this or another jurisdiction.

[6] Under Paragraph (b) of this Rule, "another jurisdiction" includes a state or territory of the United States, the District of Columbia, or a foreign country (i) in which the legal profession is recognized as such, (ii) the members of which are admitted to practice as attorneys or counselors of law or the equivalent, and (iii) such members are subject to ethical principles and effective regulation and discipline by a duly constituted professional body or public authority.

[7] A lawyer who practices law in this jurisdiction pursuant to Paragraph (b) of this Rule is subject to the disciplinary authority of this jurisdiction. See Rule 8.5.

[8] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or administrative agency to appear before the tribunal or agency. Under paragraph (b)(1), a lawyer does

not violate this Rule when the lawyer makes such an appearance. Nor does a lawyer violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing, such as factual investigation and discovery conducted in connection with a litigation or administrative proceeding in which the lawyer or someone whom the lawyer is assisting has been or reasonably expects to be admitted.

[9] Similarly, Paragraph (b)(2)(i) recognizes that some clients hire lawyers as employees. Given that such a client is unlikely to be deceived about the training and expertise of these lawyers, these lawyers may act on behalf of such a client without violating this Rule. These lawyers may also act on behalf of the client's other employees or entities that control, are controlled by or are under common control with the employer, but only in connection with the client's matters.

[10] Paragraph (b)(2)(ii) recognizes that many matters require that lawyers act temporarily in this jurisdiction on behalf of clients in circumstances in which pro hac vice admission is unavailable. For example, this conduct may involve client counseling, transactional work, negotiation with private parties or with government officers or employees, appearance in administrative or rule-making proceedings, and participation in alternative dispute-resolution procedures.

[11] Under paragraph (b)(2)(ii), a lawyer's services in this jurisdiction may be performed on a temporary basis even though the lawyer is in this jurisdiction on a recurring basis or for an extended period, as when the lawyer is representing a client in a lengthy matter. Except as authorized by these Rules or other law, however, a lawyer who is not admitted to practice in this jurisdiction must not (i) establish an office to serve the public or other permanent presence in this jurisdiction for the practice or law; or (ii) represent or hold out to the public that the lawyer is admitted to practice in this jurisdiction.

Report 201J

AMERICAN BAR ASSOCIATION
COMMISSION ON MULTIJURISDICTIONAL PRACTICE
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association adopts the proposed *Model Rule for Temporary Practice by Foreign Lawyers*, dated August 2002**:**

Model Rule for Temporary Practice by Foreign Lawyers

(a) A lawyer who is admitted only in a non-United States jurisdiction shall not, except as authorized by this Rule or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law, or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Such a lawyer does not engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the lawyer performs services in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the lawyer, or a person the lawyer is assisting, is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation or other alternative dispute resolution proceeding held or to be held in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice;

(4) are not within paragraphs (2) or (3) and

(i) are performed for a client who resides or has an office in a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(ii) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(5) are governed primarily by international law or the law of a non-United States jurisdiction.

(b) For purposes of this grant of authority, the lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.

Report 201D

AMERICAN BAR ASSOCIATION
COMMISSION ON MULTIJURISDICTIONAL PRACTICE
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association adopts the proposed amendments, dated August 2002, to Rules 6 and 22 of the ABA *Model Rules of Lawyer Disciplinary Enforcement* as follows:

RULE 6. JURISDICTION.

A. Lawyers Admitted to Practice. Any lawyer admitted to practice law in this ~~state~~, jurisdiction, including any formerly admitted lawyer with respect to acts committed prior to resignation, suspension, disbarment, or transfer to inactive status, or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of these Rules or of the Rules of Professional Conduct [Code of Professional Responsibility] or any Rules or Code subsequently adopted by the court in lieu thereof, and any lawyer specially admitted by a court of this ~~state~~ jurisdiction for a particular proceeding ~~[~~, and any lawyer not admitted in this ~~state~~ jurisdiction who practices law or renders or offers to render any legal services in this ~~state]~~ jurisdiction, is subject to the disciplinary jurisdiction of this court and the board.

RULE 22. RECIPROCAL DISCIPLINE AND RECIPROCAL DISABILITY INACTIVE STATUS.

A. Disciplinary Counsel Duty to Obtain Order of Discipline or Disability Inactive Status from Other Jurisdiction. Upon being disciplined or transferred to disability inactive status in another jurisdiction, a lawyer admitted to practice in [this ~~state~~ jurisdiction] shall promptly inform disciplinary counsel of the discipline or transfer. Upon notification from any source that a lawyer within the jurisdiction of the agency has been disciplined or transferred to disability inactive status in another jurisdiction, disciplinary counsel shall obtain a certified copy of the disciplinary order and file it with the board and with the court.

B. Notice Served Upon Respondent. Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in [name of ~~state~~ jurisdiction] has been disciplined or transferred to disability inactive status in another jurisdiction, the court shall forthwith issue a notice directed to the lawyer and to disciplinary counsel containing:

(1) A copy of the order from the other jurisdiction; and

(2)An order directing that the lawyer or disciplinary counsel inform the court, within [thirty] days from service of the notice, of any claim by the lawyer or disciplinary counsel predicated upon the grounds set forth in paragraph D, that the imposition of the identical discipline or disability inactive status in this ~~state~~ jurisdiction would be unwarranted and the reasons for that claim.

C. Effect of Stay in Other Jurisdiction. In the event the discipline or transfer imposed

in the other jurisdiction has been stayed there, any reciprocal discipline or transfer imposed in this ~~state~~ jurisdiction shall be deferred until the stay expires.

D. Discipline to be Imposed. Upon the expiration of [thirty] days from service of the notice pursuant to the provisions of paragraph B, this court shall impose the identical discipline or disability inactive status unless disciplinary counsel or the lawyer demonstrates, or this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

(1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or

~~(4)~~ (3) The ~~imposition of the same~~ discipline ~~by the court~~ imposed would result in grave injustice ~~or~~; or be offensive to the public policy of the jurisdiction; or

~~(4)The misconduct established warrants substantially different discipline in this state; or~~

~~(5)~~ (4) The reason for the original transfer to disability inactive status no longer exists.

If this court determines that any of those elements exists, this court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

E. Conclusiveness of Adjudication in Other Jurisdictions. In all other aspects, a final adjudication in another jurisdiction that a lawyer, whether or not admitted in that jurisdiction, has been guilty of misconduct or should be transferred to disability inactive status shall establish conclusively the misconduct or the disability for purposes of a disciplinary or disability proceeding in this state.

Commentary

If a lawyer suspended or disbarred in one jurisdiction is also admitted in another jurisdiction and no action can be taken against the lawyer until a new disciplinary proceeding is instituted, tried, and concluded, the public in the second jurisdiction is left unprotected against a lawyer who has been judicially determined to be unfit. Any procedure which so exposes innocent clients to harm cannot be justified. The spectacle of a lawyer disbarred in one jurisdiction yet permitted to practice elsewhere exposes the profession to criticism and undermines public confidence in the administration of justice.

Disciplinary counsel in the forum jurisdiction should be notified by disciplinary counsel of the jurisdiction where the original discipline or disability inactive status was imposed. Upon receipt of such information, disciplinary counsel should promptly obtain and serve upon the lawyer an order to show cause why identical discipline or disability inactive status should not be imposed in the forum ~~state~~ jurisdiction. The certified copy of the order in the original jurisdiction should be incorporated into the order to show cause.

The imposition of discipline or disability inactive status in one jurisdiction does not mean

that every other jurisdiction in which the lawyer is admitted must necessarily impose discipline or disability inactive status. The agency has jurisdiction to recommend reciprocal discipline or disability inactive status on the basis of public discipline or disability inactive status imposed by a ~~state~~ jurisdiction in which the respondent is licensed.

A judicial determination of misconduct or disability by the respondent in another ~~state~~ jurisdiction is conclusive, and not subject to relitigation in the forum ~~state~~ jurisdiction. The court should impose identical discipline or disability inactive status unless it determines, after review limited to the record of the proceedings in the foreign jurisdiction, that one of the grounds specified in paragraph D exists. This Rule applies whether or not the respondent is admitted to practice in that jurisdiction. See also, Model Rule 8.5, Comment [1], Model Rules of Professional Conduct.

REPORT

Effective regulation of lawyers engaged in law practice in multiple jurisdictions requires that they be subject to meaningful sanctions for misconduct committed outside the jurisdictions in which they are licensed. As discussed above, a jurisdiction should be able to discipline a lawyer for misconduct that occurred in the jurisdiction, even though the lawyer is licensed only in another jurisdiction. However, the host jurisdiction has a limited array of sanctions at its disposal. Few jurisdictions provide for sanctions, such as fines, that would allow for disciplining out-of-state lawyers other than by restricting their right to practice law in the particular jurisdiction. The host jurisdiction may suspend or disbar the lawyer from practicing in that particular jurisdiction, but doing so would not in itself deprive the lawyer of the right to practice law in the lawyer's home jurisdiction or in other jurisdictions. Only the judiciary in the lawyer's home jurisdiction can suspend or disbar the lawyer from practicing law in that jurisdiction. Effective discipline therefore requires that, when a lawyer engages in misconduct outside the jurisdiction in which the lawyer is licensed, the lawyer be sanctioned appropriately in the jurisdiction in which the lawyer is licensed to practice law.

To address this problem, Rule 22 of the ABA *Model Rules for Lawyer Disciplinary Enforcement* requires a jurisdiction in which a lawyer is licensed generally to accept and reciprocally enforce another jurisdiction's disciplinary decision. Reciprocal enforcement promotes the regulatory interest in ensuring that, when a lawyer practicing in multiple jurisdictions is found by a host jurisdiction to have engaged in sanctionable misconduct, a meaningful sanction will be imposed. The MJP Commission recommends that the ABA renew its efforts to encourage all states to adopt this requirement.

Further, the MJP Commission recommends that the ABA amend the ABA *Model Rules for Lawyer Disciplinary Enforcement* in several ways to clarify their application to lawyers engaged in multijurisdictional practice and to ensure that such lawyers are subject to effective disciplinary enforcement when they engage in disciplinary misconduct in jurisdictions in which they are not licensed to practice law. Rule 6 defines which lawyers are subject to the disciplinary jurisdiction of the highest court in the state. Rule 6 should be amended by removing the brackets around the following language: [, and any lawyer not admitted in this state who practices law or renders or offers to render any legal services in this state]. This change would clarify that the provisions of Rule 6 apply not only to lawyers admitted in the jurisdiction but also to lawyers not admitted in the jurisdiction who are practicing law in the jurisdiction on a temporary or other basis. Rule 22, which specifically addresses reciprocal discipline, should be amended to make it clear that reciprocal discipline is to be imposed based upon the record created by the jurisdiction that imposed the discipline, but that in light of its public policy, the home jurisdiction may impose a different disciplinary sanction from that imposed by the host jurisdiction.